



DECISION OF

Upper Tribunal Judge Pino Di Emidio

in an Application for permission to appeal against a

Decision of the First-Tier Tribunal for Scotland

(General Regulatory Chamber (Parking and Bus Lanes))

Sabryna Carroll-Maclaren

Appellant

and

City of Glasgow Council

Respondent

Chamber File Reference number: GP00166-2307

13 December 2023

Decision

The Upper Tribunal for Scotland Refuses permission to appeal against the decision of the First-tier Tribunal for Scotland dated 27 July 2023.

Note of reasons for decision

[1] The question that arises in this application for permission to appeal is whether it is arguable that the FTS erred in law when it refused to extend time for the lodging of an appeal against the imposition of a penalty charge notice. On 27 July 2023, the FTS (Judge McFatridge) refused to register the application. On 25 September 2023, the FTS (Judge Sorrell) refused permission to appeal the decision of 27 July 2023. The application for permission to appeal made to the FTS was also late. It was lodged on 11 September 2023.

Hearing



[2] On 22 November 2023, the appellant's father represented her at a remote hearing before me on the question whether this Tribunal should grant permission. In a very clear submission, he explained that at the material time the appellant had been unwell and felt aggrieved that a PCN had been imposed. He very fairly accepted that there was a need for time limits in a system like the one under consideration here, but he argued that in this case the appeal should be allowed to go forward.

Reasons for Decision

Preliminary Issue

[3] I have considered whether as a matter of competency, I should decline to deal with this application because the FTS did not make a decision that could be subject to an application for permission to appeal. For reasons that have not been explained, the FTS' decision of 27 July 2023 is not printed on the usual General Regulatory Chamber notepaper, though it does state that if the appellant was aggrieved she may appeal to this Tribunal, subject to obtaining permission to appeal. I have not had the benefit of a submission on this point. The decision of 27 July 2023 does not fall into any of the categories of excluded decisions in sections 51 and 52 of the Tribunals (Scotland) Act 2014. I have considered whether the circumstances are analogous to those in *Fitzpatrick v Advocate General for Scotland* 2004 SLT (Sh Ct) 93, where a Sheriff Principal held that an appeal against a sheriff's decision refusing warrant to cite was incompetent. That decision followed binding Inner House authority in the case of *Davidson v Davidson* (1891) 18 R 84. Despite this conclusion, in *Fitzpatrick* the Sheriff Principal issued an administrative instruction to the sheriff clerk to sign a warrant to cite.

[4] Does a similar rule prevent an appeal against the refusal of the FTS to register the appeal? The FTS is a statutory creation. It has no inherent jurisdiction aside from what is conferred on it by statute. Section 46(1) of the 2014 Act provides:

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“A decision of the First-tier Tribunal in any matter in a case before the Tribunal may be appealed to the Upper Tribunal.”

The FTS’s decision to refuse to register the appellant’s challenge to the PCN was a decision in a matter in a case then properly before it. The FTS’s decision to refuse to register the case is one that can competently be appealed.

The merits of the proposed appeal

[5] The appellant wishes the whole matter to be looked at afresh. The appellant feels very aggrieved and her father shares her concerns that the entire matter should be re-opened and considered afresh. The FTS’s refusal to register the appeal against the PCN means that there has been no opportunity for the appellant to put her case to the FTS. The FTS’s refusal was because the appeal to it was late. There was a time limit for bringing an appeal to the FTS, subject to the rules governing the allowance of late appeals.

[6] In terms of the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals Rules of Procedure 2020, Rule 6(3), the appellant’s notice of appeal from the decision of the parking authority had to be received by the FTS within the period of 28 days beginning with the date of service of the notice of rejection on her. If the appeal was lodged late, Rule 6(4) required that the appellant should include a statement of the reasons justifying delay. The notice of rejection was served on 13 April 2023 and the appeal was not received by the FTS until 20 July 2023. It did not contain a statement that complied with Rule 6(4). The FTS notes that it twice asked the appellant to provide more information on the timeline. No reply was received. In addition to Rules 6(3) and (4), the FTS had regard to the decision of Sheriff Jamieson to grant permission to appeal in the case of *Lathe v City of Edinburgh Council* UTS/AP/22/0016 dated 20 January 2023, where the statutory test is discussed.

[7] This Tribunal's role in determining this application is a limited one. Permission to appeal can only be granted if the appellant identifies an arguable error of law made by the FTS (section

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46(4) of the 2014 Act). I can detect no arguable error of law in the approach taken by the FTS. The delay was a period of more than two months. The appellant failed to provide reasons to the FTS that would have allowed it to conclude that the appeal should proceed though late. The FTS applied the correct legal test and was entitled to reach the decision it did on the information available to it. Permission to appeal is refused.

[8] Despite this decision, it remains open to the appellant to ask the parking authority to look again at the imposition of the PCN and request that it should exercise its discretion not to insist on payment on compassionate grounds. That is a matter for the parking authority and I make no comment on whether they should do so.

Sheriff Pino Di Emidio
Member