



DECISION NOTICE OF SHERIFF PINO DI EMIDIO

IN AN APPLICATION FOR PERMISSION TO APPEAL AGAINST
A DECISION OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND
(GENERAL REGULATORY CHAMBER) (RECONSIDERATION)

in the case of

MR PATRICK DOHERTY, 17 Douglas Crescent, Edinburgh, EH12 5BA

Appellant

and

CITY OF EDINBURGH COUNCIL, George House, City Chambers, High Street, Edinburgh,
EH1 1YJ

Respondent

FTT Case Reference ED00275-1911

10 March 2021

Upon reconsideration, the Upper Tribunal for Scotland Refuses the appellant permission to appeal the decision of the First Tier Tribunal for Scotland General Regulatory Chamber, Parking and Bus Lane Appeals, dated 27 July 2020 on the proposed grounds e) and f) set out in the Form UTS-1 dated 24 November 2020, and also Refuses grounds a) to d) for want of insistence.

Note of reasons for decision

[1] In this Note, unless the context otherwise requires, Mr Doherty is referred to as “the appellant”. City of Edinburgh Council is referred to as “the respondent”. The First-tier Tribunal is referred to as “the FtT”.

Background

[2] The appellant seeks permission to appeal (“PTA”) the decision of the First Tier Tribunal for Scotland General Regulatory Chamber, Parking and Bus Lane Appeals, dated 27 July 2020. On 27 October 2020 PTA was refused by the FtT on all six stated grounds. On 27 January 2021 this Tribunal (Sheriff C Dunipace sitting as a Judge of the Upper Tribunal for Scotland) also refused PTA on all six grounds following a review of the documentation. The appellant has asked for reconsideration of that decision as he is entitled to do under Rule 3(7) of the Upper Tribunal for Scotland Rules of Procedure 2016 (“the UTS Rules”). On 4 March 2021 a telephone conference call hearing took place. The appellant did not attend but his representative Mr Drummond made submissions on his behalf. The respondent declined to attend.

[3] The lengthy procedural history of the case is set out in Upper Tribunal Judge Dunipace’s decision at paragraphs 2 to 20.

The grounds of appeal

[4] Section 46(4) of the Tribunals (Scotland) Act 2014 (“the 2014 Act”) provides that PTA is to be granted where “... the Upper Tribunal is satisfied that there are arguable grounds for the appeal.” In approaching the terms of section 46(4), I have had regard to the discussion by the Lord Justice Clerk (Lord Carloway) in *Czerwinski v HM Advocate* 2015

SLT 610 at para [9] together with the authorities cited there. The function of the Upper Tribunal is a limited one. An appeal under the 2014 Act is not an opportunity to rehear the factual matters argued before the FtT but rather to correct any errors of law that may have been made in the decision of the FtT.

[5] At the commencement of the hearing on 4 March 2021 Mr Drummond advised me that he was not insisting on the first four of the appellant's six proposed grounds of appeal.

The remaining grounds are as follows:

- e) The Adjudicator erred in law by wrongly determining that the issue to be determined in my appeal was whether or not a Northern Ireland Organisational Blue Badge on my vehicle was valid at the time based on the Northern Ireland Blue Badge Scheme. The correct issue for determination was whether or not the use of that Badge at the relevant time was in accordance with the terms and conditions of the Scottish blue badge scheme. The proper issue for determination was not whether or not the badge was being used to drop off or pick up a disabled person but whether there had been valid and proper use of the badge in of the terms and conditions of the Scottish Blue Badge Scheme. In terms of that Scheme the vehicle could be validly parked for up to 3 hours. The vehicle had been observed for a period of only 20 minutes before the issue of the relevant penalty notice;
- f) The Adjudicator erred in law in finding that there was evidence before her that enabled a determination to be made that the vehicle was not parked in order to drop off or pick up a disabled person.

[6] At the hearing Mr Drummond submitted that the Adjudicator had failed to identify the real legal question that arose in the case. Although the blue badge had been issued in

Northern Ireland it was being used in Scotland at the material time. She had applied the Northern Irish scheme rules and that was an error of law. On the undisputed factual evidence he had been issued with a penalty notice even though he was recorded as having been parked in the location outside his home for a few minutes. The appellant contends that under the Scottish scheme and the rules applicable in the City of Edinburgh he was entitled to use the blue badge to park for up to 3 hours at a location near his house in Edinburgh because a disabled person had travelled with him from Northern Ireland in the vehicle displaying the organisational blue badge and was staying with him at the time. Therefore by failing to have regard to the extent of entitlement to park while validly displaying a blue badge under the Scottish scheme the Adjudicator erred in law. That submission depends on the Scottish scheme allowing the user of an organisational blue badge to park for a period up to 3 hours. This argument had been made to the Adjudicator and she had erroneously rejected it. Reference was made to documents that set out the terms applicable under the Northern Irish scheme for organizational blue badges and the terms of the relevant Scottish scheme.

Reasons for decision

[7] With regard to ground e) there is no dispute that the organisational blue badge which the appellant claims was validly displayed in this case was issued in Northern Ireland. The appellant produced a document issued by the Northern Irish Authorities entitled "Rights and responsibilities of Blue Badge holders" which makes clear that entitlement to park under the Northern Irish scheme has an extra territorial effect so that the badge can be used in a number of other countries, including Scotland. The use of the blue badge is subject to the restrictions applicable in any other country in which it is

recognised. Therefore when the blue badge is used in Scotland this is on the basis of the rules that apply in Scotland. The second significant document produced is entitled "The Blue Badge Scheme in Scotland Rights and responsibilities of a Blue Badge holder in Scotland". It is published under the aegis of Transport Scotland. This version had been updated as at June 2018. At page 21 there is a section entitled "Organisational Badges" This contains the following statement at paragraph 15:

"The badge may be used by the organisation when transporting disabled people who would be eligible for a Blue Badge in their own right. The badge is not allowed to be used at other times."

At page 22 there is a further passage of relevance at paragraph 16:

"The badge should only be displayed when staff of the organisation, using registered organisational vehicles, are dropping off or picking up eligible disabled people from the place where the vehicle is parked."

There is a similar statement in the Northern Irish document referred to above.

[8] The appellant's argument is that he was allowed as the user of the organisational blue badge to park outside his private dwelling house in Edinburgh for up to 3 hours because he had a (presumably eligible) disabled person staying with him. The presence of that person in the vehicle might have entitled the appellant to display the blue badge in order to drop off or pickup that person if he or she was eligible. The appellant is not suggesting that, in fact, he was picking up or dropping off the eligible disabled person at the material time. The documents relied on show only that it would have been permissible to display the organisational blue badge in Scotland for the purposes of pick-up or drop-off of an eligible disabled person.

[9] It may have been preferable if the Adjudicator had set out her findings in fact and law in a separate section without interspersing them with some discussion of the evidence, but the fair minded reader is left in no doubt as to the reasons why the Adjudicator rejected

the appellant's appeal against the issue of the penalty charge notice. The Adjudicator has found that the blue badge was not being validly displayed on this occasion. Although the Adjudicator does not appear to have set out the whole of the regulatory scheme which applied to the facts of the case, she has not reached the wrong result. She has not made clear that she was applying the Scottish rule but the rule she has applied was the correct one. The appellant's submission that the Scottish scheme allowed him to use the organisational blue badge in the way he contends is wrong in law. The Adjudicator was entitled to make findings in fact and in law that the use of the badge on this occasion was not valid. The proposed ground of appeal is not arguable and PTA is refused on this ground.

[10] With regard to ground f) this is simply a matter consequential to ground e). It does not raise a separate point of law. The Adjudicator's decision was predicated on her interpretation of the applicable rules. It is not surprising that there are no findings to the effect that the appellant's car was parked for more than 3 hours as the Adjudicator has proceeded on the basis that no such rule applied in this case. She did not err in law in approaching the matter that way for the reasons set out in the preceding paragraph. No separate issue is identified in ground f) and PTA is refused on this ground.

[11] The appellant's Form UTS-1 also took issue with the decision of FtT Judge McFatrige who refused the appellant's application for PTA on the ground that he had not complied with Rule 18(3)(c) of the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals Rules of Procedure (Scottish SI 2020/98). That rule requires the appellant to state the result that is being sought. The appellant contends that the FtT erred because it was quite clear what result he desired from his appeal. My colleague agreed with the analysis of the FtT Judge. This is not a matter on which I require to express a view. My function in this application for reconsideration is not

to decide whether the earlier decisions to refuse PTA were erroneous but rather to determine whether to grant or refuse PTA having regard to the statutory test set out above. UTS Rule 3(2) sets out the requirements for a valid notice of appeal to this Tribunal. It mirrors the first two requirements of Rule 18(3)(a) and (b) of the FtT Rules, but there is no sub-sub-paragraph (c). That third requirement, of which the appellant was found wanting in the FtT, is not a feature of the UTS Rules.