Upper Tribunal for Scotland

[2021] UT40

DECISION OF Ref: UTS/AP/20/0028

ON AN APPLICATION FOR PERMISSION TO APPEAL
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)
IN THE CASE OF

Mr. Jonathan Sammeroff, 1 Broomvale Court, 267 Mearns Road, Glasgow, G77 5LU
Appellant

- and -

East Renfrewshire Council, Eastwood Park, Rouken Glen Road, Giffnock, G46 6UG

Respondent

Decision

Permission for leave to Appeal is refused.

Introduction

1. Mr Jonathan Sammeroff, (hereinafter referred to as 'the appellant') submitted an application for permission to appeal against a decision of the First-tier Tribunal dated 9 December 2020. This application was received by the Upper Tribunal on 18 December 2020. In support of his application for permission to appeal the appellant submitted the following documents, namely:

a. Form UTS-1

b. Adjudicator's decision

c. Decision of First-tier Tribunal refusing Permission to Appeal

2. By way of background it can be noted that a Penalty Charge Notice ER000028-1912 was issued to the appellant in respect of an alleged parking contravention at 12.08 on 27 August 2019 in Mearns Road, Newton Mearns, the nature of said allegation being that the appellant had parked

for longer than permitted. The appellant lodged an appeal against the imposition of this Penalty Charge Notice to the Parking and Bus Lane Tribunal for Scotland as the First-tier Tribunal was constituted at that time. References hereinafter to 'the Tribunal' refer to the aforementioned First-tier Tribunal.

3. This initial Appeal was considered by the Tribunal on the basis of written evidence from the appellant and East Renfrewshire Council (hereinafter referred to as " the Council"), together with evidence provided by the appellant at a full hearing on 10 March 2020. It would appear that the Council were not represented and did not take part in this hearing, being content to rely upon their written submissions.

4. The Tribunal subsequently determined that the contravention had occurred, that the Council were entitled to enforce the restriction constituted within the relevant Traffic Regulation Order, and that the Penalty Charge Notice had therefore been properly issued, the decision of the legal member of the First-tier Tribunal being that the contravention had occurred given that the appellant had parked at the locus for longer than the permitted 90 minutes. The Appeal was accordingly dismissed, and the full reasons for the decision of the Tribunal were set out in the decision of the legal member dated 8 May 2020.

5. The appellant subsequently sought permission to appeal this decision from the First-tier Tribunal, on 4 November 2020, albeit he had initially indicated that he was seeking a Judicial Review of the aforementioned decision. Following further clarification of his position by the Tribunal on 18 November 2020, this process proceeded on the basis that the applicant sought to appeal in terms of the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Rules of Procedure 2020 (contained in the Schedule of the Chamber Procedure Regulations 2020 (SSI No 98) (hereinafter referred to as 'the Procedure Rules'). This application for permission to appeal was subsequently considered by a different legal member of the First-tier Tribunal on 3 December 2020 in terms of Rule 18 of the Procedure Rules' and under section 46(3) of the Tribunals (Scotland) Act 2014. The decision of the Tribunal was to refuse permission to appeal on all grounds in terms of Rule 18 of the aforementioned Procedure Rules.

6. Full written reasons for refusal of permission to appeal were provided in the decision issued by the legal member on 3 December 2020. In this written decision the legal member refused permission to appeal on the basis that the application was without merit. In particular the legal

member indicated that the original legal member had reached a conclusion that she was entitled to reach, that there had been no misdirection as regards either the facts or applicable law, and that account had been taken of all of the relevant factors when so doing. The legal member also concluded that in reaching the index decision that the original legal member had applied the correct test of the balance of probabilities, and was accordingly entitled to conclude as she had done and to find against the applicant.

Grounds of appeal

7. In his form UTS-1 seeking permission from the Upper Tribunal to Appeal against the First-tier decision, the appellant states:

> *"Rule 18.3.B: ER Council produced Zero evidence to meet Burden of Proof obligations, and the First-tier Tribunal gives no explanation as to why they believe the "balance of probabilities" have been aptly considered when in civil cases in Scotland: "et qui affirmat 'non ei qui negat, incumbit probations", and the burden of proof rests with "the party who would fail if no evidence were adduced on either side".*
>
> *Furthermore, the Adjudicator knowingly omitted crucial evidence and statements of mine from the Decision. This fact has been completely ignored by the First Tier."*

8. In his email of 9 February 2021, the appellant provided further clarification of his appeal grounds stating therein:

> *(i) Tribunal Adjudicator Petra McFatridge did omit statements and evidence I had provided from her Decision, including but not limited to a significant part of my opening statement, which I had specifically asked and waited for her to write down.*
>
> *(ii) I refuted any and all Assumptions and Presumptions, both in writing prior to, and then during the Hearing. This fact has also been ignored by the First Tier Tribunal.*
>
> *(iii) East Renfrewshire Council asserted that I am subject to Road and Traffic Regulations where I was parked. I rebutted this assertion by presenting my Title Deeds and the Rights contained therein, forming a Perfect Right. After rebutting their assertion, we find ourselves at the point where the scales are balanced again, specifically back at the point*

at which the burden of proof rests with the party who would fail if no evidence were adduced on either side. And East Renfrewshire Council produced no further evidence:

(iv) East Renfrewshire Council have produced absolutely no evidence to demonstrate that the Road Act, Road Traffic Act, Road Traffic Orders and Designation Orders beneath them, or that the Adoption of a Road, can restrict or limit the Right In Common, Granted by my Title Deeds, in any way whatsoever. Under the Balance Of Probabilities, East Renfrewshire Council have put no weight on their side of the scales, because in civil cases in Scotland, "ei qui affirmat 'non ei qui negat, incumbit probation" – on he who asserts, not he who denies is the obligation to prove.

Discussion

9. The Parking and Bus Lane jurisdiction was brought within the integrated structure of Scottish Tribunals within the General Regulatory Chamber of the First-tier Tribunal for Scotland as part of its rolling programme of reform on 1 April 2020. Prior to that date there was no statutory right to seek permission to appeal decisions of adjudicators to the Upper Tribunal for Scotland. On that date the Adjudicators of the Parking and Bus-Lane Tribunal for Scotland became legal members of the General Regulatory Chamber of the First-tier Tribunal for Scotland. In the present application, whilst the index contravention was alleged to have occurred on 27 August 2019, that is prior to the integration of the Parking and Bus Lane Tribunal into the General Regulatory Chamber, given that the appellant's appeal was considered by the legal member of the First-tier Tribunal and the determination was issued on 8 May 2020, there does exist a statutory right to seek permission to appeal to the Upper Tribunal for Scotland in relation to this matter.

10. The terms of section 46(1) the Tribunals (Scotland) Act 2014 ("the 2014 Act") provide that the Upper Tribunal for Scotland may only hears appeals in cases where permission to appeal has been granted either by the First-tier Tribunal or by the Upper Tribunal itself. Permission can only be granted in accordance with section 46(2)(b) of the 2014 Act if the appellant identifies an arguable error on a point of law in the decision of the First-tier Tribunal which he wishes to appeal.

11. Certain First-tier Tribunal decisions are excluded decisions in terms of section 51 of the 2014 Act which cannot be appealed to the Upper Tribunal. All of these matters are set out in detail at Part 6 Chapter 1 of the 2014 Act. In particular so far as relevant, section 51 provides: - "A decision falling within any of sections 52 to 54 is an excluded decision for the purposes of— … (b) an appeal under section 46 or 48."

Section 52 deals with decisions on review. So far as relevant, it provides: -

"(1) Falling within this section is—

(a) a decision set aside in a review under section 43 (see section 44(1)(b)),

(b) a decision in such a review, except a decision of the kind mentioned in subsection (2).

(2) That is, a decision made by virtue of section 44(2)(a) … (and accordingly a decision so made is not an excluded decision)."

12. Section 44(2)(a) of the 2014 Act relates to situations where the First-tier Tribunal has re-considered the case. The drafting of these provisions is such that it requires they are looked at together in order to understand what is an excluded decision under the 2014 Act. The effect of sections 51 and 52 is that a decision by the First-tier Tribunal to refuse to exercise its discretion to re-make the original decision is an excluded decision. Accordingly such a decision cannot be made the subject of an appeal to the Upper Tribunal.

13. In the present instance the decision of the legal member of 8 May 2020 was made subject to a Review in terms of section 43(1)(b) at the instance of the appellant. The matter was considered on 9 September 2020, and was rejected under Rule 17(4) of The First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 as being wholly without merit. Accordingly the First-tier Tribunal refused to exercise its discretion to re-make the decision of the legal member following review, and as such this decision is an excluded decision having regard to the terms of sections 51 and 52 of the 2014 Act all as set out above. The appellant is not therefore entitled to appeal against the excluded decision made on 8 June 2020. Accordingly this decision of 8 June 2020 cannot be made the subject of an appeal to the Upper Tribunal.

14. Following this refusal to allow his appeal following review, the appellant thereafter sought leave to appeal against the index decision of 8 May 2020 on 2 November 2020 in terms of section 46(1) of the 2014 Act. The grounds of appeal were as set out at paragraph 7 above. Accordingly

and in terms of section 46(3)(a) of the 2014 Act permission was sought from the First-tier Tribunal for permission to appeal. The matter was subsequently considered by a legal member on 3 December 2020, at which time permission was refused in terms of Rule 18(3) of the Procedure Rules 2020. The detailed reasons for refusal are as set out at in the legal member's written decision of 3 December 2020. In considering the matter the legal member considered the time limits for applying to the First-tier Tribunal or Upper Tribunal for permission to appeal against its own decisions as set out in section 2 of the Scottish Tribunals (Time Limits) Regulations 2016, which set out as follows:

> *2.—(1) An application for permission under sections 46(3)(a) or 48(3)(a) of the Act (application for permission to appeal the Tribunal's own decision) must be received by the Tribunal whose decision is being appealed against within the period of 30 days beginning with the relevant date.*
>
> *(2) The First-tier Tribunal or the Upper Tribunal, as appropriate, may on cause shown extend the period beyond 30 days if it considers such an extension to be in the interests of justice.*
>
> *(3) Subject to paragraph (4), the relevant date is the later of the date on which—*
>
> *(a) the decision appealed against was sent to the appellant;*
>
> *(b) the statement of reasons for the decision was sent to the appellant.*
>
> *(4) But where a decision is given orally at a hearing, the relevant date is either—*
>
> *(a) the date on which written reasons were sent to the parties, if—*
>
> *(i) written reasons were requested at the hearing (or were requested in writing within 14 days beginning with the day after the last day of the hearing); or*
>
> *(ii) the First-tier Tribunal or the Upper Tribunal, as appropriate, undertook at the hearing to provide written reasons; or*
>
> *(b) the date of the oral decision, if—*
>
> *(i) written reasons were not requested at the hearing (or were not requested in writing within 14 days beginning with the day after the last day of the hearing); or*

(ii) the First-tier Tribunal or the Upper Tribunal, as appropriate, did not undertake at the hearing to provide written reasons.

15. Having regard to the foregoing the legal member noted that the applicant's application to seek permission to appeal to the Upper Tribunal had been made outwith the statutory 30 day period, but given the explanation that had been provided by the appellant, the legal member was prepared to accept that the time limit should be extended on cause shown in the interests of justice. Given that finding by the legal member at that stage, I do not intend to re-visit further the question of time-bar, and accordingly this decision proceeds on the basis that no issue of time-bar applies further.

16. As indicated at paragraph 6 above the legal member concluded that the initial legal member had reached a conclusion that she was entitled to reach, and that there had been no misdirection as regards either the facts or applicable law, and that account had been taken of the relevant factors when so doing. The legal member concluded that in reaching the index decision that the original legal member had applied the correct test of the balance of probabilities, and as such was entitled to conclude as she had done and to find against the applicant. I accept that the appellant disagrees with this determination.

Conclusion

17. The appellant has requested permission to appeal to the Upper Tribunal. His application for permission to appeal is as set out in his completed Form UTS-1 dated 24 November 2020.

18. In terms of the relevant law, Section 46 of the Tribunals (Scotland) Act 2014 (hereinafter referred to as "the 2014 Act") provides:

46. Appeal from the Tribunal

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

(2) An appeal under this section is to be made—

(a) by a party in the case,

(b) on a point of law only.

(3) An appeal under this section requires the permission of—

(a) the First-tier Tribunal, or

(b) if the First-tier Tribunal refuses its permission, the Upper Tribunal.

(4) Such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are arguable grounds for the appeal.

(5) This section—

(a) is subject to sections 43(4) and 55(2),

(b) does not apply in relation to an excluded decision."

19. Rule 3(6) to 3(9) of The Upper Tribunal for Scotland Rules of Procedure 2016 (hereinafter referred to as "the 2016 Rules") provides:

Notice of appeal against a decision of the First-tier Tribunal

(6) The Upper Tribunal may, where the First-tier Tribunal has refused permission to

appeal—

(a) refuse permission to appeal;

(b) give permission to appeal; or

(c) give permission to appeal on limited grounds or subject to conditions;

and must send a notice of its decision to each party and any interested party including reasons for any refusal of permission or limitations or conditions on any grant of permission.

(7) Where the Upper Tribunal, without a hearing—

(a) refuses permission to appeal; or

(b) gives permission to appeal on limited grounds or subject to conditions,

the appellant may make a written application (within 14 days after the day of receipt of notice of the decision) to the Upper Tribunal for the decision to be reconsidered at a hearing.

(8) An application under paragraph (7) must be heard and decided by a member or members of the Upper Tribunal different from the member or members who refused permission without a hearing.

(9) Where the First-tier Tribunal sends a notice of permission or refusal of permission to appeal to a person who has sought permission to appeal, that person, if intending to appeal, must provide a notice of appeal to the Upper Tribunal within 30 days after the day of receipt by that person of the notice of permission or refusal of permission to appeal."

20. Accordingly from application of the foregoing Section 46 of the 2014 Act it is apparent that the appellant may only appeal to the Upper Tribunal on a point of law (section 46(2)(b) of the 2014 Act) and that permission to appeal to the Upper Tribunal can only be granted where the Upper Tribunal is satisfied that there are arguable grounds for appeal. Further, Rule 3(6) of the 2016 Rules makes clear that the Upper Tribunal is entitled to: refuse permission to appeal; give permission to appeal on all grounds sought; or give permission to appeal on limited grounds.

21. The question therefore to be considered at this stage, is whether the Upper Tribunal is satisfied that the matters raised by the appellant constitute points of law, and also set out arguable grounds for appeal. It is incumbent therefore upon the appellant at this stage to establish that there are such arguable grounds for appeal. This process necessitates that the appellant establish that there has been an error of law, which would include:

(i) an error of general law, such as the content of the law applied;

(ii) an error in the application of the law to the facts;

(iii) making findings for which there is no evidence or which is inconsistent with the evidence and contradictory of it; and

(iv) a fundamental error in approach to the case: for example, by asking the wrong question, or by taking account of manifestly irrelevant considerations, or by arriving at a decision that no reasonable tribunal could properly reach (see Advocate General for Scotland v Murray Group Holdings 2016 SC 201 at paras 42 to 43).

22. In the present appeal the position of the appellant is as stated at paragraphs 7 & 8 above. Essentially this position appears to be capable of being separated into two distinct elements, namely that the council had produced no evidence to establish the existence of the restrictions, and secondly that the adjudicator had knowingly omitted crucial evidence and statements in the decision-making process.

23. In dealing with the first of these elements I have noted that the position of the appellant is to effect that he has produced evidence (in the form of his Title Deeds) which is capable of proving that he has a "right in common" to use his land as he sees fit free from the interference of the state or any other body. The appellant asserted at the original hearing and also in this appeal that the Council have only produced Road Traffic Regulations, but by not producing any "overarching evidence" that they have failed to discharge the requisite burden of proof and accordingly failed to prove beyond reasonable doubt that these Regulations took precedence and could restrict in anyway his "right in common". It appears therefore to be the position of the appellant, that the Council are under an obligation to produce a document, referred to as "overarching" which proves that these Regulations can override his rights in common. By lodging a copy of his title deeds the appellant states that he has produced evidence and that having done so, that this has shifted the burden of proof to the Council. Thereafter the position of the appellant is that this subsequent evidential burden has not been discharged by the Council.

24. In reaching its decision, the First-tier Tribunal observed that the legal member clearly set out details of the evidence which had been lodged in this case. In this regard the legal member observed that the appellant had lodged the plan and first page of the title sheet for his property. The legal member noted that this made reference to the fact that the owner of this property had a "right in common together along with the proprietors of the seven shops and the remaining four flatted dwelling house in the said building". By way of background it was noted that the appellant had purchased the property in question approximately 20 years before and at that time there had been no parking restrictions. The appellant had subsequently been contacted by the Council on 2017 when they had intimated to him that they intended to introduce parking restrictions through a new order namely the East Renfrewshire Council (Newton Mearns Area-Phase 1) (Waiting and Loading) Order 2018 which introduced maximum parking time restrictions. The appellant made clear at the time that he was opposed to the introduction of any such restrictions, given that he would no longer able to enjoy unrestricted use of the parking facility in the parking bays adjacent to his property.

25. It was noted by the legal member that the Council had lodged The East Renfrewshire Council (Newton Mearns Area-Phase 1) (Waiting and Loading) Order 2018, and reference was made by the Council to Schedule 7, Mearns Road – Service Road, Item 88/1 which constituted the

basis for these parking restrictions and provided the justification for the issuing of the index penalty charge notice.

26. In determining the matter the legal member had made reference to the existence of the aforementioned Traffic Regulation Order, which had been lodged and which specifically imposed the restrictions which give rise to the issuing of the penalty charge notice. The legal member also noted that the submissions of the appellant could be reduced to three distinct and discrete arguments, namely:

a) That it was possible that no contravention had taken place, given that the council could not demonstrate that he had not left his property in his car and returned at a later point, meaning that the council were unable to establish that his vehicle have been parked for a period in excess of 90 minutes.

b) That he had provided evidence in the form of his title deeds in the form of his title deeds to demonstrate that he had a 'right in common' to use his land as he saw fit without any form of external interference, and that whilst the council had produced Road Traffic Regulations, that they had failed to establish that these Regulations could restrict his rights as evidenced in the aforementioned Title Deeds.

c) That he had been accused of a parking contravention and as such he was presumed innocent until proven guilty, meaning that there was an evidential onus on the council to produce evidence to establish that he was guilty of that contravention.

27. In the written decision of 8 May 2020 the legal member has set out in some detail the evidence which was led during the course of the hearing, and also set out the detailed submissions made both by the appellant, and also on behalf of the Council, thereafter setting out the decision reached, together with the reasoning adopted in coming to that decision

28. In relation to point a) mentioned above the legal member has indicated that evidence had been led by the Council to demonstrate that the contravention alleged, namely that the vehicle had been parked at that locus for a period in excess of 90 minutes, given that the parking attendant had initially observed the vehicle parked at the locus at 09.47, and that the vehicle was sent at the same locus at 12.08 on the date in question with the vehicle tyre valves being in the same position. The legal member has determined that this was sufficient evidence to demonstrate that the contravention

had in fact taken place, and indeed the appellant appears to have indicated that he accepted this finding and that he no longer wished to continue with his appeal on that ground.

29. In relation to point b) mentioned above the legal member has approached the matter on the basis that the issues revolved around whether the Council was entitled to make a Traffic Regulation Order over an area of ground in respect of which the appellant stated that he had established by way of his title deeds that he had a right in common. The question addressed by the legal member was whether the council were entitled to make a Traffic Regulation Order in respect of the locus. In this regard the legal member has made reference to the terms of The Road Traffic Regulation Act 1984, and specifically to section 1 thereof, which states:

Traffic regulation orders outside Greater London.

(1)The traffic authority for a road outside Greater London may make an order under this section (referred to in this Act as a "traffic regulation order") in respect of the road] where it appears to the authority making the order that it is expedient to make it—

(a) for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or

(b) for preventing damage to the road or to any building on or near the road, or

(c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or

(d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or

(e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or

(f) for preserving or improving the amenities of the area through which the road runs or

(g) for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).

30. Having noted the terms of the foregoing the legal member has concluded that the Council were entitled to adopt the service road at the locus, and indeed has noted that they did in fact do so in 2018, an action which has not been successfully challenged in the Court of Session. The legal

member also made reference to the terms of section 1 of the Roads (Scotland) Act 1984, which provides that:

(1) Subject to subsection (10) below, a local roads authority shall manage and maintain all such roads in their area as are for the time being entered in a list (in this Act referred to as their "list of public roads") prepared and kept by them under this section; and for the purposes of such management and maintenance (and without prejudice to this subsection's generality) they shall, subject to the provisions of this Act, have power to reconstruct, alter, widen, improve or renew any such road or to determine the means by which the public right of passage over it, or over any part of it, may be exercised

The legal member further made reference to the terms of section 9 of the aforementioned Roads Act, which states:

(9)Subject to subsection (10) below, every road which is entered in the list of public roads kept by a local roads authority shall vest in the authority for the purposes of their functions as roads authority: but such vesting shall not confer on an authority any heritable right in relation to a road.

For the avoidance of doubt, references above to the terms of section 1(10) are not relevant in the current context.

31. The legal member thereafter considered the definition of 'road' in terms of section 151 of the Roads (Scotland) Act 1984, and being satisfied that the locus was a road in light of this section, determined that the Council therefore had the power to impose restrictions relating to parking on said road. As indicated by the legal member in the Tribunal's determination, the fact that the Council had adopted the road did not divest the owner of his heritable rights of ownership, but it did allow the Council to impose said parking restrictions.

32. The legal member further considered the position of the appellant in relation to the submissions made under point c) above, concluding that following the de-criminalisation of parking regulations, that the relevant standard of proof was upon a balance of probabilities and not beyond a reasonable doubt, and that when the council have established that a contravention has taken place that the evidential burden shifts to the appellant to establish the matters which they seek to have considered in their favour.

33. In the foregoing circumstances I am not satisfied that the appellant has failed to identify any point of law in terms of Section 46(2)(b) of the Tribunals (Scotland) Act 2014.

Accordingly I am not satisfied therefore that there are stateable grounds for appeal. Permission to appeal is therefore refused. This however is not the only reason for refusal.

34. In terms of the arguability of the appeal, the appellant has stated various grounds of appeal all as set out at paragraphs 7 & 8 above. In relation to the factual position, there are a large number of issues where the appellant simply disagrees with the decision of the First-tier Tribunal, and says that the First-tier Tribunal made the wrong findings and came to the wrong conclusions. Unfortunately, that does not allow an appeal to succeed, given that an appeal is not simply a rehearing of the case from the beginning. An appellate court is not permitted to overturn a decision made by a Tribunal at first instance just because that court disagrees with that decision (on the hypothesis that it did so disagree). In the present case the First-tier Tribunal has discharged its function as required. The legal member of the Tribunal has demonstrated that the evidence and the submissions have been considered by summarising the salient points applicable to the decision after the hearing. The summary provided by the legal member clearly sets out what evidence was accepted by and what evidence was not, which assessment is apparent from the findings of the legal member.

35. The appellant has asserted that the legal member of the First-tier Tribunal omitted statements and evidence which he had provided, including a significant part of his opening statement, which he had specifically requested be written down. In this regard it is observed that the legal member is under no obligation to write down every detail of every submission which is made. It is a matter entirely within the discretion of the legal member to note those matters which are of significance to the decision-making process. There has been no evidence which has been presented by the appellant to suggest that the legal member has not carefully taken cognisance of all of the submissions made by the appellant. It is of particular significance that the appellant has not referred to any specific submissions made by him which have not been addressed fully by the legal member.

36. In relation to the submissions of the appellant to the effect that he has rebutted the submissions of the council to the effect that he was at the relevant time subject to Road Traffic Regulations by producing his title Deeds (or copies thereof) given that these formed what he considered to be a ‘Perfect Right’, this submission has been fully addressed by the legal member

in the original decision of 8 May 2020, at paragraphs 27 – 31. In this regard there appears to be some misapprehension on the part of the appellant to the effect that the Council require to 'prove' the validity of public statutes. This is not the case, and indeed the terms of such Acts must be judicially noted and are within judicial knowledge. It is not sufficient for the appellant to simply rebut the existence of the relevant statutory provisions, and it is specifically noted that no evidence has been presented by the appellant to suggest that Acts of Parliament do not apply to his circumstances. These considerations also apply to Regulations issued by a local authority having statutory powers to make such Regulations as is the case in the present instance. No further proof is required by the Council to prove the validity of an enacted Act of Parliament, nor indeed a properly constituted Regulation. The suggestion that additional evidence is required in this regard is misplaced. Further the assertion that an error in fact or law has been made by the legal member must be supported by a foundation in law for this proposition. In the present case that has not been provided by the appellant who has provided no basis for his assertion that the legal member has erred in law. The mere fact that the appellant disagrees with the findings in fact or in law of the First-tier Tribunal is not sufficient to allow an appeal.

37. Accordingly, and for that reason also, I refuse permission to appeal on the basis that the appeal is not arguable.

Reconsideration

38. Where the decision on permission to appeal is made without a hearing, the applicant is entitled by application in writing made within 14 days of receipt of the decision to seek to have the request for permission to appeal reconsidered at a hearing before a different member of the Upper Tribunal for Scotland."

Sheriff Colin Dunipace

Sheriff of South Strathclyde Dumfries and Galloway at Hamilton