

1. The appellant, Mr [REDACTED] N [REDACTED], is appealing a Bus Lane Enforcement Charge Notice ("CN") issued by Glasgow City Council (the "Council"). I conducted a telephone hearing on 27 August 2024 the Council was not present, at its choice.
2. The CN was first issued on 19 June 2024 in respect of a contravention that was alleged to have taken place on 11 June 2024 at 12:18 hours. It is alleged that the vehicle (registration number [REDACTED]) was being driven in an operational Bus Lane in Glassford Street.
3. On 21 June 2024, Mr N [REDACTED], submitted formal representations to the Council. He claimed the following:
 - a. The roadworks in the area obstructed the visibility of any signage indicating the contravention, making it impossible for them to comply with the traffic regulations.
 - b. The video footage shows that a road worker directed Mr N [REDACTED] to turn right out of the car park, suggesting that the roadworks prevented them from turning left, which may have been the legal route. As a result, he followed the road worker's instructions, which inadvertently led to the alleged contravention.
 - c. Mr N [REDACTED] contends that due to the lack of visible signage and the directions given by the road worker, he was not at fault for the contravention and should not be penalized for following the guidance provided in the context of the roadworks.
4. The Council considered and rejected Mr N [REDACTED]'s representations setting out their reasons for doing so in a notice of rejection dated 3 July 2024. They said:
 - a. The bus lane in question is operational 24 hours a day, 7 days a week. The Council emphasized that there is no requirement for signage to display times when a bus lane operates continuously. Therefore, the lack of time-specific signage does not invalidate the enforcement of the bus lane restrictions.
 - b. The Council reiterated that only specific vehicles, buses, taxis, and cycles, are permitted to use the bus lane according to the relevant Traffic Regulation Order. The appellant's vehicle did not fall under these exemptions.
 - c. The Council confirmed that clear signage and road markings were present at the location, indicating the bus lane and the required direction of travel for vehicles exiting the NCP car park. The Council stressed that it is the driver's responsibility to adhere to this signage.

- d. The Council noted that there were no records of Glassford Street being closed or of vehicles being diverted into the bus lane due to roadworks. Upon reviewing the video footage, the Council observed that the road worker directed the appellant to exit the car park safely but did not direct them to turn right into the bus lane. Additionally, another vehicle in the footage was seen following the correct route, further indicating that Mr N■■■■'s turn into the bus lane was not required.
 - e. The Council pointed out that there were multiple signs, including a "no right turn" sign and directional signs advising of the bus lane, which Mr N■■■■ should have followed. The Council concluded that he failed to comply with the clearly marked and signposted directions, and thus the charge was correctly issued.
 - f. Based on these factors, the Council found no grounds to cancel the CN and upheld the penalty, emphasizing the importance of adhering to the established traffic regulations and signage.
5. The Council must establish the contravention on a balance of probabilities.
6. In reaching my decision, I have considered the documentary and oral evidence and submissions. The fact that I have not referred to every document produced should not be taken to mean that I have not considered it.
7. I remind myself of what the purpose of a Bus Lane is. It is a lane restricted to buses on certain days and times, and generally used to speed up public transport that would be otherwise held up by traffic congestion. Bus Lanes are shown by road markings and signs that indicate which (if any) other vehicles are permitted to use the bus lane. They have to be kept clear of unauthorised vehicles when they are operational.
8. I also remind myself that it is well-established that, where a regulatory scheme provides certain conditions for compliance, then there is no "near miss" or "evidential flexibility" principle. Equally, there is no concept such as a "de minimis" failure to comply or breach. The question of compliance is binary: a so-called "de minimis" contravention is still a breach and a contravention for which the penalty prescribed by the statutory scheme falls due. Where a motorist contravenes the regulatory scheme, the consequence of non-compliance is established by the statutory scheme itself: the Council has power to enforce the CN and hence the penalty. This is all entirely in keeping with the fixed penalty administrative nature of the scheme of regulation.
9. Therefore, for example, where a vehicle enters a bus lane for a short time/distance, or where a vehicle enters a bus lane that is operational until 6pm at 5.59pm, those are contraventions. The fact that the time/distance was small is mere mitigation, which the Council can take into account when

deciding whether to enforce, which is a matter entirely within the discretion of the Council.

10. The issues I must determine are as follows:

- a. Were the signage and road markings adequate to warn Mr N [REDACTED] of the presence and operation of the bus lane?
- b. Did Mr N [REDACTED] rely on the road worker directing him into the bus lane? Did the road worker have ostensible authority to direct Mr N [REDACTED] into an operational bus lane implying that he was authorised to do so?

11. The Council relies on The Glasgow City Council (City Centre) (Traffic Management) Order 2010 (as amended). The following provisions are relevant:

- a. Schedule 37: This schedule specifically includes Glassford Street, prohibiting driving in a contra-flow bus lane on Glassford Street from the north kerbline of Argyle Street to the south kerbline of Wilson Street. This is directly relevant as Mr N [REDACTED] was cited for driving in this bus lane.
- b. The Articles pertaining to the bus lane in Glassford Street contain several exemptions, none of which apply to this case.

12. A public body can only be bound by acts or statements of its employees and agents if and to the extent that they had actual or ostensible authority to bind the public authority (**Rowland v Environment Agency [2002] EWHC 2785 (Ch)**); endorsed by the Court of Appeal **[2003] EWCA Civ 1885**.

13. In Scots law, the principle of ostensible (or apparent) authority refers to a situation where a third party reasonably believes that an individual has the authority to act on behalf of another party (such as a Council), even if that individual does not have actual authority to do so. In **Alexander Ward & Co v Samyang Navigation Co Ltd 1975 SC (HL) 26** the House of Lords held that for ostensible authority to bind the principal, there must be some form of representation by the principal that the agent had the authority.

14. For Mr N [REDACTED] to rely upon the principle of ostensible authority he must demonstrate that it was reasonable to believe that the road worker had the authority from the Council to direct traffic, including authorizing the use of a

bus lane. Ostensible authority typically arises from the principal (in this case, the Council) making a representation that an individual (here, the road worker) has authority. If the Council had somehow indicated that the road worker was authorized to direct drivers into bus lanes, then Mr N [REDACTED] might have a stronger argument. However, if the road worker was not visibly associated with the Council (e.g., no Council uniform or identification), it might be harder to prove. Even if the road worker was employed by the Council, their authority might not extend to directing traffic into restricted lanes. Mr N [REDACTED] would need to show that directing vehicles into the bus lane was within the scope of the road worker's apparent authority.

15. On considering the evidence, I find as follows:

Were the signage and road markings adequate to warn Mr N [REDACTED] of the presence and operation of the bus lane?

- a. Mr N [REDACTED] had never previously used the car park. It was his first time visiting Glasgow.
- b. Although Mr N [REDACTED] had no recollection of seeing the signage and road markings, on examining the enforcement camera video, the photographs provided by the Council, as well as looking at the Google Earth Street view

(<https://earth.google.com/web/search/NCP+Car+Park+near+Glassford+Street,+Milngavie,+Glasgow/@55.85835173,-4.24903134,11.71920013a,0d,60y,347.5047521h,81.08817608t,0r/data=CigiJgokCTHsrGLp7UtAER-lyiyU7UtAGabzOHn-RDAIdTW9BLpAxHAIhoKFmlwamN1b1dLWTFJQzZWY2VwekRKVVEQAq>)

the bus lane signage and road markings are clearly visible and would have alerted Mr N [REDACTED] that he would have to turn left when leaving the car park. He knew or would have known that he could not turn right into the bus lane.

Did Mr N [REDACTED] rely on the road worker directing him into the bus lane?
Did the road worker have ostensible authority to direct Mr N [REDACTED] into an operational bus lane implying that he was authorised to do so?

- c. I have watched the enforcement camera video clip provided by the Council several times at 0.25% of normal speed. From this I find:
 - i. A red vehicle was driving in the left-hand lane approaching the exit to the car park.

- ii. Road cones and a keep right sign are located at the approach to and at the exit of the car park.
 - iii. A road worker wearing a Hi-Viz jacket and hard hat is standing in the middle of the left-hand lane. There is a construction vehicle to his right. There is nothing in the video to suggest that the road worker was in any way associated with the Council. For example, the words "Glasgow City Council Roads Department" might have been present on his jacket and/or hard hat. There is no evidence of that. I cannot see any such indication on the construction vehicle. This suggests that a third-party contractor (e.g. Amey) was working for a principal whose identity cannot be determined from the video evidence. It is not clear what type of work was being undertaken (e.g. road or utilities or telecoms work).
 - iv. The construction worker gestures to the red vehicle to stop, which it does. This facilitates Mr N [REDACTED] to drive out of the car park.
 - v. As Mr N [REDACTED] drives out of the car park, he turns right into the bus lane. He has no option but to do so for the following reasons: the road worker prevents him from turning left because he is walking back towards the construction vehicle, thereby blocking Mr N [REDACTED]'s exit to the left. Mr N [REDACTED] cannot turn right into the carriageway because it is occupied by the red vehicle and to do so would mean driving against the flow of traffic in that lane. The road work also appears to be gesturing to the right suggesting that he should turn into the bus lane. At that point in the video, the road worker was standing on the boundary of the bus lane.
- d. I accept that the road worker directed Mr N [REDACTED] to drive into an operational bus lane. I do not accept that Mr N [REDACTED] has established that the road worker had ostensible authority to bind the Council to the effect that Mr N [REDACTED] could rely on the direction to drive into the bus lane with impunity. The evidence does not support the proposition that the road worker was connected with the Council and/or authorised to direct drivers into the bus lane such that they could do so without incurring liability for a penalty charge.

16. The appeal is dismissed.

A.M.S. Green, Chamber President

28 August 2024

Appeals

If you are aggrieved by the decision of the First-tier Tribunal you may appeal to the Upper Tribunal for Scotland **on a point of law only**. Before an appeal can be made to the Upper Tribunal, you must first seek permission to appeal from the First-tier Tribunal. You must seek permission to appeal within 30 days of the date the decision was sent to you.

The Upper Tribunal may uphold or quash the decision on a point of law in question. If the Upper Tribunal quashes the decision, it may:

- re-make the decision;
- remit the case to the First-tier Tribunal;
- make such other order as the Upper Tribunal considers appropriate.

The application **must**:

- identify the decision of the First-Tier Tribunal to which it relates;
- identify the alleged point or points of law on which the party making the application wishes to appeal; and
- state the result the party making the application is seeking (e.g. quash and re-make the decision).

Reviews

You may ask the First-tier Tribunal to, or the First-tier Tribunal may on its own initiative, review the decision.

If you want the First-tier Tribunal to review the decision you must apply in writing and send a copy of your application to the other party/parties. You must make your application within 14 days of the date on which the decision was made or within 14 days of the date that the written reasons were sent to you. You must also explain why a review of the decision is necessary. The grounds on which a decision may be reviewed are that:

- the decision was wrongly made because of an error on the part of its administrative staff
- the Appellant who had failed to appear or be represented at a hearing had good and sufficient reason for their failure to appear
- where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing, the existence of which could not have been reasonably known about or foreseen by the parties
- where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not have been reasonably known about or foreseen; or
- the interests of justice require such a review