



IAC-AH-LR-V1

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Environment**

Appeal Reference: NV/2017/0004

Decided at Field House without a hearing

Before

JUDGE PETER LANE

Between

LING COX

and

LEICESTER CITY COUNCIL

Appellant

Respondent

DECISION AND REASONS

A *The legislation*

1. By reason of section 46 of the Environmental Protection Act 1990, Leicester City Council ("the Council") may serve a notice on the occupier of premises requiring the occupier to place waste for collection in receptacles identified by such means as the Council may specify. The power to make requirements extends to making provision with respect to, amongst other matters, the placing of receptacles "for the purpose of

avoiding nuisance or detriment to the amenities of the area.” A person who fails without reasonable excuse to comply with any such requirements is liable on summary conviction to a fine not exceeding level 3 on the standard scale. A person may appeal against the requirement in question on the ground that the requirement is unreasonable.

2. Section 46A of the 1990 Act concerns written warnings and penalties for failure to comply with requirements imposed under section 46. The Council may give a written warning to a person who has failed without reasonable excuse to comply with a section 46 requirement, where the person’s failure to comply has caused or is or was likely to cause a nuisance; or has been, or is or was likely to be, detrimental to any amenities of the locality. The written warning must:-

- “(a) identify the section 46 requirement with which the person has failed to comply,
- (b) explain the nature of the failure to comply,
- (c) explain how the failure to comply has had, or is or was likely to have the effect of causing etc. a nuisance or being etc. detrimental to amenities in the locality,
- (d) if the failure is continuing, specify the period within which the requirement must be complied with and explain the consequences of the requirement not being complied with within that period, and
- (e) whether or not the failure to comply is continuing, explain the consequences of the person subsequently failing to comply with the same or a similar section 46 requirement (section 46A(3))”.

3. Section 46A(4) states that where a written warning has been given in respect of a failure that is continuing, an authorised officer may require the person to whom the written warning was given to pay a fixed penalty, if satisfied that the person has failed to comply with the section 46 requirement within the specified period.
4. Section 46B of the 1990 Act provides that the amount of the monetary penalty is £60, unless another amount is specified by (here) the Council. In the present case the Council has specified the sum of £80.
5. By section 46C, an authorised officer must serve a notice of intent on the person concerned, before that person may be required to pay a fixed penalty under section 46A. The notice of intent must contain information about:-
 - (a) the grounds for proposing to require payment of a fixed penalty,
 - (b) the amount of the penalty that the person would be required to pay, and

- (c) the right to make representations under section 46C(3).
6. Any such representations must be made within 28 days beginning with the day service of the notice of intent was effected. In order to require a person to pay a fixed penalty under section 46A, the authorised officer must serve on the person a further notice (the “final notice”).
 7. The final notice may not be served on the person before the expiry of the period of 28 days beginning with day service of the notice of intent on the person was effected. Before serving the final notice the authorised officer must consider any representations made under section 46C(3).
 8. Section 46C(8) provides that the final notice must contain information about –
 - (a) the grounds for requiring payment of a fixed penalty,
 - (b) the amount of the penalty,
 - (c) how payment may be made,
 - (d) the payment within which payment is required to be made (which must be not less than 28 days beginning with the day service of the final notice is effected),
 - (e) any provision giving a discount for early payment,
 - (f) the right to appeal under section 46D, and
 - (g) the consequences of not paying the penalty.
 9. Section 46D says that a person on whom a final notice is served under section 46C may appeal to the First-tier Tribunal against the decision to require payment of a fixed penalty. On appeal, the First-tier Tribunal may withdraw or confirm the requirement to pay the fixed penalty. The requirement to pay the fixed penalty is suspended pending the determination or withdrawal of the appeal.

B. Background

10. The appellant is the owner of a property known as 138 Grasmere Street, Leicester. She lets the property to students. On 30th June 2016, the appellant’s employee, Darren Evans, observed the wheelie bin of 138 Grasmere Street on the pavement. A formal notice had been sent to 138 Grasmere Street on 20th June 2016 explaining the consequences of failing to comply with the requirement to remove the wheelie bin from the public footpath after collection day. There followed a visit by Mr Evans to

Grasmere Street on 17th June 2016 when 32 properties were observed as having a wheelie bin on the public footpath after the collection day in question.

11. The wheelie bin for 138 Grasmere Street was again seen on the footpath on 3rd August and 9th November 2016, which were not collection days.

C. The appeal

12. On 10th January 2017, a fixed penalty notice was issued to the tenants and to the appellant. On 24th January 2017 the appellant contacted the respondent to state that she was not living at 138 Grasmere Street. That submission was repeated in the Appellant's grounds of appeal:-

"Although I own 138 Grasmere Street I have never lived at the property as it is rented out to students on a full-time basis. I am not sure why the property tax department have me listed as a resident at 138 Grasmere Street although they do also have the names of the students listed at 138 Grasmere also.

I am being fined due to a wheelie bin being left outside the property but as I do not live at the property I am not responsible for the wheelie bin and it is the residents who are responsible.

The warden has sent letters to the property in my name and not the students which have not been opened by the students or passed to me. I just happened to visit the property last week and noticed a letter in my name

...".

13. Both parties were content for the appeal to be determined without a hearing and in all the circumstances I was satisfied that the appeal could be justly determined without one.

D. Discussion

14. I am entirely satisfied that the appellant was not an occupier of 138 Grasmere Street at any material time. What she said to the respondent and repeated in the grounds of appeal is not contradicted by the respondent.
15. Accordingly, the appellant is not liable to a fixed penalty.

E. Decision

16. This appeal is allowed.

Judge Peter Lane

28 July 2017