



**First-tier Tribunal
General Regulatory Chamber
Environment**

Appeal Reference: NV/2020/0007/P

Between

KASIF JAVED KHAN

Appellant

and

LEICESTER CITY COUNCIL

Respondent

Before

TRIBUNAL JUDGE MOIRA MACMILLAN

Determined on the papers, the Tribunal sitting in Chambers on 13 May 2020

DECISION

1. The appeal is dismissed.
2. The Fixed Penalty Notice BH11467 dated 14 January 2020 is confirmed.

MODE OF HEARING

3. The parties and the Tribunal agreed that this matter was suitable for a determination on the papers in accordance with rule 32 of the Chamber Procedure Rules.
4. The Tribunal considered an agreed open bundle of evidence comprising pages 1 to 31.

REASONS

Background

1. This appeal is against a Fixed Penalty imposed by the Respondent in relation to a household waste wheelie bin.
2. The bin in question belongs to 61 Noel Street Leicester LE3 0DT. The Appellant is one of three occupiers known by the Respondent to live at this address.
3. The Respondent is a waste collection authority under the Environmental Protection Act 1990. As such it is able to regulate the times at which household waste bins are left out for collection. On 14 November 2020 it sent the Appellant a Notice of Contravention because the wheelie bin for 61 Noel Street had been left on the street outside the permitted times on both 21 October 2019 and 11 November 2019. The Respondent subsequently served a Notice of Intent on 6 December 2019 and a Fixed Penalty Notice on 14 January 2020. The Respondent served a Final Notice on 3 February 2020.

Law

4. S. 46 of the Environmental Protection Act 1990 allows a waste collection authority to impose requirements relating to the placement of bins ('receptacles') that are used to collect household waste.

46 Receptacles for household waste.

(1) Where a waste collection authority has a duty by virtue of section 45(1)(a) above to arrange for the collection of household waste from any premises, the authority may, by notice served on him, require the occupier to place the waste for collection in receptacles of a kind and number specified.

(1A) Where –

- (a) subsection (1) applies to a waste collection authority, and*
- (b) a waste reduction scheme under Schedule 2AA to this Act is in operation in the authority's area,*

the authority may require the occupier to place the waste for collection in receptacles identified by such means as may be specified.

(1B) A requirement under subsection (1A) –

(a) must be imposed by notice served on the occupier;

(b) may be imposed instead of, or in addition to, any requirement imposed on the occupier under subsection (1).

(2) ...

(3) ...

(4) In making requirements as respects receptacles under subsection (1) above, the authority may, by the notice under that subsection, make provision with respect to –

(a) ...

(b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;

(c) the placing of the receptacles for that purpose on highways or, in Scotland, roads;

(d) ...

(e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles.

(f) The removal of the receptacles placed for the purpose of facilitating the emptying of them; and

(g) the time when the receptacles must be placed for that purpose and removed.

(5) No requirement shall be made under subsection (1) above for receptacles to be placed on a highway or, as the case may be, road, unless –

(a) the relevant highway authority or roads authority have given their consent to their being so placed; and

(b) arrangements have been made as to the liability for any damage arising out of their being so placed.

5. Where a person fails without reasonable excuse to comply with a requirement imposed under s. 46, and where the authority assesses that this failure either causes a nuisance, or is detrimental to local amenities, the authority may issue a written warning pursuant to s. 46A. This must be served upon the person; must identify the requirement the person has failed to comply with; and must explain the consequences should they continue not to comply (s. 46A(1),(3) & (4))

s. 46A Written warnings and penalties for failure to comply with requirements relating to household waste receptacles: England

(1) This section applies where an authorised officer of a waste collection authority in England is satisfied that –

(a) a person has failed without reasonable excuse to comply with a requirement imposed by the authority under section 46(1), (3)(c) or (d) or (4) (a “section 46 requirement”), and

(b) the person's failure to comply –

(i) has caused, or is or was likely to cause, a nuisance, or

(ii) has been, or is or was likely to be, detrimental to any amenities of the locality.

(2) Where this section applies, the authorised officer may give a written warning to the person.

(3) A 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 described in subsection (1)(b),

(d) if the failure to comply 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.

6. Should the person not comply with the requirement following a written warning, the authority may impose a Fixed Penalty pursuant to s. 46A(4). The authority must first serve a Notice of Intent, which must explain why the Fixed Penalty is being imposed. The Notice of Intent must allow the person 28 days in which to make representations about why payment of the Fixed Penalty should not be required. The authority must consider any representations made before serving the Penalty Notice, which must inform the person that they must pay the penalty, and of their right to appeal.

46C Penalties under section 46A: Procedure regarding notices of intent and final notices

(1) Before requiring a person to pay a fixed penalty under section 46A, an authorised officer must serve on the person notice of intention to do so (a “notice of intent”) in accordance with subsections (2) to (4).

(2) A 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 subsection (3).

- (3) A person on whom a notice of intent is served may make representations to the authorised officer as to why payment of a fixed penalty should not be required.*
- (4) Representations under subsection (3) must be made within the period of 28 days beginning with the day service of the notice of intent is effected.*
- (5) In order to require a person to pay a fixed penalty under section 46A, an authorised officer must serve on the person a further notice (the “final notice”) in accordance with subsections (6) to (8).*
- (6) A final notice may not be served on a person by an authorised officer before the expiry of the period of 28 days beginning with the day service of the notice of intent on the person was effected.*
- (7) Before serving a final notice on a person, an authorised officer must consider any representations made by the person under subsection (3).*
- (8) 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 period within which payment is required to be made (which must not be less than the period of 28 days beginning with the day service of the final notice is effected),*
 - (e) any provision giving a discount for early payment made by virtue of section 46B(2),*
 - (f) the right to appeal under section 46D, and*
 - (g) the consequences of not paying the penalty.*

7. The right of appeal arises under s. 46D:

46D Appeals against penalties under section 46A

- (1) 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.*
- (2) On an appeal under this section the First-tier Tribunal may withdraw or confirm the requirement to pay the fixed penalty.*
- (3) The requirement to pay the fixed penalty is suspended pending the determination or withdrawal of the appeal that is the final appeal made by the person against the decision to require payment of the penalty.
(This is subject to subsection (4).)*

(4) Where the requirement to pay the fixed penalty is confirmed at any stage in the proceedings on appeal, payment must be made before the end of the period of 28 days beginning with the day on which the requirement is so confirmed unless the person makes a further appeal before the end of that period.

(5) The reference in subsection (4) to the requirement to pay the fixed penalty being confirmed on appeal includes a reference to an appeal decision confirming the requirement to pay the fixed penalty being upheld on a further appeal.

Facts

8. The Respondent has decided that Noel Street is detrimentally affected by wheelie bins being left on the pavement outside of normal household waste collection times. The collection day for Noel Street is Friday. The Respondent has therefore issued a Notice under s. 46, requiring wheelie bins to be placed at the kerb no earlier than 7pm on Thursdays and to be removed by 7am on Saturdays.
9. An officer of the Respondent authority visited Noel Street on Monday 21 October 2019 and on Monday 11 November 2019. On both occasions the Respondent took photographs of a wheelie bin marked with the number '61' on the pavement. On 28 October 2019 the Respondent wrote to the current occupiers of number 130, to remind them of the permitted times for leaving a wheelie bin on the pavement. Having consulted council tax records, on 14 November 2019 the Respondent posted a s. 46 Contravention Notice (a 'written warning') to the Appellant, sent to 61 Noel Street.
10. On Wednesday 27 November 2019 the Respondent returned to Noel Street and again photographed the wheelie bin marked '61' on the pavement. On 6 December 2019 the Respondent sent the Appellant a Notice of Intent, which notified him that he had 28 days to make representations about the imposition of a Fixed Penalty.
11. No representations having been received, on 14 January 2020 the Respondent sent the Appellant a Fixed Penalty Notice, which was followed by a Final Notice served by post on 3 February 2020.

Grounds of Appeal

12. In a Notice of Appeal dated 28 January 2020, the Appellant submits that at the time of 'the incident' none of the housemates were living at the address. He submits that a passer by or the refuse collectors "must not have put it back near the door and because no housemate was at the house we could not put it back in the right place".
13. The Appellant apologises for any difficulty caused. He submits that, as students, it would be difficult for the housemates to pay a 'heavy fine.'

14. The Respondent submits that leaving bins on the pavement causes an obstruction to vulnerable people, interferes with street cleaning, and attracts crime. The Respondent further submits that the Appellant made no representations in reply to any of the Notices served, when given an opportunity to raise any difficulty with compliance. It contends that four notices were sent to the Appellant, which provided ample time for the Appellant to make any such representations.

Decision

15. Although the Appellant submits that the house was unoccupied at the “time of the incident”, the contravention of the s.46 requirement took place on three occasions during October and November 2019.

16. Further, the Appellant’s submission suggests that the bin was habitually left by the door to the house. The Appellant is required to remove his bin from the pavement entirely other than between 7pm on Thursday and 7am on Saturday. It is clear from the Respondent’s photographs that moving the bin to next to the door would still leave it on wholly the pavement.

17. Having considered the evidence before me, and the submissions of both parties, I conclude that the bin from 61 Noel Street was left on the pavement in contravention of the s.46 requirement on 21 October 2019 and 11 & 27 November 2019, and that this was the responsibility of the Appellant and his housemates.

18. The requirement to pay the Fixed Penalty Notice is therefore confirmed.

Signed:
Judge Moira Macmillan

Date:
13 May 2020