



NCN: [2022] UKFTT 279 (GRC)

Case Reference: NV/2022/0014

First-tier Tribunal  
General Regulatory Chamber  
(Environment)

Heard by: Written Representations

Heard on: 1 August 2022  
Decision given on: 17 August 2022

Before

TRIBUNAL JUDGE SIMON BIRD QC

Between

SADIQ SAMAD AHMED

Appellant

and

LEICESTER CITY COUNCIL

Respondent

**Decision:** The appeal is Dismissed

## REASONS

The Appeal

1. The Appellant appeals against the imposition of a fixed penalty by the Respondent in relation to an alleged failure to comply with a notice served under section 46 of the Environmental Protection Act 1990 (“a Section 46 Notice) which required that the household waste bins for emptying relating to 32 Sheffield Street, Leicester LE3 09X, were to be placed on the kerb no earlier than 7.00 pm on each Wednesday and moved off the kerb by no later than 7.00 am on each Friday.
2. The Appellant argues that he knows nothing about the bin which was outside his property.

3. I am satisfied that this appeal is suitable for determination on the papers.

#### The Law

4. Section 46(1) and (4) of the Environmental Protection Act 1990 (“the Act”) provide that where a waste collection authority has a duty to arrange for the collection of household waste from any premises, it may serve a notice (“a Section 46 Notice”) requiring the occupier to place waste for collection in receptacles of a kind and number specified and may also impose requirements as to the placing of receptacles and the steps to be taken by the occupier to facilitate waste collection.
5. Where an authorised officer of the waste collection authority is satisfied that a person has failed without reasonable excuse to comply with a requirement imposed under section 46(1) and (4) and the person’s failure either (i) has caused, or is or is or was likely to cause, a nuisance or (ii) has been, or is or was likely to be detrimental to the amenities of the locality (“a relevant effect”), then a written warning may be given to the occupier of the relevant premises setting out the requirement which has not been complied with and how that failure has had, or is having or was likely to have a relevant effect. The warning must also set out the consequences of not complying with the Section 46 Notice.
6. Where a written warning has been given, section 46A(7) empowers a waste collection authority to require a person on whom the written warning has been served, to pay a fixed penalty to the authority if it is satisfied that within one year of the written warning being given, the person has again failed without reasonable excuse to comply with the requirements of a section 46 Notice and the failure has had or is having or was likely to have a relevant effect. The amount of the fixed penalty is such sum as is specified by the waste collection authority (section 46B).
7. There are strict requirements to be met before a person may be required to pay a fixed penalty. A notice of intent to impose a fixed penalty must first be served on the relevant person which sets out the grounds for requiring the payment of a fixed penalty, the amount which would be required to be paid and the notice must set out the right to make representations that a fixed penalty should not be required (section 46C(1)). There is then an additional requirement for a further notice (“the final notice”) to be served. This must not be served before the expiry of 28 days beginning with the service of the notice of intent. The final notice must contain the grounds for requiring payment of the fixed penalty, the amount of the fixed penalty, details of how payment should be made and must also set out the right of appeal to the First-tier Tribunal and the consequences of not paying the fixed penalty.
8. Under section 46D of the Act, a person on whom a final notice is served under section 46C may appeal to the First-tier Tribunal against the decision to require the payment of a fixed penalty and on appeal the First-tier Tribunal, may withdraw or confirm the requirement to pay the fixed penalty. Pending the determination of such an appeal, the requirement to pay is suspended pending determination of the appeal.

#### The Facts

9. On Monday 16th August 2021, the Respondent's City Warden found 13 properties on Sheffield Street had bins still on the public footpath after collection day which is Thursday. The bins were adjudged to be having a relevant effect. Number 32, of which Council Tax records show the Appellant to be the occupier, was one of these properties. A blue sticker was put on each of the bins to make residents aware and to remove their bins. Occupiers at each of the properties who had a bin on the street were served on 18 August 2021 by post with Section 46 Notices requiring that bins to be emptied must be placed on the kerb no earlier than 7.00 pm on each Wednesday and moved off the kerb by no later than 7.00 am on each Friday.
10. On Tuesday 12th October 2021 the bin and household waste for Number 32 were again found to be on the footpath and, in consequence, on Wednesday 3rd November 2021, a Notice of Contravention of the Section 46 Notices, explaining why bins should be removed and the consequences of failing to comply (which include the issue of an £80 Fixed Penalty Notice) was served by post on the Appellant. This set out that it was the responsibility of the Appellant to ensure that, if necessary, he had a key to access any off-street bin storage. No response to the notice was made to the Respondent by the Appellant.
11. On Tuesday 16<sup>th</sup> November 2021 the bin for 32 Sheffield Street was again found to be on the footpath and on Friday 17<sup>th</sup> December 2021 a Notice of Intent to Serve a Fixed Penalty Notice was served by post on the Appellant.
12. On 17 February 2022 a Fixed Penalty Notice and Notice of Opportunity to Pay Fixed Penalty were served by post on the Appellant and the Appellant appealed against the Fixed Penalty Notice on 4 March 2022.
13. On 6 April 2022 the Respondent notified the Tribunal that the Appellant had paid the fixed penalty. The Tribunal wrote to the Appellant asking whether he wished to pursue his appeal, but no response was received.

#### The Appellant's Submissions

14. The Appellant states he has lived at 32 Sheffield Street for three years and knows nothing about the bin being outside his property.

#### The Respondent's Submissions

15. The Respondent argues that a total of four separate notifications have been sent to the Appellant in accordance with sections 46, 46A, 46B, 46C and 46D of the Environmental Protection Act 1990 and Notice of Opportunity to Pay Fixed Penalty was served. This provided ample time for liaison with the Respondent regarding any problems with landlords, access to alleyways or any other difficulties in respect of which the Respondent may have been able to assist.

#### Decision

16. There is no dispute in this appeal that the statutory pre-conditions for the service of the section 46 Notice were satisfied and I am satisfied that there was a breach of the section 46

Notice on 16 November 2021 which was within one year of the Notice of Contravention served on 3 November 2021. I am also satisfied that all the required notices prior to the issuing of the Fixed Penalty Notice were served by the Respondent on the Appellant as required by the Act.

17. The Appellant claims that he was not responsible for the bin being outside his property on 16 November 2021. However, the photographic evidence shows that the bin was the bin for number 32 Sheffield Street, which the Appellant's Council Tax records show he is the sole occupant of. He was correctly served with the Notice of Contravention on 3 November 2021 and, as the sole occupier of the property, I am satisfied that it is more likely than not that he was responsible for placing the bin on the pavement. The Appellant has advanced no evidence of who, other than him, might have responsible for putting the bin on the pavement on 16 November 2021.
18. I therefore dismiss the appeal and confirm the notice.

Signed: Judge Simon Bird QC

Date: 6 August 2022