



**NCN: [2022] UKFTT 503 (GRC)**

**Case Reference: NV/2022/0008/HWC**

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

**Heard by: Hearing**

**Heard on: 16 September 2022**

**Decision given on: 20 September 2022**

**Before**

**TRIBUNAL JUDGE SIMON BIRD KC**

**Between**

**ANDREW WINSTON**

Appellant

**and**

**LEICESTER CITY COUNCIL**

Respondent

### **Appearances**

The Appellant did not appear and was not represented

The Respondent was represented by Mrs Barbara Whitcombe, Team Manager of the Respondent's Wardens Service

## DECISION AND 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 55 Hamilton Street, Leicester LE2 1FQ (“the Property”), were to be placed on the kerb no earlier than 7.00 pm on each Monday and moved off the kerb by no later than 7.00 am on each Wednesday.
2. The Appellant has stated in his grounds of appeal that he received none of the Respondent’s communications as he lives with and care for his grandmother who is 84 and suffers from depression and vascular dementia. One of the behaviours which his grandmother displays is the destruction and disposal of the post delivered to the Property because she does not understand the content of the letters. The Appellant states that he was unaware of the Respondent’s letters until he found part of a letter in a bin and was able to make out a contact number to enable him to get further information. The Appellant has asked all the carers that come to the Property in the future to put all mail out of reach of his grandmother.
3. The appeal was received by the Tribunal on 18 February 2022 42 days outside the 28 day statutory time limit but, given the circumstances outlined in the grounds of appeal, on 6 June 2022 the Registrar concluded that it was appropriate to extend the time limit for appealing until 18 February 2022.

### The Hearing

4. I held a hearing to determine the appeal on 16 September 2022, the Appellant having not indicated whether or not he consented to the appeal being determined on the papers.
5. The Appellant did not appear at the hearing and was not represented. I was informed by the Tribunal Assistant that notice of the date and time of the hearing had been provided to the Appellant by email together with the joining instructions, but no response was received. I was satisfied that reasonable steps had been taken to inform the Appellant of the date and time of the hearing and that, having regard to the nature of the issues raised and the fact that appeal relates to events which occurred now some 11 months ago, it was in the interests of justice to proceed in the Appellant’s absence.

### The Law

6. 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.

7. 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 (section 46A(2)). The warning must also set out the consequences of not complying with the Section 46 Notice.
8. 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).
9. 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.
10. 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**

11. On Monday 11 January 2021, the Respondent's City Warden found a number of properties on Hamilton Street had bins still on the public footpath after collection day which is Tuesday. Number 55 was one of these properties. A blue sticker was put on each of the bins to make residents aware of the need to remove their bins. All occupiers at each of the properties who had a bin on the street were served on 14 January 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 Monday and moved off the kerb by no later than 7.00 am on each Wednesday.

12. Mrs Whitcombe explained to the Tribunal that Hamilton Street is in the Council's Stoneygate Ward where there were particular issues with bins being left out on the street for long periods between collections, leading to illicit dumping by others by bins left out (as shown by the photograph taken of the Property on 1 October 2021) with the overall cumulative effect being unsightly and impacting on the Council's street cleaning functions.
13. The Appellant was one of the occupiers of 55 Hamilton Street at the date of the service of the section 46 Notice. The other occupier is recorded on the Respondent's Council Tax Register as being Mrs B M Winston.
14. The photographs of the Property taken by the Respondent in both January and October 2021 show that it was equipped with grab rails either side of the front door, together with a key safe.
15. On Thursday 27 May 2021 the bin for Number 55 was again found to be on the footpath and on 15 June 2021 a Notice of Contravention was served on both occupiers of the Property.
16. On Friday 1 October 2021 the bin for Number 55 was again found to be on the footpath and on 4 November 2021 Notice of Intent to serve a Fixed Penalty Notice was served on the Appellant, with the Fixed Penalty Notice being served on 10 December 2021. The Appellant appealed against the Fixed Penalty Notice on 18 February 2022.

### **The Respondent's Submissions**

17. The Respondent states that it has complied with all the relevant statutory requirements in relation to the service of the Fixed Penalty Notice. Mrs Whitcombe stated that her Department had no knowledge of the health of the Appellant's grandmother and that, in the absence of a request for an assisted bin collection, it would not have access to such information. No such request had been made here and an assisted bin collection would not have been available because the Appellant occupied the Property as a carer. Mrs Whitcombe also explained that the a total of 8 letters had been sent to the Property in relation to this matter, as both occupiers would have been separately served with each notice.
18. Mrs Whitcombe stated that, as far as she was aware there had been no further breaches of the requirements of the section 46 Notice in relation to the Property.

### **Decision**

19. I am satisfied from the evidence that I have seen and from Mrs Whitcombe's evidence given to the Tribunal that on 1 October 2021 there had been a failure to remove the waste bin of the Property from the street as required by the section 46 Notice. I am also satisfied that this was likely to be detrimental to the visual amenity of the locality having regard to the encouragement it gave to illicit tipping, as

evidenced by the photograph taken on 1 October 2021 and encouragement given to others to leave their bins out; both of which were issues in the Stoneygate Ward.

20. I am also satisfied that all of the requisite statutory notices were served in respect of the Fixed Penalty Notice and that, unless the Appellant had a reasonable excuse for not complying with the section 46 Notice, I should confirm the Fixed Penalty.
21. Whilst the Appellant has not appeared before the Tribunal to give evidence in support of his grounds of appeal, there is circumstantial evidence to support them. The grab rails beside the front door evidence occupation by a person with a disability and the presence of a key safe provides evidence of the need for carers to access the Property at time when the Appellant is not present. The fact that the Respondent is not aware of any further and subsequent breaches of the section 46 Notice serves to support the Appellant's evidence that he was not aware of the Notice at the time of the breach and was therefore not aware of its terms and what was required to comply with it. I note in this context, that the blue sticker placed on the bin by the Respondent's warden is expressed in general terms which do not set out the requirements of the section 46 Notice which was served on him.
22. Whilst the Appellant and his grandmother would have received eight separate communications from the Respondent, it is likely in my view, that they would have been received in just four posts and I have seen nothing to suggest that it is improbable that the Appellant's grandmother would not have dealt with any post she came across in the manner described by the Appellant.
23. For these reasons I am satisfied that the Appellant has shown that it is more likely than not that he was, by reason of his grandmother's actions, unaware of the existence of the section 46 Notice on 1 October 2021 and that, in consequence, he did have a reasonable excuse for his failure to comply with it. I therefore withdraw the requirement to pay the fixed penalty contained in the Fixed Penalty Notice of 10 December 2021.

Signed

Judge Simon Bird KC

Date: 16 September 2022