



**First-tier Tribunal
(General Regulatory Chamber
Environmental Regulation**

Appeal Reference: NV/2019/0005

**Decided without a hearing
On 24 October 2018**

Before

JUDGE ANTHONY SNELSON

Between

DR GKOLFO FERRA

Appellant

and

LEICESTER CITY COUNCIL

Respondents

DECISION

The decision of the Tribunal is that the appeal is dismissed.

REASONS

1. The Appellant was at all relevant times the occupier of premises at 2, Seymour Street, in Leicester. In these proceedings initiated by a notice of appeal dated 27 June 2019, he challenges a Fixed Penalty Notice ('FPN') issued by the Respondents ('the Council'), requiring him to pay a penalty of £80 for failing to comply with a notice and subsequent written warning served on him under the Environmental Protection Act 1990 ('the Act'), sections 46 and 46A respectively.

The statutory framework

2. By section 46 of the Act a local authority has power to serve on an occupier a notice (hereafter, a 'section 46 notice') requiring him or her *inter alia* to place waste in a specified kind of receptacle and to comply with arrangements for the collection of the waste.

3. The Act, by section 46A(1)-(3), permits a local authority to issue a written warning (a 'section 46A warning') to a person reasonably believed to have failed to comply with a section 46 notice and thereby caused a nuisance or some other detrimental effect to the amenities of a locality. The warning must *inter alia* state the nature and effect of the breach, specify, in the case of a continuing breach, the period within which the notice must be complied with, and explain the consequences of failing to comply with the notice.

4. Where a written warning has been given in respect of a continuing failure to comply with a section 46 notice, the local authority may impose a fixed penalty if satisfied that the occupier has failed to comply with the section 46 notice within the time specified in the section 46A warning (section 46A(4)). In addition, a local authority may impose a fixed penalty where satisfied that an occupier has committed a further breach of the section 46 notice within the period of one year commencing on the date on which the written warning was given (section 46A(7)(a)).

5. The amount of the penalty is fixed at £60 or such other sum as the local authority may specify (section 46B(1)). Here the Council has specified the sum of £80.

6. Before requiring an occupier to pay a fixed penalty a local authority must serve on that person a notice of its intention to do so (a 'notice of intent'), setting out the grounds relied upon, the amount of the proposed penalty and the occupier's right to make representations on the matter (section 46C(1)-(2)). Any such representations must be delivered within 28 days (section 46C(3)).

7. In order to require an occupier to pay a fixed penalty under section 46A, the local authority may, after the expiry of that 28-day period and after considering any representations under section 46C(3), serve on the occupier a further notice ('a 'final notice'). A final notice must specify the amount of the penalty, the grounds for imposing it, the right to appeal under section 46D and certain other matters (section 46C(5)-(8)).

8. A person on whom a final notice is served may appeal to the First-tier Tribunal (section 46D(1)).

The key facts

9. The material facts are not in dispute and can be summarised shortly as follows (I borrow from the Respondents' submissions responding to the appeal).

- 9.1 At all relevant times Tuesday was bin collection day for Leicester (or at least for Seymour Street, Leicester ('Seymour Street')).
- 9.2 On Friday, 9 November 2018, a City Warden employed by the Respondents found a number of wheelie bins on the footpath on Seymour Street. These included the bin for no. 2, Seymour Street. The bins ought to have been removed from the highway by 7.00 a.m. on that day. The City Warden marked the bins with blue stickers drawing attention to the obligation to remove them.
- 9.3 A section 46 notice was served on the Appellant at 2, Seymour Street, which (a) drew attention to, *inter alia*, the requirement to remove the wheelie bin from the highway by 7.00 a.m. on Wednesdays, and (b) satisfied the requirements of the Act.
- 9.4 The Appellant did not respond to the section 46 notice.
- 9.5 On Thursday, 29 November 2018, the wheelie bin for no. 2, Seymour Street was again found to be on the footpath.
- 9.6 On 12 December 2018 a section 46A warning was served on the Appellant at 2, Seymour Street. The document, which complied with the statutory requirements summarised above, stated that he had failed to comply with the section 46 notice by failing to remove the wheelie bin from the footpath and that if he did not comply in future he might be served with a notice of intent and required to pay a fixed penalty of £80.
- 9.7 The Appellant did not respond to the section 46A warning.
- 9.8 On 12 April 2019 a notice of intent was served on the Appellant at 2 Seymour Street. The document satisfied the requirements of the legislation summarised above.
- 9.9 The Appellant did not respond to the notice of intent
- 9.10 On Friday, 3 May 2019 the wheelie bin for no. 2 Seymour Street was again found to be on the footpath.
- 9.11 On 13 May 2019 the Council issued a FPN requiring the Appellant to pay the sum of £80.
- 9.12 On 31 May 2019 the Respondents served on the Appellant a 'Final Notice' referring to the FPN, allowing 14 further days for payment and drawing attention to her right to challenge the FPN by way of an appeal to the First-tier Tribunal.
- 9.13 On 26 June 2019 the Appellant issued his notice of appeal.

The appeal

10. The Appellant contends that the FPN is harsh and unfair. He does not deny the breaches on which the Council relies but argues that they were minor and, in one instance, the result of his having been away from home overnight on the Tuesday, returning on the Wednesday evening. He points out that he is careful about his responsibilities and committed to cleanliness locally. Finally, he appears to express uncertainty about the "deadlines" for putting bins out and in.

Conclusions

11. In my view the Council was entitled to impose the fixed penalty and there is no good ground to disturb its decision on appeal. The statutory formalities (summarised above) were complied with. The section 46 notice was valid. There was a breach in November 2018 and a further breach in May 2019. The breaches are undisputed. I accept that the Appellant may have been absent from the premises from time to time. But being away on occasions did not absolve him of his obligations, as an occupier, under the 1990 Act. It was his responsibility to take suitable steps to ensure that his bin was not left to become a nuisance and he failed to honour that responsibility. If, which is not easily understood, he had any doubt about “deadlines”, he should have read the section 46 notice more carefully and/or directed a suitable request for clarification to the Council.

Outcome

12. For the reasons stated, I am clear that I must dismiss the appeal.

(Signed) Anthony Snelson
Judge of the First-tier Tribunal
Date: 7 November 2019