



Appeal number: NV/2018/0002

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**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(ENVIRONMENT)**

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Ratna Akter

Appellant

- and -

Leicester City Council

Respondent

Judge Alison McKenna

TRIBUNAL:

Sitting in Chambers on 13 March 2018

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DECISION

The appeal is dismissed.

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REASONS

Background to the Appeal

1. This appeal concerns a wheelie bin which the Respondent observed to have been left on the street outside number 14 Avon Street Leicester. This is the Appellant's address.
- 10 2. On 23 January 2017 the Respondent served on the Appellant a Notice explaining why wheelie bins could not be left out on the street. Having seen the Appellant's bin outside again on 20 May 2017, the Respondent served a Notice of Contravention on the Appellant. On 9 November 2017, the Respondent
15 served the Appellant with a Notice of Intent to issue a Fixed Penalty Notice in respect of the Notice of Contravention. On 21 December 2017, the Respondent served on the Appellant a Fixed Penalty Notice pursuant to s. 46 A (4) of the Environmental Protection Act 1990. This required her to pay a penalty of £80 for breaching the terms of the Notice of Contravention, requiring her to remove
20 the wheelie bin from the street. On 8 January 2018, the Respondent served a Final Notice on the Appellant. This warned that the penalty may now be enforced as a civil debt.
- 25 3. As the Appellant lives at 14 Avon Street with her husband, they are both "occupiers" and they were both served with Fixed Penalty Notices. Neither the Appellant nor her husband got in touch with the Respondent about any of the Notices and I understand that she did not make an appeal to the Magistrates Court against the Contravention Notice
- 30 4. The Appellant lodged an appeal with the Tribunal against the Fixed Penalty Notice on 27 December 2017.

The Issues in the Appeal

- 35 5. The Appellant's case, as stated in his Notice of Appeal, was that she has had a caesarean (but does not say when); her husband works nights and sleeps in the day time and it is his job to bring the wheelie bin inside while she works full-time looking after the house and the children. She asks to be forgiven for a first-time offence.
- 40 6. The Respondent submits in the Response that the Appellant had ample opportunity to comply with the Notices but took no steps to do so and that the Appellant's grounds do not provide any basis for allowing the appeal.

7. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended.

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The Law

8. Section 46 of the Environmental Protection Act 1990 permits a Council to serve a Notice on the occupier of premises requiring them to place waste for collection in certain specified receptacles. A Notice of Contravention may be served on a person who has failed “without reasonable excuse” to comply with a section 46 requirement, and there is a right of appeal to the Magistrates Court at that stage. A Fixed Penalty Notice may be served under s. 46 A (4) of the 1990 Act on a person who has failed to comply with the Notice of Contravention.
9. There is a right of appeal against a s. 46 Notice to the Magistrates Court. However, there is also a right of appeal against a Fixed Penalty Notice to this Tribunal. The Tribunal may not vary the amount of the penalty, but may withdraw or confirm the requirement to pay the penalty. The Tribunal must decide afresh the question of whether the fixed penalty should have been served.

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Conclusions

10. The Tribunal has considered carefully all the evidence and submissions provided by the parties before reaching this Decision.
11. In this case, the Appellant has accepted the facts on which the Respondent relies but offers an explanation for what occurred. It does not seem to me that she has provided a “reasonable excuse” but, in any event, the place for raising reasonable excuses is the Magistrates’ Court. My role is limited to deciding whether the Respondent was entitled to serve the Fixed Penalty Notice.
12. It is unfortunate that the Appellant did not contact the Respondent at any stage prior to lodging an appeal to the Tribunal. As the Contravention Notice was not challenged at the relevant time, and in the absence of any other information, it is unsurprising that the Respondent took the view that the unchallenged Contravention Notice had been breached and so decide to impose a financial penalty on the occupier.
13. I note that the Respondent has offered to cancel one of the Fixed Penalty Notices if the other is paid. This recognises the risk of double-impact where the Notices are served on husband and wife and it seems a very fair approach to me, although I am told the offer has not been taken up.

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14. In all the circumstances, I conclude that the Respondent was entitled to serve the Fixed Penalty Notice on the Appellant and I now confirm it. The appeal is accordingly dismissed.

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(Signed)

Dated: 13 March 2018

Alison McKenna

Principal Judge

Promulgation date: 16 March 2018

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