



NCN: [2022] UKFTT 277 (GRC)

Case Reference: NV/2022/0009

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

Heard by: Written Representations

**Heard on: 1 August 2022
Decision given on: 16 August 2022**

Before

TRIBUNAL JUDGE SIMON BIRD QC

Between

OLGA JUNGHINA

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 87 Stuart Street, Leicester, LE3 ODW, 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 she was unable to comply with the Section 46 Notice because the gate to the bin storage area for her property was locked and she did not possess a key to open it in order to enable her to comply with the requirements of the Notice.

3. The Parties have agreed that this appeal is suitable for determination on the papers and I agree.

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 36 properties on Stuart Street had bins still on the public footpath after collection day, which is Thursday. This was adjudged to have a relevant effect. Number 87, occupied by the Appellant, 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 87 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, she 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 16th November 2021, the bin for 87 Stuart Street was again found to be on the footpath and on Friday 17th December 2021 a Notice of Intent to Serve a Fixed Penalty Notice was served by post on the Appellant.
12. On Tuesday 28th December 2022 the Appellant contacted the Respondent stating that she did not have a key to alley way and that it was overgrown. The Respondent replied on Wednesday 29th December 2022 reaffirming what was said in the Notice of Contravention of 3 November 2021 in relation to the Appellant's responsibility for securing access to off-street bin storage.
13. 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 21 February 2022.

The Appellant's Submissions

14. The Appellant states that she had explained to the Council that she did not have access to the bin storage for her property at the time as the Council gate to the alleyway was locked and she did not have a key. The alleyway was also overgrown and had been since she moved into the rented property. It also took a few days for her neighbours to clear the alleyway and, as soon as it was, her bin was taken off the street.

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. The Respondent had ample time to comply with the Section 46 Notice.

The Tribunal's 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 issue in this appeal is whether the Appellant had a reasonable excuse for not complying with the section 46 Notice given that, on 16 November 2021, she was unable to gain access to the bin storage area for her property because she had no key.
18. I am not satisfied that Appellant's excuse was a reasonable one for failing to comply with the section 46 Notice on 16 November 2021. She had been served with a copy of the Section 46 Notice on 18 August 2021 which made it clear what her responsibilities were in terms of putting her bin out for collection and there was ample time between then and 16 November 2021 to have obtained a key and to have secured access to her bin storage area to ensure that the requirements of the Notice could be complied with. The letter of 3 November 2021 had stressed that it was her responsibility to ensure that she had access to the alleyway and I have seen nothing to indicate that a key could not have obtained and the alley way cleared to accommodate the Appellant's bin, before 16 November 2021 had reasonable steps been taken by her at an earlier stage on receipt of the section 46 Notice in August 2021.
19. I am therefore satisfied that this this appeal must be dismissed and I confirm the Fixed Penalty Notice.

Signed

Judge Simon Bird QC

Date: 6 August 2022