



NCN: [2022] UKFTT 508 (GRC)

Case Reference: NV/2022/0031/HWC

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

Decided on the papers

Listed on 23.08.2022

Decision given on: 5 September 2022

Before

TRIBUNAL JUDGE FORD

Between

CANDICE JOHNSON

Appellant

and

LEICESTER CITY COUNCIL

Respondent

On the papers

Decision: The appeal is allowed

Substituted notice: The Appellant is to pay a reduced penalty of £50

REASONS

1. The Appellant is a resident of the city of Leicester. The Respondent is the City council with responsibility for waste collection for the street where the Appellant lives. The Appellant is appealing against the fixed penalty notice BH00230. The final fixed penalty notice was served on her on 04/05/2022 due to repeated failures to remove her bin from the public footpath outside the property in which she resides.
2. The history of the matter is as follows. Clifton road, on which the Appellant lives, was observed by employees of the Respondent to have an ongoing issue with bins being left on footpaths outside the permitted hours for collection. Collection of waste takes place on a Tuesday and residents can place their bins on the footpath for collection between 7pm on Monday and 7am on Wednesday each week. Outside of those hours the bins must be

removed as they cause an obstruction to footpath users and cause an environmental nuisance.

3. On 03/11/2021 a number of bins were observed on Clifton road where the Appellant lives, including her bin. They had been left there outside permitted hours. A blue sticker was placed on each of the bins affected informing residents that they must remove their bins. I have seen photos of the Appellant's bin left on the footpath taken on a date outside the permitted hours along with a photo of the blue sticker attached.
4. The Appellant's bin was not removed and on 19/11/2021 a s46 notice (section 46 of the Environmental protection Act 1990) was served on the Appellant. I have seen a copy of that notice and am satisfied that it was duly served on the Appellant by post. She was alerted to the nuisance caused by stickers being placed on her bin and she was provided with a copy of a leaflet setting out the waste collection arrangements for her area.
5. The Respondent checked the occupation of the address and there was only one occupier registered for Council tax, namely the Appellant. She did not remove the bin. On 14/12/2021 a Notice of contravention was served on the Appellant warning her of the consequences of failing to comply with the notice of 19/11/2021. She was informed that non-compliance could lead to a fine of £80. The Respondent did not receive any communication from the Appellant after this Notice was served.
6. On 03/02/2022 the Appellant's bin was still on the footpath outside her home outside of permitted hours. I have seen a photo taken by a Council officer to establish this.
7. On 23/02/2022 the Respondent served a Notice of intention to serve a Fixed penalty notice on the Appellant and she was given an opportunity to pay. I am satisfied that the notice was duly served. She did not communicate with the Respondent following this Notice and no payment was received.
8. Finally on 11/04/2022 a fixed penalty notice reference BH00230 was served on the Appellant. I am satisfied from the evidence provided by the Respondent that this was duly served.
9. On 06/05/2022 the Appellant wrote to the Team manager responsible stating that she had now cleared the blocked alleyway that she shared with other residents. She said that the blockage was preventing her from storing the bins off the footpath as the alley was completely blocked. She said the bins were now stored off the footpath.
10. The Appellant was advised how to appeal to the Tribunal against the fixed penalty notice and she wrote back stating that she had lost letters sent to her by the Respondent. She was provided with another copy and duly appealed to the Tribunal against Fixed penalty notice BH00230.
11. In her appeal she states that she could not remove her bin because the alleyway that she and other residents use to take their bins from the footpath was blocked by items placed there by parties unknown. She states that she personally has now cleared that rubbish allowing her once again to store her bin off the footpath. She did not receive any help from other residents with this.

12. In its response to her grounds of appeal the Respondent states that the Council does not have responsibility for keeping the alleyway clear as it is private property and in the ownership of the Appellant and other residents.
13. The Respondent also notes in its response that the Appellant has an unpaid fine for the same issue dating back to 2017, reference BH/17662.
14. The Appellant feels aggrieved that she should have to bear the responsibility for clearing the alleyway that is in shared ownership. Access is needed to this alleyway to store bins from more than one property. Unfortunately what the Appellant has failed to recognise is that keeping the alleyway clear of rubbish is not the responsibility of the local authority, in this case the Respondent.
15. The Appellant was given several opportunities to remedy the situation and she has already been the subject of a fixed penalty notice for leaving her bin on the footpath outside of the permitted hours for collection.
16. She was initially notified on 03/11/2021 that she had to remove her bin from the public footpath. It was not until after the Fixed penalty notice was served that she took action that enabled her to remove the bin and store it away from the footpath.
17. Giving her some credit for her belated action in finally acting to sort out this matter, the fine is reduced from £80 to £50 payable within 28 days of the date of service of this decision. I have applied this reduction because the effect of the work done by the Appellant in clearing the alleyway has been to enable all residents who share the same access to store their bins off the public footpath.

Signed

A handwritten signature in black ink, appearing to be 'A. Hand'.

Date: 04/09/2022