



Neutral Citation: [2023] UKFTT 678 (GRC)

Case Reference: NV/2023/0006/HWC

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

Heard by: Paper Consideration

Listed on: 14 August 2023

Decision given on: 16 August 2023

Before

TRIBUNAL JUDGE M. FORD

Between

HWO LAM

and

LEICESTER CITY COUNCIL

Appellant

Respondent

On the papers

Decision: The appeal is Dismissed

REASONS

1. The appellant appeals against a fixed penalty notice issued by the respondent reference BH00900. The notice was issued because the appellant had failed to respond to 3 warning notices from the respondent concerning the household wheelie bin left on the footpath outside his home thereby causing a nuisance.
2. Three notices were issued by the Respondent Council to the Appellant as the sole occupant of 241 Tudor Road dated 03/05/2022, 07/06/2022 and 13/12/2022 under section 46 of the Environmental protection Act 1990.
3. Under section 45 of the Environment Protection Act 1990 the local authority is under a duty to arrange for collection of household waste from any residents within its area of control.
4. Councils can impose requirements on residents regarding the receptacles in which they place their waste for collection and other related matters including the times during which residents are permitted to place those receptacles on the public highway. In the Appellant's area of residence the bins must not be left on the public footpath earlier than 7pm on the evening before a collection is due and must be removed no later than 7 pm on the day of collection. On 03/05/2022, 07/06/2022 and 13/12/2022 the wheelie bin marked on its lid with the number 241 was found on the footpath outside the permitted hours. Those dates were Tuesdays when no collections were due.
5. I am satisfied that the s46 notices served on the appellant were duly served on the Appellant by post under section 160 (2) and (4) on the Environment protection Act. I am satisfied that they were properly served. I am also satisfied that stickers were attached to his bin alerting him to the situation as can be seen in the photos taken by the city warden on the corresponding dates.
6. The fixed penalty notice against which this appeal is lodged was issued under s46A(4) of the Environment protection Act. It was issued because the Appellant left his wheelie bin on the highway other than at times specified in the Notice for collection.
7. The appellant has stated in his appeal that the wheelie bin seen by the warden was not his, but belonged to number 247. Number 247 has been vacant for some time after it was gutted by fire in 2021. The Appellant has supplied a number of photos showing a bin with a number painted onto it that is so worn that it is not legible, but you can make out part of a number 2 followed by an illegible number and then the number 7. He has supplied a photo showing his own bin marked 241 stored in the back garden of his home.
8. I have photos showing two bins sitting on the pavement outside the Appellant's home, the one with the barely legible numbers and the Appellant's bin marked 241.
9. The Appellant states that the property at 247 has been vacant for some considerable time. He states that he has no contact with the owners since the house was gutted by fire in 2021. He refers to the house as not being currently occupied and one questions why any bin would be left outside it.
10. The Appellant wrote an email to the city warden about the bin found outside his home not being his, but belonging to number 247. In a reply dated 08 July 2022 the Appellant was informed that if the bin was not his then could he please report this and ask for the offending bin to be removed.

11. The Respondent tried to find evidence of such a complaint by the Appellant but found no trace of one.
12. Several photos (exhibits BW) show the wheelie bin for 241 left on the pavement outside the Appellant's home outside of permitted hours causing obstruction and nuisance.

Findings

13. In making my findings I have considered the papers, photographs and video evidence filed by the parties with the Tribunal as well as the information included in the Tribunal notices.
14. I am satisfied on the evidence to a high degree of probability that the Appellant left his wheelie bin marked 241 on the footpath outside his home on 03/05/2022, 07/06/2022 and 13/12/2022 as recorded by the city warden. He was issued with several warning notices which he failed to heed.
15. Even if another bin was left on the footpath at the front of number 241 outside the permitted hours this is not a defence to the Appellant leaving his bin on the footpath outside of permitted hours. I am satisfied on the evidence of the City warden that the bin marked 241 was left on the public pavement outside the permitted hours on the dates stated thereby causing an obstruction and a nuisance to other residents and members of the public.
16. Nor does the video taken by the Appellant showing a bin marked 241 stored at the back of his home establish any defence because that video could have been taken at any time.
17. The Appellant has not reported the bin found sitting on the pavement outside his house as not being his. He emailed the city warden about it but was advised that he needed to make a report to the council that the bin was not his and ask for it to be removed. He made no such report.
18. I am satisfied that the fixed penalty notice reference BH00900 was properly issued to the Appellant under s46 of the Environmental protection Act 1990. The appeal is dismissed

Signed:



Date:14/08/2023