



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
Environment**

**Appeal Reference: NV/2016/0007**

**Decided at Field House without a Hearing  
On 26<sup>th</sup> September 2016**

**Before**

**JUDGE PETER LANE**

**Between**

**MATTHEW GODDARD**

**Appellant**

**and**

**LEICESTER CITY COUNCIL**

**Respondent**

**DECISION AND REASONS**

***A. The legislation***

1. By reason of section 46 of the Environmental Protection Act 1990, Leicester City Council ("the Council") may serve a notice on the occupier of premises requiring the occupier to place waste for collection in receptacles identified by such means as the Council may specify. The power to make requirements extends to making provision with respect to, amongst other matters, the placing of receptacles "for the purpose of avoiding nuisance or detriment to the amenities of the area." A person who fails without reasonable excuse to comply with any such requirements is liable

on summary conviction to a fine not exceeding level 3 on the standard scale. A person may appeal against the requirement in question on the ground that the requirement is unreasonable.

2. Section 46A of the 1990 Act concerns written warnings and penalties for failure to comply with requirements imposed under section 46. The Council may give a written warning to a person who has failed without reasonable excuse to comply with a section 46 requirement, where the person's failure to comply has caused or is or was likely to cause a nuisance; or has been, or is or was likely to be, detrimental to any amenities of the locality. The written warning must:-

- “(a) identify the section 46 requirement with which the person has failed to comply,
- (b) explain the nature of the failure to comply,
- (c) explain how the failure to comply has had, or is or was likely to have the effect of causing etc. a nuisance or being etc. detrimental to amenities in the locality,
- (d) if the failure is continuing, specify the period within which the requirement must be complied with and explain the consequences of the requirement not being complied with within that period, and
- (e) whether or not the failure to comply is continuing, explain the consequences of the person subsequently failing to comply with the same or a similar section 46 requirement (section 46A(3)).

3. Section 46A(4) states that where a written warning has been given in respect of a failure that is continuing, an authorised officer may require the person to whom the written warning was given to pay a fixed penalty, if satisfied that the person has failed to comply with the section 46 requirement within the specified period.

4. Section 46B of the 1990 Act provides that the amount of the monetary penalty is £60, unless another amount is specified by (here) the Council. In the present case the Council has specified the sum of £80.

5. By section 46C, an authorised officer must serve a notice of intent on the person concerned, before that person may be required to pay a fixed penalty under section 46A. The notice of intent must contain information about:-

- (a) the grounds for proposing to require payment of a fixed penalty,
- (b) the amount of the penalty that the person would be required to pay, and
- (c) the right to make representations under section 46C(3).

6. Any such representations must be made within 28 days beginning with the day service of the notice of intent was effected. In order to require a person to pay a fixed penalty under section 46A, the authorised officer must serve on the person a further notice (the “final notice”).
7. The final notice may not be served on the person before the expiry of the period of 28 days beginning with day service of the notice of intent on the person was effected. Before serving the final notice the authorised officer must consider any representations made under section 46C(3).
8. Section 46C(8) provides that the final notice must contain information about –
  - (a) the grounds for requiring payment of a fixed penalty,
  - (b) the amount of the penalty,
  - (c) how payment may be made,
  - (d) the payment within which payment is required to be made (which must be not less than 28 days beginning with the day service of the final notice is effected),
  - (e) any provision giving a discount for early payment,
  - (f) the right to appeal under section 46D, and
  - (g) the consequences of not paying the penalty.
9. Section 46D says that a person on whom a final notice is served under section 46C may appeal to the First-tier Tribunal against the decision to require payment of a fixed penalty. On appeal, the First-tier Tribunal may withdraw or confirm the requirement to pay the fixed penalty. The requirement to pay the fixed penalty is suspended pending the determination or withdrawal of the appeal.

## ***B. Background***

10. The appellant is an occupier of premises in Skipworth Street, Leicester. According to the Council, Skipworth Street has been affected by receptacles known as “wheelie bins” being left on the street outside normal collection times. The Council considers that a wheelie bin left on the street may be a target for arson and vandalism, cause an obstruction to disabled and infirm people, create difficulties for parents and carers walking with young children and pushchairs and interfere with cleansing staff street sweeping duties. Besides all this, they look unsightly, may be stolen and may be used illegally to dispose of other people’s rubbish.

11. On 22<sup>nd</sup> January 2016, a City Council warden found 37 properties on Skipworth Street, which still had bins on the public footpath after collection day. 55 Skipworth Street, occupied by the appellant, was one such property. Photographic evidence has been produced showing the position on 22<sup>nd</sup> January and on other (later) dates to which I shall make reference.
12. On 9<sup>th</sup> February 2016, the appellant and other occupiers who had bins on the street were served by hand with section 46 notices. These required that bins to be emptied must be placed on the kerb no earlier than 7pm on each Tuesday and moved off the kerb by no later than 7am on each Thursday. The consequences of a failure to comply and the availability of an appeal to the magistrates court, were detailed in the notices. Additionally, a turquoise sticker highlighting the need to remove bins from the street after collection days was placed on each offending bin. Photographic evidence was adduced.
13. None of the occupiers of 55 Skipworth Street (which includes the appellant) appealed against the section 46 notice.
14. Photographic evidence shows that bins relating to 55 Skipworth Street were on the footpath on Friday 12 and Monday 22<sup>nd</sup> February 2016. On 26<sup>th</sup> February 2016 the wheelie bin for 55 Skipworth Street was again found to be on the footpath. The Council served by first class post on the appellant a written warning under section 46A. This identified the section 46 requirement in terms of the wheelie bin being a target for arson and vandalism; a cause of obstruction to the disabled and the infirm, as well as parents, carers and those with pushchairs; an interference with street sweeping duties; looking unsightly; emitting smells; and a risk of being used illegally for the disposal of builders' waste or dangerous waste such as asbestos.
15. The period stated for remedying the breach was seven days. The result of failing to comply was stated to be that the appellant may be served with a notice of intent and required to pay the council a fixed penalty the sum of £80.
16. Regrettably the written warning was not heeded. Wardens observed the wheelie bin being on the footpath on 14<sup>th</sup> and 18<sup>th</sup> March 2016, when photographs of it were taken and, again, on 21<sup>st</sup> March. On that day the Council sent a notice of intent under section 46C to the appellant, by first class post. The notice stated that the Council intended to require payment of a fixed penalty of £80 under section 46A on the ground that the appellant had failed to remove the wheelie bin from the highway after collection, in circumstances where the failure had caused or was likely to cause a nuisance. The notice gave details of the way in which the appellant could exercise his right to make representations under section 46C(3), within the requisite 28 day period.
17. No such representations were made within that period. On 24<sup>th</sup> March 2016, the wheelie bin for 55 Skipworth Street was again found to be on the footpath.

Photograph evidence has been supplied. Further warden visits established that the wheelie bin was on the footpath on 8<sup>th</sup>, 15<sup>th</sup>, 22<sup>nd</sup> and 23<sup>rd</sup> April.

18. Following the discovery on 25<sup>th</sup> April 2016 that the wheelie bin was again on the footpath, a final notice was served by first class post on the appellant, pursuant to section 46C(5), on 25<sup>th</sup> April 2016. The notice contained information about the grounds for requiring payment of the fixed penalty; that is to say, that the appellant left the wheelie bin on the highway other than at the time specified in the Council's requirements under section 46. The amount of the penalty was again specified as £80. Information was given regarding how to make payment of the penalty and the period within which payment was required to be made. The final notice set out the appellant's right of appeal to the First-tier Tribunal.

### ***C. The appeal***

19. On 27<sup>th</sup> April 2016, the appellant appealed to the Tribunal. He did not request a hearing and I was satisfied that the appeal could be justly determined without one. The appellant described himself as one of a group of three students, studying at Leicester University, who had rented the property since 1<sup>st</sup> July 2015. The appellant said he was not aware that he was not allowed to leave wheelie bins on the street. He contended that both he and his fellow occupants of 55 Skipworth Street and more than 50% of the occupants of the rest of the street had left wheelie bins on the street for the whole week. The appellant and his fellow occupants were disturbed to have come back after the Easter break to find a fixed penalty notice, as he said he had had no prior notification or any warnings previously. Had it been brought to their attention, he said they would have taken immediate action to resolve the problem. The appellant said that the difficulties would not occur again. A request was made to cancel the penalty as "we are students and cannot afford to pay £80."

### ***D. Discussion***

20. The respondent has provided evidence of the spring term at Leicester University, which was 11<sup>th</sup> January to 18<sup>th</sup> March 2016. I am satisfied on the balance of probabilities that the appellant is more likely than not to have been at 55 Skipworth Street on 9<sup>th</sup> February 2016 when the section 46 requirements were served by hand delivery at each of the properties in Skipworth Street. In any event, it is more likely than not that the appellant would have subsequently come across this notice at the property.
21. No explanation has been given by the appellant for why he did not heed the turquoise sticker placed on the wheelie bin, highlighting the need to remove it from the street after collection day, in accordance with the requirements.

22. By the same token, I am satisfied on balance that the written warning was duly served on the appellant by post on 26<sup>th</sup> February 2016.
23. The Tribunal's power under section 46D(2) is either to withdraw or confirm the requirement to pay the fixed penalty. The Tribunal has no power to require a lesser sum to be paid.
24. I am satisfied on balance that ample warnings were given to the appellant regarding the consequences of continuing to fail to comply with the Council's requirements regarding the placing and removal of the wheelie bin for 55 Skipworth Street. The fact that remedial action was taken only after the final notice was issued does not, in my view, justify withdrawing the fixed penalty. Whilst I note the contention that the appellant is a student who cannot afford to spend £80, the Tribunal has been given no evidence of his means. I am not satisfied on balance that the appellant would suffer undue hardship by being required to pay that sum.

***E. Decision***

25. This appeal is dismissed.

**Judge Peter Lane**  
**Chamber President**  
**18 October 2016**