



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

**Appeal Reference: NV/2016/0013**

**Decided at Field House without a hearing  
On 30 December 2016**

**Before**

**JUDGE PETER LANE**

**Between**

**KHADIJAH HASSAN**

**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 at 2 Churchill Street, Leicester. According to the Council, Churchill Street has been adversely 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’s street sweeping duties. Besides this, the Council believes that

they look unsightly, may be stolen and they may be used illegally to dispose of other people's rubbish.

11. The Council states that on 22 April 2016, occupiers of 37 properties in Churchill Street that had a bin on the street that day (a Friday) were served with section 46 notices requiring that bins to be emptied must be placed on the kerb no earlier than 7.00 p.m. on each Monday and moved off the kerb by no later than 7.00 a.m. on each Wednesday. Consequences of a failure to comply with this requirement were detailed in the notices, as was the ability to appeal to the Magistrates' Court (see paragraph 1 above).
12. The appellant is one of those who was served with a section 46 notice. The Council is unaware that she has appealed to the Magistrates' Court against the requirements set out in the notice.
13. On Thursday, 12 May 2016, the bin for 2 Churchill Street was found to be on the footpath. The appellant was served with a written notice under section 46(A) of the 1990 Act (see paragraphs 2 and 3 above).
14. On Friday, 10 June 2016, the bin for 2 Churchill Street was again found to be on the footpath. A notice of intent under section 46C was served on the appellant (see paragraphs 5 and 6 above). A final notice, giving details of the fixed penalty of £80, was served on the appellant by the Council on 15 July 2016.
15. On Thursday, 21 July 2016, the bin for Number 2 Churchill Street was again seen by the Council's officer to be on the pavement.

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

16. The appellant has appealed to the Tribunal against the final notice. She has not requested a hearing and I am satisfied in all the circumstances that the appeal can justly be determined without one.
17. In her grounds of appeal, the appellant contends that the Council's officers have not been helpful. Her case is that she is unable to take her wheelie bin from 2 Churchill Street, along a rear alleyway, onto the street, because a gate in the alley is locked. She is concerned about what she describes as the "very appalling behaviour" of the Council's wardens. The grounds also state that neighbours are taking the appellant's bin in and out, "keeping our bin in their garden all the time".

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

18. In reaching a decision in this case, I have had regard to all the written materials contained in the appeal bundle, compiled by the respondent. The fact that I do not

refer to a particular document or photograph is not to be taken as indicating that I have not had regard to the same.

19. I am fully satisfied from the materials that the appellant was served with the requisite notices and that the notices met the statutory requirements set out in paragraphs 1 to 9 above. As indicated in paragraph 9, the powers of the Tribunal in an appeal of this kind are limited to withdrawing or confirming the requirement to pay the fixed penalty. In particular, it is not open to the Tribunal to order payment of a lesser sum than £80.
20. The issue in this appeal is whether the appellant has shown, on the balance of probabilities, that she is not reasonably capable of complying with the requirements of the Council, concerning the times at which the wheelie bin of Number 2 Churchill Street may be present on the pavement of that street.
21. As has already been pointed out by the Council – and as can be seen from paragraph 1 above – the reasonableness of a requirement contained in a section 46 notice is a matter that can be appealed to a Magistrates’ Court. Parliament’s intention is plain: challenges to the reasonableness of section 47 requirements lie to that Court and the right of appeal to the First-tier Tribunal under section 46D is not to be seen as a “back door” means of challenging those requirements.
22. I am not, in any event, satisfied on balance that the appellant has shown that access for the wheelie bin along the rear alleyway is unavailable to her, as a lawful leasehold occupier of 2 Churchill Street. At BW10 in the bundle, one finds an official Land Registry copy of the title to 2 Churchill Street. This makes it clear that 2 Churchill Street enjoys\_

“a full free and uninterrupted right of way at all times to and for the Purchaser and its signs in common with all other persons entitled to a like right of way over and along the passage or back way leading from the rear of the messuage or tenement hereby conveyed into Churchill Street ...”.

In the normal course of things, one would expect a tenant of 2 Churchill Street to enjoy the right of way referred to in the register of title. The appellant has not shown, on balance, that this is not the legal position. On the contrary, the e-mail of 11 August 2016 from the appellant’s landlord, Midland Heart Limited, a charitable housing association, strongly indicates that the position is as I have described.

23. I am therefore satisfied on balance that what is stated in paragraphs 12 and 17 of the Council’s response is more likely than not to be correct. The rear alleyway is one over which the appellant is likely, as the tenant of 2 Churchill Street, to enjoy a right of way, as described in the Land Registry title document. If that access is barred by the presence of a lock fitted by a previous tenant, the key for which cannot reasonably be obtained, then the appellant and/or her landlords, Midland Heart, would be entitled to take reasonable steps to secure the right of way. The appellant’s suggestion that this would entail a criminal offence is, I find,

misconceived. I also see no indication in the materials to support her assertion that Midland Heart are unwilling to take the necessary steps to ensure that she enjoys the right of way to which she would appear to be entitled, as their tenant.

24. Furthermore, I am satisfied that there is a front alleyway that could be used by the appellant for the purposes of transporting her wheelie bin. I accept the Council's evidence that the neighbour at Number 4 Churchill Street has offered the appellant a copy of the key. Indeed, the appellant herself refers to co-operation between her and the tenants at Number 4.
25. At paragraph 17 of the response, the Council states that the appellant said the rear entrance "was too far to walk and her husband told her not to". Leaving aside the reasonable availability of the front alleyway, I do not find that the appellant has put forward any evidence to show that the appellant suffers from any physical disability, such that it would be unreasonable to expect her to use the rear alleyway for the purposes of moving the wheelie bin. There is also no evidence that she lacks a family member who could assist her in this regard.
26. I am satisfied from the photographic evidence that the wheelie bin in question is that of the appellant, and bears the number 2 on it, as shown in the photographs. I do not accept that the bin in question belongs to some other property, such as Number 4.

#### ***E. Decision***

27. This appeal is dismissed.

**Judge Peter Lane**

**18 January 2017**