



IAC-AH-LR-V1

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

Appeal References: NV/2017/0001
NV/2017/0002
NV/2017/0003

Decided at Field House without a hearing

Before

JUDGE PETER LANE

Between

**DANIEL WILSON
ADAM MORGAN
DANIEL BUTLER**

Appellants

and

Leicester City Council

Respondent

DECISION AND REASONS

A *The legislation*

1. By reason of section 46 of the Environmental Protection Act 1990, the respondent, Leicester City 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 appellants are students who, at all relevant times, were each lessees and occupiers of a house known as 138 Grasmere Street, Leicester. On 17th June 2016, Darren Evans, a City Warden employed by the respondent, noted 32 properties on Grasmere Street still had a wheelie bin on the public footpath after collection day.

Every property concerned was served with a formal notice on 20th June 2016, explaining what the occupiers must do in order to comply with the legislation and what might occur if they did not. The bins concerned had placed on them a turquoise sticker highlighting the need to remove the bin from the street. The formal notice explained how an occupier could appeal within 21 days to the Magistrates' Court. None of the appellants appealed.

11. A further visit to Grasmere Street was made on 30th June 2016. The wheelie bin relating to 138 Grasmere Street was still on the footpath. Photographic evidence was taken.
12. On 1st July 2016 a notice of breach was served on the appellants, explaining why the bin should be removed and that failure to comply would lead to the issue of an £80 fixed penalty notice. None of the appellants contacted the respondent after the notice was served.
13. Further visits were made on 3rd August and 9th November 2016, when the wheelie bin of number 138 Grasmere Street was still on the footpath. On 10th November 2016 a notice of intent to serve the fixed penalty notice was issued to the appellants. Photographic evidence shows the wheelie bin belonging to 138 Grasmere Street on the footpath on 3rd August and 9th November 2016.

C. The appeals

14. On 10th January 2017, fixed penalty notices were issued to each of the appellants. The appellants appealed against the notices. The parties to the appeals are content for them to be decided without a hearing and, in all the circumstances, I am satisfied that I can justly do so.
15. The grounds of appeal are in the same terms. They state that on 17th June 2016, 138 Grasmere Street was unoccupied, as the appellants, being students, "decided to go home for a small portion of the summer and this date fell upon that time. Understandably, the waste bin should have been taken to the garden of the premises before departure, however, this was a simple mistake during the rush to get home. If the circumstances were to reoccur, with us being present in the house, the trash bin would not have been left at the front of the house".
16. The grounds contend that charging three students £80 each "for what can only be described as a mistake is unreasonable". The grounds end by saying that the waste bin "will not be left out the front of the premises again, and we apologise for any inconvenience this single occurrence has caused".

D Discussion

17. I do not accept, on a balance of probabilities, that the failure in June 2016 can be viewed as an isolated incident. The appellants have not put forward any evidence to counter that of the respondent that the wheelie bin was on the pavement on 3rd August and 9th November 2016. Although the penalty does not formally relate to those dates, the fact that the wheelie bin was there on both occasions undermines the contention of the appellants that what happened in June was an isolated incident.
18. The provisions of the legislation, read with the Interpretation Act 1978, are such as to impose liability on each occupier who infringes the requirements of that legislation. Having said this, if, for example, one occupier is designated by the others to be responsible for the placing and removal of the wheelie bin, and fails to do so, and evidence to that effect was put before the Tribunal, then the Tribunal may well decide to withdraw the requirement on the other occupiers to pay the penalty.
19. In the present case, however, there is no evidence to suggest such an arrangement was in place amongst the appellants. Accordingly, each falls to be regarded as at fault and each is properly liable to pay the fixed penalty.

E. Decision

20. These appeals are accordingly dismissed.

Judge Peter Lane

28 July 2017