



IAC-AH-LR-V1

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

Appeal Reference: NV/2017/0005

Decided at Field House without a Hearing

Before

JUDGE PETER LANE

Between

SIMON SOUTHERDEN

and

LEICESTER CITY COUNCIL

Appellant

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. On 17th June 2016, Darren Evans, a City Warden employed by the respondent, visited 32 properties in Grasmere Street, Leicester, each of which had a wheelie bin on the public footpath after collection day. Every such property was served with a formal notice on 20th June 2016, explaining that the position was, in effect, unacceptable and explaining what would occur if wheelie bins continued to be left in this manner.

11. The appellant is the occupier of 65 Grasmere Street. This was one of the properties concerned. The notice explained how to appeal against it within 21 days to a local Magistrates' Court. The appellant did not appeal.
12. Further visits were made on 30th June, 20th July, 3rd August and 26th October. Photographic evidence shows the wheelie bin still on the footpath, after collection day.
13. On 3rd November 2016, a notice of breach was served on the appellant explaining why the wheelie bin must be removed and that failure would lead to an £80 fixed penalty notice. The appellant did not contact the respondent after this notice was served.
14. On 23rd November 2016, the wheelie bin for 65 Grasmere Street was again found to be on the footpath after collection day.
15. On 1st December 2016 a notice of intent was served on the appellant and on 10th January 2017 a fixed penalty notice was served on him.

C. The appeal

16. The appellant appealed against the fixed penalty notice. Both parties were content for the appeal to be decided without a hearing and in all the circumstances I considered that I could justly do so.
17. In his grounds of appeal, the appellant describes medical conditions from which he suffers. These have led to difficulty getting the wheelie bin in and out of his backyard. There had also been a problem with access via the rear of the property. The appellant had to wait for three weeks whilst those who had a key were before he could borrow their key so that an additional one could be cut for him.
18. The appellant says that he has enlisted the help of his grandson who now visits and puts the bin out for him and brings it back in to the yard. This has been the position "since last November".

D. Discussion

19. The powers of the Tribunal in an appeal of the present kind are limited. The Tribunal cannot reduce the £80 fixed penalty; it can either withdraw or confirm the requirement to pay the penalty.
20. I have taken full account of the matters raised by the appellant. It is, however, plain that he could and should have made suitable arrangements far earlier than he did. I

accept that the respondent gave him ample warnings and that the appellant had an ample opportunity to act.

21. Whilst sympathetic to the appellant's position, others with physical difficulties no doubt make arrangements for their wheelie bins not to be left in a position where they cause problems for users of the pavement, including children and, indeed, others with disabilities.
22. In all the circumstances, the Tribunal concludes that the appellant must pay the fixed penalty.

E. Decision

23. This appeal is accordingly dismissed.

Judge Peter Lane
28 July 2017