



Appeal number: NV/2017/0015

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(ENVIRONMENT)**

LAIMONAS RAMANAUSKAS

Appellant

- and -

LEICESTER CITY COUNCIL

Respondent

TRIBUNAL: Judge Alison McKenna

Sitting in Chambers on 20 December 2017

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DECISION

The appeal is dismissed.

REASONS

Background to the Appeal

1. The Appellant lives at 94 Carlisle Street, Leicester. This appeal concerns a wheelie bin which the Respondent observed to have been left on the street outside the Appellant's home. On 15 February, the Respondent served a Notice of Contravention on the Appellant. On 22 February 2017, the Respondent served the Appellant with a Notice of Intent to issue a Fixed Penalty Notice. On 22 March 2017, the Respondent served on the Appellant a Fixed Penalty Notice pursuant to s. 46 A (4) of the Environmental Protection Act 1990. This required him to pay a penalty of £80 for breaching the terms of the Notice of Contravention, requiring him to remove his wheelie bin from the street. On 13 June 2017, the Respondent served a Final Notice on the Appellant. This warned that the penalty may be enforced as a civil debt.
2. The Appellant did not get in touch with the Respondent or make an appeal to the Magistrates Court in response to any of the Notices, but lodged an appeal with the Tribunal against the Fixed Penalty Notice on 30 June 2017.

The Issues in the Appeal

3. The Appellant has not denied that he was the occupier of the relevant property at the relevant time and he has not denied receiving the Notices. He has not denied that his wheelie bin was left out on the pavement on the dates relied on by the Respondent.
4. The Appellant's case, as stated in his Notice of Appeal, was that that he could not gain access to the rear alleyway of his property so had been unable to remove the wheelie bin from the pavement.
5. The Respondent did not address this Ground of Appeal in its Response and so, as I was unable to determine the appeal fairly without knowing the Respondent's grounds of opposition to the Appellant's stated case, I issued Directions on 13 November 2017 asking the Respondent for its further submissions and giving the Appellant a right of reply. (I also note here that the Respondent's "case summary" refers in parts to Carlisle Street and in other parts to Grasmere Street. This is unsatisfactory).
6. On 4 December 2017, the Respondent submitted that (i) the Appellant had not previously reported difficulties in accessing the rear alleyway; (ii) the

Appellant had not booked a bulky waste collections service; (iii) it is the tenant's responsibility to ensure that they have the keys to the gate; (iv) as the occupants of number 96 Carlisle Street had complied with the requirement to remove the bin, this suggests that the alley way was accessible.

7. On 5 December 2017, the Appellant replied that his route of access to the rear of his property is via number 92 not number 96 Carlisle Street. He asked the Respondent to contact him and gave his number. The appeal was, at that point, ready for me to decide in accordance with my earlier directions but unfortunately there was a delay in me returning to consider it due to pressure of other work.
8. On 18 December 2017, the Respondent (without seeking the permission of the Tribunal to file further evidence or submissions) sent in a copy of the Land Registry entry for the Appellant's property showing that there is an alleyway on either side of it. This document was attached to an e mail addressed to the Appellant (to which the Tribunal was merely copied in) which advised the Appellant that he should have asked for a key from his neighbours or landlord in order to access the rear of the property. It is unclear whether the Respondent expected this e mail and attachment to be considered by the Tribunal as part of the evidence in the appeal, but I have taken it into account in any event.
9. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended.

The Law

10. Section 46 of the Environmental Protection Act 1990 permits a Council to serve a Notice on the occupier of premises requiring them to place waste for collection in certain specified receptacles. A Notice of Contravention may be served on a person who has failed "without reasonable excuse" to comply with a section 46 requirement, and there is a right of appeal to the Magistrates Court at that stage. A Fixed Penalty Notice may be served under s. 46 A(4) of the 1990 Act on a person who has failed to comply with the Notice of Contravention.
11. As noted above, there is a right of appeal against a s. 46 Notice to the Magistrates Court. However, there is a right of appeal against a Fixed Penalty Notice to this Tribunal. The Tribunal may not vary the amount of the penalty, but may withdraw or confirm the requirement to pay the penalty. The Tribunal must decide afresh the question of whether the fixed penalty should have been served.

Conclusions

12. The Tribunal has considered carefully all the evidence and submissions provided by the parties before reaching this Decision.
13. In this case, the Appellant stated clearly in his grounds of appeal that he had no access to the rear of the property and so could not move the wheelie bin from the pavement. The Respondent did not make any comment on the Appellant's statement in its formal Response to the appeal and so I gave it a further opportunity to set out its grounds of opposition to the appeal. In its further submissions, it indicated that it had checked the access arrangements to the rear via one neighbouring property but not the other. The Appellant then submitted that the Respondent had checked the wrong property.
14. In its further submission (if that is what it was) the Respondent suggested that as there are two alleyways giving rear access, the Appellant should have arranged access via one of them. None of the further information provided by the Respondent assisted me in deciding this appeal.
15. I am satisfied on the balance of probabilities that the Appellant did not have access to the rear of his property at the time the written warning or the Fixed Penalty Notice were served. He has made clear, cogent and consistent statements to that effect and the Respondent has completely failed to mount a credible challenge to them. If the Appellant had raised that issue with the Magistrates Court at the relevant time, the Notice of Contravention might have been quashed. However, the question of whether there is a "reasonable excuse" for non-compliance with a s. 46 Notice must be raised at the Magistrates Court and not the Tribunal, as I have no power to withdraw the Fixed Penalty on reasonable excuse grounds.
16. It is unfortunate that the Appellant did not make contact with the Respondent at the relevant time or raise his difficulties with the Magistrates Court when the Notice of Contravention was served. It is also unfortunate that the Respondent has not clearly set out its factual case for the Tribunal in evidence or raised the Appellant's jurisdictional difficulties in its submissions.
17. Nevertheless, I conclude that the Respondent was entitled to serve the Fixed Penalty Notice and I now confirm it. The appeal is dismissed.

(Signed)

Alison McKenna
Principal Judge

Dated: 20 December 2017

Promulgation Date: 22 Dec. 17

