



Appeal number: NV/2017/0018

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

Christopher Massey

Appellant

- and -

Leicester City Council

Respondent

TRIBUNAL: Judge Alison McKenna

Sitting in Chambers on 2 January 2018

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DECISION

The appeal is dismissed.

REASONS

Background to the Appeal

1. This appeal concerns a wheelie bin which the Respondent observed to have been left on the street outside number 111 Warwick Street, Leicester. It is unfortunate that the Respondent's case summary refers to "Grasmere Street" but I am satisfied that the evidence relates to 111 Warwick Street.
2. On 2 May 2017, the Respondent served a Notice of Contravention on the Appellant. On 15 May 2017, the Respondent served the Appellant with a Notice of Intent to issue a Fixed Penalty Notice. On 14 June 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 3 July 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 about the Notices and I understand that he did not make an appeal to the Magistrates Court against the Contravention Notice (there is some confusion on the papers before me as the Respondent's case summary says he did not appeal but paragraph 5 of the Response indicates that he did). In any event, the Appellant lodged an appeal with the Tribunal against the Fixed Penalty Notice on 24 July 2017.

The Issues in the Appeal

3. The Appellant's case, as stated in his Notice of Appeal, was that the wheelie bin did not belong to his property but to the downstairs flat, known as "111A". He submits that the Respondent's own photographic evidence shows that the bin has "111A" painted on its side but that the number is partially obscured by the Respondent's sticker. This clearly raised the issue of whether the Notice had been served on the correct occupier.
4. The Respondent did not address the Appellant's sole Ground of Appeal in its Response. 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. It transpired that the Appellant had since moved away but the Tribunal Administration was able to find his address and send him my Directions.

5. On 4 December 2017, the Respondent submitted that it had checked its records and found that the Appellant was the only occupant of 111 Warwick Street. It also stated that “A check was also made for 111A Warwick Street and the same notices were served to this property and occupant”.
6. On 5 December 2017, the Appellant sent the Tribunal some photographs, without making any additional submissions. These appeared to be the photographs already submitted by the Respondent.
7. 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

8. 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.
9. There is a right of appeal against a s. 46 Notice to the Magistrates Court. However, there is also 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

10. The Tribunal has considered carefully all the evidence and submissions provided by the parties before reaching this Decision.
11. In this case, the Appellant stated clearly in his grounds of appeal that he was not the occupier of the property to which the wheelie bin belonged. 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 served Notices on the occupiers of both 111 Warwick Street and 111A Warwick Street. This suggests that it accepts that there are two dwellings, but that it is satisfied that the Appellant was the occupier of number 111 to which the bin belonged. Section 46 Notices had been served on both occupiers, but it is not made

clear how the Respondent had satisfied itself which occupier had contravened the Notice.

12. I note that the photographic evidence shows bins on the street with numbers painted on them, as follows:

- (i) Exhibit BW1 shows a bin with “111” painted on it. This is a photograph taken on 3 April 2017. It is a front view of the bin only so I do not know what it says on the side.
- (ii) Exhibit BW4 shows a bin with “111” painted on the front, but a partially obscured “A” on the side. This photograph was taken on 2 May 2017. This was the date on which the s. 46 Notice was served.
- (iii) Exhibit BW6 shows what appears to be the same bin, with “111” on the front and the partial “A” on the side. This was taken on 15 May 2017 and was relied upon to serve the Notice of Intent to impose the financial penalty.

13. It is unfortunate that the Appellant did not contact the Respondent or appeal to the Magistrate’s Court when he received the s. 46 Notice, because it is only that Court which can make a finding that the Appellant was not the owner of the bin and revoke the Contravention Notice. As things stand, the Contravention Notice was not challenged at the relevant time and so when the Respondent saw what it apparently believed to be the same bin still outside number 111, I find it was entitled to take the view that the unchallenged Contravention Notice had been breached and so to impose a financial penalty on the occupier.

14. The Appellant has raised an arguable point about the markings on the bin suggesting that the financial penalty was imposed on him in relation to the wrong Contravention Notice, but he has not followed it up with additional submissions and/or evidence, for example from the occupier of number 111A. The Respondent has also not addressed the question of how it identifies the relevant contravening bin for properties containing more than one dwelling. However, I note that the Appellant carries the burden of proof to establish his case in this appeal and I am afraid he has not done so, despite being given a further opportunity to provide additional material.

15. In all the circumstances, I conclude that the Respondent was entitled to serve the Fixed Penalty Notice and I now confirm it. The appeal is accordingly dismissed.

(Signed)
Alison McKenna Principal Judge

Dated: 2 January 2018
Promulgation date: 16 Jan 18

