



Appeal number: NV/2018/0005

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

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Simon Bevington

Appellant

- and -

Leicester City Council

Respondent

TRIBUNAL: Judge Alison McKenna

Sitting in Chambers on 24 April 2018

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DECISION

1. The appeal is dismissed.

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REASONS

Background to the Appeal

2. This appeal concerns a wheelie bin which the Respondent observed to have been left on the street outside number 83 Tyndale Street Leicester. This is the Appellant's address.
3. The Council has imposed a Fixed Penalty of £80 on the Appellant for breach of a requirement to remove the wheelie bin from the street apart from on collection days.

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Submissions

4. The Respondents case is as follows:
 - (i) On 29 September 2017, the Respondent served on the Appellant a Notice explaining why wheelie bins could not be left out on the street. This letter included information about the right of appeal to the Magistrates' Court. A reminder sticker was placed on his wheelie bin. No appeal was made;
 - (ii) Having seen the Appellant's bin outside again on 9 October 2017, the Respondent served a Notice of Contravention on the Appellant on 25 October 2017. This Notice included information about the right to make representations to the Council's officer, Mrs Whitcombe. No representations were made;
 - (iii) As the wheelie bin was observed to be on the street again on 16 November 2017, a Notice of Intent to serve a Fixed Penalty Notice was served on the Appellant on 28 November 2017. This Notice included information about the right to make representations to the Council's officer, Mrs Whitcombe. No representations were made;
 - (iv) On 5 January 2018, a Fixed Penalty Notice was served on the Appellant. On 9 January 2018, the Appellant contacted Mrs Whitcombe and made representations. In a letter dated 16 January, she decided to uphold the Fixed Penalty, and informed the Appellant of his right to appeal to the First-tier Tribunal;

(v) On 23 January 2018, the Respondent served a Final Notice on the Appellant. This warned that the penalty may now be enforced as a civil debt.

5 5. The Appellant's case is that he does not think he received the Notice in
September 2017 and does not think a sticker was affixed to his bin. He
accepts that he received the Notice in October and did not act on it. He has
explained that he works away a lot and that there was illness in the family
10 at this time, also that he did not then have access to the alleyway to enable
him to remove his bin from the street. He does have access now.

15 6. The Appellant states that he contacted the Council to explain this on 30
November 2017. He has sent me his mobile phone records showing a
three-minute call to the Council on this date. He says he left a message
explaining his circumstances but his call was not returned. He
subsequently made written representations to the Council.

This Appeal

20 7. The Appellant lodged an appeal with the Tribunal against the Fixed
Penalty Notice on 19 January 2018.

8. The Respondent filed a Response on 21 February 2018.

25 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.

30 10. I have considered all the submissions and evidence in making this
Decision.

The Law

35 11. Section 46 of the Environmental Protection Act 1990¹ permits a Council to
serve a Notice on the occupier of premises requiring them to place waste
for collection in certain specified receptacles and imposing requirements
about placing the receptacles on the highway. A Notice of Contravention
may be served on a person who has failed "without reasonable excuse" to
40 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.

¹ <http://www.legislation.gov.uk/ukpga/1990/43/section/46>

5 12. 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 13. Firstly, I am satisfied that all the Notices were duly served in accordance with s. 160 (2) and (4) of the Environmental Protection Act 1990². This is because the Council served them by first class post and the Appellant has said nothing to rebut the presumption of service.

15 14. Secondly, I have seen a photograph of the bin in the street with a sticker on it and I am satisfied that it was affixed.

20 15. Thirdly, I accept that the Appellant made a phone call to the Council on 30 November 2017, but I cannot be satisfied of what was said during the call. The Council says it has no record of it. In any event, I do not see how the Appellant can be said to have been prejudiced by the ineffective phone communication, as the Council later gave full consideration to the points he says he wanted to make when he made them in writing. The Council considered but rejected them in its letter of 16 January 2018.

25 16. The Appellant has accepted that his bin was left on the street at the relevant times, but offers an explanation. It does not seem to me that he has provided what may be regarded as a “reasonable excuse” for his conduct but, in any event, the place for raising reasonable excuses was the Magistrates’ Court. He did not appeal to the Magistrates’ Court at the relevant time. My role is limited to deciding whether the Respondent was entitled to serve the Fixed Penalty Notice.

35 17. It is unfortunate that the Appellant did not contact the Respondent at any stage prior to 30 November 2017. As the Appellant did not contact the Council in September or October and the Contravention Notice was not challenged at the relevant time, it is unsurprising that the Respondent took the view that the unchallenged Contravention Notice had been breached and so decided to impose a financial penalty on the occupier of the premises. The Council acted reasonably in considering the Appellant’s

² <http://www.legislation.gov.uk/ukpga/1990/43/section/160>

representations made after the event, but was entitled to uphold its earlier decision.

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

(Signed)

Dated: 24 April 2018

Alison McKenna

10 **Principal Judge**