



**First-tier Tribunal  
(General Regulatory Chamber  
Environmental Regulation**

**Appeal Reference: NV/2019/0007**

**Decided without a hearing  
On 24 October 2018**

**Before**

**JUDGE ANTHONY SNELSON**

**Between**

**MS CHANTAL MENSAH**

Appellant

**and**

**LEICESTER CITY COUNCIL**

Respondents

**DECISION**

The decision of the Tribunal is that the appeal is dismissed.

**REASONS**

1. The Appellant was at all relevant times the occupier of premises at 34 Brazil Street, in Leicester. In these proceedings initiated by a notice of appeal served on 22 July 2019, she challenges a Fixed Penalty Notice ('FPN') issued by the Respondents ('the Council'), requiring her to pay a penalty of £80 for failing to comply with a notice and subsequent written warning served on her under the Environmental Protection Act 1990 ('the Act'), sections 46 and 46A respectively.

### *The statutory framework*

2. By section 46 of the Act a local authority has power to serve on an occupier a notice (hereafter, a 'section 46 notice') specifying *inter alia* the steps to be taken by occupiers of premises to facilitate the collection of waste from receptacles.

3. The Act, by section 46A(1)-(3), permits a local authority to issue a written warning (a 'section 46A warning') to a person reasonably believed to have failed to comply with a section 46 notice and thereby caused a nuisance or some other detrimental effect to the amenities of a locality. The warning must *inter alia* state the nature and effect of the breach, specify, in the case of a continuing breach, the period within which the notice must be complied with, and explain the consequences of failing to comply with the notice.

4. Where a written warning has been given in respect of a continuing failure to comply with a section 46 notice, the local authority may impose a fixed penalty if satisfied that the occupier has failed to comply with the section 46 notice within the time specified in the section 46A warning (section 46A(4)). In addition, a local authority may impose a fixed penalty where satisfied that an occupier has committed a further breach of the section 46 notice within the period of one year commencing on the date on which the written warning was given (section 46A(7)(a)).

5. The amount of the penalty is fixed at £60 or such other sum as the local authority may specify (section 46B(1)). Here the Council has specified the sum of £80.

6. Before requiring an occupier to pay a fixed penalty a local authority must serve on that person a notice of its intention to do so (a 'notice of intent'), setting out the grounds relied upon, the amount of the proposed penalty and the occupier's right to make representations on the matter (section 46C(1)-(2)). Any such representations must be delivered within 28 days (section 46C(3)).

7. In order to require an occupier to pay a fixed penalty under section 46A, the local authority may, after the expiry of that 28-day period and after considering any representations under section 46C(3), serve on the occupier a further notice ('a 'final notice'). A final notice must specify the amount of the penalty, the grounds for imposing it, the right to appeal under section 46D and certain other matters (section 46C(5)-(8)).

8. A person on whom a final notice is served may appeal to the First-tier Tribunal (section 46D(1)).

### *The key facts*

9. The material facts are not in dispute and can be summarised shortly as follows (I borrow from the Respondents' submissions responding to the appeal).

- 9.1 At all relevant times Tuesday was bin collection day for Leicester (or at least for Brazil Street, Leicester ('Brazil Street')).
- 9.2 On Wednesday, 20 February 2019, a City Warden employed by the Respondents found a number of wheelie bins on the footpath at Brazil Street. These included the bin for no. 34, Brazil Street. The bins ought to have been removed from the highway by 7.00 a.m. on that day. The City Warden marked the bins with blue stickers drawing attention to the obligation to remove them.
- 9.3 On 27 February 2019 a section 46 notice was served on the Appellant at 34, Brazil Street, which (a) drew attention to, *inter alia*, the requirement to remove the wheelie bin from the highway by 7.00 a.m. on Wednesdays, and (b) satisfied the requirements of the Act.
- 9.4 The Appellant did not respond to the section 46 notice.
- 9.5 On Wednesday, 27 March 2019, the wheelie bin for no. 34, Brazil Street was again found to be on the footpath.
- 9.6 On 24 April 2019 a section 46A warning was served on the Appellant at 34, Brazil Street. The document, which complied with the statutory requirements summarised above, stated that she had failed to comply with the section 46 notice by failing to remove the wheelie bin from the footpath and that if she did not comply in future she might be served with a notice of intent and required to pay a fixed penalty of £80.
- 9.7 The Appellant did not respond to the section 46A warning.
- 9.8 On Friday, 3 May 2019 the wheelie bin for no. 34 Brazil Street was again found to be on the footpath.
- 9.9 On 23 May 2019 a notice of intent was served on the Appellant at 34 Brazil Street. The document satisfied the requirements of the legislation summarised above.
- 9.10 The Appellant did not respond to the notice of intent.
- 9.11 On 24 June 2019 the Council issued a FPN requiring the Appellant to pay the sum of £80.
- 9.12 On 16 July 2019 the Respondents served on the Appellant a 'Final Notice' referring to the FPN, allowing 14 further days for payment and drawing attention to her right to challenge the FPN by way of an appeal to the First-tier Tribunal.
- 9.13 On Monday, 22 July 2019 the Tribunal received the Appellant's notice of appeal, which is dated 2 July 2019.

### *The appeal*

10. In her notice of appeal the Appellant first asks for an extension of time for appealing. As I see it, this application is unnecessary since the notice of appeal was delivered (just) in time (see the First-tier Tribunal (General Regulatory Chamber) Rules 2009, rules 12 and 22(1)(b)).

11. As to the substance of the case, the Appellant contends that she and others with whom she shared 34 Brazil Street are "exempt from having to pay any fine" by virtue of being students and not "permanent or regular residents of the property",

spending “only a few weeks at a time there” during the academic year. She further states that they were unaware of any of the notices sent by the Respondents as they had not been there “for a long period of time before that” and had returned on 28 June only to collect their property.

### *Conclusions*

12. In my view the Council was entitled to impose the fixed penalty and there is no good ground to disturb its decision on appeal. The statutory formalities (summarised above) were complied with. The section 46 notice was valid. There was a breach in March 2019 and a further breach in May 2019. The breaches are undisputed. I accept that the Appellant (and her co-tenants) may have been absent from the premises from time to time (although the material events all fell within the academic year). But in any event being away on occasions did not absolve her of her obligations, as an occupier, under the 1990 Act. It was her responsibility to ensure that her bin was not left to become a nuisance and she failed to honour that responsibility.

### *Outcome*

13. For the reasons stated, I am clear that I must dismiss the appeal.

(Signed) Anthony Snelson  
Judge of the First-tier Tribunal  
Date: 7 November 2019