



**First-tier Tribunal
General Regulatory Chamber
Environment**

Appeal Reference: NV/2019/0021

Between

TENNESSEE RENVOIZE

Appellant

and

LEICESTER CITY COUNCIL

Respondent

Before

**TRIBUNAL JUDGE MOIRA MACMILLAN
Sitting Chambers on 10 March 2020**

DECISION

1. The appeal is allowed.
2. The requirement to pay the Fixed Penalty specified in the Final Notice dated 18 November 2019 is withdrawn.

REASONS

Background

3. This appeal is against a Fixed Penalty imposed by the Respondent in relation to a household waste wheelie bin.
4. The bin in question belongs to 58 Tudor Road, Leicester. The Appellant is the occupier of 58A Tudor Road.
5. 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 Tribunal considered an agreed bundle of evidence comprising 48 pages.
6. The Respondent is a waste collection authority within the meaning of the Environmental Protection Act 1990. As such it is permitted by s. 46 of the Act to impose requirements on the occupiers of premises from which it collects household waste. These requirements may relate to the type, location and presence of the 'receptacles' (bins) used by the household (s. 46(1) & (4)).

46 Receptacles for household waste.

- (1) *Where a waste collection authority has a duty by virtue of section 45(1)(a) above to arrange for the collection of household waste from any premises, the authority may, by notice served on him, require the occupier to place the waste for collection in receptacles of a kind and number specified.*
- (4) *In making requirements as respects receptacles under subsection (1) above, the authority may, by the notice under that subsection, make provision with respect to –*
 - (a) *the size, construction and maintenance of the receptacles;*
 - (b) *the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;*
 - (c) *the placing of the receptacles for that purpose on highways or, in Scotland, roads;*
 - (d) *the substances or articles which may or may not be put into the receptacles or compartments of receptacles of any description and the precautions to be taken where particular substances or articles are put into them; and*
 - (e) *the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles.*
 - (f) *The removal of the receptacles placed for the purpose of facilitating the emptying of them; and*

(g) *the time when the receptacles must be placed for that purpose and removed.*

47 Where a person fails without reasonable excuse to comply with a requirement imposed under s. 46, and where the authority assesses that this failure either causes a nuisance, or is detrimental to local amenities, the authority may issue a written warning pursuant to s. 46A. This must be served upon the person; must identify the requirement the person has failed to comply with; and must explain the consequences should they continue not to comply (s. 46A(1),(3) & (4))

46A(1) This section applies where an authorised officer of a waste collection authority in England is satisfied that –

- (a) a person has failed without reasonable excuse to comply with a requirement imposed by the authority under section 46(1), (3)(c) or (d) or (4) (a “section 46 requirement”), and*
- (b) the person's failure to comply –*
 - (i) has caused, or is or was likely to cause, a nuisance, or*
 - (ii) has been, or is or was likely to be, detrimental to any amenities of the locality.*

(1) ...

(3) A 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 described in subsection (1)(b),*
- (d) if the failure to comply 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.*

(4) Where a written warning has been given in respect of a failure to comply that is continuing, an authorised officer of the waste collection authority may require the person to whom the written warning was given to pay a fixed penalty to the authority if satisfied that the person has failed to comply with the section 46 requirement identified in the warning within the period specified by virtue of subsection (3)(d).

48 Should the person not comply with the requirement following a written warning, the authority may impose a Fixed Penalty pursuant to s. 46A(4). The authority must first serve a Notice of Intent, which must explain why the Fixed Penalty is being imposed. The Notice of Intent must allow the person 28 days in which to make representations about why payment of the Fixed Penalty should not be required.

46C Penalties under section 46A: Procedure regarding notices of intent and final notices

- (1) *Before requiring a person to pay a fixed penalty under section 46A, an authorised officer must serve on the person notice of intention to do so (a "notice of intent") in accordance with subsections (2) to (4).*
- (2) *A 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 subsection (3).*
- (3) *A person on whom a notice of intent is served may make representations to the authorised officer as to why payment of a fixed penalty should not be required.*
- (4) *Representations under subsection (3) must be made within the period of 28 days beginning with the day service of the notice of intent is effected.*
- (5) *In order to require a person to pay a fixed penalty under section 46A, an authorised officer must serve on the person a further notice (the "final notice") in accordance with subsections (6) to (8).*
- (6) *A final notice may not be served on a person by an authorised officer before the expiry of the period of 28 days beginning with the day service of the notice of intent on the person was effected.*

49 A right of appeal to the Tribunal is created by s. 46D:

46D Appeals against penalties under section 46A

- (1) *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.*
- (2) *On an appeal under this section the First-tier Tribunal may withdraw or confirm the requirement to pay the fixed penalty.*

Facts

- 50 The Respondent has decided that Tudor Road is detrimentally affected by wheelie bins being left on the pavement outside of normal household waste collection times. The collection day for Tudor Road is Thursday. The Respondent has therefore issued a Notice under s. 46, requiring wheelie bins to be placed at the kerb no earlier than 7pm on Wednesdays and to be removed by 7am on Fridays.
- 51 An officer of the Respondent authority visited Tudor Road on Tuesday 20 August 2019 and took photographs of a wheelie bin marked with the number '58' on the pavement. Having consulted council tax records, the Respondent posted a s. 46 Requirement Notice to the Appellant, addressed to 'First Floor Flat, 58 Tudor Road'. The Respondent submits that it is "aware of one occupier at 58 Tudor Road, namely the Appellant".
- 52 On Monday 23 September 2019 the Respondent returned to Tudor Road and again photographed the wheelie bin marked '58' on the pavement. On 24 September 2019 the Respondent sent the Appellant a written warning under s. 46A of the Act, again by post to the same address.
- 53 The Respondent visited to Tudor Road again on Tuesday 1 October 2019 and again photographed the wheelie bin marked '58' on the pavement. On 2 October 2019 the Respondent sent the Appellant a Notice of Intent, which notified her that she had 28 days to make representations about the imposition of a Fixed Penalty.
- 54 On Tuesday 8 October 2019 the Respondent again photographed the bin marked '58' on the pavement of Tudor Road. On 31 October 2019 the Respondent sent the Appellant a Fixed Penalty Notice.
- 55 No representations having been received, on 18 November 2019 the Respondent imposed a Fixed Penalty of £80 on the Appellant in connection with the bin for 58 Tudor Road, by way of a Final Notice served by post to the same address.

Grounds of appeal

- 56 The Appellant relies on grounds of appeal that she lives at 58A Tudor Road, not at no. 58. She submits that her occupancy has a separate door and letter box to the dwelling at no. 58.
- 57 The Appellant submits that the various Notices sent by the Respondent were not delivered to her. On 6 November 2019 the tenant living at no. 58 handed the Appellant the Respondent's letters dated 2 October 2019 (the

Notice of Intent) and 31 October 2019 (the Fixed Penalty Notice). The Appellant states that these are the only Notices she has received.

58 The Appellant acknowledges that she leaves her bin on the pavement from time to time. She submits that this is because she has mobility problems and is unable to lift the bin over the kerb unaided.

Decision

59 It is apparent from photograph BW/1, taken on 20 August 2019, that the occupiers of no. 58 and no. 58A have separate wheelie bins, both of which were left on the pavement on that occasion. Photograph BW/2 also shows what appears to be a separate entrance for 58A and 58B, distinct from the street entrance to no. 58.

60 Having considered the photographs and the submissions of both parties, I have concluded that the Appellant resides at 58A Tudor Road rather than at 58 Tudor Road. Although the Respondent is only aware of one occupier of no. 58, it is apparent that there are (at least) three separate households at that location.

61 I find that the Respondent's photographs and observations on 25 September 2019 and 8 October 2019 are of the bin belonging to no. 58 Tudor Road rather than of the Appellant's bin, which is clearly labelled '58A' in other photographs.

62 Given the photographic evidence, I find the Appellant's submission that she did not receive the Respondent's letters of 20 August 2019, 24 September 2019, and 18 November 2019 to be credible. I conclude that her submissions on this issue are sufficient to rebut any presumption of service which might otherwise apply to the service of statutory Notices under the Act.

63 I find, as a consequence, that the Respondent has not fully complied with the requirements under the Environmental Protection Act 1900 relating to the imposition of a Fixed Penalty, in that not all required Notices have been served and time periods allowed.

64 The requirement to pay the Fixed Penalty is therefore withdrawn.

Signed: Moira Macmillan
Judge of the First-tier Tribunal

Date: 10 March 2020
Promulgation Date: 20 March 2020