



Neutral Citation: [2022] UKFTT 152 (GRC)

Case Reference: NV/2022/0010

First-tier Tribunal
General Regulatory Chamber

Decided on the papers

Decision given on: 10 May 2022

Before

TRIBUNAL JUDGE FORD

Between

AILEEN LOUISE DOWLER

Appellant

and

LEICESTER CITY COUNCIL

Respondent

On the papers

Decision: The appeal is Allowed and the fine is reduced to £25

Substituted Decision Notice: A fine of £25 is substituted

REASONS

1. The appellant appeals against the fixed penalty notice issued by the respondent BH09433. The notice was issued because the appellant had failed to respond to 3 warning letters sent by the respondent concerning the household wheelie bin left on the footpath outside her home thereby causing a nuisance.
2. On 20 August 2021 a section 46 notice under the Environmental protection Act 1990 was served on the appellant. On 2 November 2021 she was given a written warning of contravention. On 17 December 2021 she was served with a notice of intention to serve a final penalty notice period she says she did not receive this until 21 December.

On 24 December at the bin was removed, the appellant apologised in an email sent to the respondent and explained that she had been away with work, had difficulties in accessing the alleyway that she used to take her bin off the highway and store it behind the property and that three of her neighbours had not cooperated in maintaining this access. She denied receiving two of the warning letters from the Respondent. She said had been sick with Covid and she said that she hadn't seen the blue warning sticker that had been attached to her wheelie bin. On 18 February 2022 way final penalty notice was issued and it was duly served.

3. Under section 45 of the Environment Protection Act 1990 the local authority is under a duty to arrange for collection of household waste from any residents within its area of control.
4. Councils can impose requirements on residents regarding the receptacles in which they place their waste for collection and other related matters including the times during which residents are permitted to place those receptacles on the public highway.
5. I am satisfied that the s46 notices served on the appellant were duly served on the Appellant by post under section 160 (2) and (4) on the Environment protection Act. She denies receiving two of them but I am satisfied that they were properly served. I am also satisfied that a blue sticker was attached to her bin alerting her alerting her to the situation. That she did not notice it does not mean that it was not attached and it can be seen in the photos supplied by the Respondent
6. The fixed penalty notice against which this appeal is lodged was issued under s46A(4) of the Environment protection Act. It was issued because the Appellant left her wheelie bin on the highway other than at times specified in the Notice for collection.
7. The appellant has relied on the defence of reasonable excuse. She states that she did not see the blue sticker that the council had placed on her bin and on the bins of others along the street. She claims that she did not receive 2 of the warning letters from the council, but acknowledges that she did receive one on 21 December 2021. She says that she removed the bin on 24 December 2021.
8. It is not the responsibility of the Respondent to keep alleyways clear so that bins can be stored in the appropriate location. The Appellant does not identify in which 2 months the alleyway was blocked. She says that she was away for work but should not have left her bin on the footpath while she was away.
9. However, the Appellant did take action reasonably quickly when she finally noticed the Notice of intention to serve a fixed penalty notice on 21 December 2021 and on 24 December 2021 she apologised that it had been left there.
10. I accept that she was ill with Covid and that she was consequently perhaps not paying attention to such matters as ensuring her wheelie bin was not causing an obstruction or nuisance. It was causing a nuisance and should not have been left on the pavement outside her house.

11. There is no indication from the Respondent that the Appellant is a repeat offender in this regard. She now realises that she needs to be more careful and I am satisfied that there will be no recurrence. I am satisfied that the amount of the fine imposed is disproportionate and should be reduced by due to the mitigating circumstance of her having Covid and overlooking the second warning letter.
12. The Notice is modified so that the fine imposed is £25.

Signed

A handwritten signature in black ink, appearing to be 'A. Ford'.

Date: 06/05/2022