



NCN: [2022] UKFTT 281 (GRC)

Case Reference: NV/2022/0017

First-tier Tribunal  
General Regulatory Chamber  
(Environment)

Heard by: Written Representations

Heard on: 1 August 2022  
Decision given on: 17 August 2022

Before

TRIBUNAL JUDGE SIMON BIRD QC

Between

KRYSTYNA BASIAK

Appellant

and

LEICESTER CITY COUNCIL

Respondent

**Decision:** The appeal is Allowed

## REASONS

The Appeal

1. The Appellant appeals against the imposition of a fixed penalty by the Respondent in relation to an alleged failure to comply with a notice served under section 46 of the Environmental Protection Act 1990 (“a Section 46 Notice) which required that the household waste bins for emptying relating to 29A Minehead Street, Leicester LE3 0SH (“the Property”), were to be placed on the kerb no earlier than 7.00 pm on each Thursday and moved off the kerb by no later than 7.00 am on each Saturday.

2. The Appellant argues that at the time of the alleged breach she was not residing at the Property, having moved in only on 1 October 2021 and she has always been careful to comply with local bylaws and regulations.
3. I am satisfied that this appeal is suitable for determination on the papers.

#### The Law

4. Section 46(1) and (4) of the Environmental Protection Act 1990 (“the Act”) provide that where a waste collection authority has a duty to arrange for the collection of household waste from any premises, it may serve a notice (“a Section 46 Notice”) requiring the occupier to place waste for collection in receptacles of a kind and number specified and may also impose requirements as to the placing of receptacles and the steps to be taken by the occupier to facilitate waste collection.
5. Where an authorised officer of the waste collection authority is satisfied that a person has failed without reasonable excuse to comply with a requirement imposed under section 46(1) and (4) and the person’s failure either (i) has caused, or is or is or was likely to cause, a nuisance or (ii) has been, or is or was likely to be detrimental to the amenities of the locality (“a relevant effect”), then a written warning may be given to the occupier of the relevant premises setting out the requirement which has not been complied with and how that failure has had, or is having or was likely to have a relevant effect (section 46A(2)). The warning must also set out the consequences of not complying with the Section 46 Notice.
6. Where a written warning has been given, section 46A(7) empowers a waste collection authority to require a person on whom the written warning has been served, to pay a fixed penalty to the authority if it is satisfied that within one year of the written warning being given, the person has again failed without reasonable excuse to comply with the requirements of a section 46 Notice and the failure has had or is having or was likely to have a relevant effect. The amount of the fixed penalty is such sum as is specified by the waste collection authority (section 46B).
7. There are strict requirements to be met before a person may be required to pay a fixed penalty. A notice of intent to impose a fixed penalty must first be served on the relevant person which sets out the grounds for requiring the payment of a fixed penalty, the amount which would be required to be paid and the notice must set out the right to make representations that a fixed penalty should not be required (section 46C(1)). There is then an additional requirement for a further notice (“the final notice”) to be served. This must not be served before the expiry of 28 days beginning with the service of the notice of intent. The final notice must contain the grounds for requiring payment of the fixed penalty, the amount of the fixed penalty, details of how payment should be made and must also set out the right of appeal to the First Tier Tribunal and the consequences of not paying the fixed penalty.
8. Under section 46D of the Act, a person on whom a final notice is served under section 46C may appeal to the First-tier Tribunal against the decision to require the payment of a fixed penalty and on appeal the First-tier Tribunal may withdraw or confirm the requirement to pay the fixed penalty. Pending the determination of such an appeal, the requirement to pay is suspended pending determination of the appeal.

### The Facts

9. On Monday 16th August 2021, the Respondent's City Warden found 25 properties on Minehead Street had bins still on the public footpath after collection day which is Friday. Number 29A was one of these properties. A blue sticker was put on each of the bins to make residents aware and to remove their bins. Occupiers at each of the properties who had a bin on the street were served on 20 August 2021 by post with Section 46 Notices requiring that bins to be emptied must be placed on the kerb no earlier than 7.00 pm on each Thursday and moved off the kerb by no later than 7.00 am on each Saturday.
10. The Appellant was not the occupier of 29A Minehead Street at the date of the service of the section 46 Notice, having moved in only on 1 October 2021.
11. On Monday 11th October 2021 the bin and household waste for Number 29A were again found to be on the footpath but no Notice of Contravention was served under section 46A of the Act.
12. On Tuesday 16<sup>th</sup> November 2021 the bin for 29A Minehead Street was again found to be on the footpath and on 18 February 2022 a Fixed Penalty Notice was served on the Appellant. The Appellant appealed against the Fixed Penalty Notice on 9 March 2022.
13. On 13 April 2022 the Respondent notified the Tribunal that the Fixed Penalty Notice had been cancelled as there had been an administrative error, as one of the notices in the legal process had not been served.

### The Appellant's Submissions

14. The Appellant states that she was not the occupier of 29A Minehead Street at the date of the breach of the section 46A notice which must have been directed at the previous occupier. This had been pointed out to the Respondent but it had not responded. She asks that the Fixed Penalty Notice be cancelled.

### The Respondent's Submissions

15. The Respondent states that it has cancelled the Fixed Penalty Notice because it failed to comply with all the requisite statutory procedures.

### Decision

16. The Respondent has properly recognised that the issue of its Fixed Penalty Notice was unlawful and has cancelled it. Whilst the Appellant is not correct in stating that she was not the occupier of the property at the date of the relevant breach of the notice (which in this case was 16 November 2021), she had not been served with the section 46 Notice as her

occupation of 29A Minehead Street did not begin until 1 October 2021. The Act provides a safeguard to those who take up occupation of a property after the service of a section 46 Notice. That safeguard is a Notice of Contravention served under section 46A of the Act which identifies the breach of the existing notice and gives time for the breach to be remedied.

17. A Fixed Penalty Notice may only be served on an occupier who was not served with the section 46 Notice where a Notice of Contravention has been subsequently served. That did not happen in this case and, therefore, the Respondent had no power to serve a Fixed Penalty Notice on the Appellant.
18. Because the Fixed Penalty Notice has already been cancelled by the Respondent, it is not necessary for me formally to withdraw it, but I allow the appeal, which is well founded, as the Respondent itself has correctly acknowledged.

Signed: Judge Simon Bird QC

Date: 6 August 2022