



NCN: [2023] UKFTT 334 (GRC)

First-tier Tribunal  
(General Regulatory Chamber)  
Household Waste Collection

Appeal Number: NV/2022/0058

Considered on the papers  
On 13 February 2023

Decision issued to the parties  
On 17 February 2023

Before

**JUDGE OF THE FIRST-TIER TRIBUNAL J K SWANEY**

Between

**MUHSENA BEGUM**

Appellant

and

**LEICESTER CITY COUNCIL**

Respondent

**DECISION**

1. The appeal is allowed.
2. The requirement to pay a fixed penalty of £80 pursuant to section 46A(4) of the Environmental Protection Act 1990 is withdrawn.

**REASONS**

**Background**

3. The appellant appeals against the imposition by the respondent of a requirement to pay a fixed penalty of £80 in relation to an alleged failure to comply with a notice served under section 46 of the Environmental Protection Act 1990 (the Act).

**The law**

4. Section 46 of the Act provides that a waste collection authority may serve a notice (a section 46 notice) requiring an occupier to place waste for collection in receptacles of a kind and number specified. It may also impose requirements as to the placing of receptacles and steps to be taken by the occupier to facilitate waste collection.
5. Section 46A of the Act provides that where a waste collection authority is satisfied that a person has without reasonable excuse failed to comply with a section 46 notice and the person's failure to comply has caused or is likely to cause a nuisance or has been or is likely to be detrimental to any amenities of the locality, they may give a written warning to the occupier of the relevant property. Subsection (3) makes provision as to the content of the written warning.
6. Subsection (4) provides that where a written warning has been served, the waste collection authority may require the person 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. Subsection (7) provides that where a written warning has been given a requirement to pay a fixed penalty may be imposed if within one year of the date the written warning was given, the person has again failed without reasonable excuse to comply with the section 46 requirement identified in the warning and the failure to comply has had or is likely to have the consequences described.
7. Section 46C of the Act requires that before a requirement to pay a fixed penalty can be issued, a notice of intent must be served. This must set out the grounds for requiring payment of a fixed penalty; the amount that would be required to be paid; and the right to make representations as to why payment of a fixed penalty should not be required. It provides that a final notice must be served not before 28 days after the notice of intent. The final notice must contain the grounds for requiring payment of a fixed penalty; the amount of the fixed penalty; details of how payment should be made; notice of the right of appeal; and the consequences of not paying the fixed penalty.
8. Pursuant to section 46D a person served with a fixed penalty final notice may appeal to the First-tier Tribunal. On appeal the tribunal may withdraw or confirm the requirement to pay a fixed penalty. The requirement to pay the fixed penalty is suspended pending determination of any appeal.
9. It is for the respondent to show on the balance of probabilities that subsection 46A(1) is satisfied. If so, the appellant may raise a reasonable excuse. If one is shown, it is then for the respondent to show that the excuse is not reasonable or should not be accepted.

### **Chronology of events**

10. On Tuesday 3 May 2022 a city warden found bins on the public footpath in the appellant's street. One of the bins belonged to the appellant's property. The warden applied a warning sticker to the appellant's bin which advises of the risk of a fine if the bin is left on the street after collection day. The sticker provides a telephone number to call if the householder has difficulty storing their bin.
11. On 24 May 2022 the respondent issued a notice (a section 46 notice) advising the appellant that her collection day is Thursday and requiring her to place her bin out for collection by no later than 7:00 pm on the day before collection and to move it within the boundary of her property by no later than 7:00 am on the day following collection. The notice was posted to

the appellant together with a leaflet explaining the respondent's free bulky waste collection service.

12. The appellant's bin was found to be on the public footpath on Tuesday 7 June 2022. As a result, on 7 July 2022, the respondent served a written warning of a contravention of the section 46 notice. The notice states that the failure to remove the bin has had or is likely to have the effect of causing nuisance or detriment to the local amenity in various ways specified in the notice. The notice advises the appellant that her bin must be put out for collection by no later than 7:00 pm on the day before collection and removed by 7:00 am on the day following collection. It advises that if her alley is blocked with waste, she can organise a free bulky collection at [Leicester.gov.uk/myaccount](https://leicester.gov.uk/myaccount). The notice warns the appellant of the consequences of any failure to comply with its requirements including the requirement to pay a fixed penalty of £80.
13. The respondent observed the appellant's bin on the public footpath on Tuesday 2 August 2022.
14. On 11 August 2022 the respondent issued the appellant with a notice of intent to serve a fixed penalty notice. It advises the appellant that she had failed to remove her bin from the public footpath contrary to a legal notice served on 7 July 2022 because her bin was observed left out on the public footpath on 2 August 2022. The notice advises that the appellant may make representations as to why payment of a fixed penalty should not be required and gives a deadline of 28 days from the date of service of the notice.
15. An email chain between the appellant and the respondent from 16 August 2022 and 10 October 2022 shows that the appellant contacted the respondent regarding the fixed penalty final notice she stated that she had been issued. She initially referred to it as having been issued in relation to fly tipping, however, it is clear that there is one notice issued to her in respect of her failure to move her bin from the public footpath.
16. The appellant advised that there was waste blocking the alley; that the waste was the responsibility of her neighbour; and that this was preventing her from accessing the alley and moving her bin off the public footpath. The appellant stated that she had been unable to arrange collection of her own bulk waste because the alley was full of big items. The respondent advised that a community protection warning notice had been issued to her neighbours and their landlord. The landlord had advised that a bed comprising a single mattress and base blocking the alley way belonged to their tenants and had been removed, but that other waste did not belong to them. The city warden advised that regardless of who was responsible for dumping waste, all occupants who have access to the alley are responsible for keeping it clear of waste. The appellant was advised that unless she had proof of who was responsible for dumping waste, there was nothing further that could be done. Towards the end of the email chain there is confirmation of the removal of waste and the appellant confirms that as of 4 October 2022 she was able to move her bin.
17. On 10 October 2022 the respondent's head of standards and development contacted the appellant to advise that her emails had been reviewed and that the team manager for the city wardens had also been spoken to. The respondent advised that there was a right of appeal against the fixed penalty final notice issued on 16 September 2022 and that it must be exercised by contacting the tribunal directly. The appellant was provided with the relevant form and a link to the tribunal's guidance. The appellant was advised that if her appeal was

late, she should indicate why in section 4 of the form and that the team manager would not oppose it being accepted out of time.

18. An email chain between 22 September 2022 and 3 October 2022 shows that the respondent contacted the landlord of the neighbouring property about the waste in the alley. The landlord stated that his tenants believed the remaining waste (other than the single bed which they accepted belonged to them) belonged to the appellant. The landlord stated that he was happy to share the cost of removing the waste with the appellant and did not believe that he should be held solely responsible. The email chain also deals with the issue of waste and overgrown vegetation in the rear garden of the property. The landlord confirmed that he would speak to the tenants.
19. The appellant contacted her housing officer on 12 October 2022 asking who was responsible for clearing overgrown trees and bushes coming from her neighbour's property into the alley.
20. On 12 October 2022 the respondent received an email from a neighbourhood housing officer from Riverside Housing Association, the appellant's landlord, stating that they had arranged for the alley to be cleared at their expense despite not accepting that it was their responsibility to do so. The housing officer sent a number of pictures with the email and noted that they clearly show overgrown vegetation coming from the neighbouring property into the alley. The housing officer asked that this be followed up with the occupants of that property and that the ongoing issue was causing the appellant distress.
21. On 13 October 2022 the Community Advice and Law Service wrote to the respondent on the appellant's behalf disputing the fixed penalty final notice. They confirmed that it was not in dispute that the appellant's bin was left on the public footpath, but raised the blocking of the alley by way of a reasonable excuse. The caseworker sought to have the matter resolved without the need to pursue the appeal.
22. The respondent replied on 17 October 2022 advising that the fixed penalty notice had been properly issued, that the alley was cleared sufficiently to allow the appellant to move her bin; and that the appellant had been advised that she could pursue an appeal if she wished to do so. The email does not engage with the request to resolve the matter without the need to pursue the appeal.
23. On 8 November 2022 the landlord of the neighbouring property sent evidence that the rear garden had been cleared.
24. It appears that the appellant contacted her MP about her fixed penalty final notice, as on 15 November 2022 a caseworker for the MP wrote to the respondent setting out a history of the case and reporting the appellant's assertion that she had been unfairly levied with two fixed penalties. The caseworker asked for a response that could be shared with the appellant.
25. An undated response was sent stating that the appellant had been issued with one fixed penalty final notice; that this was issued because she was in breach of a section 46 notice issued on 24 May 2022 and that she had appealed the decision.

### **The respondent's decision**

26. The respondent issued a fixed penalty final notice on 16 September 2022. It contained advice about the consequences of failure to pay the fixed penalty; the right of appeal; and the fact that the requirement to pay would be suspended pending the outcome of any appeal.

### **The appellant's case**

27. The tribunal received an appeal from the appellant on 7 October 2022. In her notice of appeal she does not dispute that she left her wheelie bin on the public footpath as asserted by the respondent.
28. The appellant claims that she was unable to access the alley behind her property because of fly tipped rubbish. She stated that this was left there by the tenants of her neighbouring property and not her. She had been unable to clear the waste to allow her to take her bin through the alley due to back problems.
29. The appellant seeks to have the fixed penalty withdrawn.

### **The respondent's response to the appeal**

30. In the response to the appeal, the respondent states that three separate notices pursuant to sections 46, 46A, 46B, 46C, and 46D of the Act were issued. It is asserted that this provided the appellant with ample opportunity to engage with the respondent about any difficulties she may have faced accessing the alley or any other difficulties with which the council could assist.

### **Findings and reasons**

31. I am satisfied on the balance of probabilities that the respondent has shown that the conditions for serving a section 46 notice are made out. The appellant does not dispute that her bin was left out on 3 May 2022, or that it had or was likely to cause a nuisance or detrimentally affect a local amenity. I am satisfied on the balance of probabilities that the appellant left her bin out on 7 June 2022 which was in contravention of the section 46 notice. She did not dispute this.
32. I am satisfied that the respondent served a notice of contravention (the written warning) on 7 July 2022. I am also satisfied that the appellant left her bin out on 2 August 2022 after being served with the notice of contravention. This was within one year of the notice of contravention. Again, the appellant did not dispute this.
33. I find that the respondent served a notice of intent to issue a fixed penalty on 11 August 2022. I find that the notice of intent complied with the requirements of section 46C of the Act. I am satisfied that the respondent was entitled to serve a fixed penalty final notice on 16 September 2022.
34. The issue in this appeal is whether the appellant has provided a reasonable excuse for her failure to comply with the section 46 notice.
35. The appellant claims that she could not take her bin through the alley behind her property because it was blocked with waste from a neighbouring property. She states that she was unable to move the waste because of back problems.
36. It is not disputed that a single bed dumped in the alley belonged to the appellant's neighbours. The appellant provided photographic evidence of waste in the neighbour's rear garden and a

photograph of waste in the alley. The waste in the garden bears a striking resemblance to the waste in the alley and I find on the balance of probabilities that they are one and the same. I find that the appellant was not responsible for the alley being blocked by fly tipped waste. I find that the appellant, by contacting her landlord, made efforts to find out who was responsible for clearing the alley. Furthermore, I note that her landlord took responsibility for clearing the alley of waste other than the bed, which was moved by the neighbour/their landlord.

37. The photographic evidence shows that there was a considerable amount of waste in the alley and I am satisfied that the appellant made efforts to comply with the collective responsibility to ensure that the alley is clear by contacting her housing officer. I am satisfied that it was the presence of waste which prevented the appellant from moving her bin. I accept in the absence of any evidence to the contrary that the appellant moved her bin once the alley had been cleared.
38. For these reasons, I find that the appellant has provided a reasonable excuse for breaching the section 46 notice and accordingly that the requirement to pay a fixed penalty is not appropriate.

Signed



Date 13 February 2023

Judge J K Swaney  
Judge of the First-tier Tribunal