



NCN: [2023] UKFTT 335 (GRC)

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

**Appeal Numbers: NV/2022/0060 (1)
NV/2022/0061 (2)**

**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

**CLEMENT APETROAIE (1)
THEODORA APETROAIE (2)**

Appellant

and

LEICESTER CITY COUNCIL

Respondent

DECISION

1. The appeals are allowed.
2. The requirement to pay a fixed penalty of £80 pursuant to the Environmental Protection Act 1990 is withdrawn in respect of each of the appellants.

REASONS

Background

3. The appellants appeal 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 appellants 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 the appellants' bin on the public footpath. The warden applied a sticker to the bin which advises of the risk of a fine if it is left on the street after collection day. The sticker provides a number the occupier can call if they are having problems storing their bin.
11. On 19 May 2022 the respondent issued a notice (a section 46 notice) requiring that:
 - (i) recyclable waste must be placed in orange recycling bags provided for that purpose;
 - (ii) all other waste must be placed in the wheelie bin provided for that purpose; and

- (iii) collection day is Friday and both orange recycling bags and wheelie bin must be placed on the kerb no than 7:00 pm on each Thursday and removed again by no later than 7:00 am the day after collection.
12. The notice was posted to the appellant together with a leaflet containing information about the respondent's bulky waste collection service. I note that the respondent's reply refers to a section 46 notice dated 24 May 2022. The notices contained in the appeal bundle are both dated 19 May 2022 and I find that this is the date on which they were issued. Nothing turns on this as the appellants do not dispute receiving the notices.
13. It is asserted that the appellant's bin was found on the public footpath on 7 June 2022. As a result, on 7 July 2022, the respondent served a written warning of a contravention of the section 46 notice to each of the appellants. 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 appellants that they must put their bin out for collection no earlier than 7:00 pm on the day before collection and remove it by no later than 7:00 am on the day after collection. The notices warn the appellants of the consequences of any failure to comply with its requirements including the requirement to pay a fixed penalty of £80.
14. The respondent asserts that the appellants' bin was observed on the public footpath on 2 August 2022.
15. On 11 August 2022 the respondent issued each of the appellants with a notice of intent to serve a fixed penalty notice. The notices advise the appellants that they had failed to remove their bin from the public footpath contrary to a legal notice served on 24 May 2022 because their bin was observed left out on the public footpath on 2 August 2022. The notices advise that the appellants 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.
16. The appellants did not respond.

The respondent's decision

17. The respondent issued a fixed penalty final notice to each of the appellants on 16 September 2022. The notices set out the reasons for requiring payment of a fixed penalty and contained advice about the consequences of failure to pay the fixed penalty; the right of appeal; and the fact that the requirement to pay will be suspended pending the outcome of any appeal. The final notice was accompanied by an opportunity to pay a fixed penalty notice.

The appellants' case

18. The appellants lodged notices of appeal on 13 October 2023.
19. They seek withdrawal of the requirement to pay a fixed penalty on the basis that the bin observed on the public footpath was not theirs, but belonged to one of the two other flats. They stated that they were careful to remove their bin from the footpath and that it is stored in the small yard.

The respondent's response to the appeal

20. The respondent states in her response that there are three properties at 2 Paget Street with four occupants. The respondent notes that none of the bins is labelled to indicate to which property they belong and in fairness, all four occupants were sent warning notices and fixed penalty notices. The respondent states that the appellants have not provided any evidence to show that they have a labelled bin and that it is stored off the public footpath.

Appellant's further response

21. Having considered the respondent's response to the appeal, the appellants made further comments in an email dated 27 December 2022. They state that having received the section 46 notice they understood that their bin must be taken off the footpath after collection day and that from that time onwards they have ensured that their bin was removed in accordance with the notice.
22. They further state that the bin observed on the footpath on 7 June 2022 and 2 August 2022 was not their bin, but was one belonging to one of the two other flats. The appellants state that they were not aware that their bin should be labelled, as it was not labelled when they moved into the property.

Findings and reasons

23. The appellants do not dispute that their bin was on the public footpath on 3 May 2022. I have had regard to the photograph taken on that date and note that it shows three bins on the footpath. There are three flats at the address and I find on the balance of probabilities that one of the bins is the appellants' bin. I find that the respondent was entitled to serve the section 46 notices. The appellants acknowledge having received the section 46 notices. I have had regard to the copies of the section 46 notices and I find that they complied with the relevant requirements as to their contents.
24. I am not satisfied on the balance of probabilities that the appellants' bin was left out on the public footpath on 7 June 2022 or 2 August 2022. As the respondent acknowledges, there is no evidence such as a label on the bin to confirm that it is in fact their bin. The appellants' evidence is that having received the section 46 notice they became aware of the requirement to remove their bin from the footpath after collection day and that they have, since receiving the notices, complied with that requirement. While I note that there is no evidence that the appellants' bin is in the yard as claimed, the fact that their bin is not labelled means that a photograph of a bin in yard would have very little evidential value.
25. There is nothing to suggest that the appellants' evidence cannot be relied upon. The fact that on 7 June 2022 and 2 August 2022 there was only one bin on the footpath is consistent with their statement that they removed their own bin.
26. It follows therefore that I am not satisfied on the balance of probabilities that the respondent has discharged the burden of showing that the appellants did in fact contravene the section 46 notice on 7 June 2023 and 2 August 2023. I find that imposition of a fixed penalty of £80 on each of the appellants was not appropriate.

Signed



Date 13 February 2023.

Judge J K Swaney
Judge of the First-tier Tribunal