



**Neutral Citation Number [2022] UKFTT 506 (GRC)**

**Case Reference: NV/2022/0027/HWC**

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

Decided on the papers

**Decision given on: 24 August 2022**

**Before**

**TRIBUNAL JUDGE FORD**

**Between**

**TAMSIN MOORE**

Appellant

**and**

**LEICESTER CITY COUNCIL**

Respondent

**On the papers**

**Decision:** The appeal is Allowed and the fine is reduced to £20

**Substituted Decision Notice:** A fine of £20 is substituted

## **REASONS**

1. The appellant appeals against a fixed penalty notice issued by the respondent BH80004. The notice was issued because the appellant had left the household wheelie bin left on the footpath outside her home thereby causing a nuisance on 3 occasions.
2. The first notice of contravention was sent to the Appellant on 26/04/2021
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 and do 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. The Appellant's wheelie bin was observed on the pavement outside her property again on 09/08/2021. On 13/08/2021 the Respondent wrote to the Appellant serving a Notice of intent to issue a s46 Environment Protection Act fixed penalty notice.
5. On 17/08/2021 the Appellant wrote to the Respondent stating that she had to put the bin at the front of the property while undertaking maintenance of the back garden and the entry passageway at the side of the house. She further explained that in April 2021 her twin brother had committed suicide and she was struggling to cope with her bereavement.
6. On 23/08/2021 the Respondent wrote to the Appellant and took a sympathetic approach to her situation expressing its condolences and stating that "on this occasion" no fixed penalty notice would be issued, but informing the Appellant that she had left her bin out on three separate occasions and if it happened again that a fixed penalty notice would be issued without further notice.
7. Unfortunately the same thing did happen again and the Appellant's bin was again observed left on the pavement outside her home in March 2022. The Respondent did as it had warned it would do and issued a notice of opportunity to pay a fixed penalty of £80. The penalty was not paid. The Appellant has appealed to this Tribunal against the final notice BH80004 dated 05/04/2022. She states in her Notice of appeal that she is suffering from anxiety and depression and has been unable to work since her twin brother committed suicide. She says that she did not receive any further notices of contravention, but of course the Respondent did not need to serve any further warning notices because, as it had warned her in the letter of the 23/08/2021, any further contraventions would trigger a fixed penalty with no further warning Notices.
8. I am satisfied that the necessary s46 notices under the Environment protection Act were duly served on the appellant under section 160 (2) and (4) on the Environment protection Act. I am satisfied that they were properly served. I am also satisfied that she should have been fully aware from the Respondent's email of 23/08/2021 that if the bin was left on the pavement outside her home again outside of the hours authorised for collection, the process of serving warning letters would not be followed again and the Respondent would proceed straight to imposing a fixed penalty notice.
9. The appellant has relied on the defence of reasonable excuse. She says that she is still suffering from significant mental health problems and I do accept that her bereavement hit her hard. Combined with the Covid 19 pandemic, it is not surprising that she struggled to cope and was still struggling to cope in March 2022. I accept that she has been off work due to her mental health difficulties and her income has been disastrously affected.
10. The Appellant was given latitude by the Respondent in meeting the requirement to remove her bin from the pavement outside of the hours permitted for collection. She was warned that if the bin was found to be on the pavement again she would face a fixed penalty.

11. Wheelie bins left on the pavement can cause an obstruction, particularly for sight impaired residents or wheelchair users. They can cause a nuisance in terms of smell and attract vermin. They can become a target for vandalism.
12. However, I recognise the severity of the impact of her bereavement on the Appellant's mental health as a mitigating circumstance and the Notice is modified so that the fine imposed is £20.

Signed

A handwritten signature in black ink, appearing to be 'A. Hand' or similar, written in a cursive style.

Date: 24/08/2022