



NCN: [2023] UKFTT 332 (GRC)

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

Appeal Number: NV/2022/0054

**Considered on the papers
On 13 February 2022**

**Decision issued to the parties:
On 17 February 2023**

Before

JUDGE OF THE FIRST-TIER TRIBUNAL J K SWANEY

Between

YASMIN SIMPSON

Appellant

and

LEICESTER CITY COUNCIL

Respondent

DECISION

1. The appeal is dismissed.
2. The requirement to pay a fixed penalty of £80 pursuant to the Environmental Protection Act 1990 is confirmed.

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 3 May 2022 a city warden found the appellant's bin on the public footpath together with loose plastic and cardboard waste beside the bin. The warden applied a 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 occupier has any problems storing their bin.
11. On 24 May 2022 the respondent issued a notice (a section 46 notice) which required 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 later than 7:00 pm on the day before collection and removed again by no later than 7:00 am the day after collection.
12. The notice was posted to the appellant together with the respondent's leaflet relating to bulky waste collections.
13. The appellant's bin was found on the public footpath on 15 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 appellant had left her bin, orange recycling bags or excess household waste on the public footpath. It further states that the failure 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 of the requirements as to placement of her bin out for collection and removal following collection. 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.
14. The respondent observed the appellant's bin on the public footpath on 3 August 2022.
15. 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 24 May 2022 because her bin, recycling bags or other waste were observed left out on the public footpath on 3 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.
16. The appellant did not make any representations.

The respondent's decision

17. The respondent issued a fixed penalty final notice on 16 September 2022. It contained the reasons for issuing the notice; 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. It was accompanied by a notice of opportunity to pay a fixed penalty.

The appellant's case

18. The appellant lodged a notice of appeal on 28 September 2022.
19. The appellant seeks the withdrawal of the fixed penalty notice on the basis that the entry to her property is blocked by fly-tipped waste preventing her from taking her bin onto her property. She states that this has been an ongoing problem for a significant period of time. She states that she has arranged for some works to be done to the entry to allow access for her bin.
20. The appellant states that she is disabled, has a heart condition and limited mobility. She also states that she has a hearing impairment.

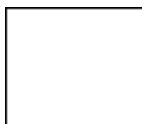
The respondent's response to the appeal

21. The respondent states that due to the fact that the appellant has a partner who can bring the bin in, she has not been offered assisted collection. In respect of the assertion that the entry way is blocked, the respondent states that the alley is private land and accordingly that there is no obligation on the respondent to maintain it or keep it clear. The respondent notes that the appellant was advised of the bulky waste collection service.

Findings and reasons

22. It is not in dispute that the appellant’s bin was left on the public footpath on 3 May 2022 and I find that it was. I find that the respondent was entitled to serve the section 46 notice. I find that it was served and that it complied with the relevant requirements as to its contents.
23. I find that the appellant’s bin was again left on the public footpath on 15 June 2022. Again, this is not disputed. I am satisfied that this was a contravention of the section 46 notice.
24. The respondent complied with the requirement to serve a notice of intent to require payment of a fixed penalty. I am satisfied that the notice of intent contains the relevant information required by section 46C of the Act. I am also satisfied that the fixed penalty final notice satisfies the requirements as to its contents.
25. The appellant did not provide any evidence to support her appeal. She claims to suffer from medical conditions – the respondent does not dispute this and I accept on the balance of probabilities that she does. Notwithstanding her medical conditions and disability, the appellant does not provide any explanation as to why her husband is unable to move the bin.
26. The appellant provided no evidence to show that access to her property is blocked such that she is prevented from bringing her bin onto the property. It does not appear that she has contacted the respondent to arrange for bulk waste collection at any time since receiving the section 46 notice.
27. I note the respondent provided a summary of the appellant’s Myaccount records. It shows that the appellant has contacted the respondent twice, the first time on 20 February 2022 and the second time on 31 October 2022. The first record shows the type of contact is ‘request or report a problem with orange bags’. The first record states that the status is ‘task completed’ and the current stage is ‘case closed’. There is no information as to the nature of the problem or how it was resolved. The second record shows the same type of contact. It shows that as of 31 October 2022 the status was ‘case open’ and the current stage was ‘internal stage’. There are no further entries post dating 31 October 2022 and again there is no indication as to the nature of the problem. There is no indication that it relates to the appellant having difficulty removing her bin from the public footpath and I find that it does not.
28. The appellant refers to asking her neighbour and husband to do some works to the entry way to allow access for the bin. There is no explanation as to what these works are or why they were not carried out following receipt of the section 46 notice issued on 24 May 2022.
29. For all of these reasons, I am satisfied on the balance of probabilities that the appellant has not shown a reasonable excuse for her failure to comply with the section 46 notice.

Signed



Date 13 February 2022

Judge J K Swaney
Judge of the First-tier Tribunal