



NCN: [2023] UKFTT 333 (GRC)

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

Appeal Number: NV/2022/0056

**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

NEIL ASTLEY

Appellant

and

LEICESTER CITY COUNCIL

Respondent

DECISION

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

REASONS

Background

3. The appellant appeals against the requirement to pay a fixed penalty of £80 imposed by the respondent in relation to an alleged failure to comply with a notice served under section 46A 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 19 May 2022 the respondent issued a notice (a section 46 notice) requiring the appellant place his bin out for collection by no earlier than 7:00 pm each Friday and that it must be moved within the 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 Thursday 14 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 he is required to put his bin out for collection by no earlier than 7:00 pm on the day before collection and that he must remove it by no later than 7:00 am on the day following collection. It advises that if he does not have a key to a council constructed gate, one can be requested at [Leicester.gov.uk/myaccount](https://leicester.gov.uk/myaccount). It also advises that if the gate is privately installed, it is his responsibility to ensure that he has keys. The notice warns the appellant of the consequences of any failure to comply with its requirements including payment of a fixed penalty of £80.

13. The respondent observed the appellant's bin on the public footpath on Wednesday 27 July 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 he had failed to remove his wheelie bin from the public footpath contrary to a legal notice served on 24 May 2022 because his wheelie bin was observed left out on the public footpath on 27 July 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. I note that the respondent refers to a section 46 notice dated 24 May 2022. The copy of the notice contained in the appeal bundle is dated 19 May 2022 and I find that this is the date on which it was issued. Nothing turns on this, as the appellant does not dispute receiving the notice.
15. The appellant did not make any representations.

The respondent's decision

16. Having received no representations from the appellant, the respondent issued a fixed penalty final notice on 16 September 2022. It contains the reasons for imposing a requirement to pay a fixed penalty; 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 an opportunity to pay a fixed penalty notice.

The appellant's case

17. The tribunal received an appeal from the appellant on 6 October 2022. In his notice of appeal he does not dispute that he left his bin on the public footpath as asserted by the respondent.
18. The appellant claims that he is unable to access the alley behind his property because the respondent has erected gates at both ends and a dividing fence between himself and his neighbour. While he has a key to one of the two gates, the dividing fence means that he cannot access the rear of his property using that gate. He does not have a key to the second gate. The appellant claims to have raised this with the council and to have requested a key to the second gate without response.
19. The appellant seeks to have the fixed penalty withdrawn and for the respondent to provide him with the means to access the alley behind his property.

The respondent's response to the appeal

20. In the response to the appeal, the respondent states that the alley serving the appellant's property is private land and the responsibility of the property owners. Similarly, the gates are privately owned and not the responsibility of the respondent. It is pointed out that the notice sets out what a person should do if they do not have a key to a gate they believe is owned by the council. The respondent asserts that the appellant did not make contact after receiving the notice and provides a printout of the appellant's Myaccount record as evidence of this.
21. The respondent notes that four separate notices pursuant to sections 46, 46A, 46B, 46C, and 46D of the Act have been issued. It is asserted that this has provided the appellant with ample opportunity to engage with the respondent about any difficulties he may have faced accessing the alley.

Findings and reasons

22. 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 his bin was left out on 14 June 2022 and I find that it was. This was in contravention of the section 46 notice.
23. 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 his bin out on 27 July 2022 after being served with the notice of contravention. This was within one year of the notice of contravention.
24. I find that the respondent served a notice of intent to issue a fixed penalty on 11 August 2022. The appellant does not dispute this. I find that the notice of intent complied with the requirements of section 46C of the Act. I accept the respondent's evidence that the appellant did not make representations in response to the notice of intent. I am satisfied that the respondent was entitled to serve a fixed penalty final notice on 16 September 2022. I am satisfied that the final notice complies with the requirements as to its contents.
25. The issue in this appeal is whether the appellant has provided a reasonable excuse for his failure to comply with the section 46 notice.
26. The appellant claims that he does not have a key to a gate which would allow him access to the alley behind his property to move his bin onto his property after collection. He claims that he has called the respondent about this and that he has spoken to street wardens who advised that it 'would be sorted'.
27. The respondent asserts that the gates in the alley are privately installed gates and that it is the appellant's responsibility to ensure that he has keys. The respondent relies on a highways land ownership map which highlights only the roads and not the alley on question. The appellant has not adduced any evidence to support his belief that the alley and the relevant gates and fence are the responsibility of the respondent. I find that on the balance of probabilities that the gates and fence are privately installed and that it for the appellant to ensure that he has keys.
28. In any event, even if the alley, gates and fence are the responsibility of the respondent, I find that there is no evidence that the appellant has attempted to gain access by contacting the respondent as asserted.

29. The only evidence of any contact the appellant has had with the respondent is contained at page 36 of the appeal bundle. This is a record of the appellant's Myaccount. It shows what appears to be a complaint made on 24 January 2017. There are three entries, the first two of which are on 24 January 2017 and 25 January 2017 respectively and are recorded as 'complaints (investigation)'. The third is also on 25 January 2017 and is recorded as 'complaints (review and report)'. All three entries carry the same reference number and the status is recorded as 'task completed' and the stage is recorded as 'case closed'. In so far as this may be evidence of the appellant contacting the council about access to the alley, I find that it pre-dates the breach to which this appeal relates by more than four years. The appellant does not provide any evidence or information as to when he states that he has contacted the respondent about access to the alley. I find on the basis of the evidence before me that the appellant did not make contact with the respondent regarding access to the alley at any time after the section 46 notice was issued on 19 May 2022.
30. For these reasons, I find that the appellant has not provided a reasonable excuse for breaching the section 46 notice and accordingly that payment of a fixed penalty notice is appropriate.

Signed



Date 13 February 2023

Judge J K Swaney

Judge of the First-tier Tribunal