



Neutral citation number: [2024] UKFTT 156 (GRC)

Case Reference: NV/2023/0017/HWC

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

Heard by: CVP Remote Video Hearing

Heard on: 20 February 2024

Decision given on: 22 February 2024

Before

TRIBUNAL JUDGE L. ORD

Between

RUKHSANA CHAUDHRY

Appellant

and

HYNDBURN BOROUGH COUNCIL

Respondent

Representation:

For the Appellant: Mr Amer Choudrey (lay representative)

For the Respondent: Mr Daniel Hoyle (solicitor)

Interpreter:

Ms Farhat Nazir Mahmood

Decision: The appeal is allowed and the requirement to pay the Fixed Penalty Notice is withdrawn.

REASONS

The Appeal

1. The Appellant appeals against a Fixed Penalty Notice dated 5 April 2023, served under the Environmental Protection Act 1990 (the Act) Part II – Collection, disposal or treatment of controlled waste.
2. The Notice alleges that the Appellant failed to comply with a requirement imposed by Hyndburn Borough Council (HBC) under section 46 of the Act, without reasonable excuse, and that this caused a nuisance and was detrimental to the amenities in the locality.

Evidence

3. The Tribunal had before it the following documentary evidence:
 - 3.1. Updated documents bundle of 96 pages.
 - 3.2. Witness statements:
 - 3.2.1. On behalf of the Appellant:
 - 3.2.1.1. Mrs Rukhsana Chaudhry (Appellant)
 - 3.2.1.2. Ms Lesley Sidhoum (neighbour)
 - 3.2.1.3. Mr Harry Walker (neighbour)
 - 3.2.2. On behalf of the Respondent:
 - 3.2.2.1. Mr Mick Coyne (Waste Services Manager)
 - 3.2.2.2. Mr William Berry (Waste Service Enforcement Officer) x 2
4. The Tribunal heard affirmed oral evidence from Rukhsana Chaudhry, Lesley Sidhoum, Mick Coyne, and William Berry.

Law

5. The law is contained in **Part II of the Environmental Protection Act 1990**. The most relevant parts of which are:

Section 45 – Collection of controlled waste

It shall be the duty of each waste collection authority –

- (a) to arrange for the collection of household waste in its area except waste.....

Section 46 – Receptacles for household waste

- (1) Where a waste collection authority has a duty by virtue of section 45(1)(a) above to arrange for the collection of household waste from any premises, the authority

may, by notice served on him, require the occupier to place the waste for collection in receptacles of a kind and number specified.

- (2) The kind and number of the receptacles shall be such only as are reasonable.....
- (3)
- (4) In making requirements as respects receptacles under subsection (1) above, the authority may, by the notice under that subsection, make provision with respect to
—
.....
(b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;
.....
(e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles
.....
- (5)
- (6) A person who fails, without reasonable excuse, to comply with any requirements imposedunder subsection (1)...or (4) shall be liable on summary conviction to a fine.....

Section 46A – written warnings and penalties for failure to comply

- (1) This section applies where an authorised officer of a waste collection authority is satisfied that-
 - (a) a person has failed without reasonable excuse to comply with a requirement imposed by the authority under section 46(1) ...or (4) (a “section 46 requirement”), and
 - (b) the person’s failure to comply-
 - i. has caused, or is or was likely to cause, a nuisance, or
 - ii. has been, or is or was likely to be, detrimental to any amenities of the locality.
- (2) Where this section applies, the authorised officer may give a written warning to the person.
- (3) A written warning must-
 - (a) identify the section 46 requirement with which the person has failed to comply,
 - (b) explain the nature of the failure to comply,
 - (c) explain how the failure to comply has, or is or was likely to have the effect in subsection (1)(b),

- (d) if the failure to comply is continuing, specify the period within which the requirement must be complied with and explain the consequences of the requirement not being complied with within that period,
 - (e) whether or not the failure to comply is continuing, explain the consequences of the person subsequently failing to comply with the same or a similar section 46 requirement.
- (4) Where a written warning has been given in respect of a failure to comply that is continuing, an authorised officer of the waste collection authority may require the person to whom the written warning was given 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.....

Section 46C – Penalties under section 46A: procedure regarding notices of intent and final notices

- (1) Before requiring a person to pay a fixed penalty under section 46A, an authorised officer must serve on the person notice of intention to do so (a “notice of intent”)
.....

Section 46D – Appeals against penalties under section 46A

- (1) A person on whom a final notice is served under section 46C may appeal to the First-tier Tribunal against the decision to require payment of a fixed penalty.
- (2) On an appeal under this section the First-tier Tribunal may withdraw or confirm the requirement to pay the fixed penalty.

Issues

- 5.1. Did Appellant have reasonable excuse for not complying with the respondent’s requirement to put waste for collection in the wheeled bins provided.

In particular the Tribunal will concentrate on the following:

- 5.1.1. Whether the Respondent effectively served notice on the appellant of the requirement to place waste in wheeled bins (s46(1) of the Act).

The Tribunal will consider all communications said to have been sent to the Appellant, and in particular:

- May 2018 – circular letter requesting residents to cease using orange bags;
- July 2018 – Waste Guide containing s46(1) Notice prohibiting side waste;
- Nov/Dec 2022 - Waste Guide containing s46(1) Notice prohibiting side waste

- 5.1.2. Whether it was reasonable for the Appellant to continue bagging waste for collection rather than using the wheeled bins provided.

The Tribunal will consider the arrangement that had been in place prior to the Respondent requiring the Appellant to use the wheeled bins.

5.1.3. Whether the Council has breached its duty to arrange for the collection of household waste, or any other duty.

5.2 If not, did the Appellant's failure to comply-

5.2.1 Cause, or was it likely to cause, a nuisance, or

5.2.2 Cause detriment, or was it likely to cause detriment, to any amenities of the locality.

Facts

6. The Appellant is an elderly lady whose English is limited. She lives at 2 Hazel Avenue.
7. The 10 houses on Hazel Avenue back onto a sloping, uneven ginnel, at the bottom of which is the collection point for the properties' household waste. This collection point is outside number 2 Hazel Avenue. For many years the Appellant, along with her neighbours in Hazel Avenue, deposited household waste in bags at this collection point.
8. In 2003 the residents were issued with grey wheeled bins for general waste. However, because of the terrain of Hazel Avenue, and the difficulty some residents would have in wheeling the bins up and down the ginnel, HBC did not require the residents to use the bins. Instead it issued residents with official orange bags in which they put their waste.
9. HBC carried out a review of its waste collection service to maximise recycling and reduce the amount of residual waste. In 2015 it formalised its waste policies including those relating to waste collection, and its enforcement policy.
10. Under its "General Service Provision" section, it set out the various wheeled bins that would be provided to residents for general waste and recycling, whilst allowing for a bag and box collection service for properties that could not accommodate wheeled bins. Under its "Residual Waste, Side Waste and Closed Wheeled Bin Lids" section, it stated that side waste would not be collected and if placed out could lead to the resident being issued with a fixed penalty notice. With respect to "Communal collection points" it said "Wheeled bins should be presented at the designated collection point neatly grouped together so as not to cause an obstruction to the entrance to any back street or footpath."
11. There is no evidence that the new waste policies were brought to the attention of the Appellant and I find that she had no knowledge of them. The Appellant, along with other Hazel Avenue residents, continued to deposit their waste in bags.
12. In 2018 HBC delivered blue and brown recycling bins to all properties throughout the borough, including the Appellant's property. It decided to bring all household waste

collection in line with its wheeled bin service, meaning that it required residents to use the bins provided.

13. In May 2018, a circular letter was produced by HBC. It said that the orange bag system would be replaced with a grey wheeled bin from July, and two further wheeled bins for recycling. Residents were to take these bins to the communal collection point. It gave details of an assisted collection scheme for residents who might have difficulty with this.
14. The Appellant says she never received a letter like this. Although her ability to understand English is limited, she said she had official letters translated for her by a member of the family. She did not have this letter translated for her. Ms Sidhoum, who also lived on Hazel Avenue at this time, gave evidence that she did not receive the letter. However, Ms Sidhoum has been on an assisted collection scheme since 2012 and this may account for her not being sent a letter.
15. The letter produced in evidence is not addressed to individual properties, but is a template which says "ADD ADDRESS". Mr Coyne said he found the template letter on HBC's computer system and, as far as he was aware, it was delivered to all properties that were on the orange bag system. HBC delivered general waste communications by hand to save costs. There is no other evidence of the letter being delivered to any properties.
16. The above account is insufficient for me to conclude that the letter was delivered to the Appellant's address. Consequently, I accept the Appellant's evidence that she did not receive it.
17. HBC also put information on their web site about the waste collection changes and on social media and distributed information packs. However, none of this was seen by the Appellant.
18. Mr Coyne gave evidence that, in July 2018, HBC delivered a waste guide to all properties in the borough, including the Appellant's property. The guide was a colourful pamphlet of six pages and on one of the pages it contained a section 46 notice, which was headed "Be A Binner Not a Sinner." The notice said it was an offence to put refuse bags out for collection and that non-recyclable waste must be presented inside grey wheeled bins. It warned of the Council's ability to issue a fixed penalty notice.
19. The Appellant gave evidence that she did not remember receiving this pamphlet. She said that she might have got it, but she received a lot of leaflets and she just threw them away because she struggled to read them due to her poor understanding of English. Mr Coyne said he was sure that these guides had been delivered because the hand deliveries were supervised and each property was accounted for.
20. Due to the supervised nature of the deliveries, I find that the waste guide containing the section 46 notice was delivered to the Appellant's property. However, because of its presentation in pamphlet form and the Appellant's limited English, I find that she threw it away, as was usual for her with leaflets and pamphlets. She did not read it or have it translated and she was unaware of its contents.

21. From 2018 no more orange bags were delivered to the Appellant. However, the Appellant, along with some of the other residents on Hazel Avenue, put black bags out for collection at the collection point outside her property. These bags were collected by HBC in the usual way.
22. Mr Coyne and Mr Berry both gave evidence that, in November/December 2022 an updated waste guide containing a section 46 notice was delivered to all properties in the borough. Again, this was a colourful pamphlet of six pages with the section 46 notice on one of the pages headed "Important Waste Enforcement Information". Under a subheading "Legislation", the guide set out similar information to the July 2018 guide.
23. The Appellant gave evidence that she did not remember receiving this pamphlet, although she might have done but possibly threw it away, not realising it was official. Mr Coyne again gave evidence that it was a supervised hand delivery and all properties were accounted for.
24. Once more, for the reasons given above, I find that the waste guide containing the notice was delivered to the Appellant's property, but that she threw it away without reading it or having it translated.
25. Thereafter, the Appellant and some other Hazel Avenue residents continued to put out black bags for collection. They were collected in the usual way.
26. On 1 February 2023, Mr Berry was on patrol and noticed several refuse bags outside number 2 Hazel Avenue. He searched through them and found waste in the name of Murad Choudrey of 2 Hazel Avenue. From Council Tax records he found that the Appellant was the lead liable person at this address.
27. Mr Berry sent the Appellant a formal written warning in letter format on 1 February 2023. It gave notice that HBC was satisfied that she had failed to comply with the section 46 requirement of not presenting side waste for collection, and that this had caused a nuisance and was detrimental to the amenities in the locality. It warned the Appellant that if she continued to do this, she may be issued with a fixed penalty notice.
28. The Appellant admits receiving this letter and at some point she gave it to her son to deal with, although the timing is unclear.
29. On 15 February 2023, Mr Berry was conducting a further patrol of the area and saw more black bags outside number 2 Hazel Avenue. He searched through them and again discovered waste in the name of Murad Choudrey of 2 Hazel Avenue.
30. As a result, Mr Berry sent a Notice of Intent to the Appellant on 15 February. It referred to the warning letter and, noting that the Appellant had further breached the requirement to put waste into the wheeled bins provided, proposed to issue a fixed penalty. The Appellant was given 30 days to respond.
31. The Appellant admits receiving the Notice of Intent. She gave it to her son to deal with.

32. She also concedes that some of the bags belonged to her household, although she said that other bags belonged to her neighbours. Looking at the exhibits of the number of bags found, I accept that it is likely that some of them belonged to other households, and I find this to be so.
33. In evidence Mr Berry said that, whilst on patrol, he had seen other households' black bags placed out for collection, although he had not found evidence of who they belonged to and therefore could not enforce.
34. On 2 March 2023 Mr Amer Choudrey, on behalf of the Appellant, wrote to HBC saying that an agreement had been in place for years between HBC and the elderly and disabled residents of Hazel Avenue, allowing those residents to use bags rather than wheeled bins. Consequently, he suggested the formal letters were a mistake or negligent.
35. At some point there was a telephone conversation between Mr Amer Choudrey and Mr Coyne during which Mr Coyne advised Mr Choudrey that waste was required to be put into wheeled bins and bags were not permitted.
36. On 5 April 2023 Mr Coyne served the Final Notice on the Appellant imposing the fixed penalty. From then onwards she has used the wheeled bins. The Appellant's evidence was that she was not aware she could not use the bags for waste collection until she received the Fixed Penalty Notice. Under threat of court action, she agreed to pay the penalty, which she has been doing in instalments.

Discussion and conclusions

Whether the Appellant had reasonable excuse.

37. The section 46 notices served by hand on the Appellant were in colourful pamphlet format, and were combined with other general waste guidance. Whilst there is no issue with them being delivered by hand, particularly given the limited resources of many local authorities, the format of the notices in this case is problematical.
38. The Appellant is elderly and has a limited understanding of English. She has many leaflets and pamphlets coming through her door and therefore, understandably, she does not attempt to read them due to her language difficulties, and throws them away.
39. This is what she did with the notices, not recognising their importance. Consequently, she did not know of the section 46 requirement to put waste into the wheeled bins. Had the section 46 notices been addressed and delivered to her as a formal letter, she would have had them translated and would have been aware of the requirement.
40. Whilst there was media publicity of the change in waste collection, the Appellant was not aware of it. In any event, this is no substitute for formal notification, which must be served.
41. In this case there was no effective service of the section 46 requirement to put waste into wheeled bins and not to put out side waste.
42. Although the Appellant received the formal written warning, it was only two weeks later that she was served with the notice of intent. In the absence of any previous

section 46 notice, and given her need to have the documents translated, it was understandable that there was a delay before she realised what was required of her.

43. Furthermore, the residents in Hazel Avenue had been on a different collection scheme to most other residents, in that their waste was put in bags for collection. That system had been in place for many years, and at the time of the warning letter and Notice of Intent, bags were still being put out by residents and collected. Consequently, the Appellant thought that she was doing no wrong by continuing with what she had always done. She had no intention of being defiant.
44. Accordingly, under the particular circumstances of this case, the Appellant had a reasonable excuse not to comply with the Respondent's requirement.
45. Given my above conclusion, there is no need for me to deal with the balance of the issues.

Signed: Tribunal Judge Liz Ord

Date: 21 February 2024