



**First-tier Tribunal
(General Regulatory Chamber
Environmental Regulation**

Appeal Reference: NV/2018/0014

**Decided without a hearing
On 8 November 2018**

Promulgation date 07/12/2018

Before

JUDGE ANTHONY SNELSON

Between

SHANNON CLANCY

Appellant

and

MANCHESTER CITY COUNCIL

Respondents

DECISION

The decision of the Tribunal is that the appeal is dismissed.

REASONS

1. The Appellant is a resident of Hulme, in Manchester. In these proceedings initiated by a notice of appeal served on 29 June 2018, she challenges a Fixed Penalty Notice ('FPN') issued by the Respondents ('the Council'), requiring her to pay a penalty of £80 for failing to comply with a notice and subsequent written warning

served on her under the Environmental Protection Act 1990 ('the Act'), sections 46 and 46A respectively.

The statutory framework

2. By section 46 of the Act a local authority has power to serve on an occupier a notice (hereafter, a 'section 46 notice') requiring him or her *inter alia* to place waste in a specified kind of receptacle and to comply with arrangements for the collection of the waste.

3. The Act, by section 46A (1)-(3), permits a local authority to issue a written warning (a 'section 46A warning') to a person reasonably believed to have failed to comply with a section 46 notice and thereby caused a nuisance or some other detrimental effect to the amenities of a locality. The warning must *inter alia* state the nature and effect of the breach, specify, in the case of a continuing breach, the period within which the notice must be complied with, and explain the consequences of failing to comply with the notice.

4. Where a written warning has been given in respect of a continuing failure to comply with a section 46 notice, the local authority may impose a fixed penalty if satisfied that the occupier has failed to comply with the section 46 notice within the time specified in the section 46A warning (section 46A (4)). In addition, a local authority may impose a fixed penalty where satisfied that an occupier has committed a further breach of the section 46 notice within the period of one year commencing on the date on which the written warning was given (section 46A(7)(a)).

5. The amount of the penalty is fixed at £60 or such other sum as the local authority may specify (section 46B (1)). Here the Council has specified the sum of £80.

6. Before requiring an occupier to pay a fixed penalty a local authority must serve on that person a notice of its intention to do so (a 'notice of intent'), setting out the grounds relied upon, the amount of the proposed penalty and the occupier's right to make representations on the matter (section 46C (1) -(2)). Any such representations must be delivered within 28 days (section 46C (3)).

7. In order to require an occupier to pay a fixed penalty under section 46A, the local authority may, after the expiry of that 28-day period and after considering any representations under section 46C (3), serve on the occupier a further notice ('a 'final notice'). A final notice must specify the amount of the penalty, the grounds for imposing it, the right to appeal under section 46D and certain other matters (section 46C (5) -(8)).

8. A person on whom a final notice is served may appeal to the First-tier Tribunal (section 46D (1)).

The key facts

9. The material facts are not in dispute and can be summarised shortly as follows (I borrow from the Respondents' submissions responding to the appeal).

9.1 On 21 August 2017, following a complaint about waste being deposited on the highway at Quenby Street, Hulme, the Appellant was served with section 46 notices satisfying the requirements of the Act.

9.2 On 11 November 2017, the Council was made aware of further bags of waste which had been deposited on the highway at Quenby Street, Hulme. In two of the nine bags envelopes sent to the Appellant's address were found, some directed to her personally and by name.

9.3 On 16 November 2017 a section 46A warning was issued to the Appellant. The document, which complied with statutory requirements summarised above, stated that she had failed to comply with the section 46 notice by failing to store waste in the bins provided and that if she did not comply within 14 days a fixed penalty of £80 might result.

9.4 On 8 May 2018 further bags of waste were found deposited on the highway at Quenby Street, Hulme. Correspondence addressed to the Appellant was found in one.

9.5 On 9 May 2018 a notice of intent was served on the Appellant. The document satisfied the requirements of the legislation summarised above.

9.6 On 12 May 2018 the Appellant sent an email to the Council containing representations in response to the notice of intent. She made two points. First, as she had (she said) told the Council, she had had "a lot of issues with her neighbour", who had been using her bins. Second, on an unspecified date she had left rubbish outside her property intending to dispose of it at a local tip, but someone had taken it to where the bins were collected, and the following day "it was gone".

9.7 On 15 June 2018 the Council issued a FPN requiring the Appellant to pay the sum of £80. A covering letter explained that the email of 12 May raised no "adequate" case against the imposition of the fixed penalty.

The appeal

10. In her notice of appeal, the Appellant repeats her point about the behaviour of her neighbour and contends that the fixed penalty is unfair.

Conclusions

11. In my view the Council was entitled to impose the fixed penalty and there is no good ground to disturb its decision on appeal. The statutory formalities (summarised above) were complied with. The section 46 notice was valid and was not the subject of any appeal. There was a breach in November 2017 and a further breach in May 2018. This was not a case of a continuing breach but a repeat breach (section 46A(7)(a)). It is unfortunate that the Appellant appears to have a difficulty with a neighbour who is prone to making use of her bins. It is for her to resolve the

difficulty as best she can, if need be with the assistance of the local authority or some other agency. But that problem does not absolve her of her obligations under the 1990 Act. Her breach is clear and, in one instance at least, admitted (see para 9.6 above). It was her responsibility to ensure that her waste was not left to become a nuisance and she failed to honour that responsibility.

Outcome

12. For the reasons stated, I am clear that I must dismiss the appeal.

Sign

Judge of the First-tier Tribunal
Date: 05/12/2018