



Appeal number: NV/2019/00008

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER**

JOSEPHINE NUAMAH

Appellant

- and -

LEICESTER CITY COUNCIL

Respondent

TRIBUNAL: HER HONOUR JUDGE ANGELA MORRIS

Sitting in Chambers on 27th August 2019

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Decision

1. The Appeal is dismissed.
2. The Final Notice dated 16th July 2019 is confirmed.

Reasons

Background

3. The Appellant, Josephine Nuamah, is a student. The Respondent (Leicester City Council) is the enforcement authority charged with the responsibility of waste collection in accordance with Section 45 of the Environmental Protection Act 1990 (the Act). As part of that duty, the Respondent has a responsibility to ensure the collection of waste on specific days and employs a Warden Service to ensure that the public highway is free from obstruction outside of collection times for waste.
4. Brazil Street in Leicester falls under the Respondent's area of responsibility. Brazil Street has been affected by wheelie bins being left on the street outside of normal collection times. The collection day for waste from wheelie bins associated with properties in Brazil Street is every Tuesday. This required the residents in Brazil Street to place bins which required emptying on the kerb no earlier than 7pm each Monday and removed no later than 7:00am each Wednesday. The Respondent also arranged for blue stickers to be placed prominently on the lids of the bins to make residents of properties in Brazil Street aware of this requirement.
5. On Wednesday 20th February 2019, City Warden Noel Cazley found the bin associated with number 34 Brazil Street was still on the public footpath. On 27th February 2019, the Respondent served by post a Notice in accordance with Section 46 of the Act on the Appellant informing her of her duties and the dates and time for collection. The Notice also provided information as to the consequences of her failure to comply with the Section 46 Notice, including a fixed penalty in the sum of £80.

6. On Wednesday 27th March 2019, the bin for 34 Brazil Street was again found on the footpath by the City Warden. On 24th April 2019 a Notice of Contravention of the Section 46 Notice was served by post on the Appellant. This Notice explained the reasons why compliance was necessary and repeated what the consequences for failing to comply without reasonable excuse might be.
7. On Friday 3rd May 2019, the bin for 34 Brazil Street was again observed on the footpath in contravention of the Section 46 and Section 46A Notices. On Thursday 23rd May 2019, a Notice of Intent to serve a Fixed Penalty Notice was posted to the Appellant at 34 Brazil Street. On Monday 24th June 2019, a Fixed Penalty Notice and Notice of Opportunity to Pay the Fixed Penalty within 28 days were posted to the Appellant at the same address.
8. On 16th July 2019, a Final Notice was posted to the Appellant at the same address.
9. By its Notice of Appeal dated 22nd July 2019, the Appellant appeals against the imposition of the Fixed Penalty Notice.
10. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended

The Legal Framework

11. Section 45 of the Environmental Protection Act 1990 places a duty on local authorities to ensure the timely collection of household waste from the occupiers of premises within its area of responsibility.
12. Section 46 of the Act sets out the framework by which the local authority may require the occupier of a premises to place waste for collection in specified receptacles (in this case wheelie bins). The local authority may set time frames within which the household waste may be collected. In order to ensure compliance with such a scheme, the local authority must serve a Notice in accordance with Section 46 of the Act upon the occupiers of premises to which it applies.

13. The responsibility to ensure that wheelie bins are removed from the pavement outside of waste collection times falls on the occupiers of the premises to which a Section 46 Notice has been served. A failure to comply with a Section 46 Notice, may result in a further Notice under section 46A of the Act being served upon the occupier of those premises, specifying the nature of the breach and the consequences of any further non-compliance.
14. Section 46C of the Act sets out the steps which a local authority must take before they can require the occupier of premises served with both the Section 46 and Section 46A Notices, to pay a fixed penalty. The local authority must first serve a Notice of Intent upon the occupier of the relevant premises setting out the grounds for requiring payment of a fixed penalty, the amount of the penalty and the right of the occupier to make representations as to why they should not be required to pay a fixed penalty. Any such representation must be made within 28 days of the service of the Notice of Intent and a Final Notice cannot be issued or served before the expiry of that time period.
15. In the event no representations are received, the local authority may issue a Final Notice setting out the grounds for requiring the payment of the fixed penalty, the amount and the period within which payment is required (namely not less than 28 days from the date of the Final Notice).
16. A local authority must act in accordance with these provisions of Section 46, 46A, 46B, 46C and 46D of the Act before a Fixed Penalty can be imposed. This ensures that an occupier is notified of their responsibility and the consequences of a failure to comply.
17. Over and above the duties encapsulated in Section 46, a local authority also has a duty to ensure that footpaths and the highway remain free of obstruction to avoid the risk of danger to the health and safety of members of the public using them. Wheelie bins are permitted to be left on the pavements within specified times in order to allow for the collection of waste. Outside of those permitted times, which the local authority is at liberty to set, wheelie bins cannot remain on the pavements and must be removed by the occupiers of the premises to which the bins are associated.

18. The responsibility to ensure that wheelie bins are removed from the pavement outside of waste collection times falls on the occupiers of the premises to which a Section 46 Notice has been served. The local authority must act in accordance with the provisions of Section 46, 46A, 46B, 46C and 46D of the Act before a Fixed Penalty can be imposed. This ensures that an occupier is notified of their responsibility and the consequences of a failure to comply.
19. The service of Notices by postal delivery is deemed good service in accordance with Sections 160(2) and (4) of the Act.

Submissions and Evidence

20. The Appellant submits that she is a student and was not always at the premises. She states that she did not receive the letter in a timely manner and was unaware of any notices or appeal until she returned to Leicester to collect her belongings from the premises. She believes that she is exempt from paying of the fine by virtue of her status as a student and not in permanent or regular residency at 34 Brazil Street. The Appellant submits that she was no longer living in the premises.
21. The Respondent submits that the postal service of the Notices is deemed good service and that they have complied with the provisions of the Act. They submit that the Appellant was given sent four separate notifications which allowed ample time for liaison with them regarding any difficulties she may have encountered regarding compliance with the scheme or her landlord and or to inform them she was not an occupier of the premises.

Conclusions

22. I conclude on the basis of the evidence before me and on the balance of probabilities that the Appellant has failed to demonstrate a reasonable excuse for failure to comply with the Notices sent to her. I note that the address stated on the Notice of Appeal is the same address to which the Section 46 Notices were posted. The Appellant has provided no evidence to support the assertion that after 27th February 2019 (when the first Section 46 Notice was served) she was not the occupier of 34 Brazil Street. In light of the fact that the dates when

non-compliance with the Section 46 Notice occurred fell within the academic term time, it is reasonable to infer the Appellant continued to be an occupier of 34 Brazil Street, even if she was not there all of the time.

23. Being a student in occupation in premises for a period of time does not abrogate the responsibility to comply with the provisions of Section 46 of the Environmental Protection Act 1990. The Section 46 Notice (dated 27th February 2019) makes it abundantly clear that the responsibility to place and remove wheelie bins from the kerb within set time period lies with the occupier of the premises. Furthermore, as the Appellant has admitted, she had left her belongings at the premises and, therefore, there is a reasonable inference she was still occupying them.
24. If the Appellant was, as she asserts, no longer occupying 34 Brazil Street, evidence of residence elsewhere would have been forthcoming and there would have been no good reason for her to leave belongings at the premises.
25. If the Appellant was, as she asserts, no longer an occupier of 34 Brazil Street, evidence of residence elsewhere would have been available. Furthermore, I note that the Appellant continued to house her belongings at the property and it is reasonable to infer she continued to have a key to the premises in order to return to collect those items. There has been so evidence provided to demonstrate that her belonging remained there under a “storage” arrangement. The Appellant has provided no evidence to demonstrate that she had quit the tenancy – such as a letter from the landlord of 34 Brazil Street, a letting agency or an evidence of a tenancy agreement at another premises.
26. Furthermore, a reasonable person quitting occupation would have arranged for post to be re-delivered to a new address. No such arrangement appears to have been put in place in this case.
27. The responsibility to ensure that wheelie bins are removed from the pavement outside of waste collection times falls on the occupiers of the premises upon whom a Section 46 Notice has been served. The documentary evidence supports the submission that the Respondent acted in accordance with the provisions of Section 46, 46A, 46B, 46C and 46D of the Act before the fixed penalty was imposed upon the Appellant.

28. Accordingly, the appeal is now dismissed and the Final Notice is confirmed.

(Signed)

Her Honour Judge Angela Morris

Dated: 27th August 2019

Promulgation Date: 6 September 2019