



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

Appeal Reference: NV/2019/0024/P

Between

NURSHAMA ABDULCADIR

Appellant

and

LEICESTER CITY COUNCIL

Respondent

Before

TRIBUNAL JUDGE MOIRA MACMILLAN

Determined on the papers, the Tribunal sitting in Chambers on 15 May 2020

DECISION

1. The appeal is allowed.
2. The Fixed Penalty Notice BH17513 dated 3 December 2019 is withdrawn.

MODE OF HEARING

3. The parties and the Tribunal agreed that this matter was suitable for a determination on the papers in accordance with rule 32 of the Chamber Procedure Rules.
4. The Tribunal considered an agreed open bundle of evidence comprising pages 1 to 52.

REASONS

Background

1. This appeal is against a Fixed Penalty imposed by the Respondent in relation to a household waste wheelie bin.
2. The bin in question belongs to 29 Glen Street, Leicester. The Appellant is one of two occupiers known by the Respondent to reside at this address.
3. The Respondent is a waste collection authority under the Environmental Protection Act 1990. As such it is able to regulate the times at which household waste bins are left out for collection. On 10 July 2019 it served a Notice of Contravention, because a wheelie bin was left on the street outside the property other than at a permitted time. The Respondent subsequently served a Notice of Intent on 5 November 2019 and a Fixed Penalty Notice on 3 December 2019.

Law

4. S. 46 of the Environmental Protection Act 1990 allows a waste collection authority to impose requirements relating to the placement of bins ('receptacles') that are used to collect household waste.

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.

(1A) Where –

- (a) subsection (1) applies to a waste collection authority, and*
- (b) a waste reduction scheme under Schedule 2AA to this Act is in operation in the authority's area,*

the authority may require the occupier to place the waste for collection in receptacles identified by such means as may be specified.

- (1B) *A requirement under subsection (1A) –*
 - (a) *must be imposed by notice served on the occupier;*
 - (b) *may be imposed instead of, or in addition to, any requirement imposed on the occupier under subsection (1).*
- (2) ...
- (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 –*
 - (a) ...
 - (b) *the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;*
 - (c) *the placing of the receptacles for that purpose on highways or, in Scotland, roads;*
 - (d) ...
 - (e) *the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles.*
 - (f) *The removal of the receptacles placed for the purpose of facilitating the emptying of them; and*
 - (g) *the time when the receptacles must be placed for that purpose and removed.*
- (5) *No requirement shall be made under subsection (1) above for receptacles to be placed on a highway or, as the case may be, road, unless –*
 - (a) *the relevant highway authority or roads authority have given their consent to their being so placed; and*
 - (b) *arrangements have been made as to the liability for any damage arising out of their being so placed.*

5. Where a person fails without reasonable excuse to comply with a requirement imposed under s. 46, and where the authority assesses that this failure either causes a nuisance, or is detrimental to local amenities, the authority may issue a written warning pursuant to s. 46A. This must be served upon the person; must identify the requirement the person has failed to comply with; and must explain the consequences should they continue not to comply (s. 46A(1),(3) & (4))

s. 46A Written warnings and penalties for failure to comply with requirements relating to household waste receptacles: England

- (1) *This section applies where an authorised officer of a waste collection authority in England is satisfied that –*

(a) a person has failed without reasonable excuse to comply with a requirement imposed by the authority under section 46(1), (3)(c) or (d) 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 had, or is or was likely to have, the effect described 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, and

(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.

6. Should the person not comply with the requirement following a written warning, the authority may impose a Fixed Penalty pursuant to s. 46A(4). The authority must first serve a Notice of Intent, which must explain why the Fixed Penalty is being imposed. The Notice of Intent must allow the person 28 days in which to make representations about why payment of the Fixed Penalty should not be required. The authority must consider any representations made before serving the Penalty Notice, which must inform the person of their right to appeal.

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") in accordance with subsections (2) to (4).

(2) A notice of intent must contain information about –

(a) the grounds for proposing to require payment of a fixed penalty,

(b) the amount of the penalty that the person would be required to pay, and

(c) the right to make representations under subsection (3).

- (3) *A person on whom a notice of intent is served may make representations to the authorised officer as to why payment of a fixed penalty should not be required.*
- (4) *Representations under subsection (3) must be made within the period of 28 days beginning with the day service of the notice of intent is effected.*
- (5) *In order to require a person to pay a fixed penalty under section 46A, an authorised officer must serve on the person a further notice (the “final notice”) in accordance with subsections (6) to (8).*
- (6) *A final notice may not be served on a person by an authorised officer before the expiry of the period of 28 days beginning with the day service of the notice of intent on the person was effected.*
- (7) *Before serving a final notice on a person, an authorised officer must consider any representations made by the person under subsection (3).*
- (8) *The final notice must contain information about –*
 - (a) the grounds for requiring payment of a fixed penalty,*
 - (b) the amount of the penalty,*
 - (c) how payment may be made,*
 - (d) the period within which payment is required to be made (which must not be less than the period of 28 days beginning with the day service of the final notice is effected),*
 - (e) any provision giving a discount for early payment made by virtue of section 46B(2),*
 - (f) the right to appeal under section 46D, and*
 - (g) the consequences of not paying the penalty.*

7. The right of appeal arises under s. 46D:

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.*
- (3) *The requirement to pay the fixed penalty is suspended pending the determination or withdrawal of the appeal that is the final appeal made by the person against the decision to require payment of the penalty.
(This is subject to subsection (4).)*
- (4) *Where the requirement to pay the fixed penalty is confirmed at any stage in the proceedings on appeal, payment must be made before the end of the period of*

28 days beginning with the day on which the requirement is so confirmed unless the person makes a further appeal before the end of that period.

(5) The reference in subsection (4) to the requirement to pay the fixed penalty being confirmed on appeal includes a reference to an appeal decision confirming the requirement to pay the fixed penalty being upheld on a further appeal.

Facts

8. The Respondent has decided that Glen Street is detrimentally affected by wheelie bins being left on the pavement outside of normal household waste collection times. The collection day for Glen Street is Thursday. The Respondent has therefore issued a Notice under s. 46, requiring wheelie bins to be placed at the kerb no earlier than 7pm on Wednesdays and to be removed by 7am on Fridays.
9. An officer of the Respondent authority visited Glen Street on Monday 3 June 2019 and took a photograph of a wheelie bin marked with the number '29', which had been left on the pavement. On 4 June 2019 the Respondent issued a warning notice to the Appellant's address. On Monday 8 July 2019 the Respondent took another photograph of a bin marked '29' left on the pavement. Having consulted council tax records, on 10 July 2019 the Respondent posted a s. 46A Contravention Notice to the Appellant, and a second Notice addressed to Mr Zakirhussein Abdulcadir, both of which were sent to 29 Glen Street, Leicester, LE4 6NN.
10. On Monday 4 November 2019 the Respondent returned to Glen Street and again photographed the wheelie bin marked '29' on the pavement. On 5 November 2019 the Respondent sent the Appellant a Notice of Intent, which notified her that she had 28 days to make representations about the imposition of a Fixed Penalty
11. On 7 November 2019 the Appellant emailed the Respondent to explain why the wheelie bin had been left on the street. She explained that the lock had been changed to the side gate leading to rear access to number 29, and that this had happened without the Appellant's knowledge. The Appellant explained that she has requested a copy of the key. From the Respondent's submissions, the email appears not to have been perceived by the Respondent as representations made in response to the Notice of Intent.
12. On 3 December 2019 the Respondent sent the Appellant a Fixed Penalty Notice.

Grounds of Appeal

13. In a Notice of Appeal dated 11 November 2019, but received by the Tribunal on 12 December 2019, the Appellant submits that the bin was left on the pavement because their household relies on a shared gate to access the rear of

the property. and the gate is left locked. The Appellant submits that she was unable to comply with the contravention of the regulations immediately because the lock to the side gate had been changed by Pinnacle Housing without her knowledge and the Appellant did not have a key. The Appellant states that she has since been able to borrow a key from a neighbour and can now unlock the side gate. The Appellant describes her contravention as a 'one off'.

14. The Respondent submits that leaving bins on the pavement causes an obstruction to vulnerable people, interferes with street cleaning, and attracts crime. The Respondent further submits that the Appellant made no representations in reply to any of the Notices served, when given an opportunity to raise any difficulty with compliance. It contends that four notices were sent to the Appellant, which provided ample time for the Appellant to make any such representations.

Decision

15. The Appellant has explained her difficulty in complying with the Respondent's requirements. She made similar representations to the Respondent on receipt of the Notice of Intent, but these appear to have been overlooked by the Respondent when responding to this appeal.
16. I accept the Appellant's explanation that she was unable to comply with the requirements at an earlier date, because the lock had been changed without her knowledge. I have considered whether, in the absence of a key to the side gate, it is reasonable to expect the Appellant to wheel her bin to the rear of her house. I conclude that it is not.
17. I do not accept the Appellant's description of the contravention as a 'one off', as her bin was photographed on the street on 3 occasions. However, having considered the steps the Appellant had to take to obtain a key, I find that her inability to use the side gate amounts to a reasonable excuse for her failure to comply with a requirement imposed by the Respondent under section 46(3)(d).
18. The requirement to pay the Fixed Penalty Notice is therefore withdrawn.

Signed:
Judge Moira Macmillan

Date:
15 May 2020