



Neutral citation number: [2022] UKFTT 505 (GRC)

Case Reference: NV/2022/0019

First-tier Tribunal
General Regulatory Chamber
(Environment)

Decided on the papers
Listed on 23/08/2022
Decision given on: 24/08/2022

Before

TRIBUNAL JUDGE FORD

Between

EMMANUEL BERNARD

Appellant

and

LEICESTER CITY COUNCIL

Respondent

Decided on the papers

Decision: The appeal is allowed to the limited extent that the penalty is reduced to £25

REASONS

1. The Appellant appeals against a Notice of intent to serve a fixed penalty notice issued to him because the Respondent observed his wheelie bin on the pavement outside his house outside the permitted hours. Residents are permitted to leave their wheelie bins on the pavement not before 7pm on Monday evening and not later than 7am on Wednesday morning each week to allow for refuse collection.
2. The Respondent council is responsible for refuse collection in the area where the Appellant lives and has duties to maintain the local environment under the Environment protection Act 1990.
3. On 22/11/2021 the Respondent council issued a written warning to the Appellant warning him that if his wheelie bin was again observed to be on the highway outside the hours permitted for bin collection then he would face a fixed penalty of £80 under the Environmental protection Act 1990.

4. The bin was again observed to be on the highway in breach of the warning notice on 08/12/2021, 04/02/2022. On 23/02/2022 the Respondent served a Notice of intent to serve a fixed penalty notice on the Appellant. The Appellant sent an email to the Respondent requesting a waiver of the penalty stating that ;
 - a. He is a student trying to complete his PhD thesis at the University of Leicester. He has been unable to complete his field research due to Covid 19 restrictions and his three-year PhD has taken longer than expected to complete. He had sponsorship for 3 years but this has now expired. He has lost his immigration status and he has applied for an extension to his student visa to enable him to complete his studies
 - b. Due to the expiry of his visa he is unable to work
 - c. Because he was so busy trying to complete his PhD thesis, he did not read the warning notice from the Respondent. His daughter read it and misunderstood it, believing it to be referring to the recycling bin. She did not speak to her father about it as he was under pressure and consequently, he was unaware of the situation.
5. In response the Local authority states that the reasons given by the Appellant for not complying with the written notice did not amount to a reasonable excuse and refused to waive the penalty.

Findings

6. I am satisfied that the Respondent has established by photographs and evidence of stickers attached by the Respondent's officers to the wheelie bin, that the Respondent duly notified the Appellant that he was failing to comply with the s46 Written warning notice served on 22/11/2021 and he faced a penalty of £80.
7. I find that the Appellant left his wheelie bin on the highway outside of the permitted hours on 22/11/2021, 08/12/2021 and 04/02/2022. On 13/04/2022 the Respondent properly issued a fixed penalty notice against the Appellant under s46A(4) of the Environmental protection Act 1990.
8. I agree with the Respondent Council that the reasons given by the Appellant for leaving the Wheelie bin out and causing an obstruction and possible nuisance to other residents in the area did not amount to a reasonable excuse.
9. Taking into account the Appellant's current straitened circumstances and given that there is no evidence of failure to comply with any other warning notices issued to the Appellant on previous occasions, I reduce the penalty on this occasion to £25.

Signed



Date: 24/08/2022