



Neutral citation number: [2024] UKFTT 963 (GRC)

Case Reference: FT/SL/2024/0054

**First-tier Tribunal
(General Regulatory Chamber)
Standards & Licensing**

**Heard by Cloud Video Platform
Heard on: 4 October 2024
Decision given on: 30 October 2024**

Before

JUDGE PETER HINCHLIFFE

Between

LIN CHENG

Appellant

and

HARTLEPOOL BOROUGH COUNCIL

Respondent

Representation:

For the Appellant: Mr Cheng represented himself.

For the Respondent: Hartlepool Borough Council were not represented.

Decision: The appeal is allowed

REASONS

The Appeal

1. The Appellant appeals against a Fixed Penalty Notice dated 24 April 2024, served under s. 46C of 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 Hartlepool Borough Council (HBC) under section 46 of the Act in respect of his property at 38 Cameron Road, Hartlepool. It states:

*“On 24/03/2024 you were served with a Notice of Intent (to issue you with a Fixed Penalty) because you had failed to comply with your obligations for the presentation of your household waste for collection by Hartlepool Borough Council, specifically: - Green bin left out on non-collection day
You must pay this Fixed Penalty of £60 within 28 days of receipt of this Notice (reduced to £40 if paid within 14 days). Failure to do so will result in the Council taking you to Court for the recovery of the money and any costs associated with doing so.”*

Evidence

3. The Tribunal had limited evidence before it at the hearing. HBC had not provided a bundle or other documentary evidence, despite being requested to do so in Directions issued on behalf of the Tribunal. Mr Cheng had provided documentation in support of his appeal. Mr Cheng provided evidence that he was resident in London at the time that the Fixed Penalty Notice was issued and for some months prior to that. He provided letters from HBC confirming that they were aware that he was carrying out major work on the property at 38 Cameron Road, Hartlepool (the Property) at the relevant time. HBC had approved a reduction in the council tax payable on the Property due to the major work being carried out and they confirmed that these works had been completed in accordance with building regulations.

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.....

....

(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

.....

.....

(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.

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")

.....

(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).

.....

(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.

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

6. Mr Cheng explained that the Property was being renovated at the time that the Fixed Penalty Notice was served. When he bought the house, it was uninhabitable. Neither he nor the builder he employed to do the work were aware that the Notice had been issued to him at the Property. He had visited the Property a few times whilst the renovation work was being carried out. He had not seen any letters or a warning notice from HBC. He had got other post, for example from utilities. He was aware that there were a lot of rubbish bins in the street at the back of the Property. They were not his bins. After he got the Fixed Penalty Notice he had contacted HBC and had been told that as he was the owner of the Property, he was responsible for the bins.

7. I asked Mr Cheng how he could be sure that the bins belonging to his Property were not left out in the street? He replied that he relied on his builder for this assurance and that he had seen when he was visiting the Property that his bin was within the Property, whilst there were also lots of bins in the street behind.

8. The Tribunal is required to consider if HBC was correct to issue the Fixed Penalty Notice, both in terms of the process followed and the facts that may justify it. If HBC was correct so to do, the Tribunal needs to consider if Mr Cheng had reasonable excuse for not complying with the HBC's requirement not to put out a green bin on a non-collection day. The Tribunal also needs to understand if a failure by Mr Cheng to comply with HBC's requirement caused, or was likely to cause, a nuisance, or caused a detriment, or was likely to cause detriment, to any amenities of the locality.

Decision

9. In the absence of any evidence or submissions from HBC establishing the basis on which the Fixed penalty notice was issued, I will accept the evidence of Mr Cheng where I believe that to be credible and truthful. In this case, I have been given no reason to doubt Mr Cheng's assertion that his green bin was kept within the Property on 24 March 2024. I conclude that the green bin belonging to Mr Cheng was not left out on a non-collection day.

44. Accordingly, under the particular circumstances of this case, HBC were not justified in issuing the Fixed Penalty Notice to Mr Cheng and it should have no further effect. The fixed penalty imposed on Mr Cheng is withdrawn.

45. The appeal is allowed and the fixed penalty notice is withdrawn.

Signed
Judge Peter Hinchliffe

Dated
18 October 2024