



Appeal number: NV/2018/0001

5

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(ENVIRONMENT)**

10

Soyal Miah

Appellant

- and -

Leicester City Council

Respondent

TRIBUNAL: Judge Alison McKenna

Sitting in Chambers on 13 March 2018

15

© Crown Copyright 2018

DECISION

The appeal is dismissed.

5

REASONS

Background to the Appeal

1. This appeal concerns a wheelie bin which the Respondent observed to have been left on the street outside number 14 Avon Street Leicester. This is the Appellant's address.
- 10 2. On 23 January 2017 the Respondent served on the Appellant a Notice explaining why wheelie bins could not be left out on the street. Having seen the Appellant's bin outside again on 20 May 2017, the Respondent served a Notice of Contravention on the Appellant. On 9 November 2017, the Respondent served the Appellant with a Notice of Intent to issue a Fixed Penalty Notice in respect of the Notice of Contravention. On 21 December 15 2017, the Respondent served on the Appellant a Fixed Penalty Notice pursuant to s. 46 A (4) of the Environmental Protection Act 1990. This required him to pay a penalty of £80 for breaching the terms of the Notice of Contravention, requiring him to remove his wheelie bin from the street. On 8 January 2018, 20 the Respondent served a Final Notice on the Appellant. This warned that the penalty may now be enforced as a civil debt.
- 25 3. The Appellant did not get in touch with the Respondent about any of the Notices and I understand that he did not make an appeal to the Magistrates Court against the Contravention Notice.
4. The Appellant lodged an appeal with the Tribunal against the Fixed Penalty Notice on 27 December 2017.

30

The Issues in the Appeal

- 35 5. The Appellant's case, as stated in his Notice of Appeal, was that he works nights and sleeps in the day time; that he was once or twice late in taking the wheelie bin inside; that he did not know what time to take the bin inside; and that he had made a mistake for which he apologises and wanted another chance.
- 40 6. The Respondent provided the Tribunal with photographs of the bin outside on the street on 23 January and again on 20 May 2017. It also provided the Tribunal with a copy of the Council Tax entry for 14 Avon Street, showing that there are two occupants. The Respondent submits that the Appellant had ample opportunity to comply with the Notices but took no steps to do so and that the Appellant's grounds do not provide any basis for allowing the appeal.

5 7. 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 Law

10 8. Section 46 of the Environmental Protection Act 1990 permits a Council to serve a Notice on the occupier of premises requiring them to place waste for collection in certain specified receptacles. A Notice of Contravention may be served on a person who has failed “without reasonable excuse” to comply with a section 46 requirement, and there is a right of appeal to the Magistrates Court at that stage. A Fixed Penalty Notice may be served under s. 46 A (4) of the 1990 Act on a person who has failed to comply with the Notice of Contravention.

15 9. There is a right of appeal against a s. 46 Notice to the Magistrates Court. However, there is also a right of appeal against a Fixed Penalty Notice to this Tribunal. The Tribunal may not vary the amount of the penalty, but may withdraw or confirm the requirement to pay the penalty. The Tribunal must decide afresh the question of whether the fixed penalty should have been served.

Conclusions

25 10. The Tribunal has considered carefully all the evidence and submissions provided by the parties before reaching this Decision.

30 11. In this case, the Appellant has accepted the facts on which the Respondent relies but offers an explanation for what occurred. It does not seem to me that he has provided a “reasonable excuse” but, in any event, the place for raising reasonable excuses is the Magistrates’ Court. My role is limited to deciding whether the Respondent was entitled to serve the Fixed Penalty Notice.

35 12. It is unfortunate that the Appellant did not contact the Respondent at any stage prior to lodging an appeal to the Tribunal. As the Contravention Notice was not challenged at the relevant time, and in the absence of any other information, it is unsurprising that the Respondent took the view that the unchallenged Contravention Notice had been breached and so decide to impose a financial penalty on the occupier.

40 13. In all the circumstances, I conclude that the Respondent was entitled to serve the Fixed Penalty Notice and I now confirm it. The appeal is accordingly dismissed.

(Signed)
Alison McKenna
Principal Judge

Dated: 13 March 2018

Promulgation date: 16 March 2018