



NCN: [2024] UKFTT 00725 (GRC)

**Case References: PR/2023/0079/EER
PR/2023/0080/EER
PR/2023/0081/EER
PR/2023/0065/EER**

**First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation**

**Heard: Determined on the papers
Heard on: 2 May 2024
Decision given on: 8 July 2024**

Before

TRIBUNAL JUDGE FINDLAY

Between

WILLIAM BECKETT

and

WYRE FOREST DISTRICT COUNCIL

Appellant

Respondent

Decision: The appeals are Dismissed.

Appeal A (PR/2023/0079/EER)

The Penalty Notice (“PN”) (Notice reference WK/202300400VARIED) dated 5 June 2023 and varied on 9 August 2023 for failing to comply with the Compliance Notice (“CN”) (reference WK/202202597) issued on 31 March 2023 (page 132) in relation to 1 Drayton Villa Farm Cottages, Drayton Road, Drayton, Belbroughton, Worcestershire, DY9 0DJ (“Property 1”), is affirmed pursuant to regulation 44 of The Energy Efficiency (Private Rented Property)(England and Wales(“the Regulations”). A Financial Penalty (“FP”) of £1000 should be imposed.

Appeal B (PR/2023/0080/EER)

The PN (reference WK/202300401/VARIED) dated 5 June 2023 as confirmed on 9 August 2023 (page 1) for failing to comply with the CN (reference WK/202202598) issued on 31 March 2023 in relation to 2 Drayton Villa Farm Cottages, Drayton Road, Drayton, Belbroughton, Worcestershire, DY9 0DJ (“ Property 2”), is affirmed. A FP of £1000 should be imposed.

Appeal C (PR/2023/0081/EER)

The PN (reference WK/202300403CON) dated 5 June 2023 as confirmed on 9 August 2023 (pages 137 and 138) for letting Property 2 or after 1 April 2020 on a tenancy which falls within section 42(1)(a) of the Energy Act 2011 (“the Act”) with an EPC that is below the minimum standard required, is affirmed. A FP of £1500 should be imposed.

Appeal D (PR/202/0065/EER)

The PN dated 5 June 2023 as confirmed on 9 August 2023 (Notice reference WK/20230040/CON) for a breach of regulation 23 of the Regulations in relation to Property 1, is affirmed. A FP of £1500 should be imposed.

REASONS

1. I agree with the parties that these appeals are 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. I have considered a bundle of 195 pages for appeal with references PR/2023/0079 (Appeal A), a bundle of 174 pages for appeal with reference PR/2023/0080 (Appeal B), a bundle of 170 pages for appeal with reference PR/2023/0081 (Appeal C) and a bundle of 167 pages for the appeal with reference PR/2023/0065 (Appeal D).
2. Although no tenancy agreements have been lodged I have proceeded on the basis that the Properties 1 and 2 satisfy the definition of ‘domestic private rented property’ as defined in section 42(1)(a) of the Act and regulation 5 of the Regulations on the basis that Mrs Beckett stated that she and the Appellant were the joint landlords, that they rented the

Properties and sub-let them to tenants. Mrs Beckett stated that she had obtained legal advice from a Solicitor on behalf of the Appellant and in the circumstances it is reasonable to assume that this point is not in issue.

3. Properties 1 and 2 are semi-detached properties of cavity wall construction. The freehold is owned by Mr Simon Wilson and Mrs Yu-Lin Wilson. The Appellant and Mrs Beckett rent the Properties from the freehold owners and sub-let to tenants.
4. I find the CNs were served pursuant to regulation 37 of the Regulations and complied with the requirements of the Regulations.
5. The Appellant did not comply with the CNs and as at the date of the hearing had not fully complied.
6. I find the Properties were let out with sub-standard EPCs. The Properties are let and managed by the Appellant as a joint landlord with Mrs Beckett.
7. Mrs Beckett lodged an appeal on behalf of the Appellant as his joint landlord. She put forward the following grounds of appeal:
 - a) It was inappropriate to serve the PNs in the particular circumstances.
 - b) She accepts that as a landlords they overlooked the changes to the Regulations governing EPCs for rented accommodation.
 - c) The period of the pandemic was extremely difficult.
 - d) Mrs Beckett had recently retire and was supporting a friend who ran a care agency.
 - e) Mrs Beckett was the main support for her 88 year old mother.
 - f) Mrs Beckett was assisting in the running of her family business of a dairy farm.
 - g) Mrs Beckett was caring from grandchildren and another grandchild was born. This happened during the 2-3 years of appalling disruption.
 - h) The tenants were supported with any needs and requirements and would testify to being very happy with the accommodation and rent level and had not complained about extra high energy bills.

- i) They has acted on the matters raised. It has taken some time to find the right channels for help and information.
- j) The Respondent did not provide help and information.
- k) They had initially contacted the energy companies as this was advised by the EPC assessor as they have an obligation to assist in upgrading properties to become energy efficient. She received no replies.
- l) They then contacted Go Green Alliance and similar companies to get the help, advice and quotation for the work required.
- m) A large part of the required works have been completed including cavity wall and loft insulation. They were waiting for a date to fit an air sources heat pump. When this work is complete the energy rating will be at the required level.

Grounds of opposition

8. The Respondent submits the following points:

- a) The Appellant did not comply with the CNs despite receipt of the CNs being acknowledged. There were breaches of regulation 23 of the Regulations and regulation 37(4)(a) in failing to comply with the CNs.
- b) The Appellant accepts that he failed to comply with the Regulations and continued to let out a sub-standard property to tenants in breach of regulation 2 of the Regulations. As such he accepts the breach.
- c) The Respondent has given thorough consideration to all the circumstances and evidence provided by the Appellant and it was appropriate to issue the PNs.
- d) None of the matters raised by the Appellant are supported by any evidence.
- e) Even if the explanations are accepted, which they are not, it can be assumed that a responsible landlord would ensure that additional help was obtained to ensure that the Properties and by extension the tenants were properly looked after and that as a landlord he fully complied with all the legislation.

- f) The Respondent accepts that although the initial weeks of the lockdown presented a challenge it cannot be said that the disruption remained at the same level for 2 to 3 years or that it remained at a level that would have prevented the Appellant from achieving compliance before enforcement took place.
- g) The deadline for complying with regulation 23 was 31 March 2020. From 1 April 2020 it became a legal requirement for all rented properties to have an EPC rating of at least rate E. The legislation requiring the Properties to have an EPC of at least rate E from 1 April 2020 came into force on 1 October 2017. The Appellant had 2.5 years to bring the Properties into compliance well before Covid hit and as such any impact of Covid on compliance should have been minimal as the national lockdown began on 26 March 2020, just 5 days before the deadline for compliance expired. Any potential mitigation due to Covid is minimal and the Appellant's activities during that period should not be given weight.
- h) The Appellant did not take all reasonable steps and due diligence was not exercised in order to avoid committing the breaches.
- i) The Appellant offered no evidence relating to the tenants despite the specific request in the CN for a copy of the tenancy agreement. Neither was any information regarding tenancy terms and rent levels provided as part of the review. It is noted that no evidence was provided in respect of this with the appeal either. The Respondent therefore cannot comment on these assertions as it has no knowledge of the facts and the assertions cannot be verified in any way at this time.
- j) There are no grounds to reduce the FPs taking into account the representations made and the information available.

Conclusions

- 9. I In reaching my decision I have taken into account all the evidence before me even if it is not specifically referred to in this decision.
- 10. I find that the Appellant was a joint landlord with Mrs Beckett of Properties 1 and 2. Although no tenancy agreement has been lodged I make findings on the basis of the information provided by Mrs Beckett on behalf of the Appellant that they took on the

responsibility for the Properties some years ago and were subletting the Properties. The tenants have been renting the Properties for 15/20 years. This is not in issue between the parties.

11. No grounds of appeal have been put forward in relation to the failure to provide the information and documents request in the CNs. At the date of the hearing the CNs had still not been fully complied with. I find the Appellant failed to comply with the CNs as required, there were grounds to issue the PNs and there are no mitigating factors to reduce the FPs for the failure to comply with the CNs. The CN were clear and set out what information and documents were required. The Appellant has provided no reasonable explanation for the failure to comply.
12. No evidence has been submitted in relation to the tenants and no copy of any tenancy agreement. No details of the terms of the tenancy or the rent have been provided. Mrs Beckett told Mr Osborne, Principal Environmental Health Officer of the Respondent, that the tenancy agreements were a private matter.
13. It is the responsibility of the Appellant to comply with the legal obligations as landlord and to respond to the CNs.
14. I find that the Appellant did not take all reasonable steps to avoid committing the breaches and did not take steps to comply with the CN.
15. I find that since taking on the Properties the Appellant, as joint landlord, has undertaken no work on the Properties.
16. The EPC certificate for Property 1 valid dated 7 May 2019 had a rating of F (pages 24 to 28 Appeal A).
17. The Energy Report for Property 1 dated 11 May 2023 indicated a rating of F (pages 111 to 113 Appeal A).
18. The EPC certificate for Property 1 dated 15 June 2023 had a rating of E (pages 135 to 19 Appeal A).
19. The EPC certificate for Property 2 dated 30 April 2019 had a rating of F (pages 28 to 33 Appeal C).

20. The Energy Report dated 11 May 2023 for Property 2 had a rating of F (pages 112 to 114 Appeal B)
21. I find on the basis of the evidence that there were breaches of regulation 23 of the Regulations in relation to Properties 1 and 2. Mrs Beckett, on behalf of the Appellant, has accepted these breaches.
22. I find that Mrs Beckett, on behalf of the Appellant, took steps to seek advice regarding energy efficiency improvements after the enforcement action by the Respondent.
23. I find that the Appellant had ample opportunity to take all reasonable steps to avoid committing the breaches and failed to do so.
24. I find the onus was on the Appellant to be aware of the legislation in April 2020 when the Regulations came into force and ensured he complied with those legislative requirements.
25. The onus is on the Appellant as the landlord to ensure he kept himself up to date with the legislative requirements. It is asserted that the Respondent did not provide help and information. It does not assist the Appellant to pass the blame for the breaches onto the Respondent. The responsibility was his.
26. The fact that the Appellant was unaware of the legislative requirements is of no assistance to him. It is significant that the EPC for Property 2 produced in 2019 states clearly that the property cannot be let unless an exemption was registered against it. I find that this EPC put the Appellant clearly on notice of his responsibilities which he chose to ignore.
27. Mrs Beckett, on behalf of the Appellant, asserts that they supported the tenants with their needs and requirements, that the tenants were happy with the accommodation and the rent level and had not complained about high energy bills. This does not assist the Appellant as it does not release him from his legislative obligations. The Appellant has submitted no documentation about the tenancies so I am unable to make findings in relation to this point of appeal. I considered whether I should adjourn to enable the Appellant to lodge more evidence but have decided it is not proportionate to do so taking into account that the Appellant has had ample opportunity to submit documentation in support of his appeals and has chosen not to do so.

28. I find the Appellant had ample opportunity to take steps to comply with the Regulations. It is accepted that there were challenges during the lockdown in getting work done but those difficulties do not excuse the Appellant from taking steps to comply with the legislative obligations. It does not assist the Appellant to submit that Mrs Beckett contacted the energy companies and received no replies. He took no steps until enforcement action had been taken and the responsibility was his not that of the energy companies.
29. It is asserted that some work was undertaken but has submitted no documentation in support of this. This does not assist the Appellant as any work undertaken was not completed until after the enforcement action.
30. In reaching my decision I have borne in mind that the deadline for complying with regulation 23(2)(b) of the Regulations was 31 March 2020 and from 1 April 2020 it was a legal requirement for all rented properties to have an EPC rating of at least rate E. The legislation requiring this came into force on 1 October 2017 and the Appellant had over two years to bring the Properties into compliance before the lockdown.
31. I find that the Appellant did not take all reasonable steps and exercise due diligence in order to avoid the breaches.
32. It is submitted that Mrs Beckett had high demands on her time and experienced demanding family difficulties in addition to assisting on the farm. These matters do not assist the Appellant for the reasons as stated. The demands on Mrs Beckett's time and family responsibilities do not absolve the Appellant from the legislative responsibilities of a landlord.
33. I find that there were grounds to issue the PNs and impose the FPs and that the notices contain all the information required by the Regulations.
34. I find that the FPs for failing to comply with the CNs were reduced on review taking into account that although the CNs had not been fully complied with there had been some communication and some information provided about intended works.
35. I find that there are no mitigating factors to further reduce the FPs and that it was appropriate in all the circumstances to issue the PNs and impose the FPs.

36. Accordingly, the appeals are dismissed.

Signed: *J Findlay*

Date: 2 May 2024