



NCN: [2025] UKFTT 260 (GRC)

Appeal Number: FT/SL/2024/0081.

**First-Tier Tribunal
(General Regulatory Chamber)
SL Standards & Licensing.**

Heard on CVP: On 11 February 2025.

Tribunal Panel: Judge Brian Kennedy KC

Between:

John Leonard Kenyon

Appellant:

and

The London Borough of Islington

Respondent:

Representation:

The Appellant: John Kenyon as a Litigant in person.

The Respondent: Gary Ward of the Respondent Council.

Result: The Appeal is dismissed.

REASONS

Introduction:

- [1]** This Judgment relates to an appeal brought against the decision contained in a Penalty Notice (“PN”) dated 14 August 2024 (reference WK/230053394).

Factual Background:

- [2]** The PN was served under regulation 41 of the Regulations above for a breach of regulation 27 of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. The financial penalty is: £2,00.00 reduced to £1,000.00 if paid within 14 days.

- [3]** The facts that give rise to the breach are that on 22 March 2016 an EPC was issued in respect of 54 Cross Street, London N1 rating the property as a G. On 6 July 2016 the landlord of 54 Cross Street, Mr John Leonard Kenyon granted a lease on this address for ten years. On 1 April 2023 the regulations changed so that from that date no (non-domestic) property could be let (or continue to be let) unless the property had an energy performance of at least a E (or a valid registered exemption).
- [4]** On 22 March 2016 an EPC was issued in respect of 54 Cross Street, London N1 rating the property as a G.
- [5]** On 28 July 2024, 54 Cross Street was assessed for energy performance and rated as a C. The property now complies with the regulations however, from 1 April 2023 until 27 July 2024 the property had been let with an energy performance rating of a G (nor did it have a valid a registered exemption) and hence a breach of the regulations has occurred.
- [6] Facts Agreed/Not Agreed:**
- i) It is agreed that the Penalty Notice incorrectly states that “On 6 July 2024 the Appellant landlord of 54 Cross Street, Mr John Leonard Kenyon granted a lease on this address for ten years.”
 - ii) It is agreed that the lease was granted on 6 July 2016 and continued to be so let until at least 28 July 2024.
 - iii) It is agreed that the EPC issued on 28 July 2024 shows that the property was now rated as a C.
 - iv) It is not agreed, as stated on GRC1, that “*On 1st April 2023 the property had a C rating according to the new grading system.*”
 - v) It is not agreed, as stated on GRC1, that “*We have been in compliance under the current grading system, and it might only be argued the paperwork needed updating*”.
 - vi) The Appellant states that a breach of the regulations did not occur.
 - vii) The Respondent states that a breach of the regulations did occur between 1 April 2023 until 27 July 2024.
- [7]** Trading Standards is responsible for enforcing the provision of a wide range of legislation which includes the provisions of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (hereafter “the regulations”)

- [8] The regulations require that non-domestic premises **must** (our emphasis) be assessed for their energy efficiency and a certificate issued which rates the property in a series of bands from A-G. On 1 April 2023 the regulations provided that all non-domestic properties (subject to a small number of exemptions) could not be let if the property was rated as an “F” or “G”.
- [9] George Moraitis, a Trading Standards Officer from the London Borough of Islington has provided a witness statement in which he avers that on 03 May 2024 he visited the EPC register where he located an entry for 54 Cross Street, London N1 2BA he noted that the property had been assessed on 22 March 2016 and rated it as a “G.”
- [10] The regulations provide that a notice may be issued to the landlord of a non-domestic property requiring that they provide certain specified information. The notice is termed a compliance notice which in this case is dated 03 May 2024.
- [11] As the property was now compliant, Mr Moraitis informed Alonso Ercilla (also on the Council Trading Standards team) in the Council so he could review the relevant penalty and on review it was decided in line with the Council set procedures that they would reduce the penalty and the penalty after review was issued on 14 August 2024 (as set out above).

The Hearing:

- [12] The Appellant attended the appeal hearing as did the Respondents witnesses George Moraitis and Alonso Ercilla who gave evidence in chief and were cross-examined by the Appellant.

Conclusion:

- [13] In effect the relevant facts were established and in essence the Appellant accepted there was a breach under the Law however he opined that the spirit of the Law did not follow the facts in this case and it was unfair both in the manner and duration it was pursued and followed, and in the way it was being enforced and in the quantum of the penalty.
- [14] The Tribunal pay tribute to the Appellant for raising his concerns and challenges at this appeal as a result of the unfortunate sequence of events in which he ultimately became engaged. It is also noted and recorded that the exemplary conduct of all involved on both parties in the manner in which they co-operated in their dispute and/or misunderstandings therein, is a credit to all involved.

[15] There is now no disagreement on the fundamental facts that the alleged breach of compliance on the Part of the Appellant has in fact been established in relation to the PN which is in accordance with the Law. The real issue between the parties was one of reasonableness and proportionality. On that issue Alonso Ercilla of the Respondent Council gave clear and unambiguous evidence about the policy and practice of determining how the level is to be assessed and he described in detail the Review process when a fine for a PN is to be determined. The Council submit their process engage proportionate and reasonable steps the Council take to arrive at the final PN. While I recognise the import of the mitigating factors due to this Appellant, which are formidable, I cannot accept that the Respondents approach is other than reasonable and proportionate in all the circumstances and I must dismiss the substance of this appeal and decree in the circumstances that the fine of £1,000.00 be paid as envisaged with 14 days, and now in effect from the date of receipt of this Judgment.

Brian Kennedy KC

13 February 2025.

Decision given on date: 27 February 2025