



NCN: [2024] UKFTT 00726 (GRC)

Case References: PR/2023/0064/EER  
PR/2023/0082/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**

**PENELOPE BECKETT**

Appellant

**and**

**WYRE FOREST DISTRICT COUNCIL**

Respondent

**Decision:** The appeals are Dismissed.

Appeal A (PR/2023/0064/EER)

The Penalty Notice (“PN”) dated 5 June 2023 as confirmed on 9 August 2023 (Notice reference WK/20230040/CON) for a breach of regulation 23 of The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 (“the Regulations”) in relation to 1 Drayton Villa Farm Cottages, Drayton Road, Drayton, Belbroughton, Worcestershire, DY9 0DJ (“Property 1”), is affirmed. A Financial Penalty (“FP”) of £1500 should be imposed.

Appeal B reference (PR/2023/0082/EER)

The PN dated 5 June 2023 as confirmed on 9 August 2023 (Notice reference WK/202300405/CON) (pages 1 and 2) for a breach of regulation 23 of the Regulations in relation to 2 Drayton Villa Farm Cottages, Drayton Road, Drayton, Belbroughton, Worcestershire, DY9 0DJ (“Property 2”), 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 192 pages for Appeal A and a bundle of 167 pages for Appeal B.
2. The Respondent issued a PN dated 5 June 2023 (page 1 Appeal A) to the Appellant on the grounds that Property 1 had been let out on or after 1 April 2020 with an EPC that was below the minimum standard required. The Respondent imposed a FP of £1500 (Notice reference WK/202300404).
3. The Respondent issued a CN to the Appellant dated 9 August 2023 (page 4 Appeal A) to impose a FP of £1500 (reference WK/202300404/CON).
4. The Respondent issued a PN dated 5 June 2023 to the Appellant (pages 104 and 105 Appeal B) on the grounds that Property 2 had been let out on or after 1 April 2020 with an EPC that was below the minimum standard required. The Respondent imposed a FP of £1500 (Notice reference WK/20200405).
5. The Respondent issued a CN to the Appellant dated 9 August 2023 (pages 1 and 2 of Appeal B) to impose a FP of £1500 in relation to Property 2 (reference WK/202300405/CON).
6. The Appellant indicated she wished to appeal against the decisions of the Respondent with references WK/202300400, WK/202300402 and WK/2023/00404 (page 7 of Appeal A) and the decisions with references WK/202300401, WK/202300403 and WK/202300405 (page 4 Appeal B).
7. The decisions with references WK/202300402 and WK/202300400 related to Mr Beckett (pages 2 and 3 Appeal A). The only decisions before me involving the Appellant are as

stated above WK/202300404 (Property 1) and WK20200405 (Property 2). I have considered four linked appeals brought by Mr Beckett (PR/2023/0065, PR/2023/0079, PR/2023/0080 and PR/2023/0081). Separate decisions have been issued for these appeals

8. I am satisfied that there are only two appeals before me relating to the Appellant on the basis of Mr Osborne's email to the Appellant of 18 August 2023 (page 148 Appeal B).
9. The Appellant puts forward the following grounds of appeal in relation to Appeals A and B:
  - a) It was inappropriate to serve a PNs in the particular circumstances.
  - b) She accepts that as a landlord she overlooked the changes to the regulations governing EPCs for rented accommodation.
  - c) The period of the pandemic was extremely difficult.
  - d) She had recently retire and was supporting a friend who ran a care agency.
  - e) She was the main support for her 88 year old mother.
  - f) She was assisting in the running of her family business of a dairy farm.
  - g) She 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) She 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) She 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) She 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. She is waiting for a date to fit an air source heat pump. When this work is complete the energy rating will be at the required level.

### **Grounds of opposition**

10. The Respondent submits that following points in relation to Appeals A and B:

- a) The Properties are semi-detached properties of cavity wall construction.
- b) The Land Registry record shows that the freehold owners are Mr Simon Wilson and Mrs Yu-Lin Wilson.
- c) The Properties at all material dates were let and managed by the Appellant and her husband.
- d) The Appellant told Ms Woodcock, Housing Enforcement Officer, on the telephone that she and her husband had taken the Properties on some years ago and were subletting them and that the EPC was already in place when they took on the Properties and no work had been undertaken since.
- e) The Appellant confirmed she and her husband were joint landlords.
- f) When making the decisions the Respondent referenced the Chartered Institute of Environmental Health excess cold enforcement guidance. In particular, the relevant information regarding insulation, heating and ventilation as well as the excess cold hazard assessment.
- g) The Respondent was aware that following the lockdown contractors were temporarily stopped from carrying out works. The initial weeks of the lockdown presented a challenge but the disruption did not remain at the same level for 2 to 3 years and would not have prevented the Appellant from achieving compliance before the enforcement action was taken.

- h) The deadline for complying with regulation 23(2)(b) of the Regulations was 31 March 2020. From 1 April 2020 it became a legal requirement for all rented properties to have an EPC at least of rate E from 1 April 2020. The legislation came into force on 1 October 2017. The Appellant had 2.5 year to bring the Properties into compliance well before Covid hit. Any impact of Covid on compliance would be minimal. The national lockdown did not start until 26 March 2020.
- i) The Appellant did not take all reasonable steps and due diligence was not exercise in order to avoid committing the breaches.
- j) No tenancy agreements have been produced and no evidence in relation to the tenancy terms and rent levels. The Respondent is unable to comment on the Appellant's assertion that the tenants were very happy with the accommodation/rent levels and had not complained about extra high energy bills.
- k) The Respondent answered all questions put by the Appellant and general information and advice was given during the initial call from the Appellant.
- l) It is the responsibility of the Appellant to ensure the Properties are complaint and that she, as a landlord, is up to date with the relevant legislation. The Appellant should seek independent advice if necessary.
- m) The EPC certificate made it very clear that works needed to be undertaken to ensure compliance and the work could have been undertaken at a much earlier state and before the deadline passed.
- n) The fact that steps were taken to seek advice after the enforcement action began has already been taken into account.
- o) As at 9 January 2024 the Property 2 retains a substandard F rating.
- p) There are no grounds to reduce the FPs. The appellant did not take all reasonable steps to avoid committing the breach.
- q) There was no evidence submitted to show that works had been undertaken and there could have been work done under the cost cap which were clearly stated within the EPC such as increasing the loft insulation cavity wall insultation, installing heating

controls (thermostatic radiator valves), replacing the boiler with a new condensing boiler and installing a flue gas heat recovery device in conjunction with the boiler (Property 2). The EPC for Property 1 showed that recommended works of increasing the loft insulation, cavity wall insulation, installing low energy lighting and high heat retention storage heaters could be achieved under the cost cap of £3,500.

- r) The Appellant accepts that she failed to comply with the Regulations and continued to let out the sub-standard Properties in breach of regulation 23 of the Regulations.
- s) It was appropriate in all the circumstances to issue the PNs.
- t) None of the matters raised by the Appellant are supported by any evidence.
- u) Even if the Appellant's explanations are accepted, which they are not, one would assume that a responsible landlord would ensure that additional help was obtained to ensure that the Properties and the tenants are properly looked after and as a landlord the Appellant should ensure full compliance with the legislation.

## **Conclusions**

11. 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.
12. I find that the Appellant was a joint landlord with Mr Beckett of Properties 1 and 2. Although no tenancy agreement has been lodged I make this finding on the basis of the information provided by the Appellant that she and Mr Beckett took on the responsibility for the Properties some years ago and were letting the Properties from the owners and subletting the Properties to tenants. The tenants have been renting the Properties for 15/20 years. This is not in issue between the parties.
13. I find that since taking on the Properties the Appellant, as joint landlord, has undertaken no work on the Properties.
14. The EPC certificate for Property 1 valid until 6 May 2029 had a rating of F (pages 34 to 38 Appeal A).

15. The Energy Report for Property 1 dated 11 May 2023 indicated a rating of F (pages 127 to 129 Appeal A).
16. The EPC certificate for Property 1 dated 15 June 2023 had a rating of E (pages 157 to 161 Appeal A).
17. The EPC certificate for Property 2 dated 30 April 2019 had a rating of F (pages 25 to 30 Appeal B).
18. The Energy Report dated 11 May 2023 for Property 2 had a rating of F (pages 113 to 115 Appeal B)
19. 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. The Appellant accepts these breaches.
20. I find that the Appellant took steps to seek advice regarding energy efficiency improvements after the enforcement action by the Respondent.
21. I find that the Appellant had ample opportunity to take all reasonable steps to avoid committing the breaches.
22. 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 she complied with those legislative requirements.
23. The onus is on the Appellant as the landlord to ensure she keeps herself up to date with the legislative requirements. She asserts that the Respondent did not provide her with help and information. It does not assist the Appellant to pass the blame for the breaches onto the Respondent. The responsibility was hers.
24. The fact that the Appellant was unaware of the legislative requirements is of no assistance to her. 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 (page 25 Appeal B). I find that this EPC put the Appellant clearly on notice of her responsibilities which she chose to ignore.
25. The Appellant asserts that she 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 her from her legislative obligation. 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 her appeals and has chosen not to do so.

26. 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 she contacted the energy companies and receive no replies. She took no steps until enforcement action had been taken and the responsibility was hers not that of the energy companies.
27. The Appellant asserted that she has undertaken some work 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.
28. In reaching my decision I have born 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.
29. I find that the Appellant did not take all reasonable steps and exercise due diligence in order to avoid the breaches.
30. The Appellant submits that she had high demands on her time and difficult and demanding family difficulties. These matters do not assist the Appellant for the reasons as stated. The demands on her time and family responsibilities do not absolve her from the legislative responsibilities of a landlord.
31. 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.



32. I find that there are no mitigating factors to reduce the FPs and that it was appropriate in all the circumstances to issue the PNs and impose the FPs.

33. Accordingly, the appeals are dismissed.

**Signed: *J Findlay***

**Date: 2 May 2024**