



Case Reference: PR/2023/0093/EER
Neutral Citation Number: [2024] UKFTT 00780 (GRC)

First-tier Tribunal
General Regulatory Chamber
Professional Regulation

Heard: Remote CVP hearing

Heard on: 18 June 2024
Decision given on: 8 August 2024

Before

TRIBUNAL JUDGE FINDLAY

Between

ALI SHAN

Appellant

and

NOTTINGHAM CITY COUNCIL

Respondent

Representation:

For the Appellant:

Mr Ali Shan

Mr Ayaz Ahmed

For the Respondent:

Mrs Elizabeth Metcalfe, Principal Environmental Health Officer

Mr Mark Thomas, Regulatory Compliance Officer

Decision: The appeal is Dismissed.

The Penalty Notice ("PN") dated 27 September 2023 is affirmed. A Financial Penalty ("FP") of £1,200 was appropriately imposed.

REASONS

1. I have conducted a hearing by CVP with the agreement of the parties. I have considered an open bundle of documents of 71 pages. I have heard submissions from Mrs Metcalfe and Mr Thomas and heard oral evidence from Mr Shan and Mr Ahmed, his son.
2. The appeal was listed at 10.00am. The link and instructions for joining the hearing were sent to Mr Shan at the email address he provided on 25 April 2024. When Mr Shan did not join the hearing the clerk telephoned him and Mr Shan stated that he did not know about the hearing. At 10.08 am an email was received from Ms Ferzana Shan, Mr Shan's daughter and appointed representative, asking for the hearing to be adjourned because her brother had not turned up to assist Mr Shan. Ms Shan gave no reason why she was unable to attend as Mr Shan's appointed representative. At 10.40 am Mr Shan joined the hearing by CVP with his son, Mr Ayaz Ahmed.
3. The Respondent is the enforcing authority. Mr Shan is the landlord of 152a Alferton Road, Nottingham, NG7 3NS ("the Property").
4. The Respondent issued a PN dated 27 September 2023 pursuant to regulations 38 and 39 of the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 ("the Regulations") (pages 3 to 10).
5. The PN stated that the Respondent was satisfied that Mr Shan, the landlord, was in breach of regulation 37(4)(a) in failing to comply with a compliance notice ("CN") served in respect of the Property. A FP of £1200 was imposed.
6. Where a landlord has failed to comply with a CN an Authority may impose a FP of up to £2,000 pursuant to Regulations 40(5) and may impose a publication penalty.
7. The Respondent served a CN on Mr Shan dated 25 January 2023 which required actions to be undertaken by 3 March 2023.
8. Mr Shan failed to supply this information/documentation to the Respondent.
9. The Respondent undertook a review of the PN on 24 November 2023 (pages 11 to 14) and decided to uphold the FP of £1,200.

10. Regulation 43 of the Regulations provides that if, after a review, a PN is confirmed by the enforcement authority, a landlord may appeal to the First-tier Tribunal on the grounds that—

- (a) the issue of the PN was based on an error of fact,
- (b) the issue of the PN was based on an error of law,
- (c) the PN does not comply with a requirement imposed by the Regulations, or
- (d) in the circumstances of the case it was inappropriate for the PN to be served.

11. Regulation 44 provides that the bringing of an appeal suspends the PN taking effect pending determination or withdrawal of the appeal and the tribunal may quash the PN or affirm the PN whether in its original form or with such modifications as it sees fit.

Grounds of Appeal

12. Ms Ferzana Shan, the appointed representative on behalf of Mr Shan, put forward the following grounds of appeal:

- a) Mr Shan did not receive the CN and at times his mail goes to Darley Avenue rather than Darley Road which is his residence.
- b) He only received the PN. He telephoned the Respondent to explain this and to inform them that building works to bring the Property to a better EPC were nearing completion and hence was compliant.
- c) He attached a photo of an envelope which he assumed contained a Christmas card addressed to Darley Avenue which had recently been posted to his address in Darley Road by mistake. The top half of the road is Darley Road where his home is and the bottom half of the road is Darley Avenue. Mail delivery mistakes were common and he did not always receive his mail.
- d) The deadlines were 31 December 2023 with no legal obligation to spend more than £3,500. He has spent twice this amount and has thus achieved an EPC rating of C. He does not understand why the Respondent still insists on issuing a PN and not taking any of the above into consideration.
- e) The current EPC certificate is proof that the works have been in progress and completed to a high standard.

- f) He seeks an annulment/waiver of the PN.

Grounds of opposition

13. The Respondent put forward the following points:

- a) The CN was correctly served on Mr Shan in accordance with the provisions of the Regulations in that it was posted to him at his last known address.
- b) Section 7 of the Interpretation Act 1978 (“the 1978 Act”) provides that where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. Therefore, the Respondent does not need to prove that Mr Shan received the CN. Provided the tribunal is satisfied that the CN was properly posted, the Respondent would have the benefit of the statutory presumption of service under section 7 of the 1978 Act.
- c) It is for Mr Shan to provide evidence in support of his case that he did not receive the CN (*Naujokas v Fenland DC* [2023] UKUT 190 (LC)).
- d) The CN, together with the two warning letters and the PN were all served to the same postal address, which is Mr Shan’s residential address as stated on his appeal.
- e) Regulation 38 provides that where a landlord has failed to comply with a CN, the enforcement authority may impose a PN of up to £2,000.
- f) The Respondent identified the Property as being non-compliant with the Regulations by checking the EPC register where it was identified the EPC rating was F. A further check of council tax records confirmed the Property as being privately rented with named occupants being confirmed in occupation since April 2020.

- g) The Respondent sent a letter to Mr Shan at his home address dated 11 October 2022, which advised of the Regulations and the actions required to ensure compliance. The letter gave 28 days to plan for the undertaking of the required energy efficiency improvements, commission a new EPC or register an exemption. No Response was received to this letter and a check of the EPC and exemptions registers confirmed the EPC remained unchanged at F rating.
- h) A second letter was sent to Mr Shan dated 9 November 2022, which allowed a further 14 days to advise of any actions Mr Shan planned to undertake. No response was received to this letter and a further check of the EPC and exemptions registers confirmed the EPC still remained unchanged at F rating.
- i) The Respondent served a CN on Mr Shan, dated 25 January 2023, which required Mr Shan to supply the information/documents listed below by 3 March 2023:
- a. the EPC for the Property which was valid at the time the Property was let. This must include any EPC commissioned even if it was not publicly available for viewing on the EPC register,
 - b. any other EPC for the Property,
 - c. any current tenancy agreement under which the Property was let,
 - d. any qualifying assessment in relation to the Property,
 - e. any invoices or written evidence or proof of the cost of any energy improvements carried out at the Property since 1 October 2017.
- j) The Respondent was justified in serving this notice because it needed to establish:
- (i) What energy efficiency improvements had been carried out or were being carried out at the Property
 - (ii) If the Property was occupied and by whom and for how long, hence the requirement to see a tenancy agreement
 - (iii) Who was the Landlord
 - (iv) Whether a new EPC had been completed, which had improved the Property to the minimum standard or for a new EPC to be commissioned to ensure compliance with the Regulations.

- k) Regulation 3 of the Regulations provides that any notice served under these Regulations must be in writing and may be given by post.
- l) Section 233 of the Local Government Act 1972 permits service by authorities by delivery of a document to the person to be served, or by posting it to him at his "proper" address, or by leaving it at his "proper" address. The "proper" address of a person is his last known address, save that in the case of a body corporate it is the registered or principal office, and in the case of a partnership, the principal office of the partnership. Mr Shan's proper address was confirmed by the council tax record. This is also the address provided by Mr Shan on the appeal form and the selective licence application for the Property.
- m) Mr Shan failed to supply this information/documentation to the Respondent by the 3 March 2023, and therefore failed to comply with the CN. A check of the EPC and exemptions registers confirmed that no exemption has been registered and the EPC was still rated as F. Mr Shan is therefore in breach of regulation 37 4)(a) having failed to comply with a CN within the specified timescale.
- n) Following the service of the CN the case officer visited the Property on several occasions in an attempt to confirm occupation and ascertain if any energy efficiency improvements had been undertaken at the Property. The officer visited on 15 March 2023, 21 April 2023 and 16 June 2023. Access was not gained to the Property as there was no response to the door knocks, however, it was noted that windows were open which indicated that the Property was occupied. The officer noted during the visits that the windows were of a wooden framed, single glazed type as identified within the EPC dated 27 August 2013.
- o) An officer visited the Property on 15 September 2023 and noted that the windows and front door had been replaced with a UPVC type door and UPVC windows with double glazing. This indicated that works to improve the energy efficiency of the Property had begun prior to the service of the PN. In view of energy efficiency improvements having started, the Respondent exercised its discretion and decided not to issue a PN for the breach of Regulation 23, letting a sub-standard property for over 3 months. However, there were

grounds to serve a second PN and impose an additional FP as there was a breach of regulation 23. Had the Respondent done so this would have significantly increased the FPs.

- p) Mr Shan confirmed the fitting of a new door and windows in a telephone conversation with the case officer on 28 September 2023. Mr Shan stated in that telephone conversation and in his appeal that the works were underway and nearing completion in any case. This contradicts Mr Shan's statement that they had not received the CN as stated within his appeal, or why else were energy efficiency improvements being undertaken? It is important to note that no other team within the LHA were actively involved in conducting a housing inspection of the Property and the only team actively requesting energy efficiency improvements was the Minimum Energy Efficiency Standards ("MEES") enforcement team.
- q) The Respondent refutes Mr Shan's allegations that they did not take into consideration Mr Shan's age and disabilities. During the telephone conversation on 28 September 2023, Mr Shan was clear in advising the case officer of his age and disabilities. As problematic as these issues would be, this does not prevent Mr Shan from letting the Property and operating as a landlord for financial gain and therefore does not excuse him from complying with his legislative responsibilities. The case officer politely responded to Mr Shan advising as such and confirmed that the Respondent had correctly followed the law in legally and duly serving the CN.
- r) The Respondent refutes Mr Shan's allegation that the case officer refused to accept Mr Shan had not received the CN, or that it had not been served as there was no evidence that it had been. The CN was properly posted and the Respondent has the benefit of the statutory presumption of service and all correspondence and notices were correctly addressed as the Royal Mail postcode finder confirms. 18 Darley Road is listed as having the postcode NG7 5NS, the address to which all correspondence was sent.
- s) The Respondent is unaware of further telephone calls made by Mr Shan. Mr Shan holds the case officers' number and the Principal Environmental Health Officer's telephone number from previous correspondence. No missed calls

and/or voicemail has been received from Mr Shan to either officers' knowledge.

- t) Mr Shan refers to the compliance deadline as being 31 December 2023. This is the deadline given on the PN for completion of energy efficiency improvements. The PN clearly states the maximum amount Mr Shan was required to spend was £3500 inclusive of VAT.
- u) The PN for breaching regulation 37(4)(a) is reasonable and proportionate as Mr Shan failed to comply with the requirements of a CN and did not have the Property reassessed until 20 December 2023, nine months after the specified date within the CN.
- v) The Respondent asks that the PN is affirmed.

Discussion

14. At the hearing Mr Ahmed and Mr Shan repeated the grounds put forward in the notice of appeal that the PN should be quashed because Mr Shan did not receive the CN. They said that it was likely that the CN was delivered in error to 18 Darley Avenue. Darley Avenue and Darley Road are one road. Mr Shan has received mail for 18 Darley Avenue so it is likely his mail was delivered to 18 Darley Avenue.
15. Mr Thomas, on behalf of the Respondent, submitted that service of the CN and PN was valid and that as long as I was satisfied that the CN was properly posted the Respondent should have the benefit of the statutory presumption of service under the 1978 Act.
16. Mr Ahmed and Mr Shan argued that Mr Shan had incurred considerable expense and had gone beyond the minimum because he liked to maintain a good standard in the Property.
17. Mr Shan told me that he is used to doing things for himself and dealing with builders and the updating of his properties. He has been in and out of hospital but has done his best to keep up to date and tried to apply the law correctly.
18. Mr Ahmed and Mr Shan stated that the new double glazing windows and the new door were fitted in March or April 2023 and Mr Shan had decided to do this because the builders told him to do so and it was not in response to the CN. The

Respondent sought to rely on the report of the officer who visited the Property on 16 June 2023 and reported that the windows were wooden framed as recorded in the EPC dated 27 August 2013 and that the UPVC door and UPVC windows were only seen at the visit on 15 September 2023.

19. Mr Ahmed argued that there was no reason for his father to lie and that he spent whatever was required on the Property. He as an elderly disabled person who had always done what he had to do to comply with the legislative requirements.
20. Mr Ahmed and Mr Shan argued that the Respondent had failed in its statutory duty because it was on notice that Mr Shan had health problems but failed to ask Mr Shan what reasonable adjustments he required and failed to provide any reasonable adjustments. The Respondent has a strategy which it did not follow as did not accommodate Mr Shan's disabilities. Mr Thomas stated that Mr Shan first indicated he had disabilities during the telephone call on 28 September 2023 but he has not stated what reasonable adjustments he requires and his health problems have not stopped him running his business as a landlord and operating in the private renting sector for many years. Mr Shan should have been aware of his legislative responsibilities.
21. Mr Thomas argued that the terms of the telephone conversation of 28 September 2023 suggested that Mr Shan had received the CN when he indicated the work had already started and Mr Shan had given no other reasonable explanation for starting the work at that time. It was unlikely that he would have started the work unless he had sight of the CN.

Conclusions

22. I find that Mr Shan is 76 years of age and has been a landlord for 50 years. He is the landlord of the Property and one other property. He had read the papers, was mentally lucid and assisted during the hearing by his son. I considered it was in the interests of justice to proceed with the CVP hearing notwithstanding that Mr Shan did not have legal representation.
23. I find that Mr Shan at all material dates was a sole trader. He has always been used to doing things for himself including dealing with correspondence, paperwork, doing his accounts and dealing with builders and the maintenance of his properties. He has no cognitive impairment or intellectual restrictions other than a bit of a memory problem. He has a number of physical disabilities. He lost

his right arm through an accident in 1974. He was right handed but since the accident has written with his left hand and managed all things with his left hand. Mr Shan had both his hips replaced. He has a problem with his shoulder, both his knees are arthritic and he has kidney problems. In October 2023 his wife was recovering from knee surgery (page 71). His physical disabilities do not prevent him from running his business with only occasional help from his family.

24. I find that having been a landlord for 50 years it is reasonable to expect Mr Shan to be aware of the legislative obligations on him as a landlord, keep himself up to date and ensure he ran his business in accordance with the legislation.
25. I find that the onus was on Mr Shan to ensure he complied with the legislation and he failed to do so. There is an expectation that Mr Shan would be proactive in assessing the Property to ensure it was compliant with the Regulations and to implement improvements where the Property is non-compliant.
26. I find that there are no grounds to reduce the FP further due to Mr Shan's age or disabilities, both physical and mental. His age and disabilities did not prevent him from operating a business as a landlord and his age and disabilities do not excuse him from complying with his legislative responsibilities.
27. Mr Ahmed and Mr Shan asserted that Mr Shan did not receive the CN and it was probably delivered in error to 18 Darley Avenue. Darley Avenue diverges into Darley Road are part of one continuous road. The postcode for 18 Darley Avenue is HG7 5NQ and the postcode for Mr Shan's address is NG7 5NS. Mr Shan said he had received mail addressed to 18 Darley Avenue so it is likely his mail was delivered to 18 Darley Avenue. Mr Shan in the notice of appeal included Bobbers Mill in his address (page 18). I find that this addition was of no significance because Darley Avenue and Darley Road both come within the Bobbins Mill area.
28. I find on the basis of the evidence that the Respondent sent the CN dated 25 January 2023 by Royal Mail post to Mr Shan's home address. I find it likely that Mr Shan received the CN and failed to act on it.
29. Regulation 37(4)(a) provides that a landlord must comply with a CN. I find Mr Shan failed to comply with the CN by 3 March 2023 as required and there were grounds for the Respondent to issue a PN on the basis that Mr Shan was in breach of regulation 37(4)(a).

30. I find that the service of the CN and PN complied with regulation 3 of the Regulations. I attach weight to the argument of the Respondent's arguments in relation to service.
31. I do not attach weight to Mr Ahmed and Mr Shan's evidence and the assertions that Mr Shan did not receive the CN. The chronology of events does not support the proposition that Mr Shan did not receive the CN. The CN was issued on 25 January 2023. Mr Shan informed Mr Thomas on the telephone on 29 September 2023 that new windows and doors had been fitted at the Property. The FN was issued on 27 September 2023. The new windows and door had been fitted between 16 June 2023 and 15 September 2023 which are recorded dates of visits to the Property by an officer on behalf of the Respondent. Mr Ahmed and Mr Shan could provide no reasonable explanation for Mr Shan starting energy efficiency improvements at the Property after 16 June 2023. In the absence of any other likely explanation it is likely that Mr Shan commenced work in response to the CN.
32. The evidence of Mr Ahmed and Mr Shan was unreliable. They told me that the new windows had been fitted in March/April 2023 but this was not correct as the old wooden framed windows were observed on 16 June 2023 when the Property was visited by an officer of the Respondent.
33. Mr Shan has a history of not responding to the Respondent when asked to do so. The Respondent wrote to Mr Shan on 11 October 2022 informing him of the legislative responsibilities in relation to the Property (pages 50 and 51). Mr Shan did not respond. The Respondent wrote to Mr Shan on 9 November 2022 again informing him of the legislative responsibilities (pages 52 and 53). Mr Shan did not respond.
34. The tenants of the Property have been in occupation since April 2020. Mr Shan was informed by the Respondent in a letter dated 11 October 2022 that steps were being taken to enforce the MEES. Since 1 April 2020 all privately rented properties must achieve a minimum EPC rating of E before being let. The EPC certificate dated 27 August 2013 (pages 41 to 49) had a rating of F and stated clearly the rules on letting the Property. It stated that the Property had an energy rating of F and could not be let unless an exemption had been registered. This notice was clear and Mr Shan did not act on it.
35. Mr Shan would have been aware of the EPC certificate of 27 August 2013 and the notice it contained on letting the Property when he entered an agreement to let

to tenants in April 2020. He chose to ignore the notice in the EPC certificate and failed to complete the work necessary to obtain a complaint EPC certificate until 20 December 2023. He could give me no explanation as to why he decided to commence work after June 2023. I find it highly likely that he commenced the work in response to the CN. I reject his assertion that he did not receive the CN.

36. I have attached weight to the report that an officer of the Respondent visited the Property on 16 June 2023 and noted that the windows were of a wooden framed, single glazed type as identified on the EPC dated 27 August 2013. An officer of the Respondent attended the Property on 15 September 2023 and noted that the windows and front door had been replaced for a UPVC type door and UPVC window with double glazing.

37. I find that the Respondent did not fail in its statutory duty to provide reasonable adjustments. I find that the Respondent did not fail to accommodate Mr Shan's disabilities. I asked Mr Ahmed and Mr Shan what reasonable adjustments he would have required or what reasonable adjustments would have assisted him. They were unable to identify any reasonable adjustments which could have been provided, that would have assisted him and confirmed that Mr Shan did not request any reasonable adjustments. I find that the Respondent was not at fault in the dealings with Mr Shan on the grounds that although he was 76 years of age and had physical problems he was able to run his business as a sole trader landlord supervising two properties and managing the financial side of the business himself. He only occasionally sought help from his family and was unable to identify any reasonable adjustments which would be of assistance to him. There is no reason why he could not have asked for reasonable adjustments to be made had there been any that would have assisted him. He did not do so.

38. In his notice of appeal Mr Shan stated that he was disabled with one arm, that he struggled to walk and used a walking stick. He needed a reasonably high seat as he could not sit right down in a lower seat and he struggled to get up as only had the use of one arm. These requirements were relevant only in relation to the attendance at a hearing. Such adjustments would not be relevant to the Respondent's dealings with Mr Shan in relation to this matter.

39. In his notice of appeal dated 28 December 2023 Mr Shan stated that "The compliance deadlines were 31st December with no legal obligation to spend more than £3500. I however have spent twice this amount and have thus achieved an

EPC rating of C.” I find that this does not assist Mr Shan with his appeal. He had ample opportunity to comply with the legislation and obtain an EPC certificate with a compliant rating but failed to do so until 20 December 2023. I find that this is not a mitigating factor.

40. It does not assist Mr Shan that he stated in a telephone call on 28 September 2023 that “The compliance works regarding the EPC were nearing completion, proving that I was complying with EPC recommendations” because the EPC with a compliant rating was not obtained until 20 December 2023.
41. It does not assist Mr Shan that he wrote in his email dated 23 October 2023 (page 71) “I have builders currently working in the property to ensure it meets the EPC compliance. This will be completed in the next week and will be ready for an enhanced EPC” because a compliant EPC certificate was not obtained until 20 December 2023.
42. I find that the CN and PN contained all the information required by the Regulations.
43. As work to improve the energy efficiency had begun on 15 September 2023 the Respondent exercised its discretion and decided not to issue a PN for the breach of Regulation 23 letting a sub-standard property for over 3 months. Mr Shan had been at any time in the 18 months preceding the date of service in breach of Regulation 23. This matter is not before me for determination.
44. In reaching my decision I have taken into account that under regulation 38 the Respondent could impose a FP of up to £2,000. The reduction to £1,200 takes into account that there is no history of non-compliance with regulatory requirements and Mr Shan had commenced work at the Property before the PN was issued. I find there are no mitigating factors to reduce the FP further.
45. I find that the decision of the Respondent was not based on an error of fact, was not based on an error of law, complied with the requirements imposed by the Regulations and in the circumstances of the case it was appropriate for the PN to be issued.
46. Accordingly, the appeal is dismissed and the PN is affirmed.

Signed: *J Findlay*

Date: 18 June 2024