

**Rent Assessment Committee: Extended reasons for decision.
Housing Act 1988**

Address of Premises

156 West Common (Chapel Street)
Horningsham
Warminster
Wiltshire
BA12 7LT.

The Committee members were:

Mr R L Sansbury (Chairman)
Mr J D Bunkall FRICS
Mr C G Thompson

1. Background

On 23 April 2004 the tenant of the above property, Professor G Spencer-Brown, referred to the Committee a notice of increase of rent served by the landlord, the Trustees of Viscount Weymouth's Fund, under section 13 of the Housing Act 1988.

The landlord's notice, which proposed a rent of £580 per month with effect from 1 May 2004 is dated 24 March 2004..

The tenancy commenced on 1 December 1999 for a term of six months. The Committee was provided with a copy of the Tenancy Agreement dated 9 November 1999. The tenant remains in occupation as a statutory periodic tenant. The current rent is £480 per month.

2. The Written Representations

The Committee received written representations from the landlord and the tenant and copies were sent by the Panel office to the other party in each case. .

A. The Tenant's representations.

These were primarily contained in the Tenant's letter of 15 March 2004 ('the March letter') which supplemented his application form. A further letter was received from the tenant dated 1 June 2004, with a fax apparently of the same date enclosing copy photographs.

The March letter sets out the major part of the tenant's case and the salient parts (quoted verbatim where indicated) are as follows:

'Kitchen; . (This is a room regarded by the landlord's agent and the Committee as a living room). '2 doors missing. Door to outside lets in wind and rain. Window does not fit. Tiled floor through which seeps a brown slime that treads all over the house. It is also corrosive..... Except for small alcove with cupboards and kitchen sink (this is the room the Committee considers to be the kitchen) with cupboards and kitchen sink (but no cooking facilities) the room is uninhabitable and unusable for any purpose'

'Stairwell; '1 door missing, another with no catch or handle, a third ill-fitting with 2-inch gap. Can be used for heating but uninhabitable because cannot be heated'

'Sitting Room; door to stairwell (with 2-inch gap) needs replacing and draught-proofing, door to porch not weather-proofed, door to outside lets in wind and rain and has broken letter-slot that delivers mail into pool of water..... window ill-fitting and lets in wind, rain and insects. Used to store books and pictures with the heating full on Uninhabitable and unusable for any other purpose, certainly not for working or entertaining.'

'Stairs and landing; Window so ill-fitting that a chill wind blows from it, so this area is cold and cannot be heated.'

'Bedroom 1; window so ill-fitting that with windows closed and locked the wind still blows papers and other objects off the cill, a swarm of bees and even a small bird got in through cracks that are not supposed to be there. Uninhabitable with radiator full on, cannot be heated above 55 degrees F in winter. Too cold and draughty even in summer'

'Boxroom; Ill-fitting window and no catch on door. Humanly uninhabitable but can be used as storeroom.'

'Bedroom 2; Very small but the only habitable room in the house. Ill-fitting window and door, but radiator large enough to heat it to a habitable temperature'

In the March letter the tenant concludes by alleging a) that the landlord had refused to make any other room habitable b) decoration was 'non-existent, walls peeling and flaking, repairs unpointed, walls and doors daubed and vandalised by previous tenant' c) the previous tenant was alleged to have removed doors, door knobs etc d) 'there are no cooking facilities whatever, not even a ring to boil a kettle, nor any other kitchen equipment' e) housing benefit had risen by the rate of inflation only.

The tenant enclosed a copy letter from the landlord (written by Mr Moore, the General Manager and Land Agent) dated 19 October 1999 the relevant paragraph of which is

'Lord Bath has told me that you would like to take a tenancy of the cottage in Chapel Street. I understand you have some concerns about the heating etc but apart from replacing the one missing radiator I think everything should function satisfactorily'

As to that letter the tenant in his representations comments 'copy letter from Mr Moore promises defects would be remedied before I moved in. They were not.' He also said his housing benefit had risen by the rate of inflation and complained that it had not been raised to pay for the previous rent increase in December 2001.

B The Landlord's Representations.

These were primarily contained in the letter from Mr P J D Grugeon Deputy Land Agent for the landlord dated 7 May 2004 ('the May letter'). Further letters were received from him dated 8th and 10th June 2004.

To summarise the salient parts of the May letter similarly: -

The property is described as a 'three bed-roomed detached property with garden (and) private parking and access area to the rear..... There is a reasonable sized garden alongside Chapel Street which was previously lawn prior to the current tenant moving in The tenant has had some difficulty in either looking after the garden or obtaining the services of a gardener' Consequently the landlord had offered to mow the garden on 3 or 4 occasions each year and cut the hedge annually.

(The property) 'underwent a considerable programme of refurbishment prior to the previous tenant taking up occupation on 1 July 1998. The property was re-roofed, which would have included felt and insulation and re-wired. Central heating was installed together with a new kitchen. Floor tiles were installed in the kitchen and/or bathroom. External decorations were carried out in 1998 and again in June 2002'.

'156 Chapel Street was left in good tenantable repair by the previous tenant and I would not have moved them to a larger and more expensive house on the Estate if there were any problems in relation to the condition of 156 prior to their leaving'

'I am content that when Professor Spencer-Brown took up his tenancy on 1 December 1999, the property was in good condition, bearing in mind its age and condition.'

'It is not the Estate's policy to redecorate properties between tenants. If the property is in need of, or overdue for, interior decorations, it is my custom either to make an allowance of say £50 per month for up to 6 months or to provide materials ... this was never discussed between myself and Professor Spencer-Brown The Estate does not supply curtains'.

'The Estate does not supply cooking facilities, except in cases where the property contains a rayburn or similar'

'I am content that the property was in good internal order when the tenant took over the tenancy on 1 December 1999 and that any decoration is due to his own actions and not to those of the Estate'

Mr Grugeon enclosed a copy letter from Mr Roger Hill, the Housing Standards Officer for the West Wiltshire District Council dated 18 March 2004 suggesting that certain work be done to the property, together with consequential correspondence with him and the tenant.

Also enclosed with the May letter was:-

- 1) A list compiled by Mr Grugeon of five allegedly comparable properties. One of these was 191 Chapel Street said to be detached with 3 bedrooms, 2 reception, oil fired central heating and a monthly rent of £600 fixed in January 2003.
- 2) A copy letter from Mr Hanwell, Rent Officer for Bristol, dated 6 May 2004 stating -
'..... it is my opinion that the open market rent of (the subject property) would be in the region of £625 - 675 per calendar month.'

'I inspected the property in 2000 for the local authority and found it to be in good condition.'

C The Tenancy Agreement between the parties is dated 9 November 1999. Clause 6 provides generally for the tenant to keep in repair all parts of the property other than those which the landlord is obliged to keep in repair all parts of the property other than those which the landlord is obliged to repair under section 11 of the Landlord and Tenant Act 1985. Clause 6 (g) specifically provides for the tenant to keep and leave the interior of the Premises in good decorative order. Clause 6 (n) requires the tenant 'to tend and cultivate the garden and to keep the same neat and well-trimmed and free from weeds.'

3. Inspection

- (a) The Committee inspected the property on 23rd June 2004 in the presence of Professor Spencer-Brown and his representative Major Roger Dean and Mr Grugeon on behalf of the landlord.
- (b) The property was found to be a detached cottage, approximately 200 years old, in the very attractive rural village of Horningsham and within a short distance of Warminster.
- (c) Village amenities include a Post Office, store and public house.
- (d) The accommodation includes two living rooms, the kitchen and the bathroom on the ground floor and three bedrooms on the first floor. Outside there is a substantial lean-to stone-built outhouse, quite a large area of garden and a parking area (serving this property only and with a separate access) for at least two vehicles.
- (e) The property generally appeared to be in reasonable condition having regard to its age and character. More specifically as to its age and condition:-
 - (1) The living room (referred to by the tenant as the kitchen) contained a rayburn stove; the tenant said he had no idea whether it works.. There were two doorways which did not contain doors. By the outside door there was staining of the floor tiles indicating that there had at some time been an ingress of water; however the area was dry despite it being a very rainy day and following rainfall for most of the night. On the floor the Committee noted the presence of a dark, damp substance being the 'brown slime' mentioned by the tenant in his representations. He had covered the floor with a considerable number of polythene bags, apparently to prevent the substance being trodden through the house. The tenant showed the Committee some shoes as evidence that the slime was 'corrosive'. There was (here and generally throughout the property) a considerable volume of paper work on the somewhat sparse furniture and on the floors. The tenant drew attention to some papers with a rusted paper clip as evidence of damp.
 - (2) The kitchen (referred to by the tenant in his representations as an alcove) was somewhat small but contained the sink unit and wall cupboards belonging to the landlord. There was a radiator from the central heating system. The refrigerator and the microwave were the property of the tenant and he drew attention to the lack of other cooking facilities.
 - (3) The sitting room contained a substantial open fireplace (not used by the tenant), a potentially attractive feature. The porch to the main front door was found to let in the water (though there was very little lying water) and the

letter-box to be defective. It was possible to see daylight through the door. The window did not appear to be very old and the Committee were able to open and shut it without difficulty. The tenant said that he could not afford curtains and anyway would not know how to put them up.

- (4) The bathroom was of reasonable size and contained a bath, basin and lavatory. The tenant said he had no comment to make about this room.
- (5) (On the first floor) Bedroom 1 was found to be a good-sized double bedroom. A large polythene sheet had been fitted by the tenant (apparently within the previous two or three weeks) because of the alleged draughts. The Committee noted that the window seemed (though it was not possible to inspect it because of the polythene) to be reasonably new, like the others. The tenant said the room was only suitable for storage. The outside of the door did appear to have been damaged.
- (6) Bedroom 2 was the room actually lived in by the tenant and it was a good-sized double bedroom. The Committee found that the window in this room also opened and shut easily. The room contained a radiator, the hot water tank and immersion heater.
- (7) Bedroom 3 (referred to by the tenant as a boxroom) contained a radiator. It was measured by the Committee and found to be 8'3" by 5'10". The Committee found that the window in this room also opened and shut easily.
- (8) Generally the inside of the property was very untidy and did not appear to have been cleaned for a very considerable time; .
- (9) Outside there was the lean-to store, stone built and recently re-roofed. It was perhaps slightly damp but no more than usual for an outhouse. It was not suitable for storage of the tenant's archives. It contained a Worcester oil-fired boiler powering the central heating system. Nearby outside there was a substantial oil-tank. The tenant confirmed that he does use the central heating.
- (10) It was apparent that there had been some burning of stubble in the garden.

The tenant said that he had done this after the grass had been cut by the landlord some three weeks previously.

(f) The Committee also inspected the outside of 191 Chapel Street which the landlord had put forward as a comparable (see paragraph 2 B above). It was found to be comparable as to its general location though the tenant pointed out that the living rooms are substantially larger than his (he said 24' and 21' long respectively). The property has delightful gardens front and rear, the tenant apparently being a very keen gardener.

4. The Hearing.

A hearing was held on 23rd June 2004 at The Old Ship Hotel Mere attended by the tenant, Professor Spencer-Brown, and his representative Major Dean and by Mr Grugeon on behalf of the landlord.

The Chairman referred to the relevant law (see paragraph 6 below). It was the Committee's task to determine the rent having regard to the condition of the property on the day of inspection. Section 14 (2) © provided that the Committee must disregard any reduction in the value of the property attributable to any failure by the tenant to comply with any terms of the tenancy. Moreover indices of inflation (such as referred to by the tenant in his written representations) were not relevant.

The tenant confirmed his evidence in the March letter. He first saw the property in October 1999. The walls and the door of Bedroom 1 were then as the Committee saw them except there had been no door knob; indeed various door knobs were missing. . He suggested that the door had been vandalised by the previous tenant. The window had let in the breeze even when fully closed. He had put up a polythene sheet a week or two previously; before that the room could not be heated. The other rooms had also been as the Committee had seen them, with the kitchen floor oozing black slime.

As to the alleged comparable property, 191 Chapel Street, the Professor said that the Committee had only seen the outside and the gardens front and rear. 191 was much bigger than his property. It had three downstairs room and the larger ones were 21' long and 24 long. The bedrooms were also bigger and the bathroom was upstairs.

He argued that 156 Chapel Street needs £10,000 to £15,000 spent on it. It particularly needed a new kitchen floor. Even if that were spent it would still be worth £150 per month less than number 191 ie the rent should be £450 per month.

Major Dean (on behalf of the tenant) said that he had first seen the cottage on the previous Friday. He had spoken to the Housing Standards Officer at West Wiltshire District Council who had said there were works needing to be done. The Chairman referred to the correspondence with the Council and concerning access. The tenant denied that he had ever made access to the property difficult. Major Dean suggested that any rent increase could be deferred until the works were done.

He also referred to a very unpleasant smell which he had noticed in the kitchen/first room. The tenant said that was caused by what was oozing up through the tiles; he had got used to it.

As to the faults in the property, he had pointed them out to the landlords whenever they came. Mr Grugeon had said the landlord was not obliged to put them right. The tenant said that the property was valueless by way of rent except to somebody on Housing Benefit. He would not himself have paid a penny for it. He had rented property all over the world and had never seen a property as bad as this.

The landlord's agent, Mr Grugeon gave evidence confirming what he had said in the May letter. He referred to the repairing obligations in the Tenancy Agreement (see paragraph 2C above). The landlord was happy to do repairs for which it was liable and once defects had been drawn to its attention. Under the Tenancy Agreement internal decorations were the responsibility of the tenant.

Mr Grugeon said that the property is a 200 year old country cottage and as such cannot be perfect. For example matters such as bees on windows and dead flies were to be expected. As to the kitchen floor he had only had one complaint. He maintained that the 'black slime' was an accumulation of dirt mixed with condensation. It was a hard granite tile floor.

As to the missing doors, the property is now as it was when let. The Professor is tenant of what he originally agreed to take. It was in better decorative order and clean at that time.

As to the property being cold, he believed that was primarily due to the way in which the property was kept. He did not think the smell was of damp; he had been a land agent for ten years and knew damp when he smelt it.

As to estate rent levels generally, he said the estate had 200 houses and cottages. 40 properties were valued every two years by professional valuers, Messrs Cooper & Tanner. One of those had been 191 Chapel Street valued at £600 per month in January 2003. He also reminded the Committee of the evidence from the Rent Officer, Mr Hanwell, in his letter of 6 May 2004 that the rent should be between £625 and £675 per month. His own estimate of the rent was £580

Questioned by the Committee, he said that day was only the fourth time he had been able to inspect the property during the Professor's tenancy. He had visited the property with the Professor in October 1999. He thought Mr Moore had probably done the same. He would have inspected the property when the previous tenant left. He would probably have inspected the entire property but was not sure whether he did on this occasion. Asked whether he had a note of the inspection, he said he had not and would normally make such a note only if there was anything in particular to note. He confirmed that doorknobs had been replaced. As to the £22,000 spent on refurbishment in 1998 (see the May letter), he had noticed on his inspection the previous Friday that the loft had not been insulated as he previously thought

At this point the tenant said that he had made a list of work required to the property following his initial visit there with Mr Moore; he produced copies of the list which he said had been made at the time. Mr Grugeon replied that he had never seen it before and doubted whether it had been made contemporaneously because in relation to one item it appeared to read 'completely destroyed' when this was known to have happened subsequently.

Closing submissions.

Mr Grugeon adhered to his rental figure of £580 per month. He asked the Committee to consider the property as if it were empty and to take into account its present condition was by reason of the tenant's use

Professor Spencer-Brown also referred to the state of the property. As to valuation he had gone to two firms of estate agents last November and both agreed that rents had gone up 8% in the previous four years. The increase being sought by the landlord was 45% i.e six times as much. He maintained that the property should be treated as two-bedroomed and that the rent should be £400 per month.

Major Dean agreed with Mr Grugeon that the smell was not of damp, it was 'much less pleasant than that'. He agreed that he was suggesting problems with the drainage. The tenant also asked the date from which the new rent would start. The Chairman said that it would normally be the date in the landlord's notice but referred the parties to s. 14 (7) of the Act whereby the Committee could specify a later date (not later than the date the rent was determined) if it appeared to the Committee that the date in the notice would cause undue hardship to the tenant.

Major Dean argued that there would be difficulties if any increased rent took effect from 1st May, having regard to the difficulties previously encountered with increased

Housing Benefit (see the March letter). Mr Grugeon said that the Estate would be prepared to wait for any back rent.

5 The Facts.

The Committee made the following findings of fact:-

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- (a) There are no 'missing doors'; such doors had never been included in the tenancy.
- (b) The door to the living room first inspected (described by the tenant as the kitchen) does not now let in the wind and rain
- (c) The brown (or black) slime does not come up through the floor, neither did the Committee see evidence of it being corrosive. The slime in question is a combination of dirt and damp caused by lack of normal air circulation.
- (d) The windows are in good condition and not ill-fitting..
- (e) All the rooms in the house are habitable
- (f) The state of the decorations now is consistent with the property having been in at least fair condition at the commencement of the tenancy. (The Committee had regard the letter from the Rent Officer to the effect that he inspected the property in the year 2000 and found it to be in good condition) Any problems with it since then will have been substantially exacerbated by the tenant's apparent difficulties in keeping the property clean, warm and aired.
- (g) The drainage is satisfactory (no cogent evidence having been supplied to the contrary)
- (h) There are no qualifying tenant's improvements to the property.
- (i) The property is capable of being heated satisfactorily by the oil-fired central heating system. The tenant appears reluctant to use the system (possibly on grounds of expense) but that would not be a problem for the average tenant of a property such as this.
- (j) The room described by the tenant as a boxroom is capable of being an adequate, if small, bedroom.
- (k) The landlord had not agreed to do any works to the property prior to the commencement of the tenancy except replace the missing radiator referred to in the letter from Mr Moore dated 19 October 1999.

However:

- (l) The door to bedroom 1 has not been vandalised but it appeared that somebody had attempted to strip it prior to decoration. That work needs to be completed.
- (m) There are no carpets or curtains supplied by the Estate
- (n) The rayburn does provide cooking facilities; however there are no 'conventional' cooking facilities provided by the landlord.
- (o) There is some rising damp such as identified by the Housing Standards Officer in his letter of 18 March 2004 but the plaster and the fit of the doors was satisfactory for a property of this age and character.
- (p) The other outside door (from the living room) and the porch and the letter-box are all in need of repair. .
- (q) There is no roof insulation

6 The Law.

In accordance with the terms of section 14 of the Housing Act 1988 the Committee proceeded to determine the rent at which it considered that the property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy.

As required by section 14 (2) c of the Act the Committee disregarded any reduction in the value of dwellinghouse attributable to the failure by the tenant to comply with any terms of the tenancy.

7 The Valuation

As to the valuation evidence, the Committee agreed with the tenant that 191 Chapel Street is not directly comparable in that it is much larger than the subject property. However this is offset by the fact that the rent of £600 per month for 191 was fixed as long ago as January 2003.

The Committee also had regard to the evidence of the Rent Officer that the open market rent would be in the region of £625 - 675 per month. Generally the Committee preferred the landlord's valuation evidence to the tenant's submissions about valuation which were vague and unsubstantiated.

In addition it had regard to its inspection, its findings of fact and the members' own general knowledge of rent levels in Warminster, Frome and Mere and their surrounding villages. The members were aware that open market rent levels have risen very significantly since the rent of this property was last increased in December 2001.

The Committee in the first instance determined the rent the landlord could reasonably be expected to obtain if the property were let today in the condition and on terms usual for such an assured shorthold open market letting, namely with the landlord supplying curtains, carpets, white goods and conventional cooking facilities and with the landlord responsible for interior decorations. It concluded that such a likely market rent would be £625 per month.

However the subject property is not in the condition or let on the terms considered usual for such an open market letting. There fore it was necessary to adjust that hypothetical rent of £625 per month to allow for the actual condition of the property as observed by the Committee, particularly the matters referred to in paragraph 4 sub-paragraphs (l) to (q) above and the somewhat unusual obligation on the tenant for internal decorations. The Committee decided that all these matters together required a deduction of £55 per month.

8 The Decision

The Committee therefore concluded that the rent at which the property might reasonably be expected to be let on the open market would be (£625 - 55 =) £570 per month.

The Committee decided (in accordance with section 14 (7) of the Act) that undue hardship would be caused to the tenant if the increase in rent were to take effect from 1 May 2004 being the date specified in the landlord's notice. The Committee decided that the new rent will take effect from 23 June 2004 being the date of its decision.

Signed

Mr R L Sansbury
Chairman

Dated 7th July 2004