

**SOUTHERN  
RENT ASSESSMENT PANEL & TRIBUNAL**

Statement of Reasons  
for the Decision by a Committee of the Panel upon an  
Inspection carried out on  
Thursday 9<sup>th</sup> June 2005

**RENT ASSESSMENT COMMITTEE**  
**Mr Michael R Horton FRICS (Chairman)**  
**Mr C G Thompson**

<i>Reference</i>	<i>Address</i>	<i>Tenant</i>	<i>Landlord</i>
CHI/24UJ/ F77/2005/70	Ferndale Middle Road Sway Lymington Hampshire	Ms F Taylor	Mr K Whittle

**Summary**

- 1.1 This was an objection by the Tenant against the registration by the Rent Officer of a Fair Rent for the property of £73.50 per week registered on 24 March 2005 and effective from that date. This rent had been subject to the *capping* legislation referred to below and the uncapped fair rent noted by the Rent Officer was £82.00 per week.

The Landlord had requested a fair rent of £85.00 per week.

The previous Fair Rent, registered on 8 October 1998, and effective from that date, was £60.00 per week.

- 1.2 The Tenant requested a Hearing.

**The Statutory Provisions**

- 2.1 It may be helpful if we describe the legal background to the function we have to perform. We have paraphrased the provisions of section 70 of the Rent Act 1977 ("the Act") below, in the hope of making them reasonably comprehensible. The actual terms of the Act are in some ways rather more complex than our description indicates. This might suggest that we have failed to apply the terms of the Act properly. Therefore we make it plain that we have in practice carried out our work by reference to the actual wording of the Act and the decided cases upon it, and not by reference to this short description.
- 2.2. Section 70 of the Act provides that in determining what rent is the fair rent for a property let under a regulated tenancy we must have regard to all the circumstances (other than personal circumstances) surrounding the letting. In particular we are to have regard to the property's age, character, locality and state of repair.
- 2.3 Section 70 (2) of the Act requires us to take account of the letting market in the locality (which must be a substantial one) where the property is situated. We have to assume

that the number of tenants looking for property to rent is roughly the same as the number of similar properties available. If there are, in our view, more tenants than properties, and if we consider that this has pushed up open market rents substantially, then we have to estimate the financial effect on open market rents of this "scarcity". In that case we must make an allowance for it when we fix the fair rent.

- 2.4 Section 70 (3) requires us to disregard certain other matters when we make our determination. First, we must disregard any disrepair or other defect because of a failure by the tenant under the regulated tenancy (or any of his predecessors under the same tenancy) to comply with any of its terms. Secondly, we must also disregard any improvement carried out by the tenant or any of his predecessors, except one that he was required to make by the terms of his tenancy. An "improvement" for these purposes usually includes the replacement of any fixture or fitting, but not a repair.
- 2.5 The Rent Act (Maximum Fair Rent) Order 1999 ("the Capping Order") came into effect on 1 February 1999. In January 2000, the Court of Appeal declared that it had been improperly made because the Act under which it had been purported to be made did not give Parliament power to bring in secondary legislation of this nature. That decision in turn was reversed by the House of Lords in December 2000, and so the provisions of the Order apply to our decision.

The effect is to limit the amount of any increase in the fair rent by the way that the Order sets out, and which we have described below.

### **Inspection**

- 3.1 On Thursday 9 June 2005 the Committee, in the presence of the tenant and Mrs J Mylchreest, who was advising the tenant, inspected the property.
- 3.2 The Committee found the property to comprise a two story semi-detached house with mainly painted brick elevations and tiled roof. The original metal framed windows in timber sub-frames remained.
- 3.3 Middle Road is a quiet thoroughfare linking Manchester Road with Station Road. Although enjoying a semi-rural feel it is, nevertheless, fronted by a wide variety of houses and bungalows. Sway village has a number of shops and more extensive facilities are available in Lymington some 4 miles away.
- 3.4 Accommodation is arranged as follows: **Ground Floor** Entrance Lobby with stairs to first floor. Living Room with door to Kitchen **First Floor** - Landing. Bathroom/Wc and 2 Bedrooms.
- 3.5 The Committee noted the generally unsatisfactory state of the property with spalled brickwork and flaking masonry paint, poor windows with decaying sub-frames, badly cracked plaster to the walls and ceilings, the very basic kitchen and bathroom fittings and general obsolescence.

The Committee noted that since the Rent Officer's registration the landlord had demolished a dilapidated rear porch, repaired some cracks and fitted a new sink unit.

## **The Hearing & Representations**

- 4.1 The Hearing was attended by Ms Taylor, the tenant, who was represented by Mrs Mylchreest, and the landlord, Mr K Whittle.
- 4.2 The Chairman opened the Hearing by explaining to the parties the legislation which defines how a fair rent is assessed and how the Committee will come to a decision.
- 4.3 **Mrs Mylchreest**, on behalf of Ms Taylor, made the following her main verbal and written representations:
  1. The main objection was that nothing was done to maintain the property and if repairs had been carried out then there would be no objection to the increased rent.
  2. A number of repairs have recently been carried out which included the removal of the rear porch, fitting a new sink unit, filling of some cracks and repairing the staircase handrail.
  3. Although the dangerous porch had been removed the result was that rain gets blown through the rear door resulting in the wood swelling and making it difficult to open.
  4. When the house was rewired damage had not been made good and there was a loose power point.
  5. She highlighted the general condition of the property and the poor state of the windows. She accepted Mr Whittle had offered to replace the windows but Ms Taylor required the frames to have more than one opening sash, as at present, as ventilation would be inadequate.
  6. She considered a rent of £60.00 per week to be adequate for the property in its present condition.
- 4.4 **Mr Whittle** made the following his main points:
  - 1 He accepted the property was not in good condition but he had recently carried out some repairs. He had already purchased replacement windows but Ms Taylor had declined to have these fitted. (For the reasons set out above)
  2. He considers the Rent Officer's assessment to be fair.
  3. The adjoining identical house was let on an assured shorthold tenancy at £110.00 per week but it was in slightly better condition.

## **Conclusions**

- 5.1 In coming to their decision the Committee are directed by the provisions of Section 70 of the Rent Act 1977 and, in particular, they have to ignore any improvements carried out by the Tenant, otherwise than in pursuance of the terms of the tenancy. They also have to disregard any failure by the tenant to fulfill their repairing obligation e.g. internal decorating.
- 5.2 The Committee carefully considered their findings at the time of the inspection and the representations submitted by the parties.
- 5.3 With regard to the general state of the property they found it to be in poor condition and it was evident that many of the amenities now expected by a prospective tenant are not incorporated into the property

Other than the adjoining property, which was referred to by Mr Whittle, neither party submitted details of comparable lettings which might produce evidence of open market rental values.

Normally it might be expected that a letting of an adjacent house would provide useful evidence but, in this case, the Committee considered there to be too many uncertainties as to its precise condition and the terms of the tenancy. Also a one off letting of an inferior type property might not necessarily reflect the normal market expectations as to rental value.

Accordingly the Committee decided to rely on their own expertise and experience of rental values in the area and they agree with the Rent Officer that a Landlord could reasonably expect to let a property of this type and in this location at a rent of £135.00 per week (£585.00 per month).

The Committee's experience indicates that with a considerably greater volume of property now available to rent tenants are becoming increasingly discerning and more selective so far as the standard of the property is concerned and at this rent they would expect to find a property with a well fitted kitchen and bathroom, full central heating and generally more modern amenities.

Further the "unfurnished" open market assured shorthold tenancy letting would almost certainly include minimum furnishings of carpets, curtains and a cooker and the landlord would expect to assume the fair wear and tear liability of internal decorations.

It is necessary therefore for the Committee to adjust the rental of £135.00 per week to reflect these differences.

5.6 The Committee arrived at the following valuation:

Base open market rent - £585.00 pcm but, say, £135.00 per week

Adjustments:

No central heating	£8.00 pw	
No basic furnishings e.g. carpets, cooker etc.	£6.00 pw	
Tenants internal decorating responsibility	£6.00 pw	
Basic kitchen, bathroom and wiring	£14.00 pw	
Poor windows	7.00 pw	
Other disrepair/obsolescence	<u>£12.00 pw</u>	<u>£53.00 per week</u>

**Adjusted Rent**

**£82.00 per week**

- 5.9 In para. 2.3 above we summarized section 70(2) of "the Act". Under this provision we have to consider whether or not scarcity of this type of property available for letting in the area is *substantial*. If we find this to be the case then we have to give consideration to making an appropriate deduction.

Appeal Court precedents dictate we have to consider the scarcity factor over a wide region and this Committee considers the appropriate area to broadly that contained between Bournemouth to the west, Southampton to the east and Winchester to the north.

No evidence was put before the Committee on this subject and on the basis of their knowledge and experience the Committee no longer consider scarcity to be substantial within this area and, therefore, within the meaning of "the Act"

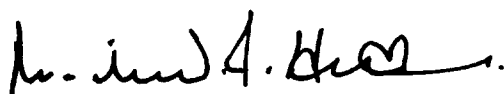
- 5.10 The rental value arrived at by the Committee is higher than the amount of £74.50 p.w., which is the maximum that can be registered under the provisions of "the Capping Order", and the Committee therefore had to decide whether any works carried out by the landlord, since the last registration, had increased the rent registered at that time by more than 15%. There was no evidence of such works having been carried out and no submissions were made on this point so the "Capping Order" applies.

#### **Decision**

- 6.1 The Rent Assessment Committee determine the Fair Rent of **Ferndale, Middle Road, Sway, Lymington at £74.50 per week** being the maximum rent they are permitted to register under the provisions of "the Capping Order"

The uncapped Fair Rent is £82.00 per week.

- 6.2 In arriving at their decision the Committee considered their inspection of the premises, the information supplied and representations made to them. They have disregarded the personal circumstances of the parties, have applied their collective knowledge and experience of the locality and they have had regard, in particular, to the provisions of Section 70 of the Rent Act 1977.
- 6.3 This decision was made on Thursday 9<sup>th</sup> June 2005 which becomes the effective date of the registration.



**MICHAEL R HORTON FRICS**  
(Chairman)