

**Rent Assessment Committee: Full Reasons for decision.**  
**Rent Act 1977****Address of Premises**

29 Sidney Smith Court  
64 Walditch Gardens  
Culliford Crescent  
Canford Heath  
BH17 9EU

**The Committee members were**

L.H. Parkyn  
A.J. Mellery –Pratt

**1. Background**

On 27<sup>th</sup> May 2004 the Landlord applied to the rent officer for registration of a fair rent of £85.13 per week for the above property.

The rent payable at the time of the application was £73.98 per week.

The rent was previously registered on 1<sup>st</sup> November 1996 with effect from the same date at £65.00 per week following a determination by the rent officer.

On 17<sup>th</sup> June 2004 the rent officer registered a fair rent of £78.85 per week including £15.85 per week in respect of services (variable) with effect from that date.

By a letter dated 27<sup>th</sup> June 2004 the landlord objected to the rent determined by the Rent Officer and the matter was referred to the Rent Assessment Committee.

**2. Inspection**

The Committee inspected the property on 20<sup>th</sup> September 2004 in the presence of the tenant : the landlord was not represented. The Committee found the property to be in good condition.

Briefly the property was a self contained purpose built ground floor flat comprising two rooms, a kitchen, bathroom with WC and entrance hall plus two walk in store cupboards and an outside bin store, all maintained to a satisfactory standard both by the landlord and tenant. Although the tenant no longer drove a car, unallocated off road car parking was available for the use of residents at the development but there was not sufficient room to allow a car space for each unit.

The property was heated by night storage heaters and the hot water by an electric immersion heater, all provided by the landlord. The landlord was said to be due to replace the windows with UPVC double glazed units in November 2004 although, as the work had not been carried out, the Committee did not take this into account when making it's determination.

The property had been carpeted and furnished by the tenant.

The property formed part of a sheltered housing development with residents also having the benefit of a communal lounge and laundry facilities with a house manager on site during normal working hours and a link with Careline to provide a full 24 hour emergency service.

The registered rent included services as noted on the rent register.

### **3. Evidence**

Initially no written representations were received from either party and neither party requested a hearing at which oral representations could be made.

At the inspection the tenant informed the Committee that previously she had held the tenancy of 18 Sidney Smith Court from December 1989 to November 2001 when she transferred to the property to secure ground floor accommodation.

In the absence of any details of the tenancy, the Committee adjourned its consideration and asked the landlord to supply a copy of the tenancy agreement, a short submission to demonstrate that the service charge provision met the reasonable test as required by Section 71 (4) of the Rent Act 1977 ("the 1977 Act"); a copy of the budget or accounts upon which the service charge of £15.85 per week was based; and a schedule of rents for the other units at the Sidney Smith Court development. In response, the landlord provided a copy of the tenancy agreement signed by the parties in November 2001, the service charge budget for the year April 2004 to March 2005, and a schedule of rents for the other units at Sidney Smith Court, all shown at rents between £57.29 and £59.87 per week, plus services of £15.85 per week in every case. The Committee was told that all the units were identical and that all secure and assured tenants paid the same rent.

The landlord did not make a submission concerning the service charge provision but stated : "We would also confirm that our service charge procedures meet with relevant legislation and good practice".

The tenant was sent a copy of the additional information provided by the landlord and invited to comment but did not respond.

### **4. The Law**

When determining the fair rent the Committee, in accordance with the 1977 Act, section 70, had regard to all the circumstances including the age, location and state of repair of the property. It also disregarded the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.

In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* [1999] QB 92 the Court of Appeal emphasized

- (a) that ordinarily a fair rent is the market rent for the property discounted for "scarcity" (i.e. that element, if any, of the market rent, that is attributable to there being a significant shortage of similar properties in the wider locality

available for letting on similar terms – other than as to rent – to that of the regulated tenant) and

- (b) that for the purposes of determining the market rent, assured tenancy (market) rents are usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

## 5. Valuation

Thus in the first instance the Committee determined what rent the landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition that is considered usual for such an open market letting. It did this by having regard to the evidence supplied by the landlord and the Committee's own general knowledge of market rent levels in the area of the Poole and Bournemouth. Having done so it concluded that such a likely market rent would be £120 per week.

However, the actual property was not in the condition considered usual for a modern letting at a market rent. Therefore it was first necessary to adjust that hypothetical rent of £120 per week to allow for the differences between the condition considered usual for such a letting and the condition of the actual property as observed by the Committee (disregarding the effect of any disrepair or other defect attributable to the tenant or any predecessor in title). The Committee then calculated the rent as follows:-

Market rent -	120.00	
Less service charges	15.85	
	<u>104.15</u>	
Less allowances for:		
Lack of carpets and curtains	10.00	
Tenants decorating obligation	<u>3.00</u>	13.00
		<u>£91.15</u>

to give a basic rental, ignoring services, of say £91 per week.

There were no tenant's improvements for which the Committee had to make an allowance.

The Committee did not consider that there was any substantial scarcity element and accordingly no further deduction was made for scarcity.

This leaves a net market rent for the subject property of £91.00 per week to which the sum of £15.85 in respect of services would be added.

## 6. Decision

The fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £106.85 per week inclusive of £15.85 per week in respect of services.

However, by virtue of the Rent Acts (Maximum Fair Rent) Order 1999 the maximum fair rent that can be registered in the present case is the lower sum of £80.85 per week inclusive of services (details are provided on the back of the decision form).

**Accordingly the sum of £80.85 per week inclusive of services of £15.85 per week will be registered as the fair rent with effect from 29 October 2004 being the date of the Committee's decision.**

Although the tenancy agreement was not as tightly drawn as might have been expected, allowing for the fact that the provision for variable services appeared to apply throughout Sidney Smith Court; the fact that the rent for the property had been treated as variable at least since the 1996 rent registration; and, taking all matters in to account, the Committee decided the registered rent was to be confirmed as variable in accordance with the terms of the tenancy (Rent Act 1977, S.71 (4)).



L.H. PARKYN  
Chairman

Dated : 29 October 2004