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EASTERN RENT ASSESSMENT PANEL

Case number : CAM/33UH/F77/2004/0046

RENT ACT 1977



STATEMENT OF REASONS

for the decision of the Committee which met on Friday 16th July 2004 to determine a Fair Rent in respect of 39 Intwood Road, Cringleford, Norwich, Norfolk

Landlord	T M & N O Cracknell
Tenant	Mrs D M Plummer
Rent at date of Application (per calendar month)	£323.00
Rent proposed by Applicant	£500.00
Rent determined by Rent Officer	£400.00
Capped rent determined by Rent Officer	£353.50
Rent determined by Committee	£450.00
Capped rent determined by Committee	£358.50

Members of the Committee

Mr G K Sinclair (chairman), Mr E A Pennington FRICS (valuer) & Mr D Wilson (lay member)

The Premises

1. The Committee inspected the subject property, a detached 3-bedroomed house built in the mid-1930s on a mainly residential road of properties of similar age, save that immediately opposite is a 2-storey office block formerly the offices of Jewson Ltd (which still has a yard for the sale of building supplies behind, but partly visible from the subject property). Intwood Road runs southwest from the main road through the former village of Cringleford, which has itself been bypassed by the A11 dual carriageway road from Norwich to Thetford & London, on the southwestern edge of the city of Norwich. The property is a 5 minute walk from shops, supermarket and a primary school at Eaton or Cringleford. A regular bus service passing along Intwood Road takes one to the centre of Norwich within 20 minutes, from where there are mainline rail links to London and Cambridge and local rail services to Cromer, Great Yarmouth and Lowestoft. The University of East Anglia, Norfolk & Norwich University Hospital, BUPA Hospital and scientific and agricultural research facilities (eg the John Innes Centre) are at Colney, within a short drive or 5 minute cycle ride from the property.
2. In its condition as originally let the property comprised a front living or sitting room and

a smaller dining room behind, each heated by a coal fire. The hall gave access to a walk-in pantry and a small kitchen with Belfast sink and gas fittings for cooking and heating water. Outside the kitchen there had been until within the last month a small timber conservatory ensuring covered access to what otherwise would have been an unheated outside WC and an adjacent shed (which probably incorporated a wash house – a redundant gas fitting still being visible on inspection). Upstairs were 3 bedrooms (originally unheated) – two double and one single – and a long narrow bathroom with large electrically heated hot water tank. There is and was no internal WC. Windows are timber framed and single glazed. There is a large rendered garage to the rear of the house (but with no internal electric sockets), reached by a wide driveway from the road running along the right hand side when viewed from the road. There is no external lighting. The front door, to the left of the property, is sheltered by a small porch and is accessed by a path leading from a pedestrian gate in the front fence and by another from the driveway along the front of the house. The property has good sized gardens to both front and rear. The new boundary fence on the right is owned by the next door neighbour.

3. Save for some of the window frames, which could do with attention, the landlord has maintained both roofs and walls to the property in good condition and in early 2003 replaced the garage roof after storm damage, part of the cost being met by insurance. About 4 or 5 years ago the property was rewired to current IEE standards, although it was noted that the single bedroom has no electrical sockets at all. The electric hot water heaters in the kitchen and bathroom have been replaced.
4. At the date of the Rent Officer's inspection the conservatory was apparently in poor condition, leaking and with rotten timbers. From the parties' written submissions it was noted that the landlord had intended to demolish and replace this in about February 2004 but, at the tenant's request, this was delayed until this summer. By the date of the Committee's inspection, however, the old structure had been removed, a new concrete sub-floor had been laid (due to the old one having crumbled under the floor covering) and low brick walls had been laid in preparation for the delivery and installation of a new PVCu structure of slightly larger dimensions than before.
5. On the date of inspection by the Committee there was heavy rain and the weather was cold. Puddles of water lay on the new concrete sub-floor, and in particular in a hole just outside the kitchen door. No date was given for completion of the new conservatory, and the Committee must assess the property in the condition in which it is seen. Regrettably this means that the property must be assessed as being without any covered and sheltered access to the WC and shed (where the tenant keeps her fridge/freezer).
6. The tenant has provided a stainless steel kitchen sink and unit (perhaps in the 1960s) and another with a modern work top (perhaps in the 1990s), a modern bathroom suite, gas fires to the two ground floor rooms and convector heaters in the two larger bedrooms. The single bedroom remains unheated. She has also installed loft insulation, but as this was about 20 years ago it will not be up to modern standards. The interior is well-decorated but the rooms upstairs, perhaps because of the tenant's age and taste – or their secondary importance, remain of a dated appearance.

The Tenancy

7. No tenancy agreement was seen by the Committee, but the tenancy was originally granted to Mrs Plummer and her late husband in 1947 at a monthly rent and for many years now a registered rent has been in force. The repairs obligations imposed by section 11 of the Landlord and Tenant Act 1985 apply, the landlord being responsible for repairs and external decoration and the tenant for internal decoration.

Reference to the Rent Assessment Committee

8. The Rent Officer registered a fair rent in respect of the subject premises on 27th April 2004, to become effective on 12th June 2004. The new rent was the maximum allowable under the Rent Acts (Maximum Fair Rent) Order 1999. The landlord objected and the application was referred to the Committee for determination.

The Landlord's Case

9. The Landlord's case appears from the initial application for a fair rent and from the written representations by Mr T M Cracknell to the Rent Officer dated 10th May and to the Committee, in response to those from the tenant, on 14th June 2004. The following quotations from his two letters summarise Mr Cracknell's approach :

"I have discussed the property in question with several professional advisors and I have compared it with other properties in my portfolio. I have concluded that your suggestion has been low for many years and enough is enough.

"Accordingly, I wish to take the matter further. I understand that official bodies further up the line need dusting and bringing up to date for the 21st century and if nothing else I will have my say.

"Our tenant has been a good tenant but I am not in a position to be unduly philanthropic – my family has been generous since 1947...

"In any other business when there is scarcity the price goes up – this is not subsidised by suppliers, but passed on just like wage increases.

"We are in no position to continue to personally support a 'nanny state' situation."
[10th May 2004]

and

"It surprises me to see that the tenant has provided kitchen units, sink, bath, wash hand-basin, etc, because when I lived there in the early 1940s they were adequate. I suspect my father would not renew at the tenants request so they fitted their own thus trying to avoid a rent increase.

“To conclude, it would just be nice if the tenant acknowledged how lucky she and her sons have been over the 56 years to live so cheaply, protected by laws weighted heavily in their favour as tenants.”

10. At the hearing Mr Cracknell, who declared that he had been at school with one of the Committee members, Mr Pennington (to whose continued involvement no-one present objected), accepted that his complaint was largely political – against the legislation itself – and that the Committee was bound to decide the issue in accordance with the statute and the Rent Acts (Maximum Fair Rent) Order 1999. So far as the capping provisions were concerned, he accepted that he could not bring himself within the 15% uplift exemption due to improvements to the property carried out between the date of the last rent registration in 2002 and the date of the Committee’s inspection. Finally, he expressed the view that the population of Norwich had been static for many years and questioned whether there was any real scarcity of rented accommodation.

The Tenants’ Case

11. The tenant was accompanied by Mr I C Plummer, one of her sons, a chartered building surveyor working for a local firm of estate agents. He showed the Committee around, identifying any alterations carried out and problems, if any. The tenant’s case was largely put in the written submissions made by her to the Rent Officer dated 5th April 2004 and to the Committee dated 3rd June 2004. She accepted that Cringleford was quite a distinct housing area, but stated that it had changed over the years, and the narrow Intwood Road was now very busy each morning. She drew attention to the lack of any internal WC, which would be off-putting in the current rental market, the slow and unprogrammed nature of repair works organised by the landlord (eg she did not know until several days beforehand the date for demolition of the conservatory, and had no idea when the builders would return) and the fact that the wooden window frames needed attention. The tenant supported the decision of the Rent Officer.

The Law

12. The principles governing the assessment of a Fair Rent are set out in section 70 of the Rent Act 1977. When determining a Fair Rent, the Committee must have regard to all the circumstances (other than the tenant’s personal circumstances, including his income) and in particular to :
 - a. the age, character, locality and the state of repair of the dwellinghouse;
 - b. the quantity, quality and condition of the furniture (if any) provided for use under the tenancy;
 - c. any premium or sum in the nature of a premium which is has been or may be lawfully required under the terms of the grant, renewal, continuation or assignment of the tenancy.
13. Factors which must be disregarded are :
 - a. scarcity value [see next paragraph];
 - b. any disrepair or other defect attributable to a failure by the tenant or any

- predecessor in title to comply with the terms of the regulated tenancy to which he is a party;
 - c. any improvements carried out by the tenant or his predecessor in title under the regulated tenancy otherwise than in pursuance of the terms of the tenancy;
 - d. any improvement in furniture provided under the tenancy made by the tenant or his predecessor in title or any deterioration to the said furniture due to ill-treatment by the tenant, any person residing or lodging with him, or any subtenant of his.
14. The Committee must assume "*...that the number of persons seeking to become tenants of similar dwelling-houses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling houses in the locality which are available for letting on such terms.*" Although the Committee is obliged to look at the so-called "scarcity" factor in terms of people wanting tenancies "*on the terms (other than those relating to rent) of the regulated tenancy*", ie regulated tenancies, the reality is that no new regulated tenancies are created and scarcity is therefore considered using the types of tenancy currently in use. Where there is an adequate number of open market comparables the proper method of assessment of a Fair Rent is to consider the open market rent and then consider what deductions need to be made in accordance with section 70 of the Rent Act 1977.¹

The Rent Acts (Maximum Fair Rent) Order 1999

15. This Order, which came into force on 1st February 1999, provides (in summary) that where :
- a. an application for the registration of a new rent in respect of a dwelling-house is made after the Order comes into force and,
 - b. on the date of that application, there is an existing registered rent under Part IV in respect of that dwelling-house,
- the new rent which may be registered shall not exceed the greater of the existing registered rent and the figure calculated in accordance with a formula set out in Article 2(2) of the Rent Acts (Maximum Fair Rent) Order 1999. The formula in effect provides for an increase in line with inflation, measured by reference to the Retail Price Index (RPI), plus an addition of a further 7.5% for the first application for rent registration of the dwelling-house after the Order comes into force and 5.0% for every subsequent application.

Findings of Fact

21. The Committee considered the comparable evidence referred to by the Rent Officer and the agreement reached between Mr Cracknell and Mr Plummer at the hearing that the open market value of a modern property of similar size (but not a similar garden) at a development in the city such as Fellows' Plain would be about £850 per calendar month. The Committee also took into account its own knowledge and experience of the letting market in the area.

¹ *Curtis v London Rent Assessment Panel & others* [1997] 4 All ER 842(CA)

22. It could be argued that landlords build in an additional figure for the voids and extra letting fees which are inevitably incurred in assured shorthold lettings which would not be incurred with a regulated tenancy. In practice, in the absence of direct evidence that that is the landlord's practice it is impossible to make such a calculation because a landlord will attempt to get what he or she can in the market place without making specific calculations as to voids and letting fees. In such circumstances the court has held², and this Committee agrees, that no adjustment should be made for voids.
23. The Committee therefore decided that a base open market figure for a similar property would be £800 per month, higher than the figure believed to have been adopted by the Rent Officer. Adjustments were then made in accordance with section 70, as appear from the schedule annexed at the end of this Statement of Reasons.

Scarcity

24. The Committee decided, contrary to the landlord's submissions, that there is sufficiently substantial scarcity of "...similar dwelling-houses in the locality..." available for letting to require it to make a further deduction to reflect this. The matters regarded by the Committee as relevant were as follows :
 - a. The Committee appreciate that in *Metropolitan Property Holdings Ltd v Finegold*³ and *Queensway Housing Association Ltd v Chiltern, Thames and Eastern Rent Assessment Committee*⁴ it was decided, in effect, that a Committee should look at a really large area although this has to be taken in the context that the Rent Act does use the word "locality". The Committee interpreted this as meaning the Norwich travel-to-work area, viz the local authority areas of Norwich City Council, North Norfolk District Council, Broadland District Council, Great Yarmouth Borough Council, South Norfolk District Council, and Breckland District Council; a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent.
 - b. The Committee's collective experience of the residential letting market leads it to the view that there is an underlying scarcity for this type of property in this area.
 - c. The evidence of Local Housing Association and council housing waiting lists is often considered relevant but in doing so, in the words of Keene J in *Forebury Estates Ltd v Chiltern, Thames and Eastern Rent Assessment Panel*⁵

...it is right to bear in mind that such lists are only likely to assist to the

² *Spath Holme Ltd v North Western Rent Assessment Committee & Bigio* [2001] EWHC Admin 541; [2003] HLR 13

³ *Metropolitan Property Holdings Ltd v Finegold* [1975] 1 All ER 389

⁴ *Queensway Housing Association Ltd v Chiltern, Thames and Eastern Rent Assessment Committee*, *The Times*, 11th December 1998

⁵ *Forebury Estates Ltd v Chiltern, Thames and Eastern Rent Assessment Panel* (2001) 33 HLR 64, at paragraph 42

extent that they may indicate that market rents are being influenced by an excess of demand over supply. That will often be far from easy to determine, because some of those on the list may be uninterested in private sector accommodation, while others may be on the list simply because they have been squeezed out of the private sector by the level of rents or because of the lack of suitable private sector accommodation. It is right, therefore, that the Committee should act with caution in the use which it makes of such lists.

As up-to-date waiting list figures for relevant council districts were not available to the Committee such evidence could not be considered, so in the instant cases this issue is irrelevant.

- d. The possible availability of similar rented accommodation through agencies must be considered in the context that agents ask for evidence of receipt of housing benefit, substantial deposits and/or references and/or guarantors. A significant proportion of prospective tenants would not be able to provide these things. It follows that many of the properties being marketed by such agents will not be available to all prospective tenants. That factor suggests that many agents' perspective of the market is likely to be a significant distortion of the true market.
 - e. As a result of the Committee's collective experience of the residential letting market it is of the opinion that, despite the recent upsurge in investment in buy-to-let properties (with the consequent effects of reducing the supply of houses to buy, increasing prices beyond the reach of many would-be purchasers, and increasing the number dependent upon the rented sector), demand consistently exceeds supply for such accommodation in the area under consideration.
 - f. Capital and rental values in the locality are continuing to increase, which can be an indicator of an increase in demand for housing generally.
25. Assessing a scarcity percentage cannot be a precise arithmetical calculation because there is no way of knowing either the exact number of people seeking housing of this type in the private sector or the exact number of such properties available. It can only be a judgment based on the years of experience of members of the Committee. That combined experience leads the Committee to the view that, while the increased availability of properties on the rental market in recent years has caused demand to decrease, it nevertheless remains substantial for such accommodation in this locality at the moment (and perhaps higher than for some other types of accommodation) and the scarcity deduction is assessed at 10%.

The Decision

26. Fair Rents have tended to increase by more than the rate of inflation in recent years. This is caused, amongst other things, by the effect of the Housing Acts 1988 and 1996, which have brought many more properties on to the letting market, thus reducing the "scarcity" element, the statutory discount for which used to suppress Fair Rents well

below the true open market rate.

27. Applying the above findings of fact the Committee was of the view that the Fair Rent to be registered for the subject property, being the maximum that the landlord may choose to levy, is £358.50 per calendar month [see schedule attached]. As the maximum figure of £358.50 allowable under the Rent Acts (Maximum Fair Rent) Order 1999 ("the capped rent") is less than the £450.00 calculated in the schedule the lower figure must be registered.

Signed
Graham Sinclair - Chairman
for the Rent Assessment Committee

Caution

For the purpose of reaching a decision the Committee inspected the subject property. Such inspection is not a structural survey and only takes a few minutes. Any comments made about the condition of the property in this Statement of Reasons are made as a result of casual observation rather than a detailed inspection. Please do not rely upon such comments as a guide to the structural condition of the property.

SCHEDULE

OMV (pcm) for modern property in good condition with usual facilities	£800.00
Less : Reduction for lack of central heating	(£80.00)
Less : Reduction for curtains & carpets	(£75.00)
Less : Reduction for single outside WC	(£50.00)
Less : Reduction for dated kitchen	(£40.00)
Less : Reduction for dated bathroom	(£30.00)
Less : Reduction for general repair / lack of double glazing	(£25.00)
 Net OMV for this property	 £500.00
Less : Scarcity @ 10%	(£50.00)
 Fair rent (if rent capping provisions did not apply)	 £450.00
Capped rent	£358.50