

Ref: BIR/ 17UJ/ F77/2005/0222

EXTENDED REASONS FOR DECISION

8 HASSOP CLOSE DRONFIELD DERBYSHIRE S18 2FX

1. Background

This is a reference to a Rent Assessment Committee by the landlord, Northern Counties Housing Association Limited, in response to a registration by the Rent Officer of a fair rent under the Rent Act 1977 of £60.00 per week effective from 17 November 2005. The tenant is Mrs. P. Watson.

2. The Property

The property consists of a self contained purpose built flat with full central heating and comprising two rooms, kitchen and bathroom and on the outside an extensive fenced garden area, grounds and car parking spaces. The property is in a good location and conveniently situate for the shops and other amenities in Dronfield, while being within a reasonable commuting distance of Sheffield and Chesterfield.

The Committee inspected the exterior of the property only as they were unable to obtain access to inspect the interior. The Committee found that the garden and grounds were very well maintained.

3. Meaning of a Fair Rent

Section 70(1) of the Rent Act, 1977 provides that in determining a fair rent regard must be had to all the circumstances (other than personal circumstances) and in particular to the age, character, locality and state of repair of the property. Section 70(3) of the Rent Act 1977 provides that any disrepair or other defect attributable to a failure by the tenant to comply with the terms of his tenancy must be disregarded, and also that

improvements carried out by the tenant (otherwise than in pursuance of the terms of the tenancy) must likewise be disregarded.

Additionally by virtue of section 70(2) of the Rent Act 1977 for the purposes of determining a fair rent it has to be assumed that the number of persons seeking to become tenants of similiar properties 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 properties in the locality which are available for letting on such terms. Therefore section 70(2) of the Rent Act 1977 will only operate where there is a scarcity of comparable property for rent.

4. Written Representations

Only the landlord made written submissions. The landlord stated that "this scheme of 20 properties is well sought after and we have a healthy waiting list, with no properties empty at the present time, and we have never had a problem in finding suitable tenants if and when properties become available". The landlord suggested that a minimum of £80 per week might be considered as the market rent of the property, although they were aware that often 10% of any market rent is taken off for furniture, curtains, carpets, white goods etc. They also referred to the excellent communication links the property enjoyed to Chesterfield and Sheffield and indeed the M1 motorway.

5. Determination

The overwhelming evidence of open market rental values is provided by lettings of properties which benefit from central heating, double glazing, fitted carpets and curtains and normal white goods as standard amenities. It is the Rent Officer's practice to deduce comparability from this open market evidence and then make an adjustment in respect of each particular property where a fair rent is determined in order to take account of any standard amenities that are not provided. This Committee follows that practice. Consequently the starting point in determining the market rent figure referred to below is the Committee's opinion of the open market rental value of the property on the basis that it is in good repair and benefiting from the standard amenities. An adjustment then has to be made to reflect the lack of any of the standard amenities and the value of any tenant's improvements to arrive at an adjusted market rent.

In the present case the Committee, using its general knowledge and experience of rents in the locality of the property, but no special knowledge, determined that the appropriate starting figure for the subject property is £85.00 per week. From this figure the Committee deducted the sum of £5.00 per week to take account of the lack of only a limited number of the standard amenities referred to above, thereby giving an adjusted market rent of £80.00 per week.

The Committee are then required to consider the question of scarcity and, if they find this to be substantial, to make a deduction to reflect this fact. The aim of this provision is to prevent landlords from benefiting from the fact of any housing shortage in a wide area within which the property is situated. They do this, as required by s.70(2) of the Rent Act 1977, by considering whether the number of persons genuinely seeking to become tenants of similar properties in the broad area of North East Derbyshire and South Yorkshire upon the same terms (other than as to rent) is substantially greater than the availability of such properties.

It has been stressed by the courts in *Curtis v London Rent Assessment Committee* (1997) 4 All ER 842 QB9 and later in *Yeoman's Row Management Ltd. v London Rent Assessment Committee* (2002) EWHC 835 that in assessing scarcity the Committee's own knowledge and experience of the locality is of particular value, and that it is not amenable to the same precision of analysis as the assessment of a market rent. Nevertheless in the cases of *R (on the application of Wolters (London) Ltd) v London Rent Assessment Committee*, (2003) 41 EG 180, where a high discount figure of 20% was made, and in the case of *Queensway Housing Association Ltd. v Chiltern, Thames and Eastern Rent Assessment Committee* (1999) 31 HLR 945, where a discount was 25 % was adopted, the courts stated that it is important to spell out the reasoning in terms that enabled one to see that the correct approach had been adopted.

In the present case the Committee are satisfied that in the wider locality of North East Derbyshire and South Yorkshire there are substantially more persons genuinely seeking to become tenants of similar properties to the subject property than there are properties available. The Committee are required to consider a wide local area rather than a narrow area to eliminate the effect of any localised amenity which would tend to either increase or decrease the rent. The Committee are satisfied that in the wide local area referred to above there is a shortage of housing, and that, if considerations as to the level of rent are ignored, there would be substantially more people seeking rented accommodation of this type than the supply of it. They reached this conclusion having considered and weighed the various factors referred to above, and in particular the


statements made by the landlord in its representations referred to in paragraph 4 above, but also using their general knowledge and experience.

Having come to this conclusion it is necessary for the Committee to quantify this scarcity so that they can apply an appropriate discount to the adjusted market rent of £80.00 per week in order to eliminate from the determination of the fair rent the element of the market rent which is attributable to the scarcity of properties available for letting. The Committee have determined the scarcity is substantial. In the opinion of this Committee a finding of a scarcity which is less than 10% is not substantial and they would not apply a discount in respect of any such finding. However, they do find that the scarcity in this case is not as great as that reflected in the percentages applied in the cases of Wolters and Queensway referred to above (20% and 25% respectively) but is nevertheless more than 10%. They perceive that the level of scarcity in the wide local area of the property as being mid way between the the lower and higher end of the scales and in all the circumstances they conclude that the appropriate reduction is £12.00 per week leaving a net rent of £68.00 per week to which the service element sum of £3.29 per week in respect of variable services has to be added resulting in a fair rent of £71.29 per week. This compares with the fair rent sought by the landlord in its application of £66.50 per week inclusive of the variable service charge.

6. Conclusion

The Committee therefore determined that for the purposes of section 70 of the Rent Act 1977 the fair rent for the property is £71.29 per week inclusive of £3.29 per week in respect of the variable service charge. 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 £64.79 per week in accordance with the details that have been provided, and accordingly this sum has been registered as the fair rent with effect from 1 December 2005 being the date of the Committee's decision. The registered rent is to be entered as variable in accordance with the terms of the tenancy.

Dated 19 DEC 2005



A.P. Bell
Chairman