

## **38 CUNNINGHAM ROAD & 54 CUNNINGHAM ROAD, TUNBRIDGE WELLS**

### **1. Background**

On 15 August 2003 the Landlords of these two properties, Kelsey Housing Association Ltd, applied to the Rent Officer for registration of a fair rent of £439.25 per calendar month for 38 Cunningham Road and £445.34 for 54 Cunningham Road. The rent payable at the time of the application was £428.00 per month in respect of each property. The rent was previously registered on 8 May 2001 with effect from 23 July 2001 at £428.00 per calendar month in respect of each property following a determination by the Rent Officer. On 12 September 2003 the Rent Officer registered a fair rent of £467.00 per calendar month including £6.45 in respect of services for each property with effect from that date. By a letter dated 6 October 2003 the Landlords objected to the rents determined by Rent Officer and the matter was referred to the Rent Assessment Committee.

### **2. Inspection**

The Committee inspected the properties on 15 December 2003 and found them to be in good condition. They were terraced houses built in about 1979 which provided similar accommodation: on the ground floor a kitchen and living room and on the first floor three bedrooms and a bathroom/wc. Each property had double-glazed windows and full central heating and each had a garden and car space. The external decorations were in good order.

We observed that each property was equipped with a stair lift to facilitate the tenants moving from one floor to the other.

### **3. Evidence**

The Committee received written representations from the Landlords and these were copied to the Tenants. No written representations were received from the Tenants. Neither party requested a hearing at which oral representations could be made.

#### 4      **The Law**

When determining a fair rent the Committee, in accordance with the Rent Act 1977, 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 emphasised

- (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 tenancy) 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).

Having provisionally arrived at a fair rent in accordance with the criteria set out in Section 70, the Committee then had to consider the impact of the Rent Act (Maximum Fair Rent) Order 1999 ("the Capping Order"). This set a maximum figure which a fair rent determined under Section 70 could not exceed. Broadly speaking, this permitted a fair rent to be increased from the previous registered rent only up to the level of inflation (as measured by the Retail Prices Index) plus 7.5% in the case of the first registration after the Capping Order became effective and 5% in the case of subsequent registrations. For the purposes of this calculation, the fair rent is taken as the gross fair rent previously registered, inclusive of any amount stated to be attributable to services. It is not based upon

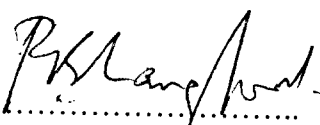
a net fair rent exclusive of services. Thus an increase in the amount attributable to services on a subsequent registration will have no effect on the fair rent limitation imposed by the Capping Order.

## **5. Valuation**

This is an unusual case. The letter dated 6 November 2003 from the Landlords to the Committee made it clear that they were only challenging one aspect of the rent, namely the amount stated to be attributable to the provision of services. The Rent Officer had, in fixing the rents for the two properties at £467.00 per calendar month, allowed for a service charge of £6.45 per month. This was the same amount as the Rent Officer had allowed in respect of 10 other properties owned by the Landlords in Cunningham Road, which shared the same service charge. However, in the case of 38 Cunningham Road and 54 Cunningham Road, additional service charges have been incurred by the Landlords in respect of the servicing of the stair lift with which each of these two properties had been provided. The Landlords considered that these additional costs should be added to the £6.45 figure to be included in the rent. The rent register showed that the uncapped rent in respect of each property was £531.45 per calendar month. It could be deduced from this that the Rent Officer had allowed a net rent in respect of each property and the other ten properties of £525.00 per month. The Landlords did not in any way challenge the Rent Officer's assessment of the net fair rent of £525.00 per calendar month. Equally the Tenants of the two properties had also not challenged the Rent Officer's figures and furthermore they had presented no representations to challenge the Landlords' view that account should be taken of the stair lift servicing charges. That being the case, and applying our own knowledge and experience of rental levels in the area, we accept the Rent Officer's figure of £525.00 per calendar month for the net fair rent. We also consider that the stair lift service charges claimed by the Landlords reflect accurately the cost of this additional service. This means that in respect of 38 Cunningham Road the service charge provision should be increased from £6.45 per month to £16.70 per month, producing a total uncapped fair rent of

£541.70 per calendar month. In the case of 54 Cunningham Road where there had been extra work to the stair lift, the amount allowed for services should be £22.79 per calendar month, instead of £6.45 per calendar month. This produces a total figure for the rent, inclusive of service charges, of £547.79.

However, by virtue of the Capping Order the maximum fair rent that can be registered is in both cases the lower sum of £470.50 per calendar month inclusive of the amounts allowed for services. The details of the calculation have been provided on the back of the decision form. As indicated in paragraph 4 above, the increased provision for services will not affect the fair rent figure calculated under the provisions of the Capping Order. Accordingly the sum of £470.50 per calendar month inclusive of services of £16.70 per calendar month will be registered as the fair rent for 38 Cunningham Road with effect from 15 December 2003 being the date of the Committee's decision. The sum of £470.50 per calendar month inclusive of services of £22.79 per calendar month will be registered as the fair rent for 54 Cunningham Road with effect from 15 December 2003 being the date of the Committee's decision.

  
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P B LANGFORD (Chairman)

Dated.....19<sup>th</sup> January 2004.....