

**SUMMARY STATEMENT OF REASONS**  
**for the decision of the Committee which met on 17 August 2005**  
**to determine a FAIR RENT in respect of 2 ASHRIDGE COTTAGES,**  
**LT GADDESSEN, BERKAMSTED, HERTS HP4 1PW**

**Ref. No.** CAM/26UC/F77/2005/0071

**Landlord:** Executors of Lord Davidson Deceased  
**Tenant:** Mrs K Crack

<b>Rent at date of Application:</b>	£1180.50 per quarter
<b>Rent proposed by Applicant:</b>	£1441.75 per quarter
<b>Rent determined by Rent Officer:</b>	£1327.00 per quarter (£1650.00 p.q. before capping)
<b>Rent determined by Committee:</b>	£1215.00 per quarter

**MEMBERS OF THE COMMITTEE:** **Mr G M Jones - Chairman**  
**Miss M Krisko BSc BA FRICS**  
**Mr B Tyers**

<b>THE PROPERTY</b>	The Committee inspected the property in the presence of the tenant and found it to be generally as described in the Rent Register. A three-bedroom terraced cottage dating from 1929, very dated interior, let completely unfurnished. Space heating is by a Rayburn stove (with back boiler) in the living room, open fires and tenant's appliances. Small rooms and awkward layout. No garage or off-street parking.
<b>CONDITION</b>	The property appeared generally to be in fair condition. However, the chimney stack is in need of re-pointing; the external decorations are poor; the electrical wiring is very old; and there are numerous cracks in internal plasterwork.
<b>TENANT'S IMPROVEMENTS</b>	The tenant has relined some ceilings and fitted a cooker point in the very basic kitchen and other power points, an immersion heater and a wall heater in the extremely dated bathroom.
<b>LOCATION</b>	In a terrace of similar properties, some modernised, situated in an attractive village setting. Overall, a good and sought-after location.

## SCARCITY

In the experience of the Committee, scarcity in this locality (rural West Herts/Mid Bucks/South Beds) for this type of property justifies a deduction of 10%.

## THE LAW APPLIED

In short, the task of the Committee is to determine a 'fair rent' within the meaning of section 70(1) of the Rent Act 1977, taking into account all relevant circumstances (other than personal circumstances). A fair rent is a market rent adjusted for scarcity and disregards under section 70(3) – in particular, tenants' improvements. A discount will be appropriate under section 70(2) where there is a significant scarcity of similar dwellings available for letting in the locality. Rent capping may apply (see below). The rent will be exempt from capping if the landlord carries out repairs or improvements to the property as a result of which the uncapped fair rent determined for the property is at least 15% more than the existing registered rent. Full Reasons (if requested) will set out the relevant legal principles in detail.

## OPEN MARKET RENT

Based on the evidence (including the Rent Officer's Market Evidence Report) and the Committee's own knowledge and experience, the open market rent for the property, if let on assured shorthold terms (the landlord – as would generally be the case – insuring), fully modernised and in good order throughout, with central heating, double-glazing and carpets, curtains and white goods, would be £900 per calendar month.

## COMMITTEE'S CALCULATIONS

Open market rent	£900.00 p.c.m.
Less global deduction for size, layout, condition and lack of basic furnishings and modern facilities and disregarding tenant's improvements 50%	<u>£450.00</u>
Adjusted open market rent for this property	£450.00
Reduction for scarcity	<u>£ 45.00</u>
	£405.00 p.c.m.
Converting to quarterly basis	£1215.00 p.q.

## THE RENT ACTS (MAXIMUM FAIR RENT) ORDER 1999

The maximum fair rent calculated in accordance with the formula set out in the Order is £1331.00 per quarter. The rent is not exempt from capping.

## DECISION

As the maximum fair rent is more than the Committee's assessment, the fair rent is £1215.00 per quarter.

**Geraint M Jones MA LLM (Cantab)**  
**Chairman**



**Note:** This is a summary of the Committee's reasons for its decision. Should you require more detailed reasons, they can be supplied but only if a written request is received by the Panel Office within 21 days from receipt of this document. The papers will then be returned to the Chair for such detailed reasons to be prepared.

**Eastern Rent Assessment Panel**

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**REASONS FOR DECISION OF RENT ASSESSMENT COMMITTEE**

*Reasons requested by Landlord/Tenant under section 10 of the Tribunals and Enquiries Act 1992 and Regulation 10a of the Rent Assessment Committees (England and Wales) Regulations 1971.*

**FIRST DRAFT**

**Property:** 2 Ashridge Cottages, Lt Gaddesden, Berkhamsted, Herts HP4 1PW  
**Ref. No.** CAM/26UC/F77/2005/0071

**Date of Decision:** 17 August 2005

**Landlord:** Executors of Lord Davidson Deceased (agent Roger Ladbury FRICS)  
**Tenant:** Mrs K Crack

<b>Rent at date of Application:</b>	£1180.50 per quarter
<b>Rent proposed by Applicant:</b>	£1441.75 per quarter
<b>Rent determined by Rent Officer:</b>	£1327.00 per quarter (£1650.00 p.q. before capping)
<b>Rent determined by Committee:</b>	£1215.00 per quarter

**MEMBERS OF THE COMMITTEE:** **Mr G M Jones - Chairman**  
**Miss M Krisko BSc BA FRICS**  
**Mr B Tyers**

**1. THE PREMISES**

- 1.1 This property is a three-bedroom terraced cottage dating from 1929. It is located in an attractive village setting and has a pleasant rear garden. Upon inspection the Committee found it to be much as described in the Rent Register (the Committee was not provided with a copy of the Rent Officer's survey report). The cottage has a very dated interior and is let completely unfurnished. Space heating is by a Rayburn stove (with back boiler) in the living room, open fires and tenant's appliances. The rooms are small and the layout awkward. There is no garage or off-street parking.
- 1.2 The property appeared generally to be in fair structural condition. However, the chimney stack is in need of re-pointing; the external decorations are poor; the electrical wiring is very old; and there are numerous cracks in internal plasterwork. It compares very poorly with other properties in the terrace which have been refurbished and modernised. In its present condition, it would be very unattractive to the vast majority of prospective tenants.
- 1.3 The tenant has relined some ceilings and fitted a cooker point in the very basic kitchen and other power points, an immersion heater and a wall heater in the extremely dated bathroom. Otherwise, it appears that little has been done to the property for many years. In short, the property has potential but is in need of substantial and comprehensive modernisation throughout.

**2. THE TENANCY**

- 2.1 The property was let to the tenant and her late husband many years ago at a rent calculated and payable by the quarter in arrear. There is no written tenancy agreement. The provisions of section 11 of the Landlord & Tenant Act 1985 may or may not apply; but in any event it appears that the landlord is responsible for the exterior of the building and for the provision and maintenance of the installations for the supply of services ie water, drainage (including foul water drainage), electricity and gas, space heating and water heating.
- 2.2 The tenant is responsible for such internal decorations as she may require though her only obligation to the landlord in that regard is to avoid causing damage.

### **3. THE APPEAL**

- 3.1 The Rent Officer determined a fair rent of £1180.50 per quarter with effect from 16 January 2003. On 9 May 2005 the landlord applied for an increase to £1441.75 per quarter. The Rent Officer did not, it appears, inspect the property (no doubt relying on previous inspection reports) or hold a consultation, presumably because neither party asked for one. On 13 June 2005 he determined a fair rent of £1327.00 per quarter to take effect on the same day. The fair rent was capped (as to which see paragraph 7.4 below), the uncapped "fair rent" being £1650.00 per quarter. To this determination the landlord objected by his agent's letter dated 14 June 2005. As neither party asked for a hearing the application was decided on the basis of written representations.

### **4. THE LANDLORD'S CASE**

- 4.1 In his letter dated 9 May 2005 to the Rent Officer, Mr Ladbury argued that the rent was substantially below the market rent for the property. His proposed figure of £1441.75 per quarter represented a "fair but reasonable" increase for the property as let. He said the landlord had intended to redecorate externally during the summer of 2005; however, the work was delayed owing to unforeseen circumstances. He pointed out that the rent had not been reviewed for 28 months (31 months from the date of the previous application).
- 4.2 By his objection letter Mr Ladbury made three points:
- (1) The registered rent appears to take no account of the landlord's obligation to insure, which he has done for the year commencing March 2005 at a cost of £317.00.
  - (2) The difference between the registered rent and the capped rent has altered adversely between 2003 and 2005. As the conditions and terms of the tenancy have not changed, the relationship should remain the same until a change is agreed between the parties.
  - (3) The registered rent remains well below the capping figure.

Mr Ladbury said that a fair rent of £1406.00 per quarter (the Rent Officer's figure plus the cost of insurance) would be acceptable to the landlord. The Committee did not agree with this approach.

### **5. THE TENANTS' CASE**

- 5.1 Mrs Crack drew the attention of the Committee to the fact that some years ago she discovered that she was entitled to a local authority grant for the installation of loft and cavity wall insulation and the fitting of a new jacket to the hot water tank. At her instigation, the local housing authority arranged for that work to be done at no expense to the landlord.
- 5.2 Generally, it appears that Mrs Crack was content to leave the question of rent to the good sense and expertise of the Committee.

## 6. THE LAW

- 6.1 The primary task of the Committee is to determine a 'fair rent' within the meaning of section 70(1) of the Rent Act 1977. In determining the fair rent, regard must be had to all the circumstances (other than personal circumstances) and, in particular, the age, character, locality and state of repair of the dwelling and the quantity, quality and condition of the furniture (if any). Section 70(2) requires the Committee to assume that the number of persons seeking to become tenants of similar dwelling-houses in the locality on similar terms is not substantially greater than the number of such dwelling-houses in the locality which are available for letting. A discount will be appropriate where there is a significant scarcity of such dwellings. Section 70(3) (as amended) sets out three matters which are to be disregarded, of which only '(b)' (improvements carried out by the tenant, other than pursuant to the terms of the tenancy) is often relevant. The Committee should make it clear what adjustments (if any) are made under section 70(3).
- 6.2 The Committee cannot concern itself with the rate of percentage increase in the rent. Rents do not always track general inflation, though there is obviously an indirect connection. A fair rent is a market rent adjusted for scarcity and disregards (*Curtis -v- London RAC (No 2)* [1997] 4 All ER 842 – see however paragraph 7.4 below). There may be more than one route to determine a fair rent; but every route must have that starting point. That is so, whether reliance is placed on market or fair rent comparables or on return on capital. Where comparables are relied upon, there is a need to assess their validity and applicability at the time of their use as comparables. In considering comparable evidence, the Committee must consider the market in the general locality of the subject property. Committees should rely upon the best available evidence. Where close market rent comparables are available, they must constitute the best evidence of the market. If the Committee relies upon the knowledge and experience of its members, the effect of that knowledge and experience and the way in which it affects the Committee's conclusions should be spelt out.
- 6.4 The assessment of a fair rent is frequently described as more of an art than a science. The members of a Committee are expected to be experienced in such valuation and to know and have a "feel" for the rental property market in the area. But the end product is a figure for the rent of particular premises. Where the comparables are not exact and/or where there is a need to make disputed adjustments for scarcity or for disregards, it necessarily involves some working through, which should appear in the Reasons.
- 6.5 The first step in the assessment of scarcity is to identify the relevant locality. The locality must not be too narrowly defined. Scarcity must be distinguished from the effect of local amenities, which may enhance rental values. A fair rent will reflect the amenity value of a property or its situation because these factors affect the market rent. The purpose of the scarcity reduction is to deprive a landlord of a "wholly unmeritorious" increase in rent that has come about because there is a broad overall shortage of houses in the locality. Judges have spoken of considering a "really large area" or "the area where potential tenants of the property could reasonably be expected to live" but have declined to lay down any hard and fast rules.
- 6.6 In the recent case of *R -v- London RAC on the application of Wolters (London) Ltd* [2003] EWHC 1465 (Admin); [2003] 41 EG 180 Harrison J emphasised the need for an adequate statement of reasons and held that, in the absence of a satisfactory explanation, three London boroughs was too small an area. Harrison J accepted three propositions of law which were agreed between Counsel:-
- (1) A fair rent will reflect the amenity value of a property or its situation because these factors affect the market rent. The purpose of the scarcity reduction is to deprive a landlord of a "wholly unmeritorious" increase in rent that has come about because there is a broad overall shortage of houses in the locality, which means a really large area.
  - (2) There is a fundamental need in practice to distinguish between scarcity that flows from the amenity of the dwelling itself and its immediate locality (section 70(1)) on the one hand, and that which arises from an excess of demand over supply in a really large locality (section 70(2)) on the other.

- (3) It is important that the committee holds clearly in mind the purpose of section 70(2) and directs itself by reference to that subsection.
- 6.7 Committees should naturally seek to apply discounts for scarcity consistently. Where there is no significant scarcity of similar dwellings in the locality, there can be no discount. Council housing lists may be relevant (particularly to show trends in housing demand), but must be used with caution. Scarcity of houses to let is only one of the reasons why people seek accommodation through local authorities. Data about homelessness is unlikely to assist. If evidence from the parties (particularly expert evidence) is to be disregarded, a clear explanation must be given. In the final analysis, however, scarcity is an artificial concept which cannot generally be objectively tested and, accordingly, the actual discount is very much a matter of opinion. It is left to Committees to decide what area to consider on the facts of each case. In the assessment of scarcity, general knowledge and experience of the local market may, in the view of the Committee, be particularly helpful.
- 6.4 The Committee considers that its task must be undertaken with caution. The Committee must not reject evidence, particularly expert evidence, without good reason but considers that it need not be credulous in cases where the evidence appears to be flawed or amounts to mere unsupported assertion. The Courts have made it clear that Committees are entitled to use their own local knowledge and expertise for this purpose. Committees must be wary of basing their conclusions on evidence that is not open to comment by the parties. The Committee must in every case set out the evidence upon which its decision is based and give adequate reasons for its findings on scarcity.
- 6.5 The Committee is also mindful of the need to have regard to the European Convention for the protection of Human Rights and Fundamental Freedoms as embodied into English law by the Human Rights Act 1998. This affects the construction of legislation and underlies the approach of the Committee to its task.

## **7. THE DECISION**

- 7.1 The Committee's view of the evidence and findings of fact are as follows:-
- 7.1.1 The parties really offered no valuation evidence. The Rent Officer's Market Evidence Report listed a wide range of properties, none of which the Committee was able to inspect. Nevertheless, the Report gave a useful indication of the range of rents for broadly similar properties in the area. The Committee assumes that, in common with most open market lettings in the area, these were let on assured shorthold terms, fully modernised and in good condition, with central heating, carpets and white goods. In open market lettings the landlord generally insures. Unless the tenancy agreement so provides, the landlord cannot recover the cost of insurance in addition to the rent.
- 7.1.2 In the absence of satisfactory evidence, the Committee is driven to rely upon the knowledge and experience of its members, derived from many sources, including the property pages of local newspapers, evidence in many previous cases and professional dealings of the members. The Committee does not rely upon any specific comparables of its own.
- 7.1.3 In the judgment of the Committee the open market rent for this property, if let on assured shorthold terms, fully modernised and in good condition, with central heating, carpets and white goods, would be £900 per calendar month. Adjustments must then be made for the fact that the property was let completely unfurnished, unmodernised, without central heating and in some disrepair. The kitchen and bathroom fittings alone would make the property unlettable to the majority of prospective tenants. The dingy condition of the external decorations is also very off-putting. Apart from the Rayburn stove in the living room, the space heating appliances belong to the tenant. The tenant also fitted the immersion heater and carried out substantial repairs to internal plasterwork.

- 7.1.4 Where a property has so many drawbacks, it can be dangerous to make individual deductions in respect of each element separately, as that can lead to total deductions in excess of what the market would demand. Doing the best we could on limited market evidence, the Committee deducted 50%, leaving an open market rent of £450 per calendar month for the property as currently let.
- 7.2 The Committee has stripped out the value of the tenant's improvements (which are to be disregarded under the provisions of section 70(3) of the Act) and makes no separate discount under this head.
- 7.3 The locality considered by the Committee for the purposes of section 70(2) is (rural West Herts/Mid Bucks/South Beds). In terms of population and rented housing this is a sufficiently large area to iron out the effects of local amenities and location generally. It is the area where, in the judgment of the Committee, prospective tenants of the subject property might reasonably be expected to live. In the experience of the members of the Committee there is substantial scarcity of similar dwellings in the locality. In the view of the Committee a discount of 10% is appropriate in order to satisfy the assumption set out in section 70(2) of the Rent Act 1977. This leaves a figure of £405.00 per calendar month before capping.
- 7.4 The Committee must then consider the effect of the Rent Acts (Maximum Fair Rent) Order 1999. This Order imposes a limit on rent increases in cases where it applies.
- 7.5 The Committee has considered whether the rent is exempt from capping. Capping does not apply if, as a result of repairs or improvements carried out by the landlord, the uncapped fair rent determined for the property is at least 15% more than the existing registered rent (at the date of the landlord's original application). This is a two-part test; there must be an increase of at least 15% **and** an increase of at least 15% must be attributable to landlord's repairs or improvements. The rent is not exempt from capping.
- 7.6 The maximum fair rent in accordance with the Order is £1331.00 per quarter. The capping calculation has already been sent to the parties. The rent assessed by the Committee is below the cap.
- 7.7 Converting to a quarterly basis, the Committee reaches a figure of £1215.00 per quarter as a fair rent for the subject property in accordance with the provisions of section 70(1) of the Rent Act 1977.



**Geraint M Jones MA LLM (Cantab)**  
**Chairman**

**CAUTION**

For the purposes 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 about the condition of the property in this Statement of Reasons are made as a result of observations made for the limited purposes of the Committee rather than a detailed inspection. Please do not rely upon such comments as a professional opinion of the structural condition of the property.