

**Eastern Rent Assessment Panel**  
Great Eastern House Tenison Road Cambridge CB1 2TR  
Telephone: 0845 1002616 Facsimile: 01223 505116



## 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.*

**PROPERTY:** 104 West Street, Coggeshall, Essex CO6 1NT  
**Ref. No.** CAM/22UC/F77/2003/0094  
**Date of Decision:** 9 September 2003  
**Landlord:** Bankway Properties Limited (agents B Bailey & Co)  
**Tenant:** Mr & Mrs A Whitelock  
**Rent at date of Application dated 14.5.2003:** £64.00 per week  
**Rent proposed by Applicant:** £96.00 per week  
**Rent determined by Rent Officer:** £70.00 per week  
**Rent determined by Committee:** £70.00 per week

## MEMBERS OF THE COMMITTEE

**Mr G M Jones - Chairman**  
**Mr D W Jennings FRICS**  
**Mr R G Martin**

### 1. THE PREMISES

- 1.1 This property is a 2-3 bedroom end-terrace cottage fronting directly onto the main street of a large village. The Rent Officer's survey is not on file.
- 1.2 Upon inspection, the Committee found the property to be a timber-framed cottage dating from about the 15<sup>th</sup> Century with a slate roof to the front and a large expanse of tiled roof to the rear. The main structure is in fair condition, though the rear elevation of the roof looks rather tired. The wood-framed sash windows are in reasonable condition. External decorations were in progress at the time of inspection.
- 1.3 At the rear of the property the long but rather narrow kitchen has fairly modern units but a rather dated look. A new sink unit is about to be installed in response to the tenants' long-standing complaints about a plumbing leak. The bathroom has been recently modified with grant aid to provide wheelchair access and a walk-in shower for the benefit of the disabled lady tenant. It appears that the bathroom provided by the landlord was fairly modern but not of very recent vintage. A fairly large living room occupies the remainder of the ground floor. It is divided into two areas by framing timbers.

- 1.4 Upstairs are two interconnecting double bedrooms with sloping ceilings. One bedroom has been subdivided by the tenants to provide for family needs. Central heating is installed (by the tenants). Although used as such, this is not really very suitable for a family with children, particularly because of the lack of privacy upstairs.
- 1.5 At the rear is a paved courtyard which is closely overlooked. A large barn conversion lies to the rear. Off-street car parking is available nearby subject to demand, though the tenants' entitlement to use this is disputed. Parking is, however, available on the street.

## **2. THE TENANCY**

- 2.1 The tenancy commenced in November 1979. It is a weekly tenancy. The Committee has seen no written tenancy agreement and there appear to be no noteworthy or unusual terms. The provisions of section 11 of the Landlord & Tenant Act 1985 apply, so 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. The tenants are responsible for such internal decorations as they may require though it appears that their only obligation to the landlord in that regard is to avoid causing damage.

## **3. THE APPEAL**

- 3.1 The previous fair rent effective from 14 July 2001 was set at £64.00 per week. The landlord applied on 14 May 2003 for an increase to £96.00 per week. The Rent Officer carried out an inspection and held a consultation which the landlord did not attend. He determined a fair rent of £70.00 per week with effect from 14 August 2003. To this determination the landlord objected by letter dated 27 June 2003. Neither party requested an oral hearing.

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

- 4.1 The landlord's agents remind the Committee of the legal principles they consider applicable to the Committee's task. They argue that a landlord is entitled to expect a return of 10% on capital; if the return is less, that indicates an over-supply. It is a mistake to think that, because rents are high, properties are scarce. The landlord calls for a substantial increase in the rent.

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

- 5.1 The tenants complain of external decorative disrepair and a long-standing problem with the kitchen sink. They make no direct representations about the level of rent. In effect they say that the landlord is entitled to a fair rent provided the property is maintained in reasonable condition.

## **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) sets out five matters which are to be disregarded, of which only '(a)'

(improvements carried out by the tenant, other than pursuant to the terms of the tenancy) is relevant. The Committee is mindful of the guidance given by the courts as to the correct approach to the determination of fair rents, in particular the review of the authorities by the Court of Appeal in *Curtis -v- London RAC (No 2)*, reported at [1997] 4 All ER 842.

- 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 (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. 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. Council house rents are not helpful in this regard, as they are not fixed by reference to the market. Council houses do, of course, form part of the housing pool and thus affect the market indirectly.
- 6.3 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 Moreover, Committees must adopt a more quantitative approach than has perhaps been usual hitherto and make their reasoning more transparent. The Court of Appeal makes this very clear in *Curtis (No 2)*. 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. Judges have spoken of considering a "really large area" (*Metropolitan Property Holdings Ltd -v- Finegold* [1975] 1 WLR 349), or "the area where potential tenants of the property could reasonably be expected to live" (*Queensway Housing Association -v- Chilterns Thames & Eastern RAC* Times 11 Dec 1998), but have declined to lay down any hard and fast rules. 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.
- 6.6 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. 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.
- 6.7 We point out that the exercise, which the Committee is required to undertake, is often bedevilled by a lack of satisfactory evidence. Even where evidence is available, it is often difficult for Committees to evaluate. Many cases are decided on written representations without a hearing. Thus Committees are often required to evaluate evidence without the opportunity to test it adequately or at all.
- 6.8 The Committee considers that this is an exercise that must be undertaken with caution. The Committee is mindful of the fact that it 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.

6.9 Committees must be wary of basing their conclusions on evidence that is not open to comment by the parties. The Committee considers it is entitled to make use of published material like the Rent Service Market Rent Summaries. But if the Committee wishes to take into account specific comparables which are not provided by the parties or the Rent Officer, the parties should generally be given an opportunity, by means of an adjournment if necessary, to consider and comment upon them. The Committee is mindful of the necessity to set out in every case the evidence upon which its decision is based.

6.10 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. In those exceptional cases where the Act has a direct effect on the Committee's determination, the nature and consequences of that effect will be set out in paragraph 7 of these Reasons.

## **7. THE DECISION**

7.1 The Committee's view of the evidence and findings of fact are as follows:-

- 7.1.1 The landlord appears to be dealing with the matters complained of in correspondence by the tenants, who are content to accept that the work in progress will be completed to a satisfactory standard and the rent should be assessed accordingly. When work is complete, the exterior will look smart and in keeping with the style of the property. The kitchen sink will no longer leak with the associated unpleasant consequences.
- 7.1.2 This is a small period cottage with the usual limitations of old cottages as regards layout, low ceilings etc. The kitchen looks tired and is not particularly attractive and (the Committee concludes on the limited evidence available) the bathroom supplied by the landlord was rather dated. The ground floor bathroom is a drawback, though not uncommon in this type of property.
- 7.1.3 The cottage fronts directly onto the pavement of a fairly busy main road. There is no front garden and not much back garden. The rear yard is closely overlooked by the house next door and dominated by a large barn conversion at the rear. The bedrooms interconnect and allow no privacy. Off-street parking is not always available. This is not really a family house, though currently used as such. The property is let without carpets, curtains or white goods. The central heating and the present bathroom are tenants' improvement and therefore to be disregarded.
- 7.1.4 The Rent Officer's Market Evidence Report dated 16 May 2003 shows a wide range of two-bedroom properties at rents between £98 and £160 per week. Only limited details of the various unidentified properties are available. Only very general conclusions can be drawn from the information provided.
- 7.1.5 The Committee does not agree with the landlord's assertion that a residential landlord is likely to achieve a rental return of 10% on capital. The landlord's agent has not put forward any evidence in support of this assertion. Without evidence of capital value, the Committee could not make the assessment the landlord proposes. In any event, return on capital is not the best guide to rental value. The Committee prefers to consider the rental market directly.
- 7.1.6 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 informal discussions held from time to time with local agents, landlords and tenants. The Committee does not rely upon any specific comparables of its own.
- 7.1.7 The Committee's own knowledge and experience indicates that the open market rental value of the subject property, if let fully modernised and in good condition throughout, with central heating, carpets, curtains and white goods, would be £125.00 per week.
- 7.1.8 Deductions are in order for lack of central heating (10%) and carpets, curtains and white goods (7.5%); also for relatively poor kitchen and bathroom (7.5%). Thus the adjusted open market rent is £93.75 per week

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 Colchester and its hinterland. That 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 20% is appropriate in order to satisfy the assumption set out in section 70(2) of the Rent Act 1977. Thus the uncapped fair rent is £75.00 per week
- 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.
- 7.6 15% of £64.00 is £9.60. The Committee does not consider that the landlord's current works, although valuable to the tenants, increase the uncapped fair rent by as much as £9.60 per week. Accordingly, the rent is not exempt from capping.
- 7.7 The maximum fair rent in accordance with the Order is £70.00 per week. The capping calculation is attached. The Committee reaches a figure of £70.00 per week 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.