

Case Ref: BIR/17UB/MNR/2006/0141

MIDLAND RENT ASSESSMENT PANEL

DETERMINATION OF THE RENT ASSESSMENT COMMITTEE

HOUSING ACT 1988

On the tenants' application to the Rent Assessment Committee under section 13(4)(a) Housing Act 1988 to determine the open market rent of an Assured Tenancy

**BROOK COTTAGE, CHAPEL STREET, FRITCHLEY,
DERBYSHIRE DE56 2FR**

Applicants: Mr. and Mrs. A. Lomax

Respondent: Trustees of the Matilda Rickman Gift

Date of Landlord's Notice: 12 August 2006

Date of Tenants' application: 22 August 2006

Date of Proposed Increase: 15 September 2006

Date of Committee's Determination: 21 November 2006

Members of the Rent Assessment Committee:

Mr. S. Duffy
Mr. R. Cooper FRICS
Mr. M Ryder

Determination: £400 per 4 weeks with effect from 15 September 2006

Introduction

1. The Committee reached its determination on 21 November 2006 and the landlord has requested extended reasons which are the subject of this document. Accordingly, these are the extended reasons for determination of the market rent of Brook Cottage, Chapel Street, Fritchley, Derbyshire DE56 2FR. Under Section 14 of the Housing Act 1988 (“the Act”), the landlord, the Trustees of the Matilda Rickman Gift have proposed a new rent of £400 per month to take effect on 15 September 2006 in place of the existing rent of £216.67. The tenants have referred the landlord’s notice to a Rent Assessment Committee under section 14(4) of the Act. A Rent Assessment Committee determined on 12 October 2006 that the said referral to it was valid and that the landlord’s notice is effective as a notice in respect of a periodic 4 weekly tenancy which is the actual period of the tenancy.

The property

2. The property comprises a three bedroom, two storey semi-detached house of stone and tile construction built around the turn of the last century. The property is located in the conservation area of Fritchley. It has on its ground floor a hall, lounge, dining room, kitchen and pantry. On the first floor there is a landing, three bedrooms and a bathroom with a WC. To the exterior there is a detached single asbestos garage with broken panels. There is a track at the side of the property which leads to a separate building used by the local school.

3. The property benefits from gas central heating which was installed by the landlord. The Committee observed during its inspection that the tenant had installed a chemically injected damp proof course throughout the house. However, the Committee was informed that the damp proof course had been installed in 1991. During its inspection the Committee noted signs of damp penetration to the quarry tile kitchen floor and condensation in the bathroom. There have been no further modifications or improvements.

The hearing

The tenants' case

4. At the hearing Mr. and Mrs. Lomax represented themselves and made reference to the written submissions they had previously made to the Committee dated 17 September 2006 and 9 November 2006 respectively, together with a complete copy of the Homebuyer's Report produced by Mark Richardson BSc MRICS of Boxall Brown and Jones and a report by Mr. Beardsley on the condition of the electrics to the property.
5. Mr. Lomax opened his case by stating that he believed the proposed increase to be unfair and that the Homebuyer's Report was a reasonable assessment of market value and the property's condition.

6. Mr. Lomax made particular reference to the Homebuyer's report, highlighting amongst other matters Mr. Richardson's findings in respect of movement due to subsidence (Paragraph C(1) of the report) and his suggestion that the drains had collapsed and caused this movement (Paragraph D(2) of the report). Mr. Lomax also referred the Committee to the comments of Mr. Beardsley a qualified electrical engineer in respect of the condition of the electrics within the property.
7. Mr. Morten cross-examined Mr. Lomax in respect of the repair to the property and the defects that Mr. Beardsley had highlighted. Mr. Morten suggested that the movement to the property was due to subsidence in the rear corner of the property and that the drains needed to be tested before any problems could be determined.
8. Mr. Morten also cross-examined Mr. Lomax in respect of a new agreement annexed as document C to his submissions of 9 November 2006. Mr. Lomax said that the purpose of his submitting the document was to show the intentions of the trust and when asked why he had not signed the agreement he explained that he had been advised by his lawyers not to sign as it would affect the security of his tenure. Mr. Lomax was not prepared to expand upon the legal advice he had received but added that he would sign what he believed to be a tenancy agreement that was both fair and consistent with his occupation.

9. Mr. Lomax did not submit any valuation evidence to the Committee and, under questioning from the Committee, commented that he considered that a reasonable rent for the property given its location and condition was £350 per month.

Landlord's Case

10. Mr. Morten, a trustee of the Matilda Rickman Gift, opened his case by explaining to the Committee the intention of the trust, the objects of which were, originally, the advancement of education and religion but which had changed towards providing housing in Fritchley. Mr Morten then referred the Committee to his written submissions dated 3 July 2006, 8 July 2006, 8 September 2006 and 26 October 2006 and to the comparable evidence which he had submitted in respect of Stone Cottage, 1 Valley Road, Bower Lane and Chestnut Bank Cottage in Fritchley.
11. In Mr. Morten's view the asking rent of £400 was a step towards asking the market rent and that the rentals he had put forward as comparables were significantly in excess of the £400 the trust was no asking.
12. Mr. Lomax cross-examined Mr. Morten in respect of how the Charity Commissioners would view a one hundred per cent increase in rentals although the Committee was of the view that this line of questioning was not relevant and that the issue in question was solely that of the market rent.

Decision

Improvements

13. There is evidence of damp, particularly in the quarry tiled floor where it has not been possible to inject the damp proof course and the Committee has no doubt that without the damp proof course which was installed in 1991 the rental value of the property would diminish significantly.

The rent

14. The Committee has taken into account the comparable evidence relied upon by Mr. Morten, which although helpful, was not conclusive. The rents referred to in paragraph 2(b) of Mr. Morten letter to the Panel Office dated 3 July 2006 are not passing rents. They are mainly asking rents. The Committee also notes that Stone Cottage has been restored and “modern living introduced”, while 1 Valley Road, having 4 bedrooms, is larger than Brook Cottage. The property to let at £565 per month at Bower Lane also appears to be appointed to a much higher standard than Brook Cottage. While Chestnut Bank Cottage, which was let for a short period at £400 between April and June 2004 has clearly been modernised, indeed it is described as having a laminate floor, modern bathroom suite and modern cupboards.

15. Brook Cottage has a side entrance over which others have rights of way and as such it has obvious drawbacks from a letting point view. In addition, the kitchen and bathroom at Brook Cottage are relatively poorly fitted and there is dampness and condensation present. The property also requires redecoration both internally and externally before it could be brought up to the standard at which it may be expected to attract a market rent in the region of those submitted by Mr. Morten as being comparable.
16. According to section 14(1) Housing Act 1988 the Committee must determine the rent at which it considers Brook Cottage might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy having the same terms as the tenancy in question. In making the determination the Committee must disregard the effect on the rent attributable to the grant of a tenancy to a sitting tenant and any increase in the rental value of the dwelling-house attributable to certain tenant's improvements as defined in section 14(3) Housing Act 1988. It should be noted that the Committee is not being asked to determine what would be a reasonable rent for Mr. and Mrs. Lomax to pay, or indeed, what a reasonable rent for Brook Cottage may be. Rather, the Committee's task is to determine what a landlord's reasonable expectation for the rent of Brook Cottage should be, if it is let on an assured tenancy with the same terms on which it is held by Mr. and Mrs. Lomax.
17. The Committee is satisfied that in order to achieve the same level of rents as are being asked for Stone Cottage and 1 Valley Road, a good deal of

money would have to be spent by the landlord on repairs and improvements. In addition, in arriving at the market rent the Committee must ignore certain tenant's improvements which, in this case, would include the damp proof course.

18. In the Committee's judgement, if the access to rear of the property was solely for the tenant and if the kitchen and bathroom were updated to some extent, the exterior of the property repaired and the interior and exterior redecorated, then the property would attract a rent of £550 per four weeks. As it is, ignoring the tenants' improvements and taking into account the shared access, the disrepair and the poor decorative condition we is satisfied that Brook Cottage would attract a rental of £400 per four weeks. In coming to its decision the Committee had regard to the members' own general knowledge of market rent levels in the area of Derbyshire, which as an expert tribunal the Rent Assessment Committee is not only entitled but bound to do, although the Committee have taken into account the comparables which Mr. Morten placed before us.

Hardship

19. According to section 14(7) of the Housing Act 1988 if it appears to a Rent Assessment Committee that an increase would cause undue hardship to the tenant then the Committee may determine a rent to have effect at a later date than that specified in the landlord's notice of increase. Accordingly, at the hearing the Committee asked Mr. and Mrs. Lomax

whether an increase in the region of that sought by the trust would cause them undue hardship. While Mr. Lomax indicated that such an increase would create difficulties he was unable to expand upon that. The Committee also bears in mind that Mr. Lomax himself had told us that he believed a rent of £350 per month would be reasonable and in the circumstances, Mr. and Mrs. Lomax must have anticipated a substantial increase in rent. Therefore the Committee finds that there is no undue hardship in this case.

Determination

20. The Committee therefore determines that, in accordance with section 14(7) Housing Act 1988, the new rent of £400 per four weeks shall take effect from 15 September 2006.

CHAIRMAN.....

DATE.....8 December 2006