

EASTERN RENT ASSESSMENT PANEL

STATEMENT OF REASONS FOR THE DECISION OF THE COMMITTEE WHICH MET ON 8th April 2003 TO DETERMINE A MARKET RENT IN RESPECT OF 'STOCKS', 76-78 HIGH STREET, BOTTISHAM, CAMBRIDGESHIRE CB5 9BA

File Reference No.:	CAM/12UC/MDR/2003/002
Landlord:	Mr M Rutherford
Landlord's Agent:	Carter Jonas
Tenant:	Dr & Mrs Byrne
Existing Rent:	£1800.00 per calendar month
Determination by the Committee:	No determination was made
Members of the Committee:	Mr JR Morris LLM (Chairman) Mr W Tawn FRICS, FBEng, FNAEA Mr Rehahn
Clerk to the Committee:	Mr M Allbut

PRELIMINARY MATTER

1. The Landlord raised an objection to the manner in which the Tenant had sought to obtain evidence for his case by visiting and in some cases obtaining admission to properties referred to by the Landlord's Agents as comparable evidence to the subject property. The Chairman informed the parties that the Committee had no jurisdiction in relation to this matter and was disregarded.

THE PREMISES

2. The subject property is a substantial four bedroom two storey, detached period house of timber frame construction with external brick walls under a tile roof.

Accommodation

The property comprises an entrance hall with stairs to the first floor, dining room, inner hall with cloakroom, breakfast room, ante area which leads to the drawing room off which is a study area, family room, kitchen and utility room on the ground floor. On the first floor there is a long landing/corridor, a bedroom with dressing room off which is an en suite bathroom, a family bathroom and three further bedrooms one of which has an en suite bathroom and w.c. In addition there is an annex comprising three rooms/offices, two stores and two w.cs and washbasins. Outside there are two outbuildings. There is a drive and large garden at the rear of the property.

Services

The property has mains electricity, water, gas and drainage. Water and space heating is by a central heating system. There is a separate central heating system in the annex.

Furnishing

The property is let with some furnishing, with white goods and carpets as per the inventory provided to the Committee by the parties.

Location

The property is situated in the centre of Bottisham village about 6 miles from Cambridge city centre.

THE TENANCY

3. The subject Tenancy commenced as a contractual assured shorthold tenancy on the 16th January 2003 for a term of 6 months. Under the Lease Section 11 of the Landlord and Tenant Act 1985 applies in relation to the Landlord's repairing liability.

THE APPLICATION

4. The Tenant applied under s 22 of the Housing Act 1988 for a determination of the rent which in the committee's opinion, the landlord might reasonably be expected to obtain under an assured shorthold tenancy, there being sufficient number of similar dwelling houses in the locality let on an assured tenancies (whether shorthold or not); and that the rent payable under the subject Tenancy is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the subject Tenancy, having regard to the level of rents payable under the tenancies for comparable properties. The Committee inspected the property in the presence of the Tenants on the 8th April 2003. The Hearing was later the same day at which the Tenants, the Landlord and Mr Hatch, as Agent for the Landlord, attended.

THE TENANTS' CASE

5. The Tenants submitted a number of documents to the Committee including:
 - A copy of the tenancy agreement
 - An account of the events leading to the Tenants taking the tenancy
 - A quantity of correspondence, records of telephone calls and e mails concerning maintenance and remedial work on the subject property
 - An inventory with comments relating to defects,
 - A statement of evidence in relation to the defects
 - A statement of evidence in relation to the comparables
6. The defects listed in the documentation fall into three categories.
 - 1) Cleaning
The Tenants stated that it had been agreed that the property should have been cleaned prior to their taking up the tenancy. They stated in evidence that this had been inadequately carried out.
 - 2) Heating
The Tenants stated that the heating system including the open fires failed to maintain the property at an appropriate level and that as a result the subject property was a

dwelling house that is 'unfit for human habitation' as defined by the Local Government and Housing Act 1989 and the Housing Act 1985 as explained in the Department of the Environment Circular 161/90. In support of their claim the Tenants produced correspondence from the Environmental Health Officer of East Cambridgeshire District Council who inspected the property and took readings pursuant to the local authority's duties under the Housing Act 1985.

3) Miscellaneous defects that had not been remedied in spite of requests to the Landlords

Defects specifically referred to were:

- No means of operating the Velux window in the Kitchen
- Unreachable smoke detector
- Right hand leg of the oven broken
- No source of heat other than the boiler
- Shower and extractor fan not working in the family bathroom
- Door knob of the door of inner hall to the passage way faulty
- Front door stiff to open
- Front door bell inaudible
- Several internal doors difficult to open
- Defects in the Office Block include:
 - Fluorescent light does not work
 - Double glazed doors have to be opened and closed together
 - Guttering and down pipes need attention

7. In correspondence the Tenants commented that the appliances and fittings were either defective or of substandard quality and that some of the maintenance of the property had been done to a very poor standard. The Tenants also considered that the property was poorly managed. The Tenants further stated that access had been granted to the Landlord's contractors but that repairs had either not been carried out or had not been done properly. They are of the opinion that the rent is too high as the house fails to function in its basic amenities.
8. At the Hearing the Tenants confirmed the written representations and referred the Committee to the Inspection stating that the rent was not reasonable because:
 - The heating is inadequate.
 - The property is open plan and poorly insulated which exacerbated the problem of inadequate heating.
 - The floors are different levels and uneven.
 - The property is dark.
 - There are areas of damp particularly in the breakfast room where the lower part of the wooden frame appears to be crumbling.
 - The woodwork is rough and not well finished.
 - The family room has no curtains or curtain rails and there is no carpet in the drawing room, which has a cold tiled floor, and there is no floor covering in the en suite bathroom of the master bedroom.
 - Externally the property is exposed and not secure.
9. The Tenants summarised that no one defect particularly significant in itself but together leaves the property severely wanting. Although the defects might not be of concern in a property if one were to purchase it nevertheless are not acceptable in a

property that is rented. The rental is too high for the standard of living that the property affords.

10. In written representations and at the Hearing the Tenants made representations in relation to the following comparable properties, which the Tenants had viewed:
Old Granary, Orwell
St Michael's, Longstanton
Hatton House, High Street, Longstanton
140 Thornton Road, Girton

THE LANDLORDS' CASE

11. In written representations the Landlord's Agent described the subject property and mentioned that it was Grade II Listed. He stated that the property had been advertised at £2,000 per calendar month and that the current rent of £1,700 was an undervalue. The Agent went on to state that the Landlord had made every effort to ensure that the Tenants were comfortable and happy and that in excess of £3,000 had been spent on the property since the let to the Tenants began. A letter from Anglian Property Management was included advising a rent of £2,250 per calendar month.
12. With regard to the heating the Landlord's Agent stated that the Landlord had made improvements to the system and following the visit of the Environmental Health Officer from Cambridgeshire District Council had offered the tenants additional electric heaters to supplement the existing heating.
13. At the Hearing the Landlord's Agent confirmed the written representations stating that previous occupiers of the property had not complained of inadequate heating. The Landlord said that he intended to live in the property himself and that letting was a temporary measure. He stated he had done all he could to accommodate the Tenant's requests.
14. In written representations and at the Hearing the Landlord's Agent submitted details of a number of comparable properties and listed 18 properties in the surrounding area that were of similar size, let on Assured Shorthold Tenancies and in the same rental range including the following properties which the Tenants had also viewed:
Old Granary, Orwell
St Michael's, Longstanton
Hatton House, High Street, Longstanton

COMPARABLE EVIDENCE

15. At the Hearing three properties were identified as being good comparables as both the Landlord's Agent and the Tenants had viewed them.
Old Granary, Orwell
Comprised dining room, sitting room, kitchen breakfast room, inner hall, garden room, utility room, cloakroom, 4 bedrooms, 3 bathrooms, garages and courtyard gardens let on an assured Shorthold tenancy at £1,900 per calendar month.

- The Tenants commented that the property had double bedrooms, polished floors on the ground floor good quality carpets on the first floor and good quality joinery, light fittings and decorations.
- Both parties agreed that this was a superior property to the subject property and warranted the higher rent.

St Michael's, Longstauton

Comprises hall, kitchen/breakfast room with conservatory, utility room, cloakroom, family room, dining room, study, sitting room, four bedrooms, one with en suite, and a family bathroom, grounds and parking let on an assured Shorthold tenancy at £1,600 per calendar month.

- The Tenants considered this to be a superior property in finish and location than the subject property although acknowledged that it did not have the large drawing room and annexe.
- The Landlord's Agent submitted that it was smaller, had less parking and did not have the annexe of the subject property. He also disagreed that the location was better.

Hatton House, High Street Longstauton

Comprises entrance hall, four reception rooms, study, kitchen, utility room, conservatory, cloakroom, five bedrooms, three bathrooms, one en suite, large garden including summerhouse, garden shed, garage and parking let on an assured Shorthold tenancy at £1,550 per calendar month.

- The Tenants commented that this was a very attractive house on a large plot, set back from the road and appeared to be in good order. It was considered by the Tenants to be very comparable to the subject property but let at a lesser rent.
- The Landlord's Agent stated that the property is on a very busy road (B1050) it is also in poor decorative order and dated internally which led to the asking rent being reduced from £1,750 to £1,550 per calendar month.

THE LAW

16. By virtue of s 22 of the Housing Act 1988 the tenant under an assured shorthold tenancy may make an application to a rent assessment committee for a determination of the rent which in the committee's opinion, the landlord might reasonably be expected to obtain under the assured shorthold tenancy.
17. However by virtue of s 22(3) of the Act the committee shall not make such determination unless they consider:
 - (a) that there is a sufficient number of similar dwelling houses in the locality let on an assured tenancies (whether shorthold or not); and
 - (b) that the rent payable under the assured shorthold in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph a) above.

THE DETERMINATION

18. The Committee noted the Tenancy Agreement and did not consider that it contained any unduly onerous terms that should be taken into account when considering the rental of comparable properties.
19. The Committee assessed the market rent for the subject property on the basis of the terms of the Tenancy Agreement and the condition of the subject property as at the time of Inspection. Therefore the Committee could not consider matters contained in the correspondence that did not relate to the assessment of rent. Therefore the Committee could not have regard to the account of the events leading to the Tenants taking the tenancy nor the correspondence, records of telephone calls and e mails concerning maintenance and remedial work on the subject property save in so far that they drew attention to defects that still had not been remedied. Therefore problems concerning inconvenience and arrangements for contractors to have access to carry out repairs and previous disrepair that had now been remedied could not be taken into account.
20. The Landlord's Agents in written representations and at the Hearing gave evidence to show that there are a sufficient number of similar dwelling houses in the locality let on assured tenancies for the Committee to draw comparisons between the rent charged for the subject property and other comparable properties in the area.
21. The Committee considered the issues raised by the Tenants and found as follows:
 - a) Cleaning
The Committee's only jurisdiction is in relation to the assessment of rent, as stated in the paragraph above relating to the law and does not extend to the matter of the alleged failure by the Landlord to ensure the property was clean prior to the commencement of the tenancy which might, if proved, be a breach of contract.
 - b) Heating
With regard to the heating the Committee has no authority or jurisdiction under the particular sections of the legislation referred to, however, the evidence provided was relevant in assisting the Committee to determine whether the rent was one that the landlord might reasonably be expected to obtain. The Committee took account of the temperatures that had been recorded while recognising that a property of this age and character was inherently difficult to heat.
 - 3) Miscellaneous defects
Notwithstanding the defects referred to by the Tenants the Committee noted at the Inspection that the subject property was in generally good condition.
22. The Committee considered the evidence in relation to the comparable properties. It accepted that The Old Granary was a superior property and therefore although not directly comparable gave a general indication of rental values. The Committee considered that St Michael's and Hatton House, Longstanton were similar to the subject property, however the Committee were of the opinion that the higher rent payable for the subject property was attributed to the more extensive accommodation afforded by its annex. In addition the properties were not direct comparables in that they were situated in different villages. The Committee noted the evidence offered by

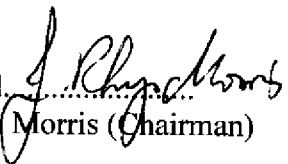
the Tenants of 140 Thornton Road, Gorton however the rental value and the circumstances of the let were not as clear as the other three properties and therefore this was not considered to be as good a comparable.

23. In assessing whether the rent for the subject property was reasonable, the Committee noted the location, age, character, state of repair and extent of the accommodation and although the cumulative effect of the defects was not an inconsiderable irritant to an occupant they did not lead the Committee to form the opinion that the current rental value was significantly higher than might reasonably be expected to be obtained by a Landlord having regard to the level of rents payable for comparable properties in the locality submitted in evidence.

THE DECISION

24. The Committee was precluded from making a determination as it did not consider the conditions referred to in Section 22 (3)(b) of the Housing Act 1988 were met. That is to say that the rent payable under the assured shorthold tenancy in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies of similar dwelling houses in the locality let on an assured tenancies (whether shorthold or not).

Signed


John R Morris (Chairman)

Caution

The Committee inspected the subject property for the purposes of reaching this decision. The inspection was not a structural survey and only took a few minutes. Any comments about the condition of the property in this Statement of Reasons are made as a result of a brief observation rather than a detailed inspection. Please do not rely upon such comments as a guide to the structural condition of the property.