

## **EASTERN RENT ASSESSMENT PANEL**

Statement of Reasons for the Decision by a Committee of the Panel following an Inspection  
carried out on 16<sup>th</sup> December 2003

### **Rent Assessment Committee**

Mrs H C Bowers BSc(Econ) MRICS (Chairman)

Mrs S Redmond BSc (Econ) MRICS

Mr A Kapur

Case No.: CAM/00ME/F77/2003/144  
Re: 9A Norfolk Road, Maidenhead, Berkshire, SL6 7AS.  
Landlord: Mr J Lion & Mrs C Smith  
Tenant: Mrs V Wheeler

### **Introduction**

1. The property the subject of this objection is a flat that is let by Mr Lion and Mrs Smith ("the landlords") to Mrs Wheeler ("the tenant") on an unfurnished regulated tenancy governed by the Rent Act 1977 ("the Act"). Consequently the rent payable by the tenant is a fair rent as defined in section 70 of the Act and it falls to be reviewed not more than once every two years. In an application made by the landlords dated 21<sup>st</sup> August 2003, a rent of £750 per calendar month was proposed. On 7<sup>th</sup> October 2003 the Rent Officer determined a rent of £69.50 per week in respect of the subject property and registered it so that the rent was effective from that date. The uncapped rent in the opinion of the Rent Officer was £89 per week. Prior to the current registration, the rent was registered at £50 per week with effect from 13<sup>th</sup> April 1992. In a letter dated 28<sup>th</sup> October 2003 the landlords objected to the current registration and so the matter came before the Committee.

### **The Statutory Provisions**

2. It may be helpful if we describe the legal background to the function we have to perform. We have paraphrased the provisions of section 70 of the Act below, in the hope of making them reasonably comprehensible. The actual terms of the Act are in some ways rather more complex than our description indicates. This might suggest that we have failed to apply the terms of the Act properly. Therefore we make it plain that we have in practice carried out our work by

reference to the actual wording of the Act and the decided cases upon it and not by reference to this short description.

3. Under Section 70 of the Act the Committee had to consider, in determining what is or would be a fair rent under a regulated tenancy of the dwelling house, all the circumstances (other than personal circumstances), in particular the age, character and state of repair of the property, if any furniture is provided and any premium which has been or may be lawfully required. The Committee had further to consider for the purposes of the determination whether the number of persons seeking to become tenants of similar dwelling houses in the locality on terms (other than those relating to rent) of the regulated tenancy is substantially greater than the number of dwelling houses in the locality which are available for letting on such terms. This provision is referred to as the scarcity factor. The Committee had to disregard any disrepair or other defect attributable to a failure by the tenant; any improvement carried out by the tenant and if any furniture is provided any deterioration in the condition of the furniture due to any ill treatment by the tenant.
4. On 7<sup>th</sup> December 2000, the House of Lords overruled a decision of the Court of Appeal, dated 20<sup>th</sup> January 2000, which had declared the Rent Act (Maximum Fair Rent) Order (“the Capping Order”) invalid. This Order prescribed a formula to limit the amount of fair rents and has now to be treated as always having been valid. However, Rent Acts (Maximum Fair Rent) Order 1999 will not apply on a first registration of a rent or in circumstances where the landlord has carried out repairs and improvements to a property and the rental value of the work exceeds 15% of the previously registered rent.

### **Inspection**

5. We made an inspection of the property on the 16<sup>th</sup> December 2003 in the company of the tenant. The subject property is a self-contained flat over a shop unit. The building is of brick and slate roof construction and dates from the 1900's. The accommodation comprises a storeroom on the ground floor with access to storage space in the basement; on the first floor there is a living room, kitchen, two bedrooms a box room and a bathroom. There is a staircase access to an attic room on the second floor. There is a small garden at the rear of the property but this is subject to a right of way from the adjoining unit. Additionally there is vehicular access to a garage that has been erected by the tenant. The property does not have any central heating although the tenant has installed some night storage heaters. The landlords have recently carried out some

work to the property, which includes heaters in the kitchen and bathroom and some rewiring, roof repairs, tanking of the cellar and the installation of a damp proof course. The kitchen and the bathroom are unmodernised.

### **Representations and Hearing**

6. Neither party requested a hearing and therefore this matter was dealt with by reference to written representations from the parties.

### **Tenant's Case**

7. Mrs Wheeler explained that she was happy with the rent fixed by the Rent Officer. There was a brief description of the tenant's improvements including the replacement of the water heater, installation of a new WC and storage heaters.

### **Landlord's Case**

8. In her written representations, Mrs Smith provided the committee with a brief history of the subject property, including occupational and rental aspects. It was stated that the circumstances surrounding the property had made it uneconomical but that despite this the landlords had spent approximately £5,000 on the property. Included with the representations was a copy of a letter from Messrs Pike Smith and Kemp, agents acting for the landlords, which addresses the issues surrounding the non-viability of the premises as a whole.

### **Consideration**

9. When considering the rental of a property under the provisions of the Rent Act 1977 we are obliged to ignore any personal circumstances when arriving at rental values. We have to carry out two valuations for the property, the first is to determine the fair rent under section 70 of the Rent Act 1977 and the second valuation is the maximum fair rent under the provisions of the Rent Act (Maximum Fair Rent) Order 1999. It will be the lower of these two valuations will be registered for the subject property.
10. In the judgement of the Court of Appeal in the case of *Curtis v London Rent Assessment Committee* {(1999) QB 92} the Court held that the starting point for the determination of the fair rent must be the open market rent appropriate for the property. A fair rent is the open market rent adjusted for the statutory disregards and for scarcity. As to the scarcity factor, in the case of *Queensway Housing Association Limited v Chiltern, Thames and Eastern Rent*

Assessment Committee {(1998) 31 HRL 945}, the Court held that the Committee must consider a really large area that gives an appreciation of the trends of Scarcity and their consequences, in determining whether the factor is applicable in the instant case. In the light of the recent House of Lords decision, the Committee also has to consider the application of the maximum fair rent under the capping formula.

11. In the first instance we must look at the level of rents in the open market as these provide us with the closest guidance as to the level of fair rents once certain deductions have been made and these are considered below. We were not provided with details of any lettings of comparable properties. Therefore from the Committee's own knowledge of the local market and taking in to account the accommodation we saw during the inspection, we are satisfied that the subject flat would let for £675 per calendar month.
12. However, properties let in the open market are generally in a good, modern letting condition. By "good modern letting condition" we mean what a prospective tenant would expect to find. The property would be in good structural and decorative order both inside and out. It would be carpeted and might have curtains. It might also have some "white goods" such as a cooker and a washing machine. This standard of accommodation is expected of a letting on the open market in this locality.
13. The adjustments we have mentioned are to reflect the differences between such a property and the one we are considering. They are adjustments to allow for the effect that those differences would have on the rent it would fetch in the open market.
14. No carpets, curtains nor white goods are included in this letting. We have made an adjustment of £100 per calendar month to allow for the difference, being the amount of the reduction in rent that we believe a prospective tenant would expect to receive in the open market to reflect these issues.
15. The property has no central heating, but the landlord has provided some heating in the kitchen and bathroom. A prospective tenant for the house would regard this as a major factor. In our opinion we consider that the rental bid for the property would be discounted by £50 per calendar month to reflect the lack of heating.


16. The kitchen and the bathroom of this flat are not up to the standard one would normally expect for a property letting at this level of rent. We have adjusted the rent by £65 per calendar month to reflect these items.
17. There are a number of items of disrepair, including the condition of the windows and the wiring. To reflect these items of disrepair we have deducted £20 per calendar month from the rent.
18. We need to consider whether there should be any allowance for the effects of scarcity. We considered the market in this area of Berkshire and the surrounding area for this purpose. That seems to us to be the area in which conditions of supply and demand would be likely to affect the rent for the property with which we are concerned and from which prospective tenants are likely to be drawn. It seems to us to be the extent of the really large area that the Courts have described as being appropriate to this purpose. We also took into account our collective knowledge and experience of the market in that area. We bore in mind that we must consider the effect that scarcity might have on the net rent after the adjustments. We have come to the conclusion that whilst we had no specific representations before us, there is a general imbalance of supply and demand within the locality we have described and therefore we have made an allowance of 15% for scarcity.
19. We therefore produced the following calculation on a monthly basis:

Open Market Rent:		£
		675
Less allowances for:		
Lack of Carpets, Curtains and White Goods	100	
Lack of Central Heating	50	
Kitchen/Bathroom	65	
Disrepair/Windows	<u>20</u>	
	235	<u>235</u>
		440
Scarcity	15%	<u>66</u>
		374

20. The fair rent of £374 per calendar month equates to £86 per week. The committee determines a fair rent of £86 per week. However that rent is capped by the Rent Acts (Maximum Fair Rent) Order 1999 and the amount to be registered as the fair rent is therefore limited to **£70 per week**. Details are provided with the decision form. That rent will be registered with effect from **16<sup>th</sup> December 2003**, being the date of the Committee's decision.

Chairman

Date:-

  
8/1/04.