

**Rent Assessment Committee: Summary reasons for decision.
Housing Act 1988****Address of Premises**

Upper Cottage
Nanshuttal Farm
St Mawes
TR2 5AB

The Committee members were

Mr R Batho MA BSc LLB FRICS (Chairman)
E R Distin FRICS
Dr C W Gronnow BSc PHD FBIM

1. Background

On 3rd November 2004 the tenant of the above property referred to the Committee a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988. The landlord's notice, which proposed a rent of £675.00 per month with effect from 15th November 2004, is dated 15th October 2004.

The tenancy is a periodic tenancy which commenced on 29th November 1994. The current rent is £435.00 per month.

2. Inspection

The Committee inspected the property on Thursday 9th December 2004 and found it to be in fair condition with respect to landlord's responsibilities. Obvious improvements have been made by the works done in the past two years, but the property still lacks modern kitchen and bathroom facilities and a comprehensive heating system. There is clear evidence of condensation, which would to some extent be alleviated by improved insulation. The drive access would be a deterrent to some prospective tenants. The following tenant's improvements had been made to the property, namely the supply and installation of an enclosed stove in the living room.

The Committee recognise that there is a dispute between the parties as to whether the property is let furnished or part furnished, and that this is the subject of litigation. For the purposes of determining a rent, the Committee have assessed the property on the basis that the tenancy includes the very limited amount furniture identified by the tenant as belonging to the landlord at the time of inspection.

The following services are provided for the tenant: the rent includes water charges based on an average household assessment, although the Committee felt that it would be in both parties' interests if charges were based on a metered calculation.

3. Evidence

The Committee had the benefit of written representations received from both the landlord and the tenant and copied to the parties.

In addition, a hearing was held at the Memorial Hall St Mawes on Thursday 9th December 2004, at which oral representations were made by and on behalf of the both the tenant and the landlord by way of supplement to what had been said in writing. In addition, the landlord produced limited evidence of rental values: the Committee put to the landlord and the tenant a slightly wider range of evidence of rents being sought for broadly similar accommodation in broadly similar localities, so as to give a general indication of the current level of rents.

4. The Law

In accordance with the terms of Section 14 of the Housing Act 1988 the Committee proceeded to determine the rent at which it considered that the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy. In so doing the Committee, as required by Section 14(1), ignored the effect on the rental value of the property of any relevant tenant's improvements as defined in Section 14(2) of that Act.

In coming to its decision the Committee had regard to the evidence supplied by the parties, the evidence of asking rents which the Committee had presented to the parties, and the members' own general knowledge of market levels in the Roseland and other coastal areas, and concluded that an appropriate market rent for the property would be £550 per month inclusive of water charges.

4. The Decision

The Committee therefore concluded that the rent at which the property might reasonably be expected to be let on the open market would be £550 per month inclusive of £25 in respect of the water supply. This rent will take effect from 15th November 2004, being the date specified by the landlord in the Notice of Increase.

Signed *Robert Batho*

Dated 9th December 2004

This document contains a summary of the reasons for the Rent Assessment Committee's decision. If either party requires extended reasons to be given, they will be provided following a request to the committee clerk which must be made within 21 days from the date of issue of this document.

**Rent Assessment Committee: Extended Reasons for Committee's Decision.
Housing Act 1988****Address of Premises**

Upper Cottage
Nanshuttal Farm
St Mawes
TR2 5AB

The Committee members were

Mr R Batho MA BSc LLB FRICS (Chairman)
E R Distin FRICS
Dr C W Gronnow BSc PhD FBIM

1. Background

Upper Cottage Nanshuttall Farm St Mawes is a semi-detached property owned by Mrs R F Huntington and occupied by Mr and Mrs P H Pranker. There is no written tenancy agreement, but it is said by the landlord that, when she allowed Mr Pranker into occupation at the end of November 1994, it was on the basis that he was to be the occupier and that that occupation was to be merely temporary. Mr and Mrs Pranker claim a joint tenancy, but whether it was granted to one or both of them is not a matter within the Committee's jurisdiction, or relevant to the determination of a rent: as a matter of convenience, therefore, and without any attempt to resolve this matter of dispute, the Committee refer to "the tenant". Quite apart from this, because there is no tenancy agreement or other documentation, the provisions of the Housing Act 1988 which applied in late 1994, when the tenancy commenced, were such that an Assured Tenancy was created, and a market rent is payable.

By October 2004 the market rent payable had risen from its original level to £435 calendar month, a figure which had been determined as a result of a previous Rent Assessment Committee hearing in 2002. On 15th October 2004 the landlord served notice under section 13 of the Housing Act 1988 that the rent was to further increased, to £675 per calendar month, with effect from 15th November 2004, and that this new rent was to include £40 per month in respect of water charges, a separate charge not previously identified. On 3rd November 2004 the tenant referred this notice increase to the Committee. This document sets out the Committee's reasons for the determination of rent which they made in the light of that reference.

2. Inspection

The Committee inspected the property on Thursday 9th December 2004. It is, as already stated, a semi detached house, and it is situated on the landward edge of the coastal town of St Mawes, close to Nanshuttall Farm, which is occupied by the landlord. It is approached by a hardcore surfaced track used in common with the farm house and a small number of other properties, and stands in a reasonably large but uncultivated area of garden, with space to park a car.

The accommodation which it provides comprises an entrance porch, which has a corrugated perspex and fibreglass roof, and from here there is access to the one living room. An inner hall off this living room gives access to the bathroom (in which there is only a bath), to the separate toilet and to the kitchen, which is fitted with a limited range of fitments including an enamel sink. There is a side porch off the kitchen which, at the time of inspection, was in use as a store. Stairs rise from the inner hall to a first floor landing serving two double bedrooms and a single bedroom.

The documentation which had been supplied to the members of the Committee prior to inspection referred to improvements which had been carried out during the previous two years: these works, which the documentation indicated had been arranged by Carrick District Council, were described as having included re-wiring; some replacement of plumbing fittings; the recovering all but the porch floors at ground floor level; some re-plastering and associated timber renewal; the installation of replacement double glazed windows; and some other more minor matters. Dr Gronow had been a member of the Committee which had inspected the property in 2002, and accordingly he was able to confirm that obvious improvements had been made by these works. Even so, the property still lacks modern kitchen and bathroom facilities and a comprehensive heating system, and remains in only fair condition with respect to landlord's responsibilities, although there also appears to have been a failure to carry out regular internal decorative maintenance on the part of the tenant. The property has, however, been improved by the tenant's supply and installation of an enclosed solid fuel stove in the living room.

The Committee saw no obvious evidence of significant structural dampness, but the members did note clear evidence of condensation: this problem would to some extent be alleviated by improved insulation and comprehensive heating, but it cannot be helped by the apparent lack of adequate ventilation of the property by opening windows. The Committee considered that the drive access would be a deterrent to some prospective tenants.

The Committee recognise that there is a dispute between the parties as to whether the property is let furnished or part furnished, and that this is the subject of litigation. Further reference is made to this below but, for the purposes of determining a rent, the Committee have assessed the property on the basis that the tenancy includes the very limited amount of furniture identified by the tenant as belonging to the landlord at the time of inspection.

The one service provided for the tenant is the provision of water from the farm supply: further reference is made to this below, but the rent proposed rent includes water charges which are said to be based on an average household assessment.

3. Evidence

The Committee had the benefit of extensive written representations received from both the landlord and the tenant, representations which had been copied to the respective parties. Much of the documentation supplied relates to litigation between the parties but it is clear from the documentation, and from the tenant's refusal to allow the landlord access at the time of the Committee's inspection, that there is significant, and most unfortunate, animosity between the parties: the landlord appears to believe (among other things) that she was misled into granting the tenancy in the first place, whilst the tenant clearly believes (among other things) that there has been a deliberate failure to carry out required repairs, together with interference with access and with the water supply. There has clearly been a significant breakdown of communication between the parties.

The Committee is concerned with the determination of rent, and is not the body for resolving such matters, but regrets the difficulty they create in establishing a proper landlord/tenant relationship, in establishing a clear picture of the terms of the tenancy, or in resolving disagreements generally.

Included within this documentation there were two documents which the Committee found of particular assistance in providing an independent assessment of the condition of the property.

The first was the expert report of John Richard Tremayne Willis MRICS, prepared in April 2002 in connection with litigation between the parties and indicating a need for limited repair. The second comprised extracts from a Schedule of Works, apparently prepared by Carrick District Council, which referred to work considered necessary but which was endorsed as saying that there was no evidence of leakage through the roof, even when the ceiling bedroom one had been removed, and no evidence of leakage around the chimneys.

In addition to the written evidence, a hearing was held at the Memorial Hall St Mawes on Thursday 9th December 2004, at which oral representations were made by and on behalf of the both the tenant and the landlord by way of supplement to what had been said in writing. The landlord also added to her written statement by producing limited evidence of rental values, a matter which had not otherwise been addressed: the Committee put to the landlord and the tenant a slightly wider range of evidence of rents being sought for broadly similar accommodation in broadly similar localities, so as to give a general indication of the current level of rents.

4. The Tenant's Case

In his oral evidence the tenant argued that rent should properly be determined in the light of a property's condition and locality, and in comparison with other properties. Two years ago the rent here had been increased from £250 per month to £435 per month on the basis of comparison with properties let for holiday purposes, and at that time it was held that the rent would have been in excess of £600 per month but for an allowance which was made for disrepair. Since then the property had been partially repaired at a cost of £12,000 but the local authority, who had arranged for these repairs to be done, had said that an expenditure of the order of £25,000 was actually necessary. This meant that the property was still not of merchantable quality and that indeed, in his view, the property would not be lettable on the open market in its present state.

Whilst he recognised that work had been done, and that that work had helped, there was still more to be done: the property lacked a central heating system; there was no insulation to the roof space or to the walls; and no exterior decoration had been carried out for ten years. All of this was relevant to comparisons made with other properties: such comparable properties should actually be inspected in order to achieve an all round comparison. If this showed that Upper Cottage was commensurate then so be it, but it was his belief that the properties cited last time had been of a very high standard, which Upper Cottage was not, and that accordingly the conclusion drawn was wrong.

The tenant made specific complaints about the water supply which, he said, was delivered to the property through rusty pipes, necessitating the purchase of bottle water at a cost of £7 per week. The water supply to the farm, and to the cattle troughs within the farm, had been renewed with modern alkathene piping but that renewal program had not been extended to Upper Cottage and the supply failed normal testing as a result. He also stated that an alternative supply was available from a well within the farm curtilage, and that the landlord switched the source of the supply to Upper Cottage between the main and the well at will, something which had the effect of disturbing corrosion in the pipes and lowering the water quality. The tenant further claimed that the septic tank, shared with the neighbouring cottage, blocked frequently for a variety of reasons, but although he believed that it needed emptying the landlord would not allow this to be done, despite an approach having been made to the Courts.

The lack of car parking adjacent to the house was a significant disadvantage and the fencing around the limited parking that did exist was dangerous. In relation to repair, the bath was in especially poor condition, as was the sink, which was said to leak around the waste pipe. The side porch was in need of re-plastering and the door to it, which needed replacing, was not secure. His offers to pay for improvements had been refused: specifically, the carpets were in poor condition but his offer to replace them had been refused, as had his offer to install a central heating system. Overall, he felt that the present condition of the property did not justify the rent increase sought, particularly whilst there were continuing problems with various aspects of the accommodation.

In conclusion the tenant repeated his view that the condition of the property did not justify the rent being sought. In particular, he said that he was not satisfied with the water quality or with what the landlord had said about the source of supply. He believed that there were wells on the property and that although the stop tap was beneath the kitchen sink it could be turned off elsewhere to do repairs or to switch the supply source. He still believed that the water was polluted and that the pipes had not been renewed as they should have been.

5. The Landlord's Case

The landlord said that, although she was legally entitled to seek an increase in rent every twelve months, she had sought no increase last year. The amount which she was now asking for represented an average increase of 11% per annum over the two year period, plus an addition for the improvements which had been carried out in the meantime. Although she had not been allowed to inspect the present condition of the property when the Committee inspected it, she believed the increase in rents in the area generally, and the improvements which had been done, justified the increase which she was seeking.

Furthermore, she now wanted some specific payment in respect of the water supply: this was something for which an occupier would normally have to meet a separate charge, but in this case water to the property was by sub-supply from the farm and no specific charge had been made for it, so the tenant had, in effect, been receiving a water supply free of charge. She could not afford to supply water without charge on a continuing basis and so she was now proposing that the revised rent of £675 per month should include £40 per month in respect of water. The £675 figure was based on informal advice given by the firm of Fulfords in Truro, although they had not actually inspected the property, and included an allowance for the water which she understood was equivalent to the average paid for a three bedroomed property in the South West Water area.

The tenant had made various allegations about the condition of the property in his evidence. The tenant's refusal of access made it difficult to reach an accurate assessment of the condition of the property. Nevertheless, with regard to the claim that the roof leaked and that the property was damp, she believed that the damp problems had been addressed, and the Council had considered that the roof was in satisfactory condition. She accepted that the gate was broken, but it was the tenant who had broken it and she felt that he should repair it: she had offered the possibility of help with this, but that offer had not been taken up. With regard to the septic tank drainage, the Council had made an inspection in August 2004, at the tenant's request, but had confirmed to her that the tank itself was in satisfactory condition and that there was a problem with a drain, which had been blocked by paper tissue put down the toilet by the tenant, and so clearly that was his responsibility. The septic tank had in fact been emptied at no cost to the tenant two years previously; Upper Cottage was the only property using the septic tank because Lower Cottage was empty.

She agreed that the property had no central heating, but argued that she would be seeking a higher rent if it did have it: furnished three bedroomed properties with central heating were being advertised at rents in excess of £700.00. With regard to the car parking, there was adequate space to park one car and the problem was caused by the tenant trying to park two cars in that space.

Although the tenant had alleged that both South West Water and SWEB employees had been refused access to the property, and that other contractors would not attend without a police escort, it was the tenant who was the cause of the problem. With regard to the water supply, the landlord denied that it was polluted or defective: at this point the tenant, who had produced a report from Carrick District Council saying that the supply was defective in November 2001, interjected that further tests done in 2003 showed that it was still defective. That later test result was not produced in evidence, and the landlord argued that, in the absence of any clear evidence to the contrary, the Committee should accept that the supply was now adequate. She specifically denied that there was any private well water supply, although she said that a neighbouring property did have a well. The tenant referred to a report from South West Water referring to a private supply to Nanshuttal Farm, but no copy of that report was produced.

In response to questions from the Committee over the status of the property as a furnished or unfurnished property, the landlord said that she saw it as being a furnished property in that it was originally fully furnished, but that there had been no inventory. An inventory was now included in the documentation, but the tenant objected to this on the basis that it had been produced after the tenancy commenced (or, to use his phrase, it had been "fabricated later") and that he had not signed it.

In response to questioning about the water supply the landlord said that there was a metered supply to the farm, the two cottages, a bungalow within the farm curtilage, to farm buildings and other outlets. The main had been renewed as part of renewal of the water mains in the area generally, but the pipework within the farm had not been changed. She was seeking payment for the water which she did supply to the tenant, and for which she had to pay, at a rate based on the average cost of water to a three bedroomed household as published by South West Water. The Committee specifically asked why no sub meter had been installed and the landlord said that that was not a matter to which she had given consideration.

In response to questions about the type of septic tank serving the properties the landlord said that she was not sure but, from her description, the Committee concluded that it was more likely to be a "traditional" block built tank rather than a modern fibreglass one. She confirmed that it served the two cottages, but said that Lower Cottage had not been occupied since 1989, a statement which the tenant said was incorrect.

One of the points that had been made by the tenant was that the party chimney stack serving the fireplaces in Upper and Lower Cottages had been damaged by fire some years ago, and that he had been advised that it was no longer safe. When questioned about this and its effect on the fireplace in Lower Cottage, the landlord said that that fireplace was lit from time to time to keep the property aired.

With regard to repair, the property had been rewired in April and June of 2003, and this had included the provision of a replacement night storage heater point to one location, although the one heater that had been in the property had been removed by the tenants. The landlord said that when the Council arranged for work to be done to the cottage they had allowed for the roof to be re-covered but then concluded that this work was not necessary.

Mr Distin of the Committee had made a brief inspection of the roof void in order to confirm whether or not it was insulated (and found that it was not) and had noted that the roof was under-felted, a factor which clearly suggested that the covering was not original. The landlord said that she understood that renovation work had been carried out in 1963 and that it was possible that the roof had been re-covered at that time, although she did not know if it had ever been insulated.

6. Rental Evidence

Mr Distin presented the limited rental evidence that he had found. He made specific reference to a three bedroomed flat in St Mawes being offered for rent at £600 per month; a two bedroomed flat in Rock, a comparably high priced coastal area, on the market at £575 per month; a four bedroomed flat in Grampound at £595 per month; a two bedroomed bungalow in Mevagissey, another coastal location, at £695 per month; a mid terraced house in Golant at £700 per month; and a two bedroomed unfurnished property with sea views in Gorran Haven, a smaller coastal village, at £695 per month. Neither the landlord nor the tenant made any specific comment on any of these properties.

7. Consideration

The Committee gave careful consideration to the written and oral evidence put before it by the parties, to the extent that it was relevant to the determination of a rent: unfortunately, much of the documentation supplied related to other disputes outside the Committee's jurisdiction, although it did help to confirm what work had been arranged by the district council. The Committee concluded that the report of Mr Willis and the extracts from the Carrick District Council Schedule of Works were particularly helpful in determining the condition of the property.

In the light of all this evidence the Committee concluded, as matters of fact in each case, that

(a) from their own inspection and the reports referred to the property was in fair condition for its age and type, having been significantly improved by the repair work but still providing accommodation of a lower standard in terms of kitchen and bathroom fittings, and the absence of a comprehensive heating system, than that which many tenants would normally expect, for but that these were matters which could be reflected by adjustment of the rent; the question of who may have organised or paid the cost of the improvement works which had been done was not relevant to the determination of rent, the relevant factor being the condition of the property at the time of assessment;

(b) preferring the landlord's evidence on the matter, although the mains water supply may have been sub-standard at one time, there was no clear evidence that it remained so, and the tenant's decision to purchase bottled water must therefore be seen as a matter of choice rather than of necessity; and neither was there evidence that the supply was drawn other than from the main;

(c) by reputation and from the Committee's own knowledge and experience, the property was situated in an area which saw high property values;

(d) the rent of the property had to be assessed in a manner which reflected the landlord's furniture currently present, and that the Committee could not determine a rent which included furniture which had not conclusively been there at the commencement of the tenancy and which may or may not have been removed.

8. The Law

In accordance with the terms of Section 14 of the Housing Act 1988 the Committee proceeded to determine the rent at which it considered that the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy. In so doing the Committee, as required by Section 14(1), ignored the effect on the rental value of the property of any relevant tenant's improvements as defined in Section 14(2) of that Act.

9. Conclusions

In coming to its decision the Committee had regard to the evidence supplied by the parties, the evidence of asking rents which the Committee had presented to the parties, and the members' own general knowledge of market levels in the Roseland and other coastal areas, and concluded that an appropriate market rent for the property, repaired, carpeted and equipped to the standard normally expected for lettings at market rents would have been of the order of £700 per calendar month.

The Committee then concluded, as a matter of fact, that a prospective tenant would wish to make deductions from this level of rent to allow for the fact that the property had no central heating system; that the landlord had in fact provided neither carpets nor curtains; that the kitchen and bathroom were fitted to a lower standard than would normally be expected, with no "white goods"; that the access was in some respects sub-standard; and that a long term tenant would take on responsibilities in relation to minor repair and decoration which a shorter term tenant payable a full rent would not. These matters, taken together, would be likely to reduce the market rent to a figure in the region of £525.00 per calendar month.

The Committee then concluded that it was reasonable that the tenant should be expected to pay for water supplied, and that the cost of this should be separately identified. The Committee further concluded, however, that the current appropriate charge was at the rate of £25 per month rather than the £40 per month proposed by the landlord.

The overall effect of these adjustments was that the appropriate market rent for the property was £550 per calendar month inclusive of water charges.

10. The Decision

The Committee therefore concluded that the rent at which the property might reasonably be expected to be let on the open market would be £550 per month inclusive of £25 in respect of the water supply. This rent will take effect from 15th November 2004, being the date specified by the landlord in the Notice of Increase.

Signed 

Extended Reasons Dated 25th January 2005
