

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

4 Mansfield Road
Highmoor
Killamarsh
S21 2BX

The Committee members were

Mr A Bell MA LLB
Mr P H Swift FRICS FSVA
Mrs K Bentley

1. Background

On 22 January 2003 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 £150.00 per week with effect from 6 February 2003 is dated 10 December 2002.

The tenancy is a statutory periodic tenancy by succession which arose on the death of Mrs Wells the former tenant. The rent payable is £60.00 per week

2. Inspection

The Committee inspected the property on 28 March 2003 in the presence of the tenant and found it to be in fair to poor condition externally and internally. Neither the Landlord nor his representative attended the inspection. The Committee found the property to be in fair to poor condition externally and internally. The Committee also noted the property had no mains drainage, had been affected by longstanding structural movement and was very close to a busy main road with a poor and

potentially dangerous access. The property is a detached house situate on its own approximately 1 mile from the centre of Killamarsh. It has a number of outbuildings within its curtilage and also a large garden. The accommodation comprises on the ground floor a hall kitchen two living rooms a utility room and pantry and on the first floor landing four bedrooms, three of which are double and one single, and a bathroom. The central heating is from a gas boiler which heats the water and supplies four radiators on the ground floor, there being no radiators on the first floor. The property has mains gas, water and electricity but drainage is through a septic tank. The following qualifying tenant's improvements have been made to the property, namely central heating, rewiring, refitting of the kitchen and the provision of a new bathroom suite.

3. Evidence

No written representations were received from either party.

A hearing was held at The Crown 1 Ashley Road Killamarsh on 28 March 2003 at which oral representations were made on behalf of the landlord and the tenant.

At the hearing Mr Wrigley on behalf of the tenant produced to the Committee and the landlord's representative, Mr Wynne, a copy of the tenancy agreement entered into on 7 July 1962 which reads as follows:-

"I Cyril Montague Wells do hereby agree to sell to Mr Windell 4 Highmoor Farm known as the "Mount Farm" for £3,000 Provided that I be the tennant of the Farm for as long as I want, at a rent of 30/- per week.

Also that I have full use of the house and buildings belonging to the Farm and that I have full use of the garden, which is also attached to the house.

Under the agreement is the understanding that I am responsible to pay the full rates for the house and that I keep the house and buildings in a reasonable condition".

Mr Wrigley expressed the view that the determination of the rent officer was a perfectly proper rent.

Mr Wynne on behalf of the landlord told the Committee that a garage and outbuildings had been demolished and he had no knowledge as to why this had been done. He told the Committee that he had made enquiry of the Rent Officer Service in both Derby and Doncaster as to the general level of fair rents in the area. Mr Wynne cited as a comparable a two bedroomed semi detached house 250 metres from 4 Mansfield Road, namely Highfields Mansfield Road, which had been let in October 1996 at a rent of £290.00 per calendar month which he was now proposing to re-market at £425.00 per calendar month. Mr Wynne drew attention to advertisements in the Sheffield Property Guide in respect of rented accommodation and, in particular, a one bedroomed town house at Gartrice Gardens Halfway advertised at £350.00 per calendar month, a mid terraced house with two bedrooms at 90 Robin Lane Beighton at £325.00 per calendar month and a three bedroomed semi-detached house with central heating and double glazing at Poplar Avenue Beighton advertised at £490.00 per calendar month. The Committee pointed out to Mr Wynne that on the same page in the Property Guide as the house in Poplar Avenue was a modern four bedroomed detached house with central heating and double glazing which was advertised at £700.00 per calendar month, which was very much in line with the fair rent that Mr Wynne was seeking for 4 Mansfield Road.

4. The law

In accordance with the terms of section 14 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.

There is one most significant factor in this case. The original tenancy agreement of 7 July 1962 imposed on the present tenant's father an obligation to keep the house and buildings in a reasonable condition. Section 11 of the Landlord & Tenant Act 1985 provides that, if a lease is granted for less than seven years on or after 24 October 1961, there is an implied obligation on the landlord to keep in repair the structure and exterior of the house, including drains and gutters, and the installations in the house for the supply of water gas and electricity and for sanitation. This obligation cannot be contracted out of unless sanctioned by the County Court. The unusual situation in this case is that the tenancy created on the 7 July 1962 was expressed to continue for so long as the present tenant's father wanted. In consequence the original tenancy was not granted for a term of less than seven years and Section 11 of the Landlord & Tenant Act 1985 is not applicable. Therefore the obligation on the tenant to keep the house and buildings in a reasonable condition is effective and enforceable. This is recognised by the landlord in his application dated the 22 January 2003 when he states that all repairs and maintenance are the responsibility of the tenant. This is an onerous obligation on a tenant very rarely found in assured tenancies.

The Rent Act protected tenancy created in favour of the tenant's father, Mr Wells, continued until his death in April 1994. When he died the tenancy was then transmitted to his widow, Mrs Wells, until her death on the 19 December 1999, when the present tenant became an assured periodic tenant under Section 39 of the Housing Act 1988.

In now determining a rent under Section 14 of the Housing Act 1988 the Committee has to do this on the basis that the "terms" of the tenancy, other than the amount of the rent, are the same as those in the tenancy to which the notice relates. In consequence it is the view of the Committee that its determination has to allow a substantial discount to the amount of the rent to reflect the onerous - and highly unusual - repairing obligation on the tenant in this case. A sum of £10.00 has accordingly been deducted from the market rent that the Committee would have determined if the landlord had responsibility for keeping in repair the structure and exterior of the house and the installations in the house for the supply of water, gas and electricity and for sanitation under Section 11 of the Landlord & Tenant Act 1985.

5. The decision

With regard to the statement by Mr Wynne that the garage and outbuildings comprised within the tenancy had been demolished without the landlord's consent the Committee has no jurisdiction to deal with a dispute of such a nature between the parties. However the Committee do accept that in making its determination it has to disregard any reduction in the value of the property attributable to a failure by the tenant to comply with any terms of the tenancy.

The Committee has taken no account whatever of the indications of the level of fair rents that two Rent Officers gave to Mr Wynne, no doubt in an attempt to try and be helpful and give an indication of the range of fair rents for properties within their areas of jurisdiction. Nor did the Committee find helpful the particular properties advertised in the Property Guide to which Mr Wynne drew to the attention of the Committee which, when converted into weekly amounts, ranged between £75.00 per week and £113.00 per week since these are no more than evidence of rents that landlords were seeking to obtain, and most importantly in all these cases the landlord would assume responsibility for the repairing obligations under Section 11 of the Landlord & Tenant Act 1985.

By virtue of Section 14 of the Housing Act 1988 the Committee is to determine the rent at which they consider the property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy disregarding any increase in the value of the dwellinghouse attributable to a relevant improvement and any reduction in the value of the property attributable to a failure by the tenant to comply with any terms of the tenancy. There is no assumption, as is the case when determining a fair rent under Section 70 of the Rent Act 1977 that the number of persons seeking to become tenants of similar dwellinghouses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwellinghouses in the locality which are available for letting on such terms.

In coming to its decision the Committee had regard to the evidence supplied by the parties and the members' own general knowledge of market rent levels in the area of

north east Derbyshire and south east Sheffield and concluded that an appropriate market rent for the property, taking into account the factors referred to above, would be £65.00 per week

This rent will take effect from 6 February 2003 being the date specified by the landlord in the notice of increase.

Chairman *AP Cu*

Dated 2nd May 2003