

Eastern Rent Assessment Panel

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**Residential
Property**
TRIBUNAL SERVICE

REASONS FOR DECISION OF RENT ASSESSMENT COMMITTEE

Reasons requested by Landlord/Tenant under section 10 of the Tribunals and Enquiries Act 1992 and Regulation 10a of the Rent Assessment Committees (England and Wales) Regulations 1971.

FIRST DRAFT

PROPERTY: 3 Landwade Farm Cottages, Landwade Road, Newmarket, Suffolk CB8 7NL
Ref. No. CAM/42UC/F77/2005/0137

Date of Decision: 6 February 2006

Landlord: Exning Estate Company
Tenant: Miss J A Godfrey (represented by Mr R D Bowman)

Rent at date of Application:	£56.50 per week
Rent proposed by Applicant:	£65.00 per week
Rent determined by Rent Officer:	£63.00 per week (£76.00 before capping)
Rent determined by Committee:	£63.00 per week
Uncapped "fair rent":	£83.00 per week

MEMBERS OF THE COMMITTEE

Mr G M Jones - Chairman
Mr J R Humphrys FRICS
Mr P A Tunley

1. THE PREMISES

- 1.1 This property is a three bedroom semi-detached farm cottage dating from about 1880. It is located near a farmyard in a quiet lane off the Exning-Fordham Road. It is one of a group of four similar properties known collectively as Landwade Farm Cottages. Next door is No 4, in footprint an identical property, though (it appears) very different inside. On the opposite side of the lane are Nos 1 and 2, of similar size, age and character, but built to a somewhat different design. Nos 1 and 4 have single Marley (pre-fabricated concrete) garages, while No 2 has two Marley garages, an extension (added by the tenant) and a larger garden. No 3 has no garage. The Committee was not able to inspect the interior of Nos 1, 3 or 4.
- 1.2 The property is of brick construction. The roof covering was probably originally of slate, still to be seen on the rear extension now housing the back hall and shower room. The main roof has been retiled (some years ago). The main entrance door (disused) opens directly into the living room and has a wooden porch. The kitchen is large enough to house a table adequate for four diners. Upstairs is one reasonable double bedroom, one fair-sized single and a small single (used as a study). Outside is a fairly small garden containing (amongst other features) a shed provided by the landlord and a septic tank.
- 1.3 Upon inspection the Committee found the property to be much as described in the Rent Officer's survey

dated 27 October 2005. The property is in excellent condition and decorative repair internally and furnished to a high standard. The basic structure appears sound. New windows, flooring and ceilings have been fitted by the landlord where necessary. However, the Committee does not agree with the Rent Officer's comment that the property is in a good state of external repair and decoration. The wooden porch over the main entrance door is rotten in places, some windows are missing substantial areas of putty and the external decorations generally are badly in need of repair. Moreover, the survey report refers to a non-existent garage.

- 1.4 The internal condition of the property is almost entirely due to the extensive works of renovation, improvement and redecoration carried out by the tenant. Oil-fired central heating has been installed (replacing an old water heater and night storage heaters) and a coal effect electric fire fitted in the living room. Additions and improvements have been made to electrical wiring. The bathroom has been fitted with a new WC and wash basin and power shower (to replace an old and tired suite installed by the landlord a good number of years ago) and has been tiled and finished to a very high standard. The old stainless steel sink unit (the only kitchen fitting supplied by the landlord) has been replaced with a high quality modern fitted kitchen. Old internal doors have been renovated and some new doors fitted. Upstairs, a fitted wardrobe has been installed in the main (front) bedroom and a new hot water tank and immersion heater in a cupboard in the second bedroom. Carpets have been fitted throughout, except where the floors have been tiled.
- 1.5 The tenant's improvements extend to the gardens, which are very neatly kept. At the rear a wooden summerhouse and decking have been added; while the front garden (apparently liable to flooding) has been drained and paved, with an attractive new fishpond.

2. THE TENANCY

- 2.1 Miss Godfrey was brought up in the property and took over the tenancy in 1982 following the death of her mother. The property is let weekly. It has always been let entirely unfurnished (as would have been usual at one time). There is no written tenancy agreement. The provisions of section 11 of the Landlord & Tenant Act 1985 apply, so that the landlord is responsible for the exterior of the building and for the provision and maintenance of the installations for the supply of services ie water, drainage (including foul water drainage), electricity and gas, space heating and water heating. The landlord arranges the emptying of the septic tank at no additional expense to the tenant. The tenant is responsible for internal decorations.

3. THE APPEAL

- 3.1 On 29 September 2003 the Rent Officer determined fair rents for Nos 3 and 4, both at £56.50 per week with effect from 28 October 2003. On 4 October 2005 the landlord applied for an increase to £65.00 per week. The Rent Officer inspected the properties and heard oral representations from Mr Bowman. (It is not clear whether the landlord attended or made representations.) On 7 November 2005 she determined fair rents of £63.00 per week to take effect on the same day. These were capped rents; the figures before capping were £76.00 per week for No 3 and £80.00 per week for No 4. To these determinations both tenants objected, in Miss Godfrey's case by letter dated 12 December 2005. Miss Godfrey asked for a hearing; the landlord did not attend, being content to rely upon written representations.

4. THE LANDLORD'S CASE

- 4.1 The landlord's agent and company secretary Mr East does not deny that the tenant has carried out substantial works at the property. He says the landlord has also carried out substantial works over the years. He agrees with the tenant that there is not and never has been a garage at the property. He says this has always been made clear to the Rent Officer. He submits that £63.00 per week is a fair rent for

the property, perhaps at the lower end of the scale. He supports the Rent Officer's determination.

5. THE TENANT'S CASE

- 5.1 As the Committee could see, the Rent Register shows that No 3 has a garage, which is patently not the case. The Rent Officer's survey report and case worksheet contains the same error. The Committee also has the Rent Register entry for No 4, which contains no reference to a garage. This despite the fact (which the Committee accepts) that, at the inspection, Mr Bowman directed the attention of the Rent Officer to the true position. The two properties were both registered on 7 November 2005 each with a fair rent of £63.00 per week. On 6 January 2006 a differently constituted Committee dealt with an appeal in relation to No 4, when the fair rent of £63.00 per week for that property was confirmed. It is not clear from the Summary Statement of Reasons whether the Committee took into account the value to the tenant of the garage.
- 5.2 Mr Bowman argued that there was an obvious error which the Committee should correct. His enquiries had revealed that, formerly, the tenant of No 4 paid for her garage under a separate agreement. The charge was initially £2.00 per week, but latterly £4.50 per week. In confirmation of this matter, Mr Bowman produced copies of the rent books for 2001. These showed a differential of £2.00 per week between the rents for No 3 and No 4. For example, in April 2001 (a 5-week month) the rent for No 3 was £220.00 (£44.00 per week) and for No 4 £230.00 (£46.00 per week). In May 2001 (a 4-week month) the figures were £176.00 and £184.00 respectively. Mr Bowman also produced copies of letters from the landlord to Mrs Maclaughlin (tenant of No 4) dated October 1999, October 2001 and October 2003, in each case referring to an impending rent increase and stating that the new rents included the garage. According to Mr Bowman, the current position was that the garage rent for No 4 was included in the registered rent. Mr Bowman's conclusion was that the registered rent for No 3 should be £4.50 per week less than that for No 4. Thus, in the light of the recent decision of the Committee in relation to No 4, the registered rent for No 3 should be £58.50 per week. It was not fair that the registered rents should be the same.
- 5.3 The Chairman reminded Mr Bowman that the registered rents were capped and explained the capping rules. He pointed out that the uncapped rents assessed by the Rent Officer were £76.00 per week for No 3 and £80.00 per week for No 4. This differential (which might, perhaps, be related to the garage) was not reflected in the registered rents because of capping. A letter for Miss Godfrey showed that the previous registered rents for Nos 3 and 4 were all the same at £56.50 per week. Thus it was inevitable that the capped fair rents would be the same for Nos 3 and 4. The new registered rent for No 2 (also last set at £56.50 per week) might be different, because it was not registered at the same time. Capping was a rough and ready method of restricting rent increases. Where it applied, the tenant could only benefit. Whether it was "fair" for tenants to benefit to different degrees was a moot point. In any event, the Committee could only apply the law. The uncapped figure assessed by the Committee for No 4 was £86.00 per week. If the uncapped fair rent for No 3 was anywhere near that figure, which seemed likely, the capping calculation showed that the capped figure for No 3 would still be £63.00 per week.
- 5.4 Mr Bowman argued further that, whichever way one looked at it, there ought to be a rent differential between Nos 3 and 4. The open market rent for No 3 in its present condition was probably £150.00-175.00 per week. But much of that was due to the improvements for which he had paid, in gratitude for accommodation made available to him on his trips to England for medical treatment (he resides in Spain) and other kindnesses bestowed upon him by Miss Godfrey. Stripped of tenant's improvements, Nos 3 and 4 were much the same, though the internal layouts were (he said) somewhat different because Mrs Maclaughlin, who is disabled and in receipt of benefit, had arranged for a shower to be installed upstairs. The major difference between the two properties, in terms of the accommodation provided by the landlord, was the garage. This should be reflected in the rent and the Committee ought to be able to make that happen.
- 5.5 Debate continued for some time. The Committee members made further attempts to explain to Mr Bowman the function of the Committee and the limits to its jurisdiction. With admirable determination (to be expected of one with his military background), but also with due courtesy, Mr Bowman stuck to

his guns. He could not see that the Committee served any useful purpose if it could not right the obvious wrong he had identified. In the end, it was apparent to all concerned that no more useful progress could be made. In all, the hearing occupied more than an hour.

6. THE LAW

- 6.1 The primary task of the Committee is to determine a 'fair rent' within the meaning of section 70(1) of the Rent Act 1977. In determining the fair rent, regard must be had to all the circumstances (other than personal circumstances) and, in particular, the age, character, locality and state of repair of the dwelling and the quantity, quality and condition of the furniture (if any). Section 70(2) requires the Committee to assume that the number of persons seeking to become tenants of similar dwelling-houses in the locality on similar terms is not substantially greater than the number of such dwelling-houses in the locality which are available for letting. A discount will be appropriate where there is a significant scarcity of such dwellings. Section 70(3) (as amended) sets out three matters which are to be disregarded, of which only '(b)' (improvements carried out by the tenant, other than pursuant to the terms of the tenancy) is often relevant.
- 6.2 The Committee cannot concern itself with the rate of percentage increase in the rent. Rents do not always track general inflation, though there is obviously an indirect connection. A fair rent is a market rent adjusted for scarcity and disregards (see however paragraph 7.4 below). There may be more than one route to determine a fair rent; but every route must have that starting point. Committees should rely upon the best available evidence. Where close market rent comparables are available, they must constitute the best evidence of the market.
- 6.5 The first step in the assessment of scarcity is to identify the relevant locality. The locality must not be too narrowly defined. Scarcity must be distinguished from the effect of local amenities, which may enhance rental values. A fair rent will reflect the amenity value of a property or its situation because these factors affect the market rent. The purpose of the scarcity reduction is to deprive a landlord of a "wholly unmeritorious" increase in rent that has come about because there is a broad overall shortage of houses in the locality. Judges have spoken of considering a "really large area" or "the area where potential tenants of the property could reasonably be expected to live" but have declined to lay down any hard and fast rules.
- 6.6 Committees should naturally seek to apply discounts for scarcity consistently. Where there is no significant scarcity of similar dwellings in the locality, there can be no discount. In the final analysis, however, scarcity is an artificial concept which cannot generally be objectively tested and, accordingly, the actual discount is very much a matter of opinion. In the assessment of scarcity, general knowledge and experience of the local market may, in the view of the Committee, be particularly helpful.

7. THE DECISION

- 7.1 The Committee's view of the evidence and findings of fact are as follows:-
- 7.1.1 The only evidence offered by either party as to the open market rental value of the subject property in its present condition was Mr Bowman's opinion that a figure of £150.00-175.00 per week would be appropriate. This was more than the figure (£121.00 per week) attributed by the previous Committee to No 4 last month. To some extent, the difference might be attributable to the fact that No 4 had been reduced to two bedrooms. However, the Committee did not know the basis of that previous conclusion and, accordingly, did not find it very helpful.
- 7.1.2 The Rent Officer's Market Evidence Report showed a range of rents between £103.85 - 178.85 per week. The cheapest property (by a clear margin of £17.30) is at Great Bradley, some considerable distance away. Ignoring that property (which appears to be anomalous), the middle of the range is exactly £150.00 per week, which accords with the knowledge and experience of the Committee. The remaining properties clearly vary in size and location; some have garages.

Six of the properties listed are in Newmarket, where rental values are high because of the racing industry. The Committee assumes that, in common with most open market lettings in the area, all the listed properties are let on assured shorthold terms, fully modernised and in good condition, with central heating, curtains, carpets and white goods.

- 7.1.3 In evaluating the limited evidence, the Committee is driven to rely upon the knowledge and experience of its members, derived from many sources, including the property pages of local newspapers, evidence in many previous cases and professional dealings of the members. The Committee does not rely upon any specific comparables of its own. The Committee has borne in mind that the subject property has no garage. In the view of the Committee, a garage is of far less significance to tenants in a quiet rural location than would be the case in town. Bearing in mind its rural location, size, layout and character, the Committee places the subject property in the middle of the range. Thus the Committee assesses the open market rental value of the subject property fully modernised and in good condition throughout, with central heating, carpets, curtains and white goods, at £150.00 per week.
- 7.1.4 The Committee then makes allowance for the deficiencies of the subject property as let and for the value of the tenant's improvements. On that basis, the property would have a very basic kitchen and bathroom, outdated wiring, heating by night storage heaters and some (relatively minor) disrepair externally. There would be no curtains, carpets or white goods. The gardens would be plain and, at the front, often waterlogged. The Committee deducts 10% for lack of central heating, 5% for curtains, carpets and white goods and 20% for the tenant's improvements and minor disrepair. Total deductions amount to 35% or £52.50 per week. Thus the adjusted open market rental value of the property is £97.50 per week.
- 7.2 The locality considered by the Committee for the purposes of section 70(2) is the Cambridgeshire-Suffolk borders, bounded roughly by Cambridge to the west, Bury St Edmunds to the east, Ely to the north and Haverhill to the south. In terms of population and rented housing this is a sufficiently large area to iron out the effects of local amenities and location generally. It is the area where, in the judgment of the Committee, prospective tenants of the subject property might reasonably be expected to live. In the experience of the members of the Committee there is substantial scarcity of similar dwellings in the locality. In the view of the Committee a discount of 15% is appropriate in order to satisfy the assumption set out in section 70(2) of the Rent Act 1977. Rounding slightly, the uncapped fair rent is thus £83.00 per week.
- 7.3 The Committee must then consider the effect of the Rent Acts (Maximum Fair Rent) Order 1999. This Order imposes a limit on rent increases in cases where it applies. There is no suggestion that the rent is exempt from capping. The maximum fair rent in accordance with the Order is £63.00 per week. The capping calculation is attached. The Committee thus reaches a figure of £63.00 per week as a (capped) fair rent for the subject property in accordance with the provisions of section 70(1) of the Rent Act 1977.
- 7.4 These Reasons have (exceptionally) been prepared in full form rather than in summary form so that Miss Godfrey and Mr Bowman can see exactly how the Committee has considered the arguments, evaluated the evidence and reached its conclusions. The Committee appreciates that the outcome will not satisfy Mr Bowman; it is, however, the inevitable result of the application of legal principle to the facts of the case.



Geraint M Jones MA LLM (Cantab)
Chairman

CAUTION

For the purposes of reaching a decision the Committee inspected the subject property. Such inspection is not a structural survey and only takes a few minutes. Any comments about the condition of the property in this Statement of Reasons are made as a result of observations made for the limited purposes of the Committee rather than a detailed inspection. Please do not rely upon such comments as a professional opinion of the structural condition of the property.