

Eastern Rent Assessment Panel
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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.

PROPERTY: Hill Place, High Street, Great Bardfield, Braintree, Essex CM7 4SP
Ref. No. CAM/22UC/F77/2006/0073

Date of Decision: 12 September 2006

Landlord: Mr J W Allington (agents Willmott Property Services Ltd of Hammersmith)
Tenant: Mrs M A Thomas

Rent at date of Application:	£9,000 per annum (RAC 27.7.04 - £10,322 before capping)
Rent proposed by Applicant:	£11,700 p.a. (£975 per calendar month)
Rent determined by Rent Officer:	£9,887.50 p.a. (30.6.06 - £10,200 before capping)
Rent determined by Committee:	£10,014 p.a.
Uncapped "fair rent":	£12,480 p.a.

MEMBERS OF THE COMMITTEE: Mr G M Jones - Chairman
Mr R Marshall FRICS FAAV
Mr R S Rehahn

1. THE PREMISES

- 1.1 This property is a substantial five bedroom house, probably dating mainly from the eighteenth century. It occupies a prominent position in the centre of an attractive village in the countryside of northern Essex. The front door opens onto the pavement of the high street. Upon inspection the Committee found it to be much as described in the Rent Officer's survey dated 29 October 1998. On the ground floor are the entrance hall, three living rooms with exposed oak beams, cloakroom, kitchen, stores and utility room (which leads to the back stairs). The main living room and dining room are handsome rooms. The study is smaller and leads to the large square kitchen. The store rooms and utility room are in a wing behind the kitchen. On the first floor are a substantial landing, five bedrooms, two bathrooms (one with WC), a separate WC and a box room. In the main section of the house are three large double bedrooms and a fair-sized single bedroom. The fifth bedroom is in the rear wing. This is a small double bedroom leading to the so-called box room, which could be used as a dressing room. At the rear is a pleasant garden which would be considered ample by modern standards for a village home. A driveway runs beside the house, leading to a parking area and an attractive old cart shed, which spans the width of the garden. One side of the cart shed has been enclosed to create a single garage. The other side currently comprises a log store and loose box. Beyond the cart shed are further substantial gardens with lawn, flower beds and a substantial vegetable garden. The whole site extends to

about 0.5 acres.

- 1.2 If the property were fully modernised and in good condition throughout, it would amount to a spacious and prestigious family home. However, there are elements that detract to a considerable extent from the quality of the accommodation. Externally, the property appears to be in fair condition. The external woodwork and render was decorated in about April 2005 and is in good decorative order. On the side elevations there is red brickwork, some of which is in poor condition and in need of attention. The roofscape is complex, suggesting that the building was added to at some stage fairly early in its lifetime. There are valleys which appear to have been problematic from time to time, leading to penetrating damp at high level. However, according to the tenant, the landlord carried out various works which appear to have solved the bulk of these problems. Provided the valleys and gutters are kept clear, it appears that the roof should now be substantially water-tight.
- 1.3 There are also signs of penetrating damp around one or two of the chimney breasts and of penetrating or rising damp at low level in some external walls. Part of the problem is caused by the level of soil and vegetation against the external walls, both within the curtilage of the property and in the gardens of the adjoining property. No doubt the porosity of the old brickwork has a part to play. According to the tenant, the landlord has undertaken works to rectify the problem, albeit not with complete success. Internal decorations in a number of places show signs of damp and water penetration, much of it now dry, though there are still several damp walls. Secondary double glazing installed by the tenant has probably contributed to the dampness by restricting air circulation.
- 1.4 The floors are uneven and there are several creaky floor boards, which is to be expected in a house of this age. However, there are some floor boards in need of attention. There are also some cracks in plasterwork which, in the judgment of the Committee, could mostly be dealt with in the normal decorative process. Some of the internal joinery was in poor condition, though cracks in doors could probably be dealt with in the normal decorative process. Most of the interior of the property has clearly not been decorated for a good number of years. Although the wooden framework of the property has shifted a good deal during its lifetime, the Committee could not detect any significant signs of recent movement such as might be caused by continuing subsidence. There is scattered woodworm infestation in some timbers.
- 1.5 The services and appliances are by no means up to modern standards. The wiring, said to be more than twenty years old, appears serviceable. But the plumbing is very old and includes some lead pipe work. There is a relatively modern oil-fired central heating system, supplemented by open fires and a Parkray stove (installed by the tenant) in the study. The cheap white painted kitchen units probably date from the 1970's. Generally, they appear serviceable, apart from the sink unit, which is rotten and needs to be replaced. Their appearance could be much improved in a few hours by a good coat of paint but, even then, they would be dated and a disappointment to most prospective tenants. One attractive feature of the kitchen is the oil-fired Aga cooker, which is serviceable, though in need of a thorough clean. The bathrooms are very dated and in need of tidying up, though the tenant could, by redecoration and the application of modest DIY skills, improve their appearance considerably. The store rooms are basic and in poor condition generally. The utility room is very basic; it contains the boiler and an old stoneware sink. It seems likely that the tenant installed the plumbing for the washing machine.

2. THE TENANCY

- 2.1 The property was let completely unfurnished on 26 March 1982 at a rent calculated by the year. There is a written tenancy agreement, a copy of which is held by the Rent Service, though the Committee has not seen it. 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 tenant is responsible for

internal decorations.

3. THE APPEAL

- 3.1 On 27 July 2004 the Rent Assessment Committee (on an appeal from the Rent Officer) assessed a fair rent of £9,000 p.a. for the property. On 8 May 2006 the landlord applied for an increase to £975 p.c.m. (£11,700 p.a.). It is not clear whether the Rent Officer inspected the property or relied entirely on the 1998 inspection report. On 30 June 2006 he determined a fair rent of £9,887.50 p.a. (£10,200 before capping) to take effect on 27 July 2006. To this determination the tenant objected by letter dated 12 July 2006. As neither party asked for a hearing the application was decided on the basis of written representations.

4. THE LANDLORD'S CASE

- 4.1 The landlord's agents remind the Committee that a fair rent is a market rent less a discount for scarcity. They say that, according to local agents, the open market rent for this type of property in this location would be in the band £1,400 – 2,000 p.c.m. They cite two properties, one let by Strutt & Parker at £1,950 p.c.m. and one by Mullucks Wells at £1,900 p.c.m. Allowing for scarcity, they argue that the Rent Officer's decision was correct.

5. THE TENANTS' CASE

- 5.1 In extensive written representations, the tenant argues that the properties cited by Willmotts are much superior to the subject property. She says that, although local comparables are difficult to find, in her opinion the open market rent for the subject property is in the band £1,200 – 1,400 per calendar month. She cites two properties from the Rent Register and several advertised through Rightmove.co.uk as available to let on the open market. She concedes that the defects in external joinery and external decorations have been dealt with since July 2004. However, she says there are still numerous defects which can be summarized as follows: -

- Rising and penetrating damp
- Cracked ceilings
- Subsidence
- Poor internal joinery
- Scattered woodworm infestation
- Dated kitchen and bathroom fittings in poor condition
- Old water pipes prone to bursts and leaks
- Old electrical system
- Non-compliance with the Electrical Equipment (Safety) Regulations 1994
- Leak in garage wall

- 5.2 The tenant proposes a deduction of £200 p.c.m. on account of these defects and a further £315 p.c.m. for lack of carpets curtains and white goods. She also seeks a discount of £40 p.c.m. on account of improvements carried out by her and her husband over the years, namely: -

- Secondary double glazing
- Parkray stove in study
- Substantial overhaul of gardens
- Provision of security lighting

- 5.3 The tenant also argues that there is substantial scarcity of similar properties in the locality and proposes a further discount of 15-20% for scarcity. She says that the proximity of Stanstead

Airport makes the area more desirable with demand vastly succeeding supply. This also artificially inflates rental values.

5.4 The tenant's final calculation is as follows: -

	£	£
Open market rent (p.c.m.) (assuming good condition and modern facilities)		1,300.00
Less: Deduct for condition	200.00	
Deduct for lack of facilities		
curtains carpets and white goods	315.00	
Deduct for tenant's improvements	40.00	555.00
Adjusted open market rent		745.00
Deduct 15% for scarcity to reach		633.25
Annual fair rent		7,599.00 p.a.

6. THE LAW Fair rent

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 relevant. The Committee should make it clear what adjustments (if any) are made under section 70(3).

Method of assessment

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 (*Curtis -v- London RAC (No 2)* [1997] 4 All ER 842 – 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. That is so, whether reliance is placed on market or fair rent comparables or on return on capital. Where comparables are relied upon, there is a need to assess their validity and applicability at the time of their use as comparables. In considering comparable evidence, the Committee must consider the market in the general locality of the subject property. Committees should rely upon the best available evidence. Where close market rent comparables are available, they must constitute the best evidence of the market. If the Committee relies upon the knowledge and experience of its members, the effect of that knowledge and experience and the way in which it affects the Committee's conclusions should be spelt out.

6.4 The assessment of a fair rent is frequently described as more of an art than a science. The members of a Committee are expected to be experienced in such valuation and to know and have a "feel" for the rental property market in the area. But the end product is a figure for the rent of particular premises. Where the comparables are not exact and/or where there is a need to make disputed adjustments for scarcity or for disregards, it necessarily involves some working through, which should appear in the Reasons.

Scarcity

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. Council housing lists may be relevant (particularly to show trends in housing demand), but must be used with caution. Scarcity of houses to let is only one of the reasons why people seek accommodation through local authorities. Data about homelessness is unlikely to assist. If evidence from the parties (particularly expert evidence) is to be disregarded, a clear explanation must be given. 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. It is left to Committees to decide what area to consider on the facts of each case. In the assessment of scarcity, general knowledge and experience of the local market may, in the view of the Committee, be particularly helpful.

The Committee's approach

- 6.4 The Committee considers that its task must be undertaken with caution. The Committee must not reject evidence, particularly expert evidence, without good reason but considers that it need not be credulous in cases where the evidence appears to be flawed or amounts to mere unsupported assertion. The Courts have made it clear that Committees are entitled to use their own local knowledge and expertise for this purpose. Committees must be wary of basing their conclusions on evidence that is not open to comment by the parties. The Committee must in every case set out the evidence upon which its decision is based and give adequate reasons for its findings on scarcity.
- 6.5 The Committee is also mindful of the need to have regard to the European Convention for the protection of Human Rights and Fundamental Freedoms as embodied into English law by the Human Rights Act 1998. This affects the construction of legislation and underlies the approach of the Committee to its task.

7. THE DECISION

- 7.1 The Committee's view of the evidence and findings of fact are as follows:-

7.1.1 The comparable evidence laid before the Committee by both parties is inevitably very limited as properties of this size and quality are not often seen on the rental market. This is a house of considerable charm and character with spacious rooms and, for a village house, substantial grounds. Careful examination of the particulars supplied reveals that the properties cited by the landlord are modernised and in good condition and at the upper end of the band for such properties, while those cited by the tenant are not truly comparable and, in the judgment of the Committee, below the lower end of the band. Purcell Road (£1,350 p.c.m.) is an estate house miles away at Witham. Chaffinch Way (£1,000 p.c.m.) is also an estate house at Witham with fairly small rooms. High Street, Lt Chesterford (£1,300 p.c.m.) is another estate house, as is Wren Close, Stanway (also £1,300 p.c.m.). Lavenham Road, Gt Waldingfield (£1,150 p.c.m.) has only four modest bedrooms. High Street, Braintree (£1,100 p.c.m.) is on a corner and has smallish rooms. Bouchiers Grange Farmhouse, Coggeshall (£1,350 p.c.m.) is a modern property, again with smallish rooms.

- 7.1.2 In evaluating the limited evidence, the Committee is driven to rely to a large extent 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. Applying that collective knowledge and experience in the light of the evidence, the Committee concludes that Willmotts are correct in saying that the open market rents for similar properties in the locality fall in the band £1,400-2,000. The Committee assumes that, in common with most open market lettings in the area, these are lettings on assured shorthold terms, fully modernised and in good condition, with central

heating, carpets and white goods. In the judgment of the Committee the subject property falls somewhere in the middle of that band. The Committee assesses the open market rental value of the property, if let fully modernised and in good condition throughout with carpets and white goods, at £1,650 p.c.m. The Committee does not rely upon any specific comparables of its own.

- 7.1.3 It is then necessary to make adjustments to reflect the areas where the subject property falls short by comparison to the open market lettings. Here the Committee is on familiar territory. The deductions are 12 ½ % for the dated and shabby kitchen and bathroom fittings; 10 % for lack of carpets and white goods; and 7 ½ % for disrepair. Total deductions amount to 30 % or £495 p.c.m. Accordingly the adjusted open market rent is £1,155 p.c.m.
- 7.2 The Committee has stripped out the value of the tenant's improvements (which are to be disregarded under the provisions of section 70(3) of the Act) and makes no separate discount under this head.
- 7.3 The locality considered by the Committee for the purposes of section 70(2) is Uttlesford District, Braintree District and Chelmsford District. In terms of population and rented housing this is a sufficiently large area to iron out the effects of local amenities and location generally. The Committee bears in mind the importance of not confusing the effects of local amenities and other local factors (in particular the "Stanstead effect") from scarcity caused by an imbalance between the number of prospective tenants looking for similar properties and the number of available properties in the locality. On the evidence and 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 10 % is appropriate in order to satisfy the assumption set out in section 70(2) of the Rent Act 1977. Rounding slightly, this leads to a figure of £1,040 p.c.m. or £12,480 p.a.
- 7.4 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. The Committee has considered whether the rent is exempt from capping. Capping does not apply if, as a result of repairs or improvements carried out by the landlord, the uncapped fair rent determined for the property is at least 15 % more than the existing registered rent (at the date of the landlord's original application). This is a two-part test; there must be an increase of at least 15% **and** an increase of at least 15% must be attributable to landlord's repairs or improvements. The landlord has not advanced a case for exemption, though there have been some works carried out by the landlord since the last registration. Doing the best it can on the evidence, the Committee is not satisfied that those works were sufficient to gain exemption. Accordingly, the rent is not exempt from capping.
- 7.5 The maximum fair rent in accordance with the Order is £10,014 p.a. The capping calculation is attached. This is the figure the Committee considers to be a fair rent for the subject property in accordance with the provisions of section 70(1) of the Rent Act 1977 and the Rent Acts (Maximum Fair Rent) Order 1999.

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.