Southern Rent Assessment Panel **File Ref No: CHI/40UC/F77/2005/0112**

Rent Assessment Committee: Extended Reasons for decision

Address of premises: Branchflower Cottage
Shearston,
North Petherton,
Bridgwater
TA6 6PL

Committee Members: Professor David Clarke, MA, LLM, Solicitor
Mrs Margaret Hodge, BSc (Hons) MRICS

1. Background

On 22 March 2005, the landlord applied to the rent officer for registration of a fair rent of £350 per calendar month for the above property.

The rent payable at the time of the application was £272 per calendar month.

The rent was previously registered on 26 February 2003, with effect from that date.

By a letter dated 14 June 2005, the tenant objected to the rent determined by the Rent Officer and the matter was referred to the Rent Assessment Committee.

2. Inspection

The Committee inspected the property on 28 July 2005 and found it to be in a fair condition. It was very similar to the description in the rent officer's 1998 survey sheet, which has been copied to the parties. The main difference since that date is the fact that there is now mains supply of water, of which more below, but otherwise the condition noted on inspection did not differ substantially to the position noted in 1998.

The following tenants improvements have been made to the property since the commencement of the tenancy:
Inside the house:

(1) Installation of central heating including Parkray boiler and 6 radiators.
(2) New immersion heater
(3) Fitted cupboards in kitchen
(4) Replaced cooker and refrigerator
(5) Replaced toilet cistern shower over existing bath, tiling in bathroom
(6) Front porch enclosed by doors
(7) Sundry shelving in sitting room and bedroom 2
(8) Airing cupboard in bedroom 2

Outside the house: wooden garage built against existing brick wall and a garden shed.

We were told, as noted in previous inspections, that part of the land used for parking vehicles is occupied with consent or toleration by the adjoining owner and is not strictly part of the tenancy.

3. Evidence

A hearing was held subsequent to the inspection on 28 July 2005 at the Bridgwater and Albion Rugby Club, at which oral representations were made by the tenant and by Mr Cole on behalf of the landlords.

4. The law

In determining the fair rent the Committee, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances including the age, location and state of repair of the property. The Committee also disregarded (a) the effect of any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant on the rental value of the tenancy.

In *Spath Holme Ltd v Chairman of Greater Manchester Rent Assessment Committee* (1995) 28 HLR 107 and *Curtis v London Rent assessment Committee* [1999] QB 92 the Court of Appeal emphasised that:

(a) Ordinarily, a fair rent is the market rent for the property discounted for scarcity (ie, that element, if any, of the market rent that is attributable to there being a significant shortage of similar properties in the wider locality available for letting on similar terms, other than as to rent, to that of the regulated tenancy) and

(b) For the purposes of determining the market rent, assured tenancy (market) rents are usually appropriate comparables though these rents may have to be adjusted where necessary to reflect any relevant differences between these comparables and the subject property.

5. Valuation

In the first instance, the Committee determined what rent the landlord could reasonably be expected to obtain for the property, where the location was rural and relatively isolated with the nearest amenities approximately 2 miles away, in the open market if it were let today in the condition that is usual for such an open market letting. It did this by having regard to the Committee's own general knowledge of the market rent levels in the area of Bridgwater and Taunton. Having done so, it concluded that such a likely market rent would be £600 per calendar month.

However, the actual property is not in the condition considered usual for a modern letting at a market rent. The Committee considered that this required a deduction of £100. Furthermore, to allow for the tenant's improvements, as listed above, it was necessary to make a further deduction of £150. Together, these amounted to £250 per calendar month.

The Committee did not consider that there was any substantial scarcity element and accordingly no further deduction was made for scarcity.

This leaves a net market rent for the subject property of £350 per calendar month.

6. Decision

The fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £350 per calendar month.

However, if the Rent Acts (Maximum Fair Rent) Order 1999 ("the 1999 Order") applies to this case, the maximum fair rent that can be registered in the present case is the lower sum of £305 per calendar month (details are provided on the calculation attached to this decision).

The key issue the Committee had to decide was whether the 1999 Order applies to this case. The rent officer decided that it did not but gave no reasons for his decision. The Committee surmised that he must have based his decision on the exception relating to repairs or improvements by the landlord since the only other possible exception relates to service charges – an exception that obviously cannot apply to this case. The Committee therefore asked for and heard evidence on the improvements to the water supply to the property since registration of the last fair rent in 2003.

The property was let on the basis that it had a private water supply from a well on the former landlord's farm via a private pipe across several fields. This supply only ceased recently when the mains water was connected. The tenant therefore had a free supply of water until a few months ago. However, the water pressure apparently could vary because of the header tank installed by the tenant. There was also a concern that the quality of the water did not meet modern standards. Tests some years ago after the birth of the tenant's two children found it below an acceptable level and the children, at least, have drunk bottled water. But the tenant gave evidence that he drank this water until the supply was replaced and suffered no ill effects.

The tenant has expressed concerns over the years to the landlord about the water supply. To the landlord's credit, they decided to connect the property to the mains supply. This was completed in early 2005. The capital cost of the works amounted to £2,937.21p and receipts were supplied. The supply comes across a field or fields owned by the landlord's family and from the end of the mains supply the other side of the A38 main road. The tenant argued that the cost would have been less if it had come from the mains at Shearston, which would have been a shorter distance and with no road crossing. The Committee were entirely satisfied that the landlord would have incurred greater expense if this option had been chosen since the route, though slightly shorter and with no main road to cross, would have required the purchase of an easement. It is quite clear that the landlord did these works as economically as possible and the tenant now has the benefit of a purer water supply at constant pressure. The downside is that the water is metered and the landlord stated that they expected the tenant to pay the metered costs. No bill from the water company had been received at the time of the hearing.

The issue for the Committee is the application of these facts to the exception contained in paragraph 2(7) of the 1999 Order. This provides:

'This article does not apply in respect of a dwelling-house if because of a change in the condition of the dwelling-house or common parts as a result or repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV [of the 1977 Rent Act] exceeds by at least 15% the previous rent registered or confirmed.'

It is clear to us that the replacement of the private water supply with a mains supply is an improvement within this paragraph. The issue that we wrestled with is the question whether the rent exceeds 15% of the registered rent. If it does, the capping provisions of the 1999 Order do not apply. If it does not, they do.

The increase of at least 15 % must be an increase wholly attributable to the repairs and improvements and not to any other factor. Fifteen per cent of the previously registered rent of £272 amounts to £40.80p and so there has been an increase of more than 15% in the fair rent since 2003, namely from £272 to £350 – an increase of £78. The question is the extent to which some of that increase was attributable to other market factors.

Applying the Committee's knowledge of the rise in market rents in the area, we concluded that at least 50% of the increase, perhaps more, was attributable to the general increase in market rent levels since 2003. This means that there is not an increase of at least 15%, or £40.80p, attributable to this factor. We tested this conclusion by asking ourselves whether a reasonable tenant would pay at least an extra £40.80 rent per calendar month after the connection of the mains supply, compared to a tenancy with the free private supply. Such a reasonable tenant would certainly pay more for the security, improved pressure and better purity of such a supply – but we considered that an extra £41 per month would be right at the upper limit of what a reasonable tenant would be prepared to pay. If the landlord was continuing to provide a mains supply free to the tenant then, possibly, a reasonable tenant would pay at least £41 pounds a month more. But the tenant is not getting the mains supply for free. The landlord made it clear that the supply was metered and that they had informed the water company that the tenant would pay. The terms of the tenancy have therefore altered to that extent. From the Committee's own knowledge, we were sure that a family of four would be charged an absolute minimum of £25 per month by the water company and it could exceed, perhaps significantly, £35 per month. In our judgement, a reasonable tenant would, taking this cost into account, not be prepared to pay both £40.80 extra rent and at least £25 a month for the supply – and would therefore reduce the extra rent that would be payable well below £40.80 per month.

The result is that the 1999 Order does apply and the rent is capped since paragraph 2(7) does not apply. We came to this conclusion reluctantly. The tenant undoubtedly complained about the old water supply (though we did not specifically hear evidence as to whether and to what extent the tenant pushed for a replacement supply). However, the landlord acted very properly in making these improvements. We were told that, before commencing these works, the landlord had taken the advice of a rent officer and received some sort of assurance that the rent would increase as a result, perhaps by £50 or even £70 per calendar month. But we have not seen that advice and, even if we had, we are bound by the terms of the legislation that applies.

Therefore, by virtue of the 1999 Order, the maximum fair rent that can be registered in the present case is the lower sum of £305.

Accordingly, the sum of £305 per calendar month will be registered as the fair rent with effect from 28th July 2005.

(Signed)

Professor D.N.Clarke, Chairman

Dated 3 August 2005.