

Rent Assessment Committee: Full reasons for decision.

Rent Act 1977

Address of Premises

135B High Street
Lee on the Solent

The Committee members were

Mr R P Long LL B
Mr P D Turner Powell FRICS

1. Background

On 21st January 2003 the landlord applied to the rent officer for registration of a fair rent of £150 per week for the above property. The rent was previously registered on 19th March 2001, with effect from the same date, at £75 per week following a determination by the rent officer. On 7th March 2003 the rent officer registered a fair rent of £81-50 per week with effect from 19th March 2003. By a letter dated 27th March 2003 the landlord objected to the rent determined by the Rent Officer and the matter was referred to the Rent Assessment Committee.

2. Inspection

We inspected the property on 29th May 2003. The flat is a two bedroom flat with a living room bathroom and kitchen above a shop. The entrance is by way of an outside metal staircase at the rear and thence across a patio (part of the flat roof of the rear of the shop beneath). There is a small sea view from the patio between two other buildings.

We found the flat generally to be as it is described in the Rent Officer's survey sheets that were with our papers, and which had been copied to the parties. We were unable to inspect the roof repairs that were carried out recently, and to form a view about their quality. At the moment it appears that they have cured the leaks that led to their being carried out, and we have assumed in making our decision that they were done to a reasonable standard. We saw too that some external decoration work has been carried out at the rear of the property, in particular that the back wall of the flat has been painted with masonry paint.

We noted that the kitchen fitments are by now very dated and that the bathroom is not of a standard that we would ordinarily expect to see in a property let in this area on an open market basis. The tenants showed us a small wall cabinet that they had installed in the kitchen but we have not otherwise been made aware of any tenants' improvements to the property of the sort that section 70(3) of the Rent Act 1977 requires us to disregard in making our determination.

3. Evidence

The Committee received written representations from both the landlord and tenant, and these were copied to the parties. Neither party requested a hearing at which oral representations could be made.

The Landlords first set out a history of the rises in fair rents between 1999 and the present time. The rent had been registered at £ 80 per week in 1999 and they had not objected. In 2001 it fell on application for re-registration to £75 per week, and now had risen to £81.50 per week, a rate of increase of .019% over four years or a yearly increase of .005%. They had recently carried out extensive works to the property at a cost of over £10,000, a copy of which had been sent to the Rent Officer. Local agents had advised them that they could let this flat at close to £500 per month, and they quoted nearby comparables at 92 High Street (2 bedrooms) let at £465 per month, 96 High Street (3 Bedrooms) let at £550 per month and 88 High Street (2 bedrooms) let at £475 per month. These were all flats above shops that did not have the benefit of sea views. There was no shortage of property to be let in the area so that there should be no difference between fair rent and market rent. Indeed the security of tenure enjoyed by a regulated tenant should tend to increase the rent for such a tenancy.

Mr & Mrs Giddy wrote to us to detail the extent of work that they said had been done at the flat, with a view to bear out their contention that the landlord had done little to improve the flat. We are not clear whether the work that we understand has recently been done to the roof and the decorating work we have described were done before or after that letter was written. They pointed out that the central heating had been renewed with the aid of a grant from Gosport council.

4. The law

When determining a fair rent, we had regard to all the circumstances that section 70 of the Rent Act 1977 requires us to take into account. These include the age, character, location and state of repair of the property. We also disregarded the effect of the effect of any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.

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

- (a) that ordinarily a fair rent is the market rent for the property discounted for 'scarcity' (i.e. 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) that for the purposes of determining the market rent, assured tenancy (market) rents are usually appropriate comparables.

5. Valuation

Thus in the first instance the Committee determined what rent the landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition that is considered usual for such an open market letting. It did this by having regard both to the evidence supplied by the landlord in the light of the Committee's own general knowledge of market rent levels in the area of Lee on the Solent. By that means We accepted the levels of rent that the landlord's valuers had suggested for the two two-bedroom flats (nos. 88 and 92 High Street) as reflecting the likely open market rent for a flat like this in the locality Having done so we concluded that such a likely market rent would be £475 per calendar month or £110 per week.

However, the actual property is not in the condition considered usual for a modern letting at a market rent. We adjusted it in two ways. First, because of the poor kitchen and bathroom, we thought it likely that a tenant wishing to take an assured shorthold tenancy of a property like this in the open market would be likely to pay £10 per week less because of the inferior state of these facilities compared with those usually found in such lettings. In our experience the standard of the kitchen and bathroom is of some importance to those in the market either to rent or to buy property offering this sort of accommodation.

Secondly, a property let on an assured shorthold tenancy locally is almost invariably, within our experience, let with the benefit of curtains and carpets. Those are not supplied here. An assured shorthold tenant, whose tenancy is usually of a much shorter duration than that of a regulated tenant, is not normally required to undertake interior decoration as a regulated tenant is ordinarily required to do. We considered that the combined effect of these factors would be to persuade an intending shorthold tenant, bearing in mind that as the landlords suggest there seems to be no scarcity in the area, to pay a further £10 per week less in rent. This would partly reflect the convenience of having carpets and curtains provided, and in part the likely cost of having to carry out internal decorating obligations.

The Committee did not consider that there was any substantial scarcity element and accordingly no further deduction was made for scarcity. For the purposes of making this determination we considered our experience of the letting market for property of this sort in south-east Hampshire, an area which for the avoidance of doubt includes the Boroughs of Gosport, Fareham and Havant, and the City of Portsmouth.

This leaves a net market rent for the subject property of £90 per week.

6. Decision

The fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £90-00 per week.

However, by virtue of the provisions of the Rent Acts (Maximum Fair Rent) Order 1999 ("the Order") the maximum fair rent that can be registered in the present case is the lower sum of £82-50 per week. Details of the calculation in accordance with the Order are provided on the back of the decision form. There is nothing before us or from what we saw at the inspection to suggest that the work recently (that is to say at some time earlier this year as we understand the chronology from what is before us) was of so substantial a nature that of itself it would have resulted in an increase of 15% in the then registered rent of £75 per week.

Indeed it appears from the papers supplied to us (and which we understand to be those that the landlord said that it supplied to the Rent Officer) that the major works costing more than £10,000 were carried out in 1996. The bill from K & N Builders & Decorators supplied to us totaling £13494-88 is dated 18th March 1996. For the avoidance of doubt we explain that the Order (paragraph 2(7)) allows us only to take into account major work done since the date of the last registration for the purposes of establishing whether a registration is exempt for the terms of the Order by reason of such works.

Accordingly the sum of £82-50 per week will be registered as the fair rent with effect from 29th May 2003, being the date of the Committee's decision.

Chairman

Robert Lee

Dated

5th June 2003