



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/00CT/MNR/2018/0054**

Property : **8 Blythewood Close, Solihull, West
Midlands, B91 3HL**

Applicant : **Mr Walters and Miss Munroe**

Respondent : **Highways England Company Limited**

**Respondent's
Representative** : **Carter Jonas**

Type of Application: **Determination of a market rent under
The Housing Act 1988 Section 14**

Tribunal Members : **Judge S McClure
Mr N Wint FRICS**

Date of Hearing : **13 November 2018**

**Date of Statement
of Reasons** : **13 December 2018**

STATEMENT OF REASONS

Background

1. The Applicants are the assured tenants of 8 Blythewood Close, Solihull, West Midlands, B91 3HL (the Property). Their Landlord is the Respondent in this matter, Highways England Company Limited. The Property is managed on behalf of the Respondent by Carter Jonas
2. By way of Notice dated 21 August 2018, served under S13(2) of the Housing Act 1988 (the 1988 Act), the Respondent proposed an increase of rent from £1200.00 a month to a new rent of £1500.00 a month (the S13 Notice). The commencement date for the new rent was given in the S13 Notice as 1 October 2018.
3. The Applicants moved into the Property in 2006. Their current tenancy agreement commenced in 2016.
4. The Applicants made their application for referral of the S13 Notice to the Tribunal in time.
5. The tenancy is an assured periodic tenancy. The tenancy (not being for a fixed period of 7 years or more) is subject to Section 11 of the Landlord and Tenant Act 1985 (under which the Landlord is responsible for all repairs to the property except internal decoration).

Inspection, submissions and hearing

6. The Tribunal inspected the Property on 13 November 2018 in the presence of the Applicants. The Respondent did not attend, having been properly notified of the date and time of the inspection.
7. The property is a large detached house located approximately 1 km north of Knowle and 2 km south east of Solihull town centre in a desirable residential area that includes Lady Byron Lane and Warwick Road.
8. The property was built in the 1960's and includes gas central heating and double glazing throughout. The accommodation on the ground floor comprises entrance hall, showerroom/toilet, living room, dining room, kitchen with utility room off, and access from the utility room to a toilet and garage. The second floor comprises four double bedrooms, one ensuite and a bathroom. There are gardens to the front and rear.
9. The Property was in good decorative condition.
10. A significant feature of the Property, and a material factor in respect of rent, is its close proximity to Junction 5 of the M42 motorway. The Applicants asserted the Property was only 42 metres from the south-bound carriageway of the motorway. This distance was not disputed by the Respondent and upon inspection it was clear to the Tribunal that the Property was indeed very close to the motorway. Standing in the rear garden and inside the house and in particular from the bedrooms with

the windows open, it was evident that the noise from the motorway was sufficiently loud and intrusive to affect the Applicants peaceful enjoyment of the of the property. The level of noise produced by heavy traffic can contribute to stress-related health problems. Furthermore, traffic noise has a variety of adverse impacts on human health which includes disturbing sleep patterns and the wider health risks from excessive pollution. The most widespread impact is however more often simply annoyance.

11. The evidence comprised written and oral submissions from both parties, and that derived from the inspection. The Tribunal took all of the evidence into account. Reference is made below to specific evidence where necessary.
12. The Applicants' submissions contended that the rental value of the subject property is materially affected by two main issues; the close proximity of the motorway to the Property and the fact that the Property is at risk of being the subject of a Compulsory Purchase Order (CPO).
13. The Applicants made detailed submissions in response to the Respondent's comparables, the most significant of which was the fact that all bar two of the comparables were not close to the motorway. The two properties that were close to the motorway, 2 and 3 Poolmeadow Close, were 150 metres from the motorway compared to the 42 metres distance for the Property.
14. The Property had been recently decorated throughout by the Applicants at their own expense. The Applicants submitted that the Property had not been redecorated since they moved in in 2006. Their requests of the Respondent that the Respondent redecorate the interior was refused. The Applicants conceded that the tenancy agreement did not confer responsibility for internal redecoration upon the Respondent.
15. The Applicants suggested that a reasonable rent for the Property was £1300.00 pcm.
16. Of the 14 properties submitted by the Respondent as comparables, the Respondent stated that the best comparables were 2 and 3 Poolmeadow Close. These properties were also close to the motorway, and were also at risk of being compulsorily purchased under a CPO. The properties were both let fairly recently at £1500.00 and Mrs Smith of Carter Jonas told the Tribunal that she believed that a market rent for the Property would be between £1700 and £1800 a month, and that a discount down to £1500 was appropriate due to the proximity of the motorway. She conceded that the risk of the CPO may also affect the rent, but did not provide a figure as to the applicable discount in respect of the risk. She submitted that a reasonable rent for the Property was £1500.00 pcm.

The Tribunal's deliberations

17. In accordance with the terms of section 14 of the Housing Act 1988, the Tribunal determined 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.

18. In so doing, the Tribunal, as required by section 14(2), ignored the effect on the rental value of any relevant tenant's improvements as defined in section 14(2) of the Act.
19. The Tribunal cannot take account of any history of alleged disrepair to the property, or of any dispute between the parties as to the condition of the property, in coming to its decision. However, the Tribunal can, and indeed, must take the condition of the property into account when coming to its decision, to the extent that the condition of the property affects the market rent.
20. In the first instance the Tribunal determined what rent the Landlord could reasonably be expected to obtain in the open market on the assumption that the property is let in a condition that would be considered usual for a property of this type and location. It did this by having regard to the Tribunal's own general knowledge of market rent levels and the evidence of comparable rents provided by the parties.
21. Having done this, the Tribunal concluded that the market rent for a similar property, unaffected by both main issues, would be £1750.00 per calendar month (pcm). This is consistent with the Respondent's figure of £1700.00 to £1800.00 pcm, and with the comparables provided.
22. It was clear to the Tribunal that the constant noise from the motorway is significant and would be a major consideration for a tenant alongside the air pollution from the traffic as well as the fact that the property may also be compulsorily acquired at some point in the near future.
23. Based on the properties at 2 and 3 Poolmeadow Close the Respondent arrived at a rent of £1,500 for the subject property. The Tribunal does not however consider this evidence sufficiently relevant as they are further from the motorway than the Property. In addition, they are bungalows which tend to command a premium whereas the Property is a house.
24. The Tribunal considered that any rental adjustment would have to be sufficiently significant to reflect the impact of the proximity of the motorway and the possible effect of the CPO risk particularly given the type of property, its location and the likely market for the property as a family home.
25. The Tribunal considered this adjustment to be at least £400.00 a month and therefore concludes that the appropriate market rent for the Property is £1350.00.
26. The Tribunal has also had regard to the general specification of the Property and considers it to be below the standard generally expected for this type of property in this location. It is therefore necessary to adjust

that hypothetical rent of £1350.00 pcm to allow for these differences. (See paragraph 28 below for details).

27. The Tribunal has considered the condition and state of repair found at the property. The Applicant advised that it had undertaken some redecoration works throughout the Property at its own cost. The Tribunal found these works were carried out to a satisfactory standard and the Property was generally in a fair state of repair and condition.
28. The Tribunal has made adjustments to reflect the fact the Property is let without certain items that would ordinarily be expected to be included in a property of this type. In particular, the Tribunal has deducted £40.00 pcm to reflect the lack of landlord's white goods and unmodernised bathrooms, £5.00 pcm for the Applicants' works carried out in respect of the dishwasher, and £5.00 pcm in respect of provision by the Applicants of flooring to the kitchen and general light fittings.
29. The deductions total £50.00 pcm. The Tribunal therefore concluded that the rent at which the property might reasonably be expected to be let on the open market would be £1300.00 pcm.
30. The rent will take effect from 1 October 2018, being the date set out in the S13 Notice.

The Decision

31. The rent determined by the Tribunal is £1300.00 pcm. The rent will take effect from 1 October 2018.

If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law. Prior to making such an appeal an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this statement of reasons, stating the grounds upon which it is intended to rely on in the appeal.

Name: Judge S McClure

Date: 13 December 2018