



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

Case reference : **CAM/11UF/MNR/2021/0034**

HMCTS code : **A:BTMMREMOTE**

Property : **The Lodge, Marsh, Aylesbury Bucks
HP17 8SP**

Applicant : **Henre Lourens and Nicole Gerold**

Respondents : **Alexander Forsyth and Virginia
Forsyth**

Representative : **Robert Bowker, Counsel**

Type of application : **Section 14 of the Housing Act 1988
Determination of market rent
payable.**

Tribunal member(s) : **Mary Hardman FRICS IRRV(Hons)**

Date of hearing : **9 August 2021**

Date of decision : **2 September 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote [audio] hearing which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in individual bundles produced by the Applicant and the Respondent. I have noted the contents and my decision is below.

Decision:

1. The Tribunal determined a rent of **£2,950** per calendar month to take effect from **6 June 2021**

Reasons**Background**

2. The Landlord by a notice in the prescribed form dated 24 April 2021 proposed a new 'rent' of £3250 per calendar month (pcm) to be effective from 6 June 2021. On 1 June 2021 the tenant referred the Notice to the Tribunal. This was in lieu of the previous rent of £2150 pcm.
3. No inspection took place due to measures introduced to combat the spread of the Coronavirus (COVID-19) and to protect the parties and the public, particularly those at risk.
4. Parties were requested to complete a pro forma supplying details of the accommodation on a room by room basis, the features of the property (central heating, white goods, double glazing, carpets and curtains) and other property attributes and any further comments that they may wish the tribunal to take into consideration. This could include any repairs and improvements that had been made, any comments on the condition of the property and rentals of similar properties – should they wish to rely on these.
5. They were invited to include photographs and were informed that the Tribunal may use internet mapping applications to gather information about the location of the property and may inspect externally.
6. The determination would take place based on the submissions from both parties unless either party requested a hearing. Further evidence was submitted by both the landlord and the tenant. The tenant requested a hearing.

The Property

7. The property is a substantial detached 4/5 bedroomed house of brick construction with a tiled roof. Full details were contained in the estate agent's sale details supplied. The details state the property was modernised some four years ago.
8. The accommodation comprises an entrance hall, sitting room, kitchen/breakfast room, study, utility room, family room/bedroom and cloakroom to the ground floor. On the first floor there are four bedrooms, two with ensuite and a further bathroom. There are approximately 1.75 acres of gardens and a shed.

9. The property has oil central heating and most windows are double glazed. The cooker and dishwasher were provided by the landlord and all other white goods by the tenant. Carpets and floor covering were provided by the landlord.
10. According to the sales particulars the property is approximately 2,100 square feet.

The Tenancy

11. The tenancy commenced on 6 April 2016 and was then renewed on 6 April 2018 and a copy of that assured shorthold tenancy agreement was provided. The tenancy term was for a period of three years and a statutory tenancy on the terms of the written agreement appears to have arisen from 6 April 2021. Section 11 of the Landlord and Tenant Act 1985 applies in respect of Landlord's repairing obligations.
12. The tenancy agreement from 6 April 2018 states the rent to be £2150 per month.

The Law

13. By virtue of section 14 (1) Housing Act 1988 the Tribunal is to determine a rent at which the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured periodic tenancy-
 - (a) having the same periods as those of the tenancy to which the notice relates;
 - (b) which begins at the beginning of the new period specified in the notice;
 - (c) the terms of which (other than relating to the amount of rent) are the same as those of the subject tenancy
14. By virtue of section 14 (2) Housing Act 1988 in making a determination the Tribunal shall disregard –
 - (a) any effect on the rent attributable to the granting of a tenancy to a sitting tenant;
 - (b) any increase in the value of the dwelling-house attributable to a relevant improvement (as defined by section 14(3) Housing Act 1988) carried out by a tenant otherwise than as an obligation; and
 - (c) any reduction in the value of the dwelling-house due to the failure of the tenant to comply with any terms of the subject tenancy.

Representation – Landlord

15. In their written representations the landlords said that the property had new carpets, wooden flooring in the hallway, downstairs WC and

corridors and travertine tiles laid to the kitchen, utility room and pantry as part of the renovation and extension work carried out in 2015/16. The property also had a large range cooker and dishwasher installed just before the tenants moved in.

16. The landlord also paid the tenant's company to install super-fast fibre broadband.
17. They said that the tenants had not made any improvements to the property and had failed to maintain the property in accordance with the tenancy agreement. They had not regularly serviced the sewage treatment plant nor regularly filled the oil tank which had resulted in the landlord having to carry out repairs.
18. This was the first substantial rent review for 6 years. They had originally let the property at £2,100 and agreed to keep the rent low on renewal in 2018 as they were abroad for work and did not need the stress of finding new tenants. The tenancy was renewed for a 3 year term and the rent was agreed at £2,150 for 2018/19, £2,200 for 2019/20 and £2,250 for 2021/21. They acknowledged the inconvenience due to the water leak and this was subsequently reflected in a nil increase in years 2 and 3.
19. They confirmed that the property had a current EPC.
20. In setting the proposed new rent they had undertaken a review of similar properties within 5 miles of the HP17 postcode and said that detached, recently refurbished, rural properties with 4-5 bedrooms, large gardens, private driveway and ample parking were advertised at, and had rented for, between £2650 and £3995.
21. This was based on the rental comparables below, which were also referred to by Mr Bowker at the hearing.

	Address	Accom.	Rent pcm	Remarks
1	Orchard Close, High Wycombe HP14	5 bed/3 bath	£3,500	
2	Marsh Rd, Little Kimble HP22	4 bed/2 bath	£3,995	Ex farmhouse
3	Marsh Rd, Little Kimble HP22	4 bed/2 bath	£3,250	Barn conversion
4	Bellington, HP5	3 bed/3 bath	£2,950	Let agreed
5	West Wycombe Road, High Wycombe HP12	5 bed/2 bath	£2,708	Student let
6	Bicester Rd, Westcott HP18	4 bed/2 bath	£2,650	
7	Missenden Rd, Great Kingshill HP15	4 bed/2 bath	£2,500	Bungalow
8	Thorps Lane Whiteleaf HP22	4 bed/3 bath	£2,500	
9	Wendover Road, HP22	4 bed/2 bath	£2,500	Let agreed

22. They felt that the best comparables were (2) and (3) above which were just down the road from the subject property.
23. The subject property had been valued for sale in the previous 12 months by 4 estate agents with a range of valuations between £975,000 and £1.25 million. They said that according to Severn Capital the average UK rental yield for 2021 was 3.53% which suggested a rental value in the range of £2868 - £3677 with a mid-point of £3272 pcm.
24. This tallied with the rentals for similar nearby properties. They had obtained advice from Andrew Murray Estate Agents who had suggested a rental value in the current market of £3,000 pcm and from Knights Lettings who said that they believed that the proposed rental of £3250 was 'fair'.
25. There were further financial drivers in that their mortgage costs had increased significantly as the fixed term of the mortgage had expired. Additionally the tax changes on mortgage rebates had introduced an additional tax cost of approximately £1000 pcm on ownership which had driven up the cost of rentals.
26. At the hearing Mr Bowker said that the new rent was based on the evidence of comparables submitted which reflected the characteristics of the subject property and which he ran through briefly. The landlords had provided these comparables, a rental valuation based on open market value and representative yield, and e mails from 2 agents. He felt that the proposed rent was supportable as the evidence not only pointed to an increase per se, but also to a market rent of around £3000 per month.

Representations – Tenant

27. In their written representations the tenants confirmed the details of the accommodation and features of the property but did not accept that the carpets and flooring were new at the start of their tenancy.
28. They said that following a break clause in 2019, the rent was not increased as set out in the tenancy agreement to reflect the tenants suffering financial damages following an internal and large external water leak. This resulted in a Thames Water bill of £3,600 plus additional cost of hot water and heating the property due to poor workmanship of the plumbing.
29. They believed that the properties referred to as comparables by the landlords were generally considerably larger and offered more outbuildings such as garages. They said that they had found similar sized properties to The Lodge that ranged from £1,800 to £2,500. In respect of the comparables provided by the landlord their comments were:

	Address	Accom.	Rent pcm	Tenants' comments
1	Orchard Close, High Wycombe HP14	5 bed/3 bath	£3,500	2536ft² Not comparable
2	Marsh Rd, Little Kimble HP22	4 bed/2 bath	£3,995	Overpriced Were advised to rent for £2400-£2750
3	Marsh Rd, Little Kimble HP22	4 bed/2 bath	£3,250	Overpriced – Agents recommended £2200-£2500. Same landlord as 2 above.
4	Bellington, HP5	3 bed/3 bath	£2,950	2584ft² Too far out of area
5	West Wycombe Road, High Wycombe HP12	5 bed/2 bath	£2,708	HMO – not applicable
6	Bicester Rd, Westcott HP18	4 bed/2 bath	£2,650	Too far away 3970ft²
7	Missenden Rd, Great Kingshill HP15	4 bed/2 bath	£2,500	Not in area Too far for kids' school
8	Thorns Lane Whiteleaf HP22	4 bed/3 bath	£2,500	2622ft²
9	Wendover Road, HP22	4 bed/2 bath	£2,500	Let agreed

30. The tenants bundle also contained one comparable :

10	Kimblewick Road, HP17	4 bed/4 bath	£2,500	Barn conversion 1200ft ² larger than the Lodge Let agreed
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31. They said that the landlords had agreed to provide the mower to maintain the garden and that they would cover the fuel to maintain the pasture land as this was done three times annually by a local farming contractor for £450 per annum.

32. They felt that they were being bullied by the landlords following the latter's acceptance of an offer on the property on 27 March 2021. The landlords sent them a 'Letter before Action' on 14 April 2021, which was provided in the landlords' bundle. This stated that they believed that the tenants' e mails of September 2020 confirming that they had found another property constituted notice, and such notice expired on 28 March 2021. They intended to ask their lawyers to submit the

- paperwork to the courts on 27 April 2021. They also proposed to increase the rent
33. The landlord then wrote on 24 April 2021 attaching the Schedule 13 notice and increasing the rent to £3250 and explaining their rationale for this – as referred to in their representations above.
 34. They had asked a local agent for a valuation and his opinion was £2650pcm although they provided no evidence of this.
 35. They also stated that they believed that the two nearest comparables – (2) and (3) above were properties transferred following probate . They believed that they had rented for significantly less than the asking prices but again provided no evidence of this . They then went on to say that they believed the market to be pretty buoyant and was operating on a ‘first come, first served’ basis.
 36. At the hearing they said that the landlords were also pursuing them in the county court for something that they felt that they were not due to pay for.
 37. They felt that the 51% increase was not justified and that the current proceedings were all really unnecessary . They were happy to pay a 5% increase and did not believe that they would recoup their losses by the time they vacated the property on 6 November 2021.

Determination

38. The Tribunal determines a market rent for a property by reference to rental values generally and to the rental values for comparable properties in the locality in particular. It does not take into account the present rent and the period of time which that rent has been charged nor does it take into account the percentage increase which the proposed rent represents to the existing rent. In addition, the legislation makes it clear that the Tribunal cannot take into account the personal circumstances of either the landlord or the tenant.
39. The Tribunal assesses a rent for the Property as it is on the day of the hearing disregarding any improvements made by the tenant but taking into account the impact on rental value of disrepair (if any) which is not due to a failure of the tenant to comply with the terms of the tenancy.
40. The tribunal has reviewed the comparables provided by the landlords and agrees that the two properties on March Rd – properties (2) and (3) above- are the best comparables being of a similar character to the subject property and very closely located. What has been provided however are asking rents, but the tribunal also has little regard to the tenants claim as to what rents they actually achieved, given they provided no evidence and in the absence of this the claimed rents seems very low.
41. It has also had lesser regard to properties 1,7 8 and 9 which all differ somewhat from the subject property but provided useful additions to the basket of larger individual detached properties in the area with good sized gardens and some character.

42. It has had no regard to property (5) which is a HMO and to property (6) which appears to be almost twice the size of the subject property and some distance away.
43. It also has had some regard to the comparable provided by the tenants.
44. It finds the e mails provided from Andrew Murray Estate Agents suggesting a rental value in the current market of £3,000 pcm helpful and that from Knights Lettings less so, in that they merely commented following a chaser e mail from the landlord that the proposed rental of £3250 was 'fair'.
45. In respect of the 'check' valuation applying a yield of 3.53% to the asking price this, as part of the overall picture is not unhelpful although not conclusive in itself .
46. The role of the tribunal is to arrive at the open market rental value of the property as at the valuation date and as set out in paragraph 38 above. It does not take into account the present rent nor the percentage increase which the proposed rent represents to the existing rent. Whilst it is perfectly understandable that the tenants would be unhappy with such a significant increase, the previous rent is not relevant to the tribunals deliberations, particularly as it does not accept that any adjustment should be made for losses from the water leak in 2019.
47. Having taken all the above into account the tribunal determines that the open market rent of the property is £2,950 per calendar month with effect from 6 June 2021.

**Mary Hardman FRICS IRRV(Hons)
Regional Surveyor**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).