



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

Case Reference : **MAN/00CG/F77/2020/0001**

Property : **2 & 9 Longshaw House Sheffield S11 7TZ**

Applicant : **Mr N.A. Foster**

Representative : **Mr E. Wright, Wright Chartered
Surveyors**

Respondent : **The National Trust**

Representative : **Mr M. Pocock, Senior Estate Manager**

Type of Application : **An application to determine a fair rent
pursuant to s.70 Rent Act 1977**

Tribunal Members : **Tribunal Judge J. E. Oliver
Tribunal Member S. A. Kendall
Tribunal Judge L. F. McLean**

Date of Determination : **18th May 2022**

Date of Decision : **15th June 2022**

DECISION

Decision

1. The fair rent for 2 & 9 Longshaw House (“the Property”) is £6899.50 per annum, effective from 18th May 2022.
2. This rent is limited by the Rent Acts (Maximum Fair Rent) Order 1999 (“1999 Order”). The rent for the Property would otherwise have been in the sum of £7439.00., inclusive of the service charge.

Application

3. By an application dated 10th September 2019, The National Trust (“the Trust”), as the landlord of the Property, applied to the Rent Officer for the re-registration of a fair rent in respect of the Property.
4. The tenant of the Property is Mr Nigel Foster (“Mr Foster”).
5. On 8th December 2019 the Rent Officer determined the rent in the sum of £5577.00 per annum, effective from the same date. This was following a consultation meeting between the Rent Officer and the parties to enable the Rent Officer to consult and discuss the issues relating to the Property. The uncapped rent was determined as £7000.
6. Mr Foster objected to the registered rent and the matter was referred to the Tribunal for a determination upon the issue of the rent.
7. When the application was filed with the Tribunal, Mr Foster requested the Tribunal undertake an inspection of the Property but, due to the restrictions imposed by the Covid-19 pandemic, this could not take place. There were delays with the application due to various issues, but when it was eventually listed the Tribunal could undertake an internal inspection. An inspection and hearing were therefore fixed for 17th and 18th May 2022.

The Inspection

8. The inspection of the Property was attended by Mr Foster, his representative, Mr Wright and Mr Pocock on behalf of the Trust.
9. The Property is comprised of two flats numbered 2 and 9 Longshaw House. Number 2 is a ground floor flat and number 9 a first floor flat which Mr Foster has combined to form one single residence. Mr Foster has 2 garages included within his tenancy, although in 2019, one garage was exchanged to allow for the refurbishment of the Visitor’s centre.
10. The Property forms part of an old hunting lodge on the Longshaw Estate owned by the Trust. The former hunting lodge has been converted into flats and there are now 9 residences within the building. The Property has a small paved area to the rear of the Property included within the tenancy.
11. There are two entrances to the Property, one being the entrance to Flat 2 which is opposite the Visitor’s Centre and the entrance to Flat 9 being through a common area that also serves Flats 8 and 15. Mr Foster confirmed he does not use this entrance.
12. The Property is the nearest of the residences in the hunting lodge to the Visitor’s centre situate on the estate. During the pandemic this has been redeveloped and extended and that has resulted in toilets being relocated and additional seating area being created to the front and rear of the original centre. Visitors to the estate can also visit a kitchen garden, access to which

- passes near the entrance and side elevation to the Property. The kitchen for the centre café is located at the end of the centre and near the Property. Smells from the kitchen can be detected in the Property when the door is left open.
13. The Property has 5 rooms and a boiler room and kitchen on the ground floor, this being Flat 2 and 3 rooms on the first floor, this being Flat 9.
 14. At the inspection Mr Foster confirmed that he had undertaken significant work at the Property. When he first acquired the tenancy of the Property in 1986 it was uninhabitable. He had lived in a caravan whilst remedial work was ongoing. He had undertaken a programme of works to include the “tanking” to a greater part of the ground floor and the relaying of flooring in the same areas, the plastering of the majority of the walls, the installation of a central heating system and new kitchens and bathrooms. He had rewired the Property, installed new plumbing and electric storage heaters. He had replaced all the internal doors and had reconfigured certain areas by installing doorways, but since he was now only occupying the first floor, those new doorways had been blocked off. Additionally, he had replaced all the door and window furniture. Further work had included the installation of a staircase to combine the two flats into one property.
 15. Mr Foster advised he had boarded out the loft area in the Property and had installed a loft ladder. In accordance with the requirements of the Improvement Notice the Trust had insulated the loft. The insulation had been placed over the boarding, but it was their intention to remove the boarding by the end of June 2022.
 16. In 2012 The Trust had been served with an Improvement Notice resulting in it carrying out required works over a period of 5 years. This work included the replacement of the central heating boiler, the installation of secondary double glazing, the replacement of the electric storage heaters installed by Mr Foster, the replacement of the bathrooms on both the ground and first floor and a replacement kitchen. The local authority inspected the Property on 29th September 2016 and confirmed to the Trust on 16th November 2016 that “*the Council are satisfied that the National Trust has undertaken all the necessary works in order to comply with the Improvement Notice served on them*”.
 17. The Trust had replaced the flooring in the bathrooms and kitchen when refurbishing them. There were no floor coverings to the ground floor and those other than the bathroom on the first floor belonged to Mr Foster.
 18. When inspecting the exterior of the Property it was noted by the Tribunal and conceded by Mr Pocock there are areas of disrepair. In particular, the exterior paintwork is in poor condition and some pointing is required.

The Law

19. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977 (the 1977 Act), section 70,
 - (1) has regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property;
 - (2) disregards the effect of the rental value of the property of (a) any relevant tenant’s improvements and (b) any disrepair or other defects attributable to the tenant or any predecessor in title under the regulated tenancy;
 - (3) assumes (as required by s. 70(2) that, whatever might be the case, the demand for similar rented properties in the locality does not significantly exceed

supply of such properties to rent. In other words that the effect of such “scarcity” on rental values is not reflected in the fair rent of the subject property.

20. In *Spath Homes 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 that section 70 means:
 - (a) that ordinarily a fair rent is the market rent for the subject property discounted for “scarcity” and
 - (b) that the purposes of determining the market rent, assured tenancy (market) rents are usually appropriate comparables. These rents may be adjusted where necessary to reflect any relevant differences between those comparables and the subject property.
21. Thus, once the market rent for the property has been determined by the exercise in (2) above that rent must be adjusted, where necessary, for any scarcity.

The Hearing

22. At the hearing Mr Foster was represented by Mr Wright and Mr Pocock represented the Trust.
23. Mr Wright submitted a written valuation to the Tribunal dated 31st August 2021 in which he had suggested alternative valuation options when determining a fair rent for the Property.
24. The first method was to use comparable fair rents registered for properties in the locality. Whilst there were other properties within the hunting lodge that were subject to the 1977 Act, the Property itself had disadvantages to those by reason of its position and lack of privacy. It was suggested the strongest evidence of comparable fair rents was Heather Cottage Grindleford, Nether Hall Cottage Hathersage and 2 Oddfellows Cottage Hathersage. The fair rents for the first two properties had been registered in 2019 in the sums of £4,524 and £3718 respectively. The rent for 2 Oddfellows Terrace had been registered on 28th February 2021 in the sum of £5720. Upon this valuation method, it was said the fair rent for the Property should be in the sum of £4160 per annum.
25. The alternative was to consider a comparable rent from Assured Shorthold Tenancies (AST) and from that deduct those matters referred to within the 1977 Act, including scarcity. In this Mr Wright referred to other properties within the Peak District ranging from £650 to £895 pcm. There should be deducted from the market rent an amount of 20% for Tenant’s Improvements, 25% for privacy and 25% for scarcity. In respect of the latter, it was said that scarcity should be high due to a lack of available flats at Longshaw. Upon this basis of valuation, the fair rent should be between £4050 and £4320 per annum.
26. Mr Pocock, in response to the valuation submitted a written response dated 16th November 2021. In this, he objected to the fair rent comparables provided by Mr Wright upon the basis those properties are substantially different and more reliable evidence is from other flats at Longshaw House. Mr Pocock confirmed he supported the uncapped rent of £7000.
27. The Tribunal advised the valuation method to be used was that in accordance with the 1977 Act, namely a comparable market rent with deductions for

tenant's improvements, disrepair, scarcity and a lack of the provision of furnishings and white goods.

Market rent

28. Mr Wright accepted the evidence of market rents within his valuation would require updating. If evidence was to be taken from other flats at Longshaw there would need to be an allowance made for the lack of privacy experienced by the Property.
29. Mr Pocock confirmed there was no evidence of current market values from the ASTs at Longshaw. There had been no rent reviews within the past 2 years due to the pandemic. The following is the available evidence of ASTs at Longshaw:

2 bedroom flat	Rent £720 pcm	Last reviewed 2016
1 bedroom flat,	Rent £600 pcm	Last reviewed 2018
1 bedroom flat	Rent 625 pcm	Last reviewed 2016
1 bedroom flat	Rent £730 pcm	Last reviewed 2016
3 bedroom flat	Rent £800 pcm	Last reviewed 2019

30. Mr Wright referred to the following rents, but again, they had not been reviewed since the pandemic:

Longshaw Gate House
3 bedroom detached house Rent £750 pcm

Longshaw Lodge
1 bedroom apartment Rent £720 pcm

36 Fairy Bank Crescent
Semi-detached house Rent £850 pcm

31. Mr Wright advised that due to the lack of privacy at the Property any rental value should reflect Mr Foster's lack of use of the downstairs accommodation. Whilst those rooms were previously used as a living room x 2, office/study and a utility room, those are now used as storage rooms. Mr Foster does not use the shower room, instead using the one on the upper floor. Mr Foster does use the kitchen.
32. Mr Wright argued the downstairs is overlooked by visitors to Longshaw, the numbers increasing over several years but more so with the improvements to the Visitor's Centre. This is exacerbated by the commercial vehicles that visit the site, Further, the entrance to Flat 2 is now overlooked by offices used by the Trust, whilst previously those had been residential flats. One of the routes used by visitors to the kitchen gardens is immediately outside the entrance door. And several downstairs windows. He suggested a market rent would be

£800 pcm. The parties agreed that Mr Foster was permitted to apply privacy film to the inside of the secondary double glazing although this appeared to have been removed at the date of the inspection.

33. Mr Wright referred to noise from the upstairs flat, Flat 8, that, he said, is inadequately insulated for noise. Consequently, Mr Foster does not use three of the downstairs rooms as living space because of this. Mr Pocock advised that there had been “*acoustic transmission improvements to reduce noise disturbance from neighbours*”. Mr Foster did not accept the work was adequate and asserted that more could be done.
34. Mr Foster advised the Tribunal he had paved an area outside the flat and this should now be excluded, since he no longer used it. Mr Pocock advised this area formed part of the tenancy under the terms of the new tenancy agreement dated 28th May 2019.
35. Mr Pocock submitted the downstairs accommodation was suitable for use as residential accommodation and that it had been used as bedrooms in the past; this was agreed by Mr Foster. Mr Pocock asserted that if the Property was available to let, the rent would be based on all the accommodation and that all the work required by the Improvement Notices had been complied with and if the downstairs accommodation was mainly used as bedrooms they would not be affected by the visitors. He would suggest a market rent of £1200 pcm.
36. The Tribunal had undertaken its own search of the lettings market at the time of the determination and advised of one property, a 3 bedroomed semi-detached property, recently let by the National Trust in Edale Derbyshire for the rent of £1200 pcm. Mr Wright objected to the comparable since there was no information detailing the accommodation.

Tenant’s Improvements

37. It was acknowledged by both parties that when Mr Foster acquired the tenancy of Flat 2 it was in a very poor condition and over the term of his tenancy of both of this flat and Flat 9, he has undertaken significant work.
38. Mr Wright outlined the extent of the work as referred to in paragraph 14 above. In addition to this, he confirmed that the kitchen and bathroom in the Property had been replaced more than once, although it was conceded those now there are those installed by the Trust under the terms of the Improvement Notice.
39. Mr Foster confirmed he had installed two boilers at the Property, although the current boiler was that installed by the Trust. He stated the previous boiler was 100,000 btu whilst the one put in by the Trust was only 80,000 btu and he asserted that this is inadequate. Due to its capacity it cannot be left on tick over as it needs to be fed more often and thus goes out if left overnight or if he goes out. As a result of this Mr Foster no longer uses the boiler and instead relies upon the electric storage heaters in the Property.
40. Mr Pocock advised the Property had been assessed for its heating needs and the Trust had been advised that, along with the other improvements carried out, a boiler with a capacity of 80,000 btu would be sufficient to heat the Property. The local authority approved the work and had removed the “Excess Cold” notice. He further advised the Trust had installed additional storage heaters at the request of Mr Foster to provide further background heating without the need to use the boiler.

41. Mr Pocock confirmed the Trust did not dispute the work undertaken by Mr Foster, but there also should be an acknowledgment of the work completed by the Trust.

White goods and Furnishings

42. Mr Pocock confirmed that, save for the floor coverings in the bathroom and kitchen, the Trust did not provide any other furnishings in the Property.

Landlord's Neglect

43. The parties agreed there was a need for windows to be painted externally and for some pointing to be carried out to the stonework of the building. Mr Pocock confirmed that due to the pandemic the cycle of repairs and maintenance had been disrupted. The work was scheduled to be carried out, but it would not take place in 2022. The painting of the internal common parts is to be done in 2022.
44. Mr Foster confirmed the external bunkers, belonging to each flat are in a poor state of repair. Whilst he maintains his own, others are in a poor condition. Mr Pocock confirmed the bunkers are the property of each tenant and are therefore their responsibility and not the Trust.
45. Mr Foster referred to the quality of the water supply to the Property, the water being discoloured. Mr Foster provided several reports to the Tribunal that had been prepared for other proceedings and the latest was dated 2017. These were not specifically referred to by Mr Wright or Mr Foster at the hearing.
46. Mr Foster advised occasional letters had been sent to the tenants to advise them to boil their drinking water and consequently he only drank bottled water
47. Mr Pocock confirmed the water source was from a spring within the Longshaw estate and was therefore discoloured due to the peat and that cannot be filtered out. Mr Pocock also stated the current system uses a UV lamp and if there is any disruption to the electricity supply, then the Trust cannot be certain how effective the filtration has been and letters are then sent out, but this is only when needed. The system has now been upgraded and there are now 2 UV lamps, although this does not resolve the problem of a potential intermittent failure in the electricity supply. However, Mr Pocock stated a fail-safe is also being installed, such that the water will be cut off in the event of an electricity failure. No cost for this is being attributed to the tenants and the installation had not been completed at the time of the inspection of subsequent hearing.
48. Mr Foster advised that when he was the caretaker of the estate, there was cover 24/7. Since he had retired, there had been no replacement. Mr Pocock confirmed there was a 24/7 tenant repair line and there is authority for emergency repair. There is also a key holder who can deal with emergencies should the repair line not be available for any reason.
49. Mr Foster referred to an electrical live wire on top of an external wall forming part of the external boundary of the communal patio/garden area to the north-west of the Property. Mr Pocock confirmed that would be reviewed. The Tribunal noted that neither the wall, nor the relevant section appeared to fall within the premises comprised within the tenancy of the Property.

50. Mr Foster also referred to the fire alarm system that has been problematical. Mr Pocock confirmed work was ongoing that would include the alarm being hard wired into individual flats and that work would soon be completed.

Scarcity

51. Mr Wright submitted that here scarcity was high. There were 15 apartments at Longshaw and supply could not equate to demand. In his written report Mr Wright placed scarcity at 25%.
52. Mr Pocock accepted that any flats do not remain empty for long.

Service Charge

53. It was agreed that on the service charge schedule provided to the Tribunal the costs certain expenses are divided between the Trust and 10 flats and others are just the responsibility of the flats.
54. The Trust had originally submitted a schedule that determined their costs of providing the services at £823.30 per tenant per annum. On reflection, however, the parties had reached an agreement with the Valuation Office Agency on or around 3rd December 2019 that an amount of £485 was appropriate. By coincidence this was the same figure as was determined in the previous rent registration process.
55. By the date of the hearing, Mr Foster argued that there are now 9 lettable residential flats within the hunting lodge with a further two having been converted into offices for the Trust. Therefore, the apportionment is incorrect; the amounts charged to the residential accommodation should be 11, including those flats taken over by the Trust. Mr Pocock agreed this would require investigation, although the Schedule provided is for 2018/2019 which predates the changes to the accommodation that took place during the pandemic. The parties agreed that clearer financial information could be provided by the Trust in future service charge schedules, to better aid the understanding of all involved and that they might seek to discuss this outside the current proceedings.

Rent Cap

56. At the hearing, Mr Pocock intimated that the Trust felt that an application of the rent cap under the 1999 Order should be looked at. However, no evidence was adduced or further submissions made as to the impact of the Trust's improvements on the rental value, as opposed to any increases attributable to other factors such as underlying market changes in the years since the previous registration.

Calculation of fair rent

57. The Tribunal considered the submissions made by Mr Wright regarding the calculation of the fair rent and as advised at the hearing the appropriate method is as set out in the 1977 Act. Consequently, other fair rents cannot be used as a means of assessing the fair rent for the Property. The Tribunal has

no knowledge as to how the other fair rents have been calculated, including the factors to be considered, e.g disrepair, tenant's improvements and/or statutory rent capping.

58. The Tribunal considered the evidence of market rents in the locality of the Property and found there were few direct comparables. Mr Pocock had provided details of other properties held under an AST at Longshaw, but none had been reviewed since at least 2019 and none had the same accommodation as the Property, which is considerably more extensive than the average.
59. In determining the open market rent for the Property and in the absence of any current evidence offered by the parties, the Tribunal relied upon its own knowledge and experience of the lettings market. Whilst it considered the nearest comparable evidence were the 3 bedroomed properties on the Longshaw estate, those rents were outdated. It did consider the property referred by the Tribunal to the parties in Edale that had been let at £1200 pcm. Whilst Mr Wright had objected to the use of that property, the Tribunal determined it was good evidence of a market rent achieved for a property of a similar size and in a similar location to the Property. It therefore determined the open market rent for the Property would be £1200 per month. However, that should be reduced to reflect the position of the Property within the estate.
60. The Tribunal accepted the position of the Property was more disadvantageous than other accommodation within the hunting lodge. There was a lack of privacy, not only from the visitors and being overlooked by the offices of the Trust, but also the disruption from the commercial vehicles coming to the Visitor's Centre. The Tribunal considered this would reduce the market rent to £1000 pcm, equivalent to £12,000 per annum.
61. The Tribunal considered the arguments put forward on behalf of Mr Foster regarding the use of the downstairs accommodation, in that he said it was not usable due to a lack of privacy. The Tribunal did not accept this. The accommodation was not redundant; it could be used as bedrooms. In addition to privacy film which Mr Foster had used, blinds and/or net or voile curtains could be employed to maintain an adequate level of privacy and whilst Mr Foster did use the entrance opposite the offices and adjacent to the Visitor's Centre, he did have the option of using the communal entrance that was further away from the areas used by the visitors to the estate.
62. In accordance with s.70 of the Act there has to be deducted from the market rent an amount for the lack of carpets and curtains not included within the tenancy, white goods, tenants' improvements and disrepair.
63. The Tribunal considered the amount to be deducted for the lack of white goods and furnishings would be in the sum of £125 pcm, equivalent to £1500 per annum.
64. The Tribunal then considered the tenant's improvements and noted that whilst these had been significant, some of those improvements had now been negated by the work undertaken by the Trust at its own expense. In particular, this included the replacement kitchen and bathrooms, the boiler and the replacement storage heaters. The fact these works were mandated by a statutory Improvement Notice is irrelevant for the purposes of the 1977 Act.
65. The Tribunal considered the submissions made in respect of the boiler and whether its capacity, as stated by Mr Foster, would render it ineffective. The Tribunal did not find this to be the case. It noted the Trust had fully assessed the Property when undertaking the work required by the Improvement Notice. It had installed the recommended boiler and had also put in secondary double

glazing and new storage heaters to complement the heating. The local authority had accepted the work and had removed the “Excess Cold” hazard from the Improvement Notice. The Tribunal considered the decision by Mr Foster to not use the boiler was from personal choice, notwithstanding the temperature readings referred to in his application papers. The Trust had installed additional storage heaters to support Mr Foster in this decision. Mr Foster may be unhappy with the level of comfort afforded by the heating capacity and functionality of the boiler, with or without supplementary heating, but there has been no more enforcement action taken by the local authority on the basis of the Property being excessively cold. The Tribunal took into account the age, character and location of the Property, including its potential limitations as to energy efficiency, when reaching its decision as to the likely market rent.

66. The Tribunal accepted that, irrespective of the works replaced by the Trust, Mr Foster had undertaken significant improvements at the Property that remain in place. It considered that the amount to be deducted from the market rent for this was £250 pcm, equivalent to £3000 per annum.
67. The Tribunal thereafter considered disrepair/landlord’s neglect. Here, it agreed there was a need for external paintwork and pointing and also to be included was a storage heater in the kitchen that was not working at the time of the inspection. It also included the defects to the water system that the Trust is in the process of improving but, at the time of this determination issues remain. The Tribunal determined this would justify a reduction to the market rent of £500 per annum.
68. The Tribunal also considered the issue of scarcity. Whilst it noted that both parties accepted that when accommodation on the Longshaw estate becomes available it does not remain on the market for long, the Tribunal cannot consider the estate alone. The Tribunal should consider a wider area and here, this should include not only the Peak District but also the nearby city of Sheffield. Any scarcity must exceed 10% in order to be deemed substantial and, when considering the wider area, the Tribunal does not find that it does; exceed that amount; it is not substantial for this type of Property. Accordingly, there is no deduction from the market rent for scarcity.
69. The Tribunal looked at the issue of the service charge which is registered as a fixed charge and noted the current dispute is in respect of the apportionment, rather than the amounts charged for individual services. The Tribunal accepted the amount to be charged to the residential accommodation should be apportioned between 11 properties rather than 10. Upon the basis the general amounts determined by the Rent Officer were not challenged by the parties, the Tribunal determined the new apportionment of that amount would result in a charge to the Property of £439, rather than the registered sum of £485. The Tribunal does observe, for the benefit of any future applications under the Act, that had there been a dispute over the underlying figures, then it would have welcomed clearer financial information being supplied in relation to the services that are said to be provided, the correlating costs that the Trust say it incurs in providing those services and, if possible, any comparable service charges payable for other such services provided for residential dwellings.
70. The Tribunal considered the work undertaken to the Property by Mr Foster as referred to above and whether that would exclude the rent from the Rent Acts (Maximum Fair Rent) Order (“1999 Order”). The fair rent is not limited by the

1999 Order if the work repairs and/or improvements undertaken by a landlord causes the rent to exceed the last registered rent by at least 15%. Here, in the absence of direct evidence, the Tribunal does not find the work to fulfil this and the 1999 Order does apply.

71. The Tribunal then applied the 1999 Order to determine the maximum fair rent to be registered. The calculation for this is given below.
72. The rent to be registered for the Property is £6899.50 per annum including the service charge, effective from 18th May 2022.
73. The uncapped rent for the Property is in the sum of £7000 plus the service charge of £439 per annum.

Maximum Fair Rent Calculation

Latest RPI- March 2022	323.5
Previous RPI – December 2010	228.4
Difference	95.1
95.1 divided by 228.4 =	0.4163747
Add 1.05 =	1.4663747
Where service charge is fixed:	£4220+£485=£4705 x 1.4663747 = £6899.29
Rounded to nearest 50p =	£6899.50 per annum

