



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

**Case reference** : **LON/00AF/S77/2022/0032**

**HMCTS code  
(paper, video,  
audio)** : **P: PAPERREMOTE**

**Property** : **58A South Hill Park, London NW3 2SJ**

**Applicant** : **Dr Peter Harper**

**Representative** : **Robin Cunningham, Counsel instructed  
by AxiomDWF solicitors**

**Respondent** : **Ms Margaret McCourt**

**Representative** : **None**

**Date of application** : **22 June 2021**

**Type of application** : **Determination of the registered rent  
under Section 70 Rent Act 1977**

**Tribunal  
member(s)** : **Mr Ian B Holdsworth MSc MCI Arb FRICS**

**Venue** : **Remote**

**Date of decision** : **15 July 2022**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was, P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable. It was agreed between the parties that all issues could be determined in a remote hearing or on paper. The documents that the tribunal were referred to are supplied in a 53 page bundle and skelton argument, the contents of which have been noted.

## **Background**

1. The Landlord applied to the Rent Officer for the registration of a fair rent for this property on 22<sup>nd</sup> June 2021.
2. The fair rent was previously registered on 3 December 2014 at £162.00 per week by the Rent Officer and this was increased to £207.00 per week following an appeal to the First-tier Tribunal Chamber (FTT). This rent was registered on 5<sup>th</sup> February 2015.
3. A fair rent of £199.00 per week was registered on 18 August 2021 following the application. AxiomDWFM solicitors, on behalf of the Landlord subsequently challenged the registered rent on 3<sup>rd</sup> September 2021 and the Rent Officer has requested the matter to be referred to the Tribunal for a determination. Confirmation of the objection to the registered rent are at page 20 of the bundle.
4. Directions were issued on 3<sup>rd</sup> March 2022 and subsequently amended on 16<sup>th</sup> March 2022 following receipt of the objection. The Directions stated that the application was suitable for determination on the basis of a video hearing due to Covid restrictions.
5. The parties were invited to submit any relevant information and submissions. Relevant information was received from both the Landlord's representatives and the Tenant.
6. The Landlord was represented by Robin Cunningham, Counsel at the hearing. Ms McCourt was a litigant in person.

## **Inspection**

7. No inspection of the property was carried out due to Covid restrictions.

## **The property**

8. The Tribunal rely upon the description provided in the written submissions.
9. The property is a 1 bedroom ground floor flat with a garden. It is situated near to Hampstead Heath and approximately 0.5 miles from Hampstead Heath overground station.

## **Hearing**

10. Counsel for the Landlord submitted a skeleton argument on behalf of the Applicant.
11. A 53 page bundle of documents is provided to tribunal. This included completed Pro Forma tenant and landlord reply forms.
12. The Applicants reply form described and detailed recent improvement works including updating of the electricity, sanitary fittings, gas fire and kitchen fittings. It also referred the Tribunal to the tenancy agreement between the parties dated 14 January 1985 between Grace Millicent Barrs and Margaret Anne McCourt. The Applicants submission included a Market Rental opinion prepared by a local estate and letting agent.
13. The Tenants submission commented on the extent of dilapidation at the dwelling including damp, disturbance caused by previous workings and the recent works undertaken by the landlord and the nuisance caused by previous residents in the shared premises.
14. Counsel referred the Tribunal to the tenancy agreement and in particular **clause 2(v)** in which the Tenant covenants,  
*“to keep and maintain the premises and the rear garden throughout the tenancy in good tenantable and habitable repair and condition together with the landlords fixtures and fittings including gas, electricity and water supplies and sanitary fitments and water pipes and garden tools but excluding main bearing walls and main bearing timbers”* and **clause 3(c)** where the Landlord only covenants,  
*“to keep in repair the exterior of the premises and also subject to Tenants obligations as herein before stated the drains and main water supply to the premises.”*
15. Counsel referred to a rental opinion prepared by a local letting agent The agent held that should the dwelling be let on an Assured Shorthold Tenancy the comparable evidence supports rents of around £2,150 per month. The Applicants also submitted the comparable evidence relied upon by the Valuation Office in determining the fair rent.
16. No Assured Shorthold tenancy rental comparable evidence was submitted by the Tenant.

## The law

17. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, “the Act”, it had regard to all the circumstances including the age, location and state of repair of the property. It also disregarded the effect of (a) any relevant tenant's improvements and (b) 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.
18. In **Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee (1995)** and **Curtis v London Rent Assessment Committee [1999]** the Court of Appeal emphasised that ordinarily a fair rent is the market rent for the property discounted for 'scarcity'. This is 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.

19. Counsel refer tribunal to **Curtis v London Rent Assessment Committee (1999) QB.92** as a relevant authority in registered rent determination. This authority states where good market rental comparable evidence i.e., assured shorthold tenancies is available enabling the identification of a market rent as a starting point it is wrong to rely on registered rents. The decision stated: *“If there are market rent comparables from which the fair rent can be derived why bother with fair rent comparables at all”*.
20. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
21. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
22. The Upper Tribunal in **Trustees of the Israel Moss Children’s Trust v Bandy [2015]** explained the duty of the First Tier Tribunal to present comprehensive and cogent fair rent findings. These directions are applied in this decision.
23. **The Rent Acts (Maximum Fair Rent) Order 1999** applies to all dwelling houses where an application for the registration of a new rent is made after the date of the Order and there is an existing registered rent under part IV of the Act. This article restricts any rental increase to 5% above the previously registered rent plus retail price indexation (Rpi) since the last registered rent. The relevant registered rent in this matter was registered on 5<sup>th</sup> February 2015 at £207.00 per week. The rent registered on 18<sup>th</sup> September 2021 subject to an Objection and subsequent determination by tribunal is not relevant to this calculation.

## Valuation

24. In the first instance the Tribunal 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 to their general knowledge of market rent levels in this area of West London.
25. This hypothetical rent is adjusted as necessary to allow for the differences between the terms and condition considered usual for such a letting and the condition of the actual property at the date of the inspection. Any rental benefit derived from Tenant’s improvements is disregarded. It is also necessary to disregard the effect of any disrepair or other defects attributable to the Tenant or any predecessor in title. No adjustments are made to the transaction evidence in assessment of the rent for this property.

26. The responsibility for internal maintenance of this property under the tenancy agreement is the responsibility of the Tenant. This includes all service provision.
27. The provisions of section 70(2) of the Rent Act 1977 in effect require the elimination of what is called “scarcity”. The required assumption is of a neutral market. Where a Tribunal considers that there is, in fact, substantial scarcity, it must make an adjustment to the rent to reflect that circumstance. In the present case neither party provided evidence with regard to scarcity.
28. The Tribunal then considered the decision of the High Court in **Yeomans Row Management Ltd v London Rent Assessment Committee [2002] EWHC 835 (Admin)** which required it to consider scarcity over a wide area rather than limit it to a particular locality. West London is now considered to be an appropriate area to use as a yardstick for measuring scarcity and it is clear that there is a substantial measure of scarcity in West London.
29. Assessing a scarcity percentage cannot be a precise arithmetical calculation. It can only be a judgement based on the years of experience of members of the Tribunal. The Tribunal therefore relied on its own combined knowledge and experience of the supply and demand for similar properties on the terms of the regulated tenancy (other than as to rent) and in particular to unfulfilled demand for such accommodation. In doing so, the Tribunal found that there was substantial scarcity in the locality of West London and therefore made a further deduction of 20% from the adjusted market rent to reflect this element.
30. The valuation of a fair rent is an exercise that relies upon relevant market rent comparable transactions and property specific adjustments. The fair rents charged for other similar properties in the locality do not form relevant transaction evidence.
31. Table 1 below provides details of the fair rent calculation:

Property: 58A South Hill Park London NW3 2SJ						
Fair rent calculation in accordance with s(70) Rent Act 1977						
Market rent				£495.00	per week	
Disregards				Deduction per week	as % weekly rent	
Carpets , curtains white, goods, soft furnishing				£24.75	5.00%	
Full repairing and insuring lease ( see clauses 2(v) and 3c of lease)				£61.88	12.50%	
Dilapidations				Deduction per week	as % weekly rent	
None advised responsibility of landlord				£0.00	0.00%	
Improvements undertaken by tenant					as % weekly rent	
None material to rental value				£0.00	0.00%	
Total deductions				£86.63	17.50%	
Adjusted Rent balance				£408.38		
Less Scarcity 20.00%		on adjusted market rent		£81.68		
Adjusted Market Rent				£326.70	per week	Uncapped rent
Capped rent in accordance with Rent Acts (Maximum Fair Rent) Order 1999				£ 280.50	per week	Capped rent

## Decision

- 32.** The Rent Acts (Maximum Fair Rent) Order will apply to this determination. The uncapped fair rent initially determined by the Tribunal for purposes of Section 70 is £326.70 per week by virtue of the rent acts maximum fair order 1999 the maximum fair rent that can be registered for this property is £280.50. **This is based on a specific 5% increase plus any retail price increases on the previously registered rent of £207.00 per week.**
33. The statutory formula applied to the previously registered rent is at Annex A.
34. Details of the maximum fair rent calculations were provided with the original notice of decision.
35. Accordingly, the sum that will be registered as a fair rent with effect from 25 May 2022 is £280.50 per week.

Valuer Chairman: Ian B Holdsworth  
Dated: 15 July 2022

## Appendix A

## **The Rents Act (Maximum Fair Rent) Order 1999**

(1) Where this article applies, the amount to be registered as the rent of the dwelling-house under Part IV shall not, subject to paragraph (5), exceed the maximum fair rent calculated in accordance with the formula set out in paragraph (2).

(2) The formula is:

$$\text{MFR} = \text{LR} \left[ 1 + \frac{(x-y)}{y} + P \right]$$

where:

- 'MFR' is the maximum fair rent;
- 'LR' is the amount of the existing registered rent to the dwelling-house;
- 'x' is the index published in the month immediately preceding the month in which the determination of a fair rent is made under Part IV;
- 'y' is the published index for the month in which the rent was last registered under Part IV before the date of the application for registration of a new rent; and
- 'P' is 0.075 for the first application for rent registration of the dwelling-house after this Order comes into force and 0.05 for every subsequent application.

(3) Where the maximum fair rent calculated in accordance with paragraph (2) is not an integral multiple of 50 pence the maximum fair rent shall be that amount rounded up to the nearest integral multiple of 50 pence.

(4) If  $\frac{(x-y)}{y} + P$  is less than zero the maximum fair rent shall be the y existing registered rent.