



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

**Case Reference** : **CAM/22UF/MNR/2022/0064  
A:BTMREMOTE**

**Property** : **11 Barbel Road Colchester CO4 3EJ**

**Applicant** : **Ms Edyta Drabek**

**Representative** : **Mr Yomi Adisa**

**Respondent** : **Mr Jamie B Johnson**

**Representative** : **-**

**Date of Application** : **20 June 2022**

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

**Tribunal** : **Mrs E Flint FRICS**

**Date and venue of  
Determination** : **8 September 2022  
remote telephone hearing following  
an inspection.**

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**DECISION**

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The market rent as at 26 June 2022 is £ per month.

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was A:BTMREMOTE. 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 the Tribunal were referred to are in a bundle, the contents of which have been noted. The order made is described below.

## **Background**

1. On 20 June 2022, the tenant referred to the Tribunal a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988.
2. The landlord's notice, which was dated 20 May 2022 proposed a rent of £1750 per month with effect from 26 June 2022 in place of the existing rent of £1220 per month.
3. The tenant occupies under a periodic tenancy which commenced on the expiry of a tenancy for 24 months commencing 26 February 2018.
4. Directions were issued by the tribunal on 22 June 2022.
5. The parties did not object to the matter being dealt with by a telephone hearing following an inspection by the tribunal. Prior to which both the landlord and the tenant sent to the tribunal written representations.

## **The Inspection**

6. The Tribunal inspected the property and locality in the morning of 8 September 2022.
7. Barbel Road is a cul de sac within a modern residential estate on the outskirts of Colchester close to a number of local facilities including schools. The subject property is off a driveway shared with two other houses and set back off the road. The area immediately in front of the house is block paved and provides parking for two or three cars, further parking is available in front of the double garage however the use of the garage has been retained by the landlord.
8. The waste pipe serving the kitchen sink has a hole in it, consequently the waste water runs onto the border in front of the house. The door is missing from the gas meter cupboard on the flank wall of the house.
9. The accommodation comprises on the ground floor a cloakroom, dual aspect living room with door to the kitchen/diner, leading into a conservatory with direct access to the rear garden and on the first floor four bedrooms and bathroom/wc. The decorative condition is tired throughout.
10. The dual aspect lounge has a gas fire which has been disconnected by the landlord, the current central heating radiator is of a different size to that previously installed; there has been no making good of the wall where the bracket has been removed, leaving an unpainted area with two holes in the plaster. The kitchen is fully fitted with floor and wall units with a range style cooker; the door to the main oven is not properly attached. There are blinds at the conservatory windows, they

are worn and damaged in a number of places. There are three double and one single bedroom all with built in cupboards of varying depth.

11. The wc in the cloakroom has been replaced with one of a different size to the original, a plank of wood has been fixed to the wall to provide support for the wc cistern, there is exposed pipework along the wall. A similar arrangement although less obtrusive also applies to the wc cistern in the bathroom. The extractor fan in the bathroom is disconnected.
12. The curtains and white goods are the tenant's.

### **The Evidence**

13. Mr Adisa, on behalf of the tenant, referred to the written representations and also said that the landlord had increased the rent during Covid to £1220 per month. He did not consider that the rent should be increased as the property was not well managed, it was difficult to get repairs done. The house was not in as good condition as the landlord's comparables which he said included garages, ensuites and often a second reception room. The subject property was smaller than the other houses in the cul de sac.
14. The landlord had removed the hedge at the side of the property which reduced the privacy, particularly in the cloakroom. The fence to the side of the house screening the back garden had been replaced by a lower fence, the tenant had provided a higher screen to retain privacy in the garden as the neighbour's parking space was directly in front of this area.
15. Mr Adisa said he had looked for four bedroom comparables in the area however they all had garages and ensuites. In his written representations he had drawn attention to the differences between the subject property and the comparables. The rents ranged from £1600 for a house within walking distance to the station or another situated in the village of Wivenhoe; £1650 for a house in north Colchester which was fitted to a higher standard, garage and larger garden; two other properties at £1800, now reduced, and £1900 which were not comparable owing to their size and or location.
16. Mr Adisa said that the tenant was self-employed and in receipt of a small amount of universal credit. The pay the increase sought backdated by 3 months would be difficult.
17. Mr Johnson explained that after the gas fire was disconnected following a gas safety inspection, he had installed a new boiler and central heating system. He had removed the hedge because the neighbour had complained that it was not being maintained. He did not accept that it had a material effect on the privacy of the house, the opaque window to the wc was at a high level. He always attended to repairs and had instructed a plumber to deal with the waste pipe and also the gas safety certificate which was due at the end of September.
18. He had supplied brief details of a number of comparables in his written representations which he invited the tribunal to consider in detail after the hearing.

19. Mr Johnson's comparables were as follows: Peppercorn Close situated close to the hospital and station at an asking rent of £1600 per month; Rectory Road a character house in the quaint village of Wivenhoe at an asking rent of £1600; a stunning family home in the Kingswood area at an asking rent of £1650 per month; Rouse Way, a quiet location within walking distance of the city centre at £1800 per month; and Gladwin Road a spacious house in the Hamilton and Philip Morant school catchment area at £1900 per month.

### **The law**

20. In accordance with the terms of section 14 Housing Act 1988 the Tribunal proceeded to determine 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.
21. In so doing the Tribunal, as required by section 14(1), ignored the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2) of that Act.

### **Valuation**

22. In coming to its decision, the Tribunal had regard to the evidence supplied by the landlord and the tenant. The comparables provided by the landlord indicate a rent of £1600 per month as the open market rent for a four bedroom house with ensuite and garage on the outskirts of Colchester. However, the subject property has neither an ensuite nor a garage and has a number of matters which require attention.
23. The Tribunal concluded that the rent at which the property might reasonably be expected to be let on the open market in its current condition would be £1400 per month.

### **The decision**

24. The Tribunal determines the open market rental value of the house is £1400 per month effective from 26 August 2022 as it is satisfied that backdating the increase to 26 June would cause undue hardship to the tenant.

Chairman: Evelyn Flint

Dated: 8 September 2022

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### **ANNEX - RIGHTS OF APPEAL**

- i. 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.

- ii. 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.
- iii. 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.
- iv. 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.

## **Appendix Housing Act 1988**

14 Determination of rent by rent assessment committee.

(1) Where, under subsection (4) (a) of section 13, a tenant refers to a rent assessment committee a notice under subsection (2) of that section, the committee shall determine the rent at which, subject to subsections (2) and (4) below, the committee consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy—

- (a) which is a periodic tenancy 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 the rent) are the same as those of the tenancy to which the notice relates; and
- (d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.

(2) In making a determination under this section, there shall be disregarded—

- (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 carried out by a person who at the time it was carried out was the tenant, if the improvement—
  - (i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or

(ii) was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and

(c) any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.

(3) For the purposes of subsection (2)(b) above, in relation to a notice which is referred by a tenant as mentioned in subsection (1) above, an improvement is a relevant improvement if either it was carried out during the tenancy to which the notice relates or the following conditions are satisfied, namely—

(a) that it was carried out not more than twenty-one years before the date of service of the notice; and

(b) that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under an assured tenancy; and

(c) that, on the coming to an end of an assured tenancy at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit.

(4) In this section “rent” does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture or for any of the matters referred to in subsection (1) (a) of that section, whether or not those sums are separate from the sums payable for the occupation of the dwelling-house concerned or are payable under separate agreements....

(7) Where a notice under section 13(2) above has been referred to the appropriate tribunal, then, unless the landlord and the tenant otherwise agree, the rent determined by the appropriate tribunal ... shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the appropriate tribunal that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the appropriate tribunal may direct.

