



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

**Case reference** : **LON/00BK/F77/2022/0206**

**Property** : **45 Acacia Road London NW8  
6AP**

**Applicant** : **The Eyre Estate**

**Representative** : **Savills**

**Respondent** : **Mrs Evelyn Etkind**

**Type of application** : **Section 70 of the Rent Act 1977**

**Tribunal members** : **Mr D Jagger MRICS**

**Venue** : **10 Alfred Place, London WC1E  
7LR**

**Date of Extended  
Reasons.** : : **1st February 2023**

**Decision**

**£54,140.50 per annum is to be registered as the fair rent for the above property with effect from 6th December 2022 being the date of the Tribunal's decision.**

The reasons for this decision are set out below.

## **Reasons**

### **Background**

On 7th June 2022 Savills on behalf of the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £78,000 per annum which equates to £6,500 per month for the property.

The rent payable at the time of the application was £42,731 per annum effective from 18th June 2022

On 4th. August 2022 the Rent Officer registered a fair rent of £41,850 per annum. The rent reduction imposed by the Rent Officer had been “uncapped” or unlimited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 ( the Order).

By email dated 8th September 2022 the landlords agent objected to the rent determined by the Rent Officer and the matter was referred to this Tribunal.

### **The law**

When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It also must disregard the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant, on the rental value of the property.

Section 70(2) of the Rent Act 1977 imposes on the Tribunal an assumption that the number of persons seeking to become tenants of similar dwelling house in the locality on the terms ( other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling houses in the locality which are available for letting on such terms. This is commonly called ‘scarcity’.

In *Spath Holme Ltd v Chairman of the Greater Manchester Council (1995) 28 HLR 107* and *Curtis v London Rent Assessment Tribunal [1999] QB 92* the Court of Appeal emphasised

- (a) that ordinarily a fair rent is the market rent for the property discounted for 'scarcity' (i.e. 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 - other than as to rent - to that of the regulated tenancy) and
- (b) that for the purposes of determining the market rent, assured tenancy (market) rents are usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

The Rent Acts (Maximum Fair Rent) Order 1999 places a “cap” on the permissible amount of the increase of a fair rent between one registration and the next, by reference to the amount of the increase in the United Kingdom Index of Retail Prices

between the dates of the two registrations. Where the cap applies the Rent Officer and the Tribunal is prevented from increasing the amount of the fair rent that it registers beyond the maximum fair rent calculated in accordance with the provisions of the Order and the mathematical formula set out in the Order.

By article 2(7) of the 1999 Order the capping provisions do not apply *“in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.”*

### **Facts found without Inspection**

The Tribunal did not inspect the property and relied on information provided by the parties together with its expert knowledge. An inspection of the property by the Tribunal was not requested by the parties in the ‘Reply Forms’

The property is a Victorian two storey semi detached house located in an established residential area. The property is located approximately 0.2 miles from St Johns Wood High Street and underground station.

The accommodation measure approximately 2330 f2 according to the Landlords records and sketch plan and comprises: basement with one room, kitchen, Ground floor: two rooms, lavatory First floor: 4 rooms, 2 bathrooms, Rear garden..

### **Terms of the tenancy**

It is understood that this tenancy began in 1970. The Tribunal has not had sight of the agreement. It is agreed between the parties that the Tenant is responsible for external and internal repairs and decorations on a full repairing and insuring lease. The property was let unfurnished. (See tenants improvements)

### **Tenant's improvements**

The Rent Officer confirms the tenant has refurbished the property during the term of tenancy. The tenant has installed kitchen fittings, all sanitary fittings, floor coverings, gas central heating system and undertaken external repairs and internal decoration.

### **Evidence**

The Tribunal had copies of the Valuation Office Agency correspondence including the rent registers effective 18th June 2020 and 4th August 2022.

The Landlords agent Savills provided a comprehensive document which formed part of the submissions. This set out detailed information in connection with the property, and comparable evidence in the form of a schedule comprising seven comparable properties which formed the basis for the landlords methodology to calculate the

proposed rent. In essence, the starting point was £156,000 per annum less 40% adjustment and 10% for scarcity which crystallised a rent of £78,000 per annum. The Tenants did not provide any rental evidence or correspondence.

## **Valuation**

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.

Based upon the evidence provided together with its expert knowledge, the Tribunal considers that the subject property, if finished to a reasonable standard would be likely to attract a rent let on an assured shorthold tenancy, for around £120,000 per annum. (£10,000 per month) This figure falls below the range of the schedule provided by the Landlord. Once adjustments have been made for specification, location, floor area and market movement.

Next, we need to **adjust that hypothetical rent of £120,000 per annum** to allow for the differences between the terms of this tenancy and complete disregard of the effect of any tenant's improvements.

The Tribunal has considered very carefully the parties' submissions and the notes prepared by the Rent Officer.

Using our own expertise we considered that deductions of 40% should be applied in order to take into account the onerous terms of the tenancy, and condition of the property at the commencement of the tenancy. This provides a deduction of £48,000 pa from the hypothetical rent. This reduces the figure to £72,000.

It should be noted that this figure cannot be a simple arithmetical calculation and is not based upon capital costs but is the Tribunal's estimate of the amount by which the rent would need to be reduced to attract a tenant.

## **Scarcity**

Thirdly, the Tribunal then went on to consider whether a deduction falls to be made to reflect scarcity within the meaning of section 70(2) of the 1977 Act. The Tribunal followed the decision of the High Court in *Yeomans Row Management Ltd v London Rent Assessment Committee*, in which it was held that scarcity over a wide area should be considered rather than scarcity in relation to a particular locality. Greater London is 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 Greater London.

We therefore made a further deduction of approximately **15% (£10,800)** from the adjusted market rent of £77,000 to reflect this element to produce a figure of **£61,200 per annum**.

## **Conclusion**

The capping provisions of the Rent Acts (Maximum Fair Rent) Order apply (see calculations) and therefore the capped fair rent is **£54,140.50 per annum**

The Maximum Fair Rent Calculation is based upon a mathematical formula set out in the Rent Act 1977 and an Explanatory Note is provided with the Decision. The reason for the significant increase in Maximum Fair Rent is due to the particularly sharp increase in the Retail Price Index (RPI) in the past 12 months, as the calculation is based upon such a percentage change in the Index.

Therefore, this is the fair rent to be registered limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the 6th December 2022 being the date of the Tribunals decision.

Detailed calculations are provided on the back of the decision form already issued and dated 6th December 2022.

**D Jagger MRICS**

**1st February 2023**

## **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).