



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

Case reference : **CAM/42UG/F77/2024/0001**

HMCTS code : **P:PAPERREMOTE**

Property : **Little Stubbs, Cliff Road,
Woodbridge, Suffolk, IP12 4QL**

Applicant (Landlord) : **Ms A O’Keeffe**

Respondent (Tenant) : **Mr and Mrs M Sharpe**

Type of application : **Determination of a fair rent under
section 70 of the Rent Act 1977**

Tribunal members : **Peter Roberts FRICS CEnv**

Date of Determination : **4 April 2024**

DECISION

Description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was a paper determination described above as P:PAPERREMOTE. The documents that the Tribunal was referred to are in bundles from the Applicant and the Respondent. The Tribunal has noted the contents and the decision is below.

Decision

The Tribunal determined a fair rent of £560 per month effective from 4 April 2024.

Reasons

Background

1. The Landlord made an undated application to register the rent of the Property at £812 per month.
2. The Rent Officer registered a Fair Rent of £660 per months on 12 December 2023 effective from 12 December 2023. This was in lieu of the previous rent of £540 per month which was effective from 22 October 2021.
3. The Landlord objected by way of an email 28 December April 2023. The matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued Directions on 9 January 2024, inviting the parties to submit any further representations (including any photographs and details of rentals for similar properties) they wished the Tribunal to consider.

The Property

5. The Tribunal inspected the Property on the 4 March 2024 accompanied by the Tenant. The Landlord did not attend.
6. The Property comprises a former timber boat shed that was first occupied as a bungalow in circa 1977 since which time various improvements have been carried out.
7. The accommodation comprises a kitchen, lounge, bathroom and two bedrooms together with loft space. There is a private garden and access is via a private unmade track leading to Cliff Road.
8. The Tenant also occupies two car parking spaces and outbuildings adjacent to the private track. However, the Landlord does not have any interest in this land and the Tenant's occupation is pursuant to arrangements with a Third Party.
9. The Property benefits from oil-fired central heating and UPVC double glazing.
10. The EPC certification has expired but the Property was previously assessed as falling within Band F. The Landlord's attention is drawn to Section 23 of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 and section 42 (1) (a) (ii) of the Energy Act 2011.

The Law

11. The relevant law is set out in section 70 of the Rent Act 1977 (the Act) and The Rent Acts (Maximum Fair Rent) Order 1999 (the Order).

12. Section 70 (1) of The Act provides that in assessing the rent:

“regard shall be had to all the circumstances (other than personal circumstances) and in particular to—

- i. the age, character, locality and state of repair of the dwelling-house,*
- ii. if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture and*
- iii. any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.”*

13. Section 70 (3) of the Act provides that:

“...there shall be disregarded.

- i. any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof;*
- ii. any improvement carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his*
- iii. if any furniture is provided for use under the regulated tenancy, any improvement to the furniture by the tenant under the regulated tenancy or any predecessor in title of his or, as the case may be, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his.”*

14. In addition, section 70 (2) of The Act requires the Tribunal to assume:

“that the number of persons seeking to become tenants of similar dwelling-houses 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.”

15. This latter provision requires the Tribunal to assume that the demand for similar rented properties in the locality does not significantly exceed the supply of such properties for rent; in effect, if such scarcity exists, the Tribunal is to adjust the rental figure so that the fair rent is not affected by it.

16. In *Spath Holme Ltd 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:
- (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).”*
17. In considering scarcity under section 70 (2) the Tribunal recognised that:
- (a) *“there are considerable variations in the level of scarcity in different parts of the country and that there is no general guidance or “rule of thumb” to indicate what adjustment should be made; the Tribunal therefore considers the case on its merits;*
 - (b) *terms relating to rent are to be excluded. A lack of demand at a particular rent is not necessarily evidence of no scarcity; it may be evidence that the prospective tenants are not prepared to pay that particular rent.”*
18. Section 71 (1) of the Act provides that the registration of the rent takes effect from the date that the Tribunal makes its decision.
19. Fair rents are subject to a capping procedure under the Rent Acts (Maximum Fair Rent) Order 1999 which limits increases by a formula based on the increase in the Retail Price Index since the previous registration.
20. Section 72 (1) (b) of the Act provides that the registration of a rent takes effect:
- “...if the rent is determined by the appropriate tribunal, from the date when the tribunal make their decision”*

Representations – Tenant

21. The Tenant completed the Reply Form and stated:
- “2022- New bath, shower and taps installed and paid by tenants. Since we moved into Little Stubbs in 1977 we have completely renovated the property including flooring, doors, kitchen units, log burner in living room. All rooms are in excellent repair and regularly decorated and paid for by tenants. Exterior of property also maintained by tenants including painting, gutters and general maintenance. We feel that the rent increase is a fair one given the work and money we have spent on this property. In 1977 Little Stubbs was basically a shell with a caravan sink and camping stove in the kitchen. Since that time we have completely transformed the property.”*

22. Document 1 as attached to the Reply Form set out the building works carried out by the Tenant. Document 2 comprised the Sales Particulars relating to the Landlord's purchase of the Property for £140,000 in August 2021.

Representations – Landlord

23. The Landlord's representations comprised the following:
- Email to the Rent Officer dated 18 December 2023
 - Email to the Rent Officer dated 28 December 2023
 - Appendix 1 to the Fair Rent Application (undated)
 - Reply Form dated 25 January 2024
24. The Landlord's representations can be summarised as follows:
- Repairs and improvements by tenants in excess of their contractual requirements should be disallowed
 - The rent payable should include the outbuildings and car parking spaces
 - The Landlord is subsidising the Tenant's rent
 - The Tenant's improvements/alterations should be assessed by reference to the cost of such works amortised over the life of those works
 - The Landlord's expenditure on maintenance etc should be taken into account
25. The Landlord also provided a schedule of asking rents.

Determination

26. The first point to clarify concerns the Property that is to be valued. In this regard, the Landlord advised that the previous freeholder owned the house together with the outbuilding and car parking area located to the north of the house. However, whilst the Landlord purchased the house, they did not purchase the land that comprises the outbuilding and car parking area and the Tribunal understands that this land is registered in a separate title to the house.
27. The Tribunal has no evidence before it as to the nature of the Tenant's rights to use the outbuilding and car parking but understands that the Landlord has no legal interest in that land.
28. It therefore follows the Landlord has no control over the use of the outbuilding and car parking and thereby has no ability in law to grant any rights over that land to a Third Party such as the Tenant. It further follows that, if the Landlord has no legal capacity to exercise any rights over that land, it is also unable to demand payment for the benefit to the Tenant of using that land.
29. The Tribunal has therefore valued the Property on the basis that the Tenancy between the Landlord and Tenant does **not** include the outbuilding or car

parking area with effect from the date that the current Landlord acquired their interest. Any payment by the Tenant for the use of the outbuilding or car parking is solely a matter for them and the relevant landowner of that land.

30. The Property has therefore been assessed as it exists but excluding the outbuilding and car parking spaces such that an incoming Tenant would have to make its own car parking arrangements and either forgo the outbuildings or replace them within the curtilage of the Property. Bearing in mind the access to the Property, this would, in all probability, result in the Tenant parking on the public highway and then walking down the track to the Property.
31. The Tribunal is unable to take into account the personal circumstances of the Parties. As such, the assessment of rent has no regard to the personal, financial or health circumstances of either party both of whom are considered to be hypothetical. The Tribunal has therefore had regard to hypothetical, willing parties in the open market. The ownership costs arising to the actual Landlord are therefore irrelevant to this exercise.
32. Having established the extent of the Property to be valued and determined that the parties to the assumed transaction are hypothetical, the next step, as set out in the Spath case as referred to above, is to determine the rent which a landlord could reasonably expect to obtain for the Property in the open market if it were let today in the condition and on the terms now usual for open market lettings.
33. The rent currently paid and/or registered is not relevant to this exercise. As such, the Tribunal has not relied upon the previous rent in any way and has disregarded historic evidence/determinations.
34. The Landlord argued that average monthly rentals for 2 bedroom properties within 3 miles of IP12 4QL are £1,038 per month. However, the Landlord further states in Appendix 1 to the Fair Rent Application that:

“Taking four different data sources into account suggests a monthly rental range of £718 to £943... ...I would like to request registration of a rent of £812 per calendar month as it seems to strike a balance between the current market rentals (above requested rent) the index movements (below requested), and my ownership costs (above requested).”
35. In contrast, the Rent Officer adopted £866.66 per month having taken into account the non- standard construction arising as a result of the Property comprising a converted timber boat shed. It is therefore the case that, on a like for like basis, the Rent Officer’s starting point at £866.66 per month was higher than the Landlord’s assumed rent of £812 per month.
36. However, it is clear from the Rent Register that both the Rent Officer and the Landlord assumed that the tenancy included a car space whereas, for the reasons set out above, this is no longer the case following the splitting of the freehold title.

37. The Tribunal is of the opinion that, having regard to the location, configuration and the nature of the Property together with the lack of car parking but taking into account the Tenant's alterations the current unadjusted open market rent would, if the Property was fully modernised and EPC compliant, be in the region of £800 per month.
38. Having calculated the market rent, it is then necessary to make deductions on account of "value sensitive" Tenant's alterations and the additional obligations (i.e., decoration and maintenance) that do not typically apply to modern lettings.
39. In this regard, it is uncontested that the Tenant has made significant alternations and improvements over the years which would have a direct impact on the rental value of the Property.
40. The Landlord suggests that it would be appropriate to cost these improvements/alterations and amortise them over their anticipated life. However, this approach ignores the point that the anticipated life exceeds the typical length of a modern lease such that a Tenant would not expect to recoup the cost of their works and takes no account of the fact that the works would have a detrimental impact on the Tenant's enjoyment and beneficial occupation of the Property during their implementation.
41. In reality, a Tenant taking possession under a modern lease would not be prepared to bear the cost and hassle of these works but would expect a discount in their rent to incentivise them to take a lease on the Property in that state rather than take a lease on an alternative property in an improved state. The Tribunal acknowledges that a scenario could arise where a Property is uninhabitable unless the improvements are carried out but, nevertheless, the principle still applies whereby it is assumed that a Tenant would take occupation if the rent was suitable reduced.
42. In essence, the Tribunal is required to assess the Property in the state in which it was originally provided together with any improvements carried out by the Landlord. Matters of age and obsolescence in respect of the Tenant's alterations are therefore of no relevance to the valuation exercise.
43. The main "value sensitive" items comprise the kitchen fit out (10%) and bathroom alterations (5%), double glazing (5%), carpets (5%) and curtains (2.5%).
44. A further adjustment is required to account for the fact the Tenant has carried out the interior decoration whereas modern open market lettings do not typically include specific redecorating obligations.
45. Having taken all these matters into account, a total allowance of 30% is considered to be appropriate.
46. The Tribunal does not consider a scarcity allowance to be appropriate on this occasion.

47. Having fully considered all matters relevant to this case, the Tribunal therefore considers the Fair Rent to be £560 per month.
48. The provisions of the Rent Acts (Maximum Fair Rent) Order 1999 require that the registered rent is either the capped Fair Rent, details of which are attached to this Decision, or the Fair Rent.
49. As set out above, the capped rent is determined by a formula that has regard to the increase in the Retail Price Index since the date of the last rent registration.
50. The Tribunal notes that the previous rent detailed on the Rent Register was £540 per month as registered on 22 October 2021. The calculated capped rent as at the date of this Determination is therefore £686.50 per month.
51. However, it must be pointed out that the capped rent has been derived from the previous rent which included the outbuildings and car parking area neither of which now belong to the Landlord.
52. The Fair Rent is below the capped rent. Therefore, the Fair Rent of **£560 per month** applies.
53. The Tribunal also directs that the revised rent takes effect from the date of this Determination. This means that the rent will continue at £540 per month until the date of this Determination at which point it will increase to £560 per month.
54. The Rent Officer's assessment is therefore of no effect having been supplanted by this Determination.

Name: Peter Roberts FRICS CEnv

Date: 4 April 2024

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 either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) on any point of law arising from this Decision.

Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision to the person making the application (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013).

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).

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Notice of the Tribunal Decision

Rent Act 1977 Schedule 11

Address of Premises

Little Stubbs, Cliff Road, Woodbridge,
Suffolk, IP12 4QL

The Tribunal members were

Peter Roberts FRICS CEnv

Landlord

Ms A O’Keeffe

Tenant

Mr and Mrs M Sharpe

1. The fair rent is

560

per

month

(excluding water rates and council tax
but including any amounts in paras
3&4)

2. The effective date is

4 April 2024

3. The amount for services included in
the rent is

Nil

Per

N/A

4. The amount for fuel charges (excluding heating and lighting of common parts) not
counting for rent allowance is

Nil

Per

N/A

not applicable

5. The rent is not to be registered as variable.

6. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply

7. Details (other than rent) where different from Rent Register entry

The outbuildings and car parking spaces are leased from a separate landlord and are therefore excluded from
the assessment of rent in respect of the Property.

Chairman

Peter Roberts
FRICS CEnv

Date of decision

4 April 2024

MAXIMUM FAIR RENT CALCULATION

Address of premises

Little Stubbs, Cliff Road, Woodbridge, Suffolk,
IP12 4QL

LATEST RPI FIGURE	x	381			
PREVIOUS RPI FIGURE	y	312			
x		381	minus y	312	= (A) 69
(A)		69	divided by y	312	= (B) 0.2211538
First application for re-registration since 1 February 1999					No
If yes (B) plus 1.075 = (C)				N/A	
If no (B) plus 1.05 = (C)				1.2711538	
Last registered rent* <small>*(exclusive of any variable service charge)</small>		540	Multiplied by (C) =		686.42
Rounded up to the nearest 50 pence =		686.50			
Variable service charge (Yes/No)		No			
If YES add amount for services =		N/A			
MAXIMUM FAIR RENT =		682.50	per		month

Explanatory Note

1. The calculation of the maximum fair rent, in accordance with the formula contained in the Order, is set out above.
2. In summary, the formula provides for the maximum fair rent to be calculated by:
 - a) increasing the previous registered rent by the percentage change in the retail price index (the RPI) since the date of that earlier registration and
 - b) adding a further 7.5% (if the present application was the first since 1 February 1999) or 5% (if it is a second or subsequent application since that date).

A 7.5% increase is represented, in the calculation set out above, by the addition of 1.075 to (B) and an increase of 5% is represented by the addition of 1.05 to (B)

The result is rounded up to the nearest 50 pence
3. For the purposes of the calculation the latest RPI figure (x) is that published in the calendar month immediately before the month in which the Committee's fair rent determination was made.

4. The process differs where the tenancy agreement contains a variable service charge and the rent is to be registered as variable under section 71(4) of the Rent Act 1977. In such a case the variable service charge is removed before applying the formula. When the amount determined by the application of the formula is ascertained the service charge is then added to that sum in order to produce the maximum fair rent.