



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

**Case reference** : **LON/00BK/F77/2021/0107**

**Property** : **Fifth Floor Flat North, 25 Wimpole St,  
London W1G 8GL**

**Applicant** : **Miss PA Jordan**

**Representative** : **Mrs Janet Jeal at the hearing;  
Russell Cooke, Solicitors (no attendance  
at the hearing)**

**Respondent** : **Howard de Walden Estates Ltd**

**Representative** : **None**

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

**Tribunal member** : **Mr Charles Norman FRICS  
Valuer Chairman  
Mr John Francis QPM**

**Date of hearing and  
venue** : **5 August 2021, at 10 Alfred Place,  
London WC1E 7LR**

**Date of decision** : **5 August 2021**

**Date of Reasons** : **21 September 2021**

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**REASONS**

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## **Background**

1. On 6 August 2020, the landlord applied to the Rent Officer for registration of a fair rent of £23,000 per annum for the above property. A schedule landlord's services were provided.
2. The rent payable at the time of the application was £20,800 per annum.
3. On 12 November 2020, the Rent Officer registered a fair rent of £22,707.50 with effect from the same date.
4. By letter dated 26 November 2020, the tenant objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
5. On 18 March 2021, the Tribunal issued directions setting the matter down for determination by written submissions, unless either party requested a remote video hearing, which neither did. On 10 May 2021 the Tribunal determined a fair rent of £22,962.50 per annum. At that point the Tribunal had received no documentation from the applicant other than the letter of appeal. A request was made to set aside that decision on the grounds that the applicant had not been notified of the hearing date, she wished to present her case in person at a hearing and that the applicant had a serious sight problem amounting to a disability. The Tribunal set aside the decision of 10 May 2021 and issued further directions. The matter was directed to be determined following a face-to-face hearing. The landlord was directed to complete a reply form and provide submissions and evidence by 18 June 2021. The tenant was directed to do likewise by 2 July 2021. The landlord was given permission to provide a brief response by 9 July 2021.
6. The case was heard at a face-to-face hearing on 5 August 2021 at 10 Alfred Place. The applicant appeared in person and was also represented by Mrs Janet Jeal. The landlord did not appear and was not represented, having previously notified the Tribunal of that intention. The Tribunal made its determination on 5 August 2021 and the tenant subsequently requested reasons.

## **The Property**

7. The Tribunal viewed internal and external photographs of the property supplied by the tenant and considered all documents supplied by the parties. The Tribunal accepts the description of the subject flat as set out by the applicant in a clear and helpful written submission. The flat is on the fifth floor, within the mansard roof of the building thereby having a degree of restricted height. The floor area is approximately 794 ft<sup>2</sup>, which the tenant had taken from service charge information supplied by the landlord. The flat is unmodernised. The lift extends only to the fourth floor, and this requires use of one and a half flights of stairs to gain access to the subject flat. The property has no central heating but there are three Economy 7 [night storage] heaters within the flat most of which were said not to work. There is an electric immersion heater. There is a wall mounted fan heater in the bathroom. The kitchen is basic and installed prior to the applicant moving to the property on 2 June 2000. The landlord supplied an electric integrated hob and cooker, washer dryer and integrated extractor hood. There

was a leak which damaged the fridge freezer. The bathroom has not been modernised. It comprises basic mismatched fittings and the shower is poor. The extractor fan does not work, and condensation builds up. The windows are metal single glazed and in very poor condition. The building is a seven story purpose-built block of flats on the east side of Wimpole St overlooking Harley Place, W1. The block appears to date from the 1950s. The Tribunal accepts the applicant's evidence that it contains 14 flats which are predominantly used as medical clinics.

## **Evidence**

### The Landlord's Case

8. The landlord did not respond to the appeal save for stating that it would not be attending the hearing.

### The Tenant's Case

9. The tenant referred to three comparables, full agents' details of which were provided. A two-bedroom flat in Wimpole Street W1 was available at £2383 per calendar month. This had two bedrooms, reception room kitchen and two bathrooms, both ensuite, plus guest cloakroom and also access to a private patio. It was managed by Howard de Walden. It was modernised throughout and considerably larger than the subject flat at 1267 ft<sup>2</sup>. A two-bedroom flat at 1 Marbury Court Marylebone St, W1G was available at £2535 per calendar month. From the agents' details, this was a garden flat in good decorative order with two double bedrooms, reception room, modern fitted kitchen and bathroom and with direct access to a secluded communal garden. The building was portered. A two-bedroom flat 8 Copperfield House, 52 Marylebone High St, W1U was available at £2492 per calendar month. This was a spacious first floor flat with live two bedrooms, two bathrooms, reception room kitchen and lift. It was finished to a high standard with a modern fitted kitchen and bathroom and was larger than the subject property at 886 ft<sup>2</sup>. The tenant also supplied a letter from the rent officer dated 22 July 2021 in which the rent officer set out his calculations which were as follows:

Open market value	£38,220 per annum
Less Adjustments	£11,465 per annum
Scarcity	£2140 per annum
Fair Rent	£24,615 per annum

## **The Law**

10. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property. (See Appendix below).
11. In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Tribunal* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Tribunal* [1999] QB 92 the Court of Appeal emphasised 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 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).

## Valuation

12. The Tribunal accepted the evidence of the applicant in relation to her comparables as being the best guide to value and the only direct evidence before the tribunal. The Tribunal did not accept the approach to fair rent adopted by the Rent Officer. The average of these comparables was £29,600 per annum which the Tribunal adopted as a starting point, had the property been in a condition usual for a modern letting on an assured shorthold tenancy. From this, the Tribunal considered that the following downward adjustments were needed:

Evidence of damp and condition of windows	10%
No central heating	10%
Condition of bathroom	5%

This aggregated to 25% or £7,400 per annum, leaving an adjusted market rent of £22,200 per annum.

13. The Tribunal found that there was substantial scarcity in the locality of Greater London. It took judicial notice of long local authority and social housing waiting lists in arriving at this decision. It therefore made a deduction of 20% (£4,400 per annum) from the adjusted market rent to reflect this element.
14. It follows that the Tribunal found that the fair rent was £17,760 per annum subject to application of the Rent Acts (Maximum Fair Rent) Order 1999.
15. However, this amount was not limited by the Rent Acts (Maximum Fair Rent) Order 1999, which prescribed a higher maximum fair rent of £23,487, per annum the calculations for which were supplied with the Notice of the Tribunal's Decision. Having considered the schedule of services, the Tribunal accepted the Rent Officer's attribution of rent to services of £2,084 per annum.

16. Accordingly, the sum of £17,760 per annum was determined as the fair rent with effect from 5 August 2021, being the date of the Tribunal's decision.

Mr Charles Norman FRICS  
21 September 2021

## **ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

### **Appendix**

#### **Rent Act 1977**

Section 70 Determination of fair rent.

(1) In determining, for the purposes of this Part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to—

(a) the age, character, locality and state of repair of the dwelling-house, . . . F1

(b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture [F2, and]

[F2(c) 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.]

(2) For the purposes of the determination it shall be assumed 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.

(3) There shall be disregarded—

(a) 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;

(b) 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;

(c)(d). . . . . F3

(e) 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.

F4[(3A) In any case where under Part I of the Local Government Finance Act 1992 the landlord or a superior landlord is liable to pay council tax in respect of a hereditament (“the relevant hereditament”) of which the dwelling-house forms part, regard shall also be had to the amount of council tax which, as at the date on which the application to the rent officer was made, was set by the billing authority—

(a) for the financial year in which that application was made, and

(b) for the category of dwellings within which the relevant hereditament fell on that date,

but any discount or other reduction affecting the amount of council tax payable shall be disregarded.

(3B) In subsection (3A) above—

(a) “hereditament” means a dwelling within the meaning of Part I of the Local Government Finance Act 1992,

(b) “billing authority” has the same meaning as in that Part of that Act, and

(c) “category of dwellings” has the same meaning as in section 30(1) and (2) of that Act.]

(4) In this section “improvement” includes the replacement of any fixture or fitting.

[F5(4A) In this section “premium” has the same meaning as in Part IX of this Act, and “sum in the nature of a premium” means—

(a) any such loan as is mentioned in section 119 or 120 of this Act,

(b)any such excess over the reasonable price of furniture as is mentioned in section 123 of this Act, and

(c)any such advance payment of rent as is mentioned in section 126 of this Act.]

(5). . . . .

(emphasis added)