

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') issued under section 26 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

Chamber Ref: FTS/HPC/RR/24/3773

Property: Whelpside Farmhouse, Glenbrook Road, Balerno EH14 7JF ('the Property')

The Parties:

Mr Simon Thomson, Cockburnhill House, Balerno EH14 7JN ('the Landlord')

Mrs Louise McColl, Whelpside Farmhouse, Glenbrook Road, Balerno EH14 7JF ('the Tenant')

Tribunal members:

George Clark (Legal Member/Chairperson) and Sara Hesp (Ordinary/surveyor Member).

Background

The tenancy is a regulated tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £15,000 per annum (£1,250 per month). The Landlord applied for the rent to be increased to £18,000 per annum (£1,500 per month). The Rent Officer registered a rent of £16,500 per annum (£1,375 per month) with effect from 16 August 2024. The Landlord referred the determination to the First-tier Tribunal on 17 August 2024. He stated that the comparable figures used by the Rent Officer had not been registered rents, but had been open market rents. They had also not been in the Balerno area. He provided the Tribunal with a list of rents of farmhouses and cottages near Balerno. He stated that he had carried out general repairs to the roof and gutters and re-harling of the gable end chimney breast of the Property. He had also rewired

the Property 6 years ago. In his view, the roof would need to be replaced within the next 5 years at a cost of £48,000 and the Property would need to be improved to comply with EPC ratings requirements. An air source heat pump, internal wall insulation and solar panels would cost in excess of £50,000, a new kitchen in excess of £30,000 and replacement windows and doors at least a further £25,000.

The comparables provided by the Landlord were:

- 1 Goodtrees Farm, Balerno. 4 bedrooms. Rent £2,150 pcm from October 2022*
- 2 Goodtrees Farm, Balerno. 4 bedrooms. Rent £2,215 pcm from September 2023*
- 3 Goodtrees Farm, Balerno. 4 bedrooms. Rent £2,150 pcm from June 2022*
- 4 Goodtrees Farm, Balerno. 4 bedrooms. Rent £2,215 pcm from May 2023*
- 5 Goodtrees Farm, Balerno. 4 bedrooms. Rent £2,215 pcm from July 2024*
- Goodtrees Farmhouse, Balerno. 4 bedrooms. Rent £1,995 pcm from August 2024*
- Bavelaw Mill Farmhouse, Balerno. 4 bedrooms. Rent £1,995 pcm from July 2024*
- 2 Cockburnhill Cottage, Balerno. 2 bedrooms. Rent £1,250 from June 2023*
- Whelpside Cottage, Balerno. 3 bedrooms. Rent £1,395 from October 2018*
- Gardner's Cottage, Balerno. 2 bedrooms. Rent £1,250 from March 2014*

The Inspection.

The Tribunal Members inspected the Property on the morning of 21 January 2025. The Landlord and Tenant were both present at the Inspection.

The Property is a stone-built 19th century farmhouse with a pitched slate roof. The accommodation comprises living room, dining room, 4 bedrooms, kitchen and bathroom. There is LPG central heating and the Property has modern upvc double glazed windows. Drainage is to a septic tank. The gross internal floor area is 181 square metres or thereby. The Tenant fitted the kitchen with wall and floor units, oven and hob, installed the central heating, and fitted the double glazing. She received a grant for installing the central heating boiler. The Property is situated in a rural area approximately two miles from the village of Balerno on the outskirts of Edinburgh. The Landlord meets the cost of emptying the septic tank.

The Hearing

Following the Inspection, a Hearing was held at George House, 126 George Street, Edinburgh. The Landlord was present. The Tenant was not present or represented.

The Landlord told the Tribunal that he believed the Property could be rented out in its present condition at £2,000 per month, £2,500 per month when fully upgraded with an improved EPC rating as a result of green solutions and a biomass boiler. In seeking to raise the rent to £1,800 per month, he was trying to keep pace with the Retail Price Index and also with present rents for other properties in the area.

4. Decision

The Tribunal had the following documents before it:-

- (i) a copy of form RR1, the Landlords' application for registration of the rent.
- (ii) a copy of the Rent Officer's determination.
- (iii) a copy of the Landlords' letter of 17 August 2024 objecting to the rent registered by the Rent Officer.
- (iv) a schedule of rents for properties in the area, provided by the Landlord.

The Tribunal considered these documents and the rental evidence.

The Tribunal Members were mindful of the terms of section 48(1) of The Rent (Scotland) Act 1984, which requires the Tribunal 'to have regard to all of the circumstances (other than personal circumstances) and in particular to apply their knowledge and experience of current rents of comparable property in the area, as well as having regard to the age, character and locality of the dwelling house in question and to its state of repair and, if any furniture is provided for use under the tenancy, and to the quantity, quality and condition of the furniture'. Also, Section 48(2) requires them 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 which are available to let on such terms.'

The Tribunal recognised that the three methods of assessing the rent in Scotland are

- (1) determining the fair rent by reference to comparable registered rents in the area.
- (2) determining the fair rent by reference to market rents of comparable properties

allowing for appropriate deductions for scarcity and (3) determining the fair rent by reference to the anticipated annual return based on the capital value of the property. They acknowledged that none of these methods is the primary method. The task of determining a fair rent is a composite task which takes account of these three methods. The appropriate method depends on the facts and circumstances of each case. The Tribunal also gave consideration to the observations of the Lord President in *Western Heritable Investment Co Ltd v Hunter* (2004) and also the case of *Wright v Elderpark Housing Association* (2017) which requires the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible.

Scarcity

As already noted, when the Tribunal fix a fair rent they must do so on an assumption that the number of persons seeking to become tenants of similar properties in the locality of the Property is not substantially higher than the number of similar dwelling houses which are available for lease. The Tribunal was satisfied from the evidence before it that there was a reasonable balance between supply and demand in the area of west Edinburgh and that scarcity was not, therefore, an element which affected the rental levels.

The Tribunal considered whether it was appropriate to use a return on the capital valuation of the Property. The Parties had not provided any evidence of capital valuations of the Property and the Tribunal was mindful that the capital valuation method has been described as notoriously unreliable 'normally to be used only as a last resort' (*Western Heritable Investment Co Ltd v Husband* 1983 SC (HL) 60, 73). Given the strong evidence of comparable market rents and the absence of evidence of capital valuations the Tribunal determined that it was appropriate to proceed to assess the fair rent of the Property without using the capital valuation method.

The Tribunal considered the rental evidence provided by the Landlord. The comparisons were all open market rents for newly converted or fully modernised houses, all to a high specification. The view of the Tribunal was that the best comparison was Bavelaw Mill Farmhouse, the rent for which is £1,995 per month. The Tribunal had to take into account, however, that it was renovated to a high specification and also the fact that the Tenant in the present application had made very considerable

improvements to the Property during the tenancy. The Landlord had provided his estimates of the repairs and improvements that would be required to bring the Property up to a high specification and the Tribunal had regard to these figures, although its view was that the roof remains serviceable and there is nothing to suggest it is not watertight, so did not include it in the calculations. The Tribunal considered that the likely cost of a new kitchen and bathroom, with a lifespan of 15 years, plastering and redecoration with a decoration lifespan of 10 years, a green solution amortised over 25 years, windows and external doors written down over 15 years and floorcoverings and carpets with a lifespan of 10 years would be approximately £115,000 and that, applying these depreciation figures as deductions from the rent of a fully modernised, high-specification house of similar size, produced a monthly rental figure for the Property, in its present condition, of £1,375.

The Tribunal is mindful that fixing the rent is a composite task and consequently after consideration of all these factors the Tribunal decided that a fair rent for the Property is £16,500 per annum (£1,375 per month).

In reaching this decision the Tribunal have had regard to all the considerations required to be taken into account in terms of Section 48 of the Rent (Scotland) Act 1984.

This decision takes effect from 17 August 2024, the date on which the Landlord appealed the Rent Officer's decision to the Tribunal .

G Clark

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Chairperson

28 January 2025