



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
PRHP/RR/15/0204	7 July 2015	Landlord

ADDRESS OF PREMISES

2 Craigmyle Cottages, Torphins, Aberdeenshire AB31 4NJ

TENANT

Robert Gallagher

NAME AND ADDRESS OF LANDLORD

NO AGENT

Craigmyle Estates Limited,
Craigharr House,
Keithhall, Inverurie, Aberdeenshire AB51
OLN

DESCRIPTION OF PREMISES

Semi-detached bungalow in converted steading in rural surroundings. Accommodation comprises kitchen, living room, two double bedrooms, single bedroom/study, bathroom with bath and shower and wash-hand basin; porch; garden
The gross internal floor area is 87 square metres

SERVICES PROVIDED

None.

COMMITTEE MEMBERS

CHAIRMAN

D Bartos

SURVEYOR

A. Anderson

HOUSING PANEL MEMBER

J. Wolstencroft

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 6 150 p.a.*	25 September 2015	15 October 2015

*

D Bartos

Chairman of Private Rented Housing Committee

Date 25 September 2015



Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as “the Committee”)

Under paragraph 10(1) of schedule 5 to the Rent (Scotland) Act 1984

Case Reference Number: PRHP/RR/15/0204

Re : Property at 2 Craigmyle Cottages, Torphins, Aberdeenshire AB31 4NJ (“the Property”)

The Parties:-

Craigmyle Estates Limited, Craigharr House, Keithhall, Inverurie, Aberdeenshire AB51 0LN (“the Landlords”)

Robert Gallagher, 2 Craigmyle Cottages, Torphins, Aberdeenshire AB31 4NJ (“the Tenant”)

The Committee comprised:-

Mr David Bartos	- Chairperson
Mr Angus Anderson	- Surveyor member
Mr John Wolstencroft -	- Housing member

Background:-

1. Mr Robert Gallagher is the tenant of the Property under house at 2 Craigmyle Cottages, Torphins, Aberdeenshire. It is not in dispute that this was a regulated tenancy in terms of the Rent (Scotland) Act 1984. The tenancy is covered by sections 43 to 54 of the Rent (Scotland) Act 1984. The rent under the tenancy is registrable under sections 46 to 50 of the 1984 Act. The tenancy is unfurnished. The Landlords have not supplied any of the “white goods”.
2. The previous registered rent was £ 550 per calendar month or £ 6600 per annum

with no service charge noted. The Landlords applied to the Rent Officer for registration of a fair rent of £ 9618.88 per annum inclusive of £ 400 per annum in respect of services provided by the Landlords.

3. On 22 June 2015 the Rent Officer registered a rent of £ 6864 per annum inclusive of a service charge of £ 100 to be effective from 18 August 2015. This was intimated to the Tenant and the Landlords. The Landlords objected to this by letter of appeal to the Rent Officer dated 6 July 2015. The Rent Officer referred the objections to the Committee.
4. The Committee attended at the Property on 7 September 2015. The Tenant was present. A director of the Landlords, Dr Gordon Drummond was present. The weather was sunny. The Property is the southmost of two semi-detached bungalows which form the east side of a partially converted square-shaped farm steading on a country estate. The semi-detached bungalow adjoining the Property is No. 1, Craigmyle Cottages. The north side of the steading comprises parking facilities accessible through a number of gates onto the courtyard. The west side of the steading comprises former stables. The south side of steading includes a roofed gate providing vehicular access into the courtyard and adjacent to it a former stable area which has been used as a workshop.
5. The bungalow at No.1 has been extensively refurbished. It uses the eastern third of the parking facilities as its parking facility. Access to it is obtained through an entrance porch which is located in the north-eastern corner of the courtyard.
6. The steading of which the Property forms part is located about one mile to the east of the village of Torphins. Vehicular access to the steading is from the north via an unclassified road and from there by a rough pot-holed vehicular track with traffic calming road-humps about 250 metres in length.
7. The steading was built in the mid-19th century and appears to have been partially converted in the second half of the 20th century into the two dwellinghouses mentioned. The dwellinghouses are stone built and share a slate tiled roof. The condition of the roof was good. On the part of the roof pertaining to the Property and facing the courtyard there were three slipped slates and one missing slate. These did not cause any leaks and notwithstanding their presence the roof was wind and watertight. Externally the condition of the Property was good, with the exception of the windows and entrance porch.
8. To the east of the dwellinghouses is a garden. The southern boundary of the garden is stone wall which on its south side bounds the verge of the access track. At the eastern end of the stone wall there is a gap in the wall wide enough for vehicular access. At present it is blocked off with temporary chicken wire fencing.

The Property has no parking facility in the garden or elsewhere. The eastern boundary is a stone wall and the northern boundary is a post and wire fence which extends eastwards from the north-east corner of No.1. There was a dispute over whether the northern part of the garden adjoining the house at No.1 was part of the tenancy of the Property or not. The garden has a gentle grass slope downhill away from the houses. At the foot of the garden it is wet and boggy. There were geese belonging to the Tenant in the garden.

9. Access into the Property is from the access track over the garden and through an entrance porch facing east. The porch adjoins the main building. It is wooden-built on a low brick and rendered wall with a sloping felt covered roof. It has wooden framed double glazing window units on two sides including the entrance door itself. There is misting within these units. The wood has wet rot. The paintwork is peeling. Staining to the ceiling indicated past water ingress, although the area was dry when tested with a damp meter. There is ceramic tile flooring which has been installed by the Tenant.
10. Within the main building the accommodation consists of three bedrooms, living room, kitchen and bathroom with a gross internal floor area of 87 square metres excluding the porch. There is a central hallway which gives access to the living room, bathroom, double bedroom facing the rear (courtyard), and the single and double bedrooms which face southwards onto the verge of the access track. At the commencement of the lease the single and double bedrooms formed one larger bedroom. From this an extension to the hallway was formed and the remaining area subdivided to form the small bedroom and second double bedroom. The small bedroom has an area of approximately 6.5 square metres. The main double bedroom faces to the rear.
11. The kitchen is reached via the living room. It is a very small kitchen, which but for its square shape might be described as a "galley kitchen". It has a single glazed window facing the courtyard. The kitchen has an old worn vinyl floor covering supplied by the Landlords. Old upper units were installed by the Tenant. The "conti-board" wood-style wall coverings are peeling off the wall. There is an old, dated cooker electrical socket. There is a small radiator on the right upon entry from the living room. The door to the kitchen had been installed by the Tenant.
12. The bathroom has a bath with an electric shower. These were supplied by the Tenant and installed by the Landlords. The ceramic tile flooring was installed by the Tenant. There is a radiator in the bathroom. Above the radiator there is a connection point for electrical wiring for a wall-mounted electrical heater. The heater has been removed but the connection point has not been sealed off.

13. The living room has heating from a stove located in the fireplace which was supplied by the Tenant. This stove also provides heat which is used to provide hot water to the radiators in the Property and hot water for use by the Tenant. The hot water cylinder is located in the kitchen. The living room has wooden-framed double glazed windows facing the garden. There is storage from a cupboard press. The carpet had been supplied by the Tenant. The room has blue painted woodchip wallpaper. There was no smoke detector in the living room despite its proximity to the kitchen and distance from the detector adjacent to the far bedrooms. This appeared to be in breach of the statutory repairing standard in the Housing (Scotland) Act 2006.
 14. The main double bedroom has a double glazed window to the rear (courtyard) which with misting in the wooden framed unit. The unit appears to originate from the 1970s or early 1980s. There is a built in wardrobe in the bedroom and a radiator. The smaller double bedroom and single bedroom have wooden framed double glazed windows and radiators. All carpets in the bedrooms were supplied by the Tenant.
 15. The central hallway has a double glazed window facing the garden. It has a ceramic tiled floor supplied by the Tenant which leads into the porch. The light fittings in the hallway appear to date back to the original conversion to a dwellinghouse.
 16. The windows of the Property have peeling paint on the exterior and in some cases internally.
 17. The Committee took account of their inspection and in addition the following evidence : -
 - Copy form RR1 being the Landlords' application for registration of rent for the properties dated 5 May 2015
 - Copy extract from the Rent Register for the property showing among other matters the rent registered by the Rent Officer for the Property on 22 June 2015
 - Copy letter of appeal from the Landlords to Rent Service Scotland dated 6 July 2015
 - Copy reference to PRHP from the Rent Officer dated 7 July 2015
 - Copy short assured tenancy of No.1 between the Landlords and Lynn Smith and Craig Rae dated 1 and 21 October 2014
 - Written representations from Gina Drummond
 - An aerial photograph lodged by the Tenant at the hearing
 - The evidence of Dr Gordon Drummond at the hearing
 - The evidence of the Tenant at the hearing
- The Committee also took account of the decision of its predecessor on 15 October

2012 (Reference RAC/AB31/866). The Committee was not provided with a copy of the tenancy agreement.

The Hearing

18. Following the inspection, the Committee held a hearing within Banchory Business Centre, Burn O'Bennie Road, Banchory, Aberdeenshire, AB31 5ZU. The hearing had been fixed for 12.30 p.m. but due to the length of the inspection the time was rearranged for 1 p.m.. At the hearing the Tenant appeared in person and was represented by Rachel Smith of Gordon Rural Action. The Landlords appeared and were represented by their director Dr Gordon Drummond. Dr Drummond was accompanied by Mr Adam McCaig of Messrs Burnett & Reid, solicitors, Aberdeen.
19. The Committee explained to the parties the task of the Committee and what was entailed in a fair rent for the purposes of the 1984 Act. Dr Drummond stated that on the basis of the decision of a PRHP committee in 2012, he was content with a 20% deduction from market rents in the area to take account of the repair and maintenance work required to achieve such rents. He stated that he had offered to refurbish the Property two years ago but that the Landlords had been repeatedly denied access and the offer had "fallen on deaf ears". He was of the opinion that had the Property been refurbished it could achieve market rents in the area.
20. Dr Drummond acknowledged that work would require to be done to the kitchen. He accepted that the windows suffered from peeling paint and that the porch suffered from wood decay. He acknowledged that the Property lacked a carbon monoxide detector in the living room where the stove was situated. He said that he had offered to remove the porch.
21. With regard to the garden he stated that the northern boundary did not extend beyond the division line of the two cottages. He said that he and his mother remembered a dividing fence extending from that line towards the wall at the bottom of the garden. The decking extending from No.1 into the garden had been put up by him when he had refurbished No.1.
22. Dr Drummond stated that the Property as let to the Tenant did not extend to the parking sheds on the north of the steading, nor to the workshop adjacent to the gate on the south of the steading. It was common ground that there had been a dispute over this between the parties which had resulted in court proceedings and a court decree confirming Dr Drummond's position. The Tenant accepted this, although he did not agree with the court decree. The Property did not include any such outbuildings. The 2012 committee decision had increased the rent by £ 360 per annum in respect of these. Dr Drummond said that he viewed this figure as

covering only the workshop and the two thirds of the parking sheds.

23. With regard to the claim for services, Dr Drummond stated that when thought necessary the septic tank, which served both No.1 and the Property, and had been designed for 3 other houses intended for the steading, was cleared. This had occurred twice in the period from 2007 to 2015. The cost was about £ 130 to £ 150 on each occasion to cover both cottages. Gutter cleaning was apportioned from the gutters of the whole courtyard. This amounted to an eighth of the whole. He was unable to advise on costs. With regard to window painting he accepted that the whole Property required to be upgraded with full replacement of the windows. He said that an offer had been made to carry out the upgrade.
24. Dr Drummond was cross-examined by Ms Smith. However the cross-examination dealt in the main with his evidence about the repair of a leak in the kitchen which has on the account of both Dr Drummond and the Tenant been repaired. Dr Drummond accepted that he would rather carry out a full refurbishment of the Property rather than individual repairs. The refurbishment of No.1 had taken a number of months between tenancies. He accepted that the gutters had not been cleaned since the 2012 committee decision. The septic tank had last been cleared after the 2012 decision. He did not believe that painting of the windows was worth carrying out. The condition of the woodwork was rotten and the windows required to be replaced.
25. The Tenant gave evidence about the leak in the kitchen and the steps taken to repair it. However given that he and Dr Drummond were at one that the leak had been dealt with this is not material. He explained that the porch had to be retained as otherwise there was little storage for appliances in the house. The kitchen could contain a freezer only at the cost of blocking access to the airing cupboard. He said that the wood in the porch was rotten, he had asked Dr Drummond to repair it but Dr Drummond had said that he would not do so.
26. With regard to the garden he lodged an aerial photograph of the steading to which Dr Drummond had no objection. He denied that there had been a fence extending from the dividing line of the two cottages down to the eastern dyke of the garden. The only fence going west to east in the garden was a fence which at one time separated the vegetable patch opposite No.1 from the rest of the garden. He knew this from the time when he had tenanted No.1 before he had moved into the Property. At that time the garden of No.1 was in the courtyard.
27. The garden was muddy and the grass was not suitable for parking for vehicles other than his Landrover. He required to park his car beside the gate at the path leading from the access track to the porch. It was too muddy to park by the caravan that he had stationed at the foot of the garden. He had been permitted by

the Landlords to have the geese. He did not recall the septic tank having been cleaned but had no issue over this. He used to clean the gutters himself.

28. In cross-examination he accepted that he had reported the windows to the Landlords but claimed that he had forgotten about getting in touch with the Landlords or their tradesmen since. On being asked whether he was illiterate, having claimed in the written representations to have had literacy issues, the Tenant stated that he had difficulties with reading letters. He could not pick up newspapers to look to find jobs. The Tenant accepted that it was not appropriate to park in the garden.
29. During the course of the cross-examination of the Tenant Dr Drummond sought to lodge two documents which had previously not been intimated to either the Committee or the Tenant. Ms Smith objected to the lodging of these at this late stage. In the light of this, Dr Drummond, very fairly, withdrew his request.
30. Dr Drummond submitted that the starting point for valuation was the short assured tenancy of No.1 which was £ 787.50 per month negotiated in October 2014. It was due for a contractual review in October 2015. He accepted that this would raise it to about £ 820 per month. He accepted that No.1 had a cooker integrated into the units but that was the only appliance in the lease. Given that the tenancy of the Property was a regulated one, it should command a higher rentable value. No.1 was a near identical property, but No.2 had three bedrooms. Aberdeenshire was a highly desirable area with overinflated prices. The local housing allowance rents reflected this (there was an error in the letter of 6 July when it referred to "Association" rather than "allowance"). Dr Drummond's position was that there was no scarcity of supply of rental properties of the size of No.1. The rent of No.1 did not vary in relation to services. The fair rent for the Property should be higher due to the security of tenure in the tenancy. Dr Drummond also submitted that the Committee should take account of the Landlords' costs of dealing with the Tenant.
31. The Committee confirmed its statutory duty to fix the rent on the assumption that the demand for similar dwellings in the locality on the terms of the tenancy (other than rent) was not substantially greater than the supply on such terms.
32. Ms Smith submitted that the so-called services were not services under the tenancy. She submitted that there was a scarcity of rental of premises in the Banchory area. She submitted that prices in Aberdeenshire had been inflated due to demand triggered by the oil industry and the drop in sales in the economy. The Landlords' letter of 6 July 2015 dealt with the "local housing allowance" and the figures used in that letter (£9616 per annum April 2015 commencing) applied to Aberdeenshire and the City of Aberdeen. It was inflated by the City and was not

applicable to the locality of the Property which she characterised as the “Deeside area of Aberdeenshire”. She had no comment to make on whether the rental of No.1 was a reasonable market rent.

33. She submitted that the rental would be reduced by the solid fuel heating system which was dependent on the storage of large supplies of solid fuel. Wood would require to be stored outside. The Property was remote, and had a difficult access track which would make winter access difficult. The property was a cold building with stone floors. She referred to the condition of the windows. No.1 had much better decoration and it had parking in the north wing of the steading. The fixtures and fittings had been largely provided by the Tenant. In response to Dr Drummond’s suggestion that the fair rent should be higher than a market rent on account of the security of tenure she did not believe that this was the intention of the legislation. There was limited storage for white goods. She submitted that a fair rent would be about £ 410 per annum.
34. In response Dr Drummond stated that No.1 also had solid fuel heating. With regard to access the difficulties with the access track were reflected in the rent for No.1. The lack of proximity to amenities contributed to its desirability. There was no inconvenience through the loss of storage in the workshop.
35. On the material areas of the evidence the Committee accepted Dr Drummond’s evidence in respect of the septic tank. It also accepted the Tenant’s evidence in respect of the extent of the garden and the nature of the parking facilities there. There appeared to be no dispute that the Tenant was in possession of the whole garden and had been since at least the commencement of his tenancy. While this was unusual, the evidence of the Tenant to that effect was not challenged in evidence. If the Landlords had been of the view that the Tenant’s lease did not extend to the garden opposite No.1 one would have expected a challenge of some kind to have been made at some point over the decades since the commencement of the tenancy but none has.

Reasons for Decision

36. The Committee considered carefully all the evidence presented, together with the observations of the Committee members at the inspection.
37. In considering the objection of the Landlords to the rent registered by the Rent Officer the Committee requires to determine for itself what rent is or would be a fair rent under a regulated tenancy of the property in question. If the Committee determines that the rent registered by the Rent Officer is a fair rent then it must confirm the rent but if it takes the view that the rent so registered is not a fair rent, then it must determine the fair rent for the property in question. The duty of the

Committee to determine the fair rent is set out under section 48 as of the Rent (Scotland) Act 1984.

38. In determining the fair rent the Committee is obliged to have regard to all 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 dwellinghouse in question and to its state of repair, and if any furniture is provided under the tenancy to the quality, quantity and condition of the furniture. In determining the fair rent the Committee are obliged to assume that the number of persons seeking to become tenants of similar properties in the locality on the terms (other than those relating to rent) of the tenancy is not substantially greater than the number of dwellinghouses in the locality which are available for letting on such terms. The Committee are obliged to disregard any improvement or the replacement of any fixture or fitting carried out, otherwise than in pursuance of the tenancy by the tenant or any predecessor of his under the tenancy.
39. The Committee considered which method should be applied for determining a fair rent. The three accepted methods are :
- (a) having regard to registered rents of comparable dwellinghouses in the area;
 - (b) taking market rents and deducting an amount in respect of improvement and the like which requires to be disregarded and an amount if the market rents did not reflect the assumption as to demand not being substantially greater than supply (the assumption as to absence of scarcity) and
 - (c) calculating the appropriate return based on the capital value of the property, taking into account the assumed absence of scarcity.

None of these methods is regarded as the primary method.

40. There was a lack of recently registered rents of comparable dwellinghouses in the area and for this reason this method was not resorted to.
41. The Committee were able to use their knowledge and experience of market rents from the Banchory and Torphins area of Deeside. The Committee also had the benefit of the evidence about the let of No.1. The calculation of an appropriate return based on the capital value of the Property did not appear appropriate given (1) the imprecision of such a calculation which invariably requires the use of contentious variables (in particular the decapitalisation rate) compared to the relative ease of using comparable rents and (2) the readily available evidence of open market let property in the area. Accordingly, the Committee considered that to determine a fair rent it was appropriate to compare open market rents for similar properties in the locality of the Property

42. From its own market knowledge the Committee assesses that a property of the size of the Property in a fully modernised condition would let for £ 800 per month at the current time provided that it had parking facilities. While the Property has three bedrooms, the third of these is of such a small size that it is in effect a two bedroom property. In October 2014 No.1 had been let for £ 787.50 per month. There was no dispute between the parties that No.1 is substantially the same size as the Property and the Committee is satisfied that at the rent achieved in October 2014 reflects market conditions at that time as between a willing lessor and a willing tenant. There has been no material rise in rental levels since that time but No. 2 has a garden which, accepting the Tenant's evidence on this matter, No.1 does not. There is no evidence that the Tenant of No.1 has used the part of the garden opposite it. This suggests that No.1 with a garden could now attract a rent of £ 800 per month. However No.1 is a fully modernised property and it has a garage for parking. The latter is particularly attractive for a rural property where public transport is not accessible within reasonable walking distance. In contrast, the Property has many worn and dated features which require replacement and improvement.
43. In these circumstances and weighing up the circumstances of the Property, the Committee exercising its expertise considered what the Landlord would require to spend to modernise the Property in order to achieve the rent of £ 800 per month or £ 9600 per annum and the approximate lifetime of such replacements and improvements. From these figures the Committee allocated an annual cost of such expenditure and in order to apply the disregard, deducted the annual cost from the rent of £ 9600 per annum.
44. In addition, over the years the Tenant had installed or replaced the internal fixtures and fittings of the Property. These included the ceramic tile flooring in the bathroom, central hallway and porch, the stove in the living room, the upper kitchen units in the kitchen, the door from the living room into the kitchen, the bathroom suite including the shower, and the carpets in the living room and bedrooms. None of these were required in terms of the tenancy and all fell to be disregarded under section 48(3) of the 1984 Act in the assessment of a fair rent. All of these fell to be disregarded.
45. In the exercise of its expertise the Committee took the view that to achieve the rent of £ 800 per month the Landlords would require to install a new kitchen and bathroom at approximate costs of £ 5000 and £ 3000 with a rough lifetimes of 10 years and 15 years respectively giving annual costs of £ 500 and £ 200. While the Landlord had installed a new fuse box, as evidenced by the antiquated power point in the kitchen, limited provision of power outlets, bakelite fittings and twisted lighting flex in the hallway and the unsealed electrical connection in the bathroom, the Property would require new electrical wiring at an estimated cost of

£ 3000 with a lifetime of say 20 years, to be annualised at £ 150 per annum. With regard to heating, the stove had been installed by the Tenant and the radiators were rusty and of an older design so the value of works to be done by the Landlord to make up for the Tenant's installation and repairs are estimated at £ 5000 to last 20 year giving an annual cost of £ 250 per annum. A full decoration of the Property would be required at an approximate cost of £ 3000 amortised over 5 years to give an annual cost of £ 600 per annum. The single and double glazed decayed windows would require replacement with modern versions at a cost of £ 2500 amortised over 15 years giving an annual cost of £ 167 per annum. The Tenant had installed the floor coverings so these fell to be disregarded but would cost the Landlords about £ 1250 amortised over 5 years giving an annual cost of £ 250 per annum.

46. The porch is an important area of storage for the Property and forms part of the tenancy. No.1 has a porch. The Committee took the view that removal of the porch as suggested by the Landlords would be in breach of the tenancy. Nevertheless the porch requires considerable repairs which may be estimated at £ 5000 to last 15 years giving an annual cost of £ 333 per annum.
47. Deducting these Landlords' costs and disregards would give a rent of £7150 per annum or £ 595 per month. However the Committee took the view that without any parking facility a tenant would not be prepared to take on the tenancy of the Property at that level. The disadvantages of living in the Property without parking is a material deterrent which must be reflected in the fixing of a fair rent. Not least in this respect is there a material difference between No.1 and the Property. The former has garaged parking with additional space within the courtyard whereas the latter does not. The Landlord himself took objection to the Tenant parking at the end of the garden but whether or not that objection is technically justified (and the Committee express no view on that matter) the Committee took the view that the garden did not provide the suitable parking for a car that a tenant of such a property would expect. It was far short of the garage provided for No.1. The Committee took the view that the Landlords could provide a garage for one car at or near the entrance path at a cost of approximately £ 1000 per annum without any material loss in respect of the land taken up thereby.
48. The heating of No.1 is also solid fuel based central heating and its rent takes that into account. The Committee considered that no discount was appropriate in respect of the solid fuel nature of the heating and it was open for a tenant to create a wood or coal storage facility in the garden. Equally, the condition of the vehicular access track is something shared by No.1 and taken into account in its rent. No discount was appropriate in respect of that. The existence and cost of disputes between an existing landlord and an existing tenant are "personal circumstances" and are not to be taken into account in a fair rent. There was no

evidence to support the contention that rents offered for residential tenancies with security of tenure were higher than those offered for tenancies without security of tenure. That submission is rejected.

49. The Committee considered carefully whether the statutory assumption under section 48(2) of the 1984 Act of demand for tenancies of similar properties in the locality on the same terms (other than rent) not being substantially higher than their availability (the absence of scarcity) was justified. The purpose of the statutory assumption is to ensure that when market rents have been pushed up by a substantial excess of demand over supply of houses to let, tenants do not have to bear the burden of increases in rent caused by that excess. It considered the submissions for the parties. In the experience of the Committee demand for a tenancy of the Property could originate from the City of Aberdeen itself as well as from Deeside. It therefore assessed the locality for this purpose of the assumption as being the City of Aberdeen and the Deeside area of Aberdeenshire. Using its knowledge and experience the Committee considered that the assumption of absence of scarcity was justified. No discount from the market rents required to be made in order to apply the assumption.
50. Applying the deductions noted above the Committee determined that, leaving aside the issue of services, a fair rent for the Property would be £ 6150 per annum being £ 512.50 per month.
51. The Committee is conscious that this represents a decrease of £ 450 per annum from the fair rent fixed by its predecessor committee in October 2012. However that committee was assessing a property which contained a garage and a workshop. It is now accepted that these are not part of the Property under assessment. The absence of any form of parking has a material impact. An allowance must be made for the provision of the garage. It is true that the predecessor committee assessed the value of the garage and workshop (described as “outbuildings” in its decision) at £ 360 per annum. However this figure appears to have been added to a figure based on the starting point for the rental valuation which itself was based on knowledge of market rents for properties with garages. In effect that committee, whether this was its intention or not, assessed the Property as containing two garages as well as the workshop. Clearly that is not the Property being assessed at present.
52. In addition, in fairness to the previous committee, given its assumption that at least one garage was contained in the Property, it did not require to focus on the effect on rental of the absence of any form of suitable car parking for a rural property. In contrast this Committee has required to pay close attention to that effect. Finally, this Committee is in any event not bound by any findings of the earlier committee. Thus while the earlier committee applied a broad brush

deduction of 20% to meet the value of Landlords' expenditure to achieve the market rent, this Committee has taken a more detailed approach to the matter and is entitled to do so. In addition it is fair to observe that there was little evidence of significant ongoing maintenance work and it is a reasonable inference that the condition of the Property has most probably deteriorated since 2012.

53. The fair rent to be determined by the Committee also includes any amount payable by the Tenant to the Landlords for services whether under the tenancy agreement or any separate agreement (or which a landlord is in fact supplying and the tenant enjoying) which amount is fairly attributable to the provision of those services by the Landlords to the Tenant. The Committee was not provided with a copy of the tenancy agreement (lease).
54. The evidence provided by the Landlords to the Committee in respect of the payment to be made in respect of services was poor. In the Landlords' application to the Rent Officer they stated that "septic tank cleaning, gutter and window painting" services were provided by them with a fair charge of £ 400 per annum to be included in the rent. No service charge had been registered in 2012. No agreement with the Tenant since that date was produced. It was plain from the inspection that no window painting had been carried out since 2012. No evidence of such painting was given. In evidence he said that he was unable to advise on the costs of the gutter cleaning and on cross-examination conceded that none had been carried out since 2012. In relation to the septic tank cleaning, the Tenant accepted that he had no reason to doubt Dr Drummond's evidence as to when it had been carried out. The Committee have no reason to doubt Dr Drummond's evidence as to the carrying out of the cleaning or the costs on each occasion.
55. That said, the no element as to services was included in the decision of the earlier committee in 2012. Following his evidence, at the end of his submission, on being invited to address the Committee on the valuation of the services Dr Drummond stated that "no variation of rent in relation to services" was sought. He did not submit for example that the Committee should adopt a particular cost for the cleaning of the septic tank.
56. In these circumstances the Committee did not include in the fair rent any amount in respect of services. Ms Smith did query whether the services claimed for were services which required to be included in the fair rent. While she did not elaborate on her submission, a number of points were unusual in respect of the services claim. Firstly, despite the septic tank cleaning having taken place before 2012, no claim was made by the Landlords at that time. Secondly, if the Landlords expected to be paid for the services by the Tenant, one would have expected them to produce an invoice or demand for payment as evidence of this. None was produced. Thirdly, where a landlord is aware that external painting is required in

order to maintain the exterior of the house in a reasonable state of repair he has a statutory duty under the Housing (Scotland) Act 2006 to carry out that painting unless it is excluded by a sheriff's court order. Services carried out by a Landlord in implement of a statutory duty are not services payable by the Tenant which can be passed on by the Landlord to the tenant in the form of a fair rent.

57. The Committee, after considering all the available evidence determined that the rent registered by the Rent Officer was not a fair rent and that a fair rent for 2 Craigmyle Cottages, Torphins, Aberdeenshire was £ 6150 per annum being £ 512.50 per month.

58. In reaching this decision the Committee had regard to all of the requirements of section 48 of the 1984 Act.

D Bartos

SignedDate: 25 September
2015.....

David Bartos, Chairperson