



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

**Case reference** : **CAM/11UF/MNR/2020/0034**

**Property** : **The Lodge, Marsh, Aylesbury, Bucks HP17 8SP**

**Applicants** : **Henre Lourens and Nicole Gerold**

**Respondents** : **Alexander Forsyth and Virginia Forsyth**

**Application** : **Application for permission to Appeal**

**Tribunal members** : **Mary Hardman FRICS IRRV(Hons)**

**Date of Decision** : **1 December 2021**

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**DECISION REFUSING PERMISSION TO APPEAL**

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## **Decision**

1. The tribunal has considered the applicants' request for permission to appeal dated 16 September 2021, the response from the respondents dated 30 September 2021 and the further submission from the applicants dated 5 November 2021, and determines that:
  - a. it will not review its decision; and
  - b. permission to appeal is refused.
2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, each party who applied for permission to appeal may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.
3. Where possible, any further application for permission to appeal should be sent **by email** to [Lands@justice.gov.uk](mailto:Lands@justice.gov.uk), as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

## **Original Application**

4. The Original Application was made on 1 June 2021 for the determination of a market rent under Section 14(1) of the Housing Act 1988 by Mr Laurens and Ms Gerold, the tenants, following service of a notice in the prescribed form by the landlord on 24 April 2021.
5. The landlord's notice proposed a new rent of £3250 per calendar month to be effective from 6 June 2021. The rent from 6 April 2018 had been £2150 per month.
6. The tribunal determined a market rent of £2,950 per month, taking effect from the date specified in the notice, for the reasons set out in the decision notice dated 2 September 2021 (the "Decision").

## **Reasons for the decision**

7. The tribunal has decided not to review its Decision and refuses permission to appeal to the Upper Tribunal because it is of the opinion that there is no realistic prospect of a successful appeal in this case.
8. For the benefit of the parties (and of the Upper Tribunal (Lands Chamber), if any further application for permission to appeal is made), the tribunal records below its comments on the grounds of appeal.

9. The applicants, Mr Laurens and Ms Gerold disagree with the findings of the tribunal and in their appeal provide examples of further properties that they say have become available to rent since the hearing. They also provide a letter from a local estate agent suggesting that the 'property should be marketed at a figure of around £2,650 per month, exclusive of utilities'.
10. The landlords expressed their disappointment at the decision of the tribunal not to uphold their proposed market rent of £3,250.
11. A basic guiding principle is that there has to be an end to litigation. The Court of Appeal, in *Ladd v Marshal* [1954] 1 WLR 1489, identified three matters which a court should take into account when considering whether to admit new evidence on an appeal. Those were: first, that the evidence could not have been obtained with reasonable diligence for use at the original hearing; secondly, that it must be such that it would probably have had an important influence on the result of the case if it had been considered by the original court, although it need not be decisive; and thirdly, the evidence must be apparently creditable, though it need not be incontrovertible.
12. In respect of the admission of the letter from the letting agent, this will fail on the first principle – that it could have been obtained for use at the original hearing. It also fails on the second, as explained below.
13. In terms of the provision of additional letting details, these particular properties were potentially not all on the market at the date of the hearing. However, there will always be new properties coming onto the market. The tribunal had directed each party to provide all evidence they relied upon for the rent determination. It was supplied with details of nine properties by the respondent landlords and only one by the applicant tenants, based on which the tribunal was able to arrive at the market rent of £2,950 per annum. It does not believe that there is anything in the late further evidence (the new letting details or the letter from the letting agent) that would have had an important influence on this decision; even if this evidence had been provided at the time, the same rent would have been determined.
14. On this basis the tribunal is not satisfied that it would be appropriate to admit the new evidence.
15. The applicants further submit that the tribunal should have exercised its discretion under Section 14(7) of the Housing Act 1988 to direct a later rent commencement date on the basis that allowing the determined market rent to take effect from the beginning of the new period specified in the notice would cause undue hardship to the tenants.
16. The tribunal considered this in making its original decision and based on submissions from both parties about the general circumstances decided not to delay the rent commencement date. This is a valuable property where it would be reasonable for the tenants to expect that the original rent would increase in line with the market and for which it would be reasonable to make provision. The tribunal bears in mind that the increase is significant but in the absence of

other than anecdotal evidence from the applicants (even with the application for permission to appeal) is not satisfied that that the increase with effect from the date specified in the notice will cause undue hardship.

**Mary Hardman**  
**Regional Surveyor**  
**1 December 2021**