



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

**Case Reference** : **BIR/41UB/RTB/2018/0010**

**Property** : **28 Forge Road Rugeley Staffordshire WS15 2JP**

**Applicant** : **Mrs S Whitehouse**

**Representative** : **Ms L Hill**

**Respondent** : **Cannock Chase Council**

**Type of Application** : **An application under paragraph 11 of Schedule 5 to the Housing Act 1985. (Denial by Landlord of the Right to Buy provisions of the Act because the property is particularly suitable for occupation by an elderly person).**

**Tribunal Members** : **V Ward F.R.I.C.S (Chairman)  
P Hawksworth Lawyer**

**Date of Decision** : **28 January 2019**

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**DECISION**

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## **Introduction**

1. This is an application to the First – tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) to determine whether the exception to the right to buy in paragraph 11 of Schedule 5 to the Housing Act 1985 (“the Act”) – property particularly suitable for occupation by elderly persons and let to the tenant for occupation by a person aged 60 or more – applies to the property which is the subject of this application.

## **Background**

2. The Tenant, Mrs Susan Whitehouse (“the Applicant”) by notice applied to Cannock Chase Council (“the Respondent”) to buy 28 Forge Road, Rugeley, Staffordshire WS15 2JP (“the Property”) under the Right to Buy provisions contained in the Act.
3. By way of an RTB2 Form – Notice in Reply to Tenant’s Right to Buy Claim, the Respondent served notice on the Applicant denying the right of the Applicant to buy the Property as in their opinion paragraph 11 of Schedule 5 to the Housing Act 1985 applies. This form was dated 7 August 2018 but in brackets afterwards was the notation “resent 20/9/18”.
4. By an application dated 6 October 2018, and received on 11 October 2018, the Applicant applied to the Tribunal pursuant to section 181 of the Housing Act 2004 for a determination as to whether the Property was excluded from the Right to Buy (RTB) provisions contained in the Act on the grounds that the dwelling:
  - was first let before 1 January 1990
  - is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons; and
  - was let to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more.
5. Under paragraph 11 (4) of Schedule 5 to the Act, the application must be made to the Tribunal within 56 days of the service of the Landlord’s Notice as above. If the date of the RTB2 form were taken as 7 August 2018, then the application would be considered to be out of time, the Tribunal have no jurisdiction and the application be struck out.

6. However, if the date of the RTB2 were taken as 20 September 2018, then the Tribunal would have jurisdiction and would proceed to a determination.
7. By way of Directions dated 12 October 2018, the Tribunal advised the parties that it was minded to consider the effective date of the RTB2 form as 20 September 2018 and accordingly treat the application as in time but invited the parties to make representations on this point by 31 October 2018.
8. Both parties made representations. The Respondent indicated that the RTB2 form issued on 7 August 2018 did not appear to have been received by the Applicant hence it was resent on 20 September 2018. The representations made by the Applicant were related to the refusal grounds themselves.
9. As neither party objected to the application being treated in time, the Tribunal proceeded to a determination.
10. The Applicant was represented in this matter by Ms Lisa Hill, her daughter.
11. The Office of the Deputy Prime Minister Circular 07/2004 entitled Right to Buy: Exclusion of Elderly Persons' Housing ("the Circular") gives guidance on the criteria to be adopted in determining the suitability of a dwelling house for occupation by elderly persons. The Tribunal is not bound by the Circular and decides each case on its merits but has regard to the Circular for guidance.

## **The Property**

12. The Tribunal inspected the Property on 17 January 2019 in the presence of Mrs Whitehouse and Ms Hill.
13. The Property comprises a modern semi-detached bungalow offering the following accommodation, which benefits from double glazing and gas fired central heating:
  - Hall
  - Lounge
  - Kitchen
  - Double Bedroom
  - Single bedroom
  - Bathroom with suite including paneled bath, wash hand basin, and low flush WC.
14. From the evidence provided to the Tribunal and gleaned at the inspection it appears that the Applicant has completely renovated and modernised the Property,

including new kitchen and bathroom fittings, new doors and complete redecoration. As part of these renovations the existing bathroom was converted from a wet room with hand rail to a more traditional bathroom suite.

15. To the front of the Property is a garden laid primarily to lawn. There is a paved path from the pavement to the front door which slopes slightly. There are larger than average rear and side gardens with areas of hard surfacing. The Property benefits from a dedicated car space adjacent to, and with access from, the rear garden with vehicular access from Mill Lane.
16. The step into the front door of the Property is 11 cm (excluding the door frame) whilst there is no step to the rear door, other than the door frame.
17. The Property forms the front part of a development of similar dwellings and fronts onto Forge Road which skirts Rugeley town centre, which is a 5 minute walk away. On the opposite side of Forge Road is a car park and a Morrisons supermarket which incorporates a pharmacy. Within the town centre, in addition to the aforementioned supermarket, is a Post Office, restaurants, public houses and specialty shops. The local Doctors Surgery, on Sandy Lane, is approximately 900 m away. The bus station and stops are within the town centre.

### **The Submissions of the Parties**

18. Neither party requested a hearing at which oral representations could be made.

### **The Applicant's submissions**

19. Submissions on behalf of the Applicant were as follows:
  - a) The Applicant was aware of other properties within the development where tenants had exercised their RTB successfully.
  - b) The Applicant had previously been a tenant of the Respondent in a three bedroom house within the Borough and gave that up to allow another family the benefit of the same, and considers it unfair that she should be penalised by giving up a property where she could exercise her rights to buy to one where she could not. The Applicant considers that she should have been advised by the Respondent that in moving from that property to the subject Property, her RTB rights may have been forfeited.

- c) The Applicant and her family had spent a considerable amount of time and money bringing the Property up to its current condition.

### **The Respondent's submissions**

- 20. Submissions on behalf of the Respondent confirmed that the Property was first let on 9 October 1989 and the tenant at that time was 73 years of age. The Applicant moved into the property on 15 June 2015 when they were 64 years of age. The Respondent considers that the dwelling's location, size, design and heating are all factors which make the Property suitable for occupation by elderly persons.

### **The Law**

- 21. The relevant law is contained in paragraph 11 of Schedule 5 of the Act as follows:
  - (1) *The right to buy does not arise if the dwelling-house:*
    - (a) *is particularly suitable, having regard to its location, size, design heating system and other features, for occupation by elderly persons, and*
    - (b) *was let to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more (whether the tenant or predecessor or another person).*
- (2) *In determining whether a dwelling is particularly suitable, no regard shall be had to the presence of any feature provided by the tenant or a predecessor in title of his.*
- (3) *This paragraph does not apply unless the dwelling-house concerned was first let before 1<sup>st</sup> January 1990.*

### **The Tribunal's Findings (including those relevant to the Circular)**

- 22. The Property is a semi-detached bungalow.
- 23. The Property benefits from a gas fired heating system which, from the enquiries made at the Tribunal's inspection, appears to function correctly and provide overnight heating if required, and also double glazing.

24. The immediate area around the subject Property is of a gradient reasonable from the viewpoint of an elderly person who can live independently and is not frail or disabled .
25. The Property is located conveniently close to all necessary amenities as listed above.
26. The Property was first let before 1990.

### **Determination by the Tribunal**

27. The issue concerning whether or not the Applicant should have been advised concerning RTB rights on moving from one Local Authority dwelling to another is not for this Tribunal to deal with. Sales of nearby properties to third parties are also not relevant to this application.
28. Whilst the Tribunal has much sympathy for the Applicant in view of the amount of time, money and effort invested in the Property, the matter to be decided is whether the Property is **particularly** suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons.
29. The term “elderly persons” does not mean persons who are frail or severely disabled; provision is made in other paragraphs of Schedule 5 of the Act to exclude dwelling houses for such persons from the right to buy legislation. The Tribunal is obliged to examine suitability from the perspective of an elderly person who can live independently. The personal circumstances of the Applicant are not to be taken into account.
30. In the Upper Tribunal decision, *Milton Keynes v Bailey* [2018] UKUT 207 (LC), P D McCrea commented:  
  
*“The question in a case such as this is whether the property is particularly suitable. Some features may tend in one direction, while others point the other way. Some features may be so significant in themselves that they make the property positively unsuitable (for example that it could only be reached by a very steep staircase). But what is required is an assessment of the whole”.*
31. The Tribunal considers that, when assessing it as a whole, the Property is particularly suitable for occupation by an elderly person who can live independently and noted the proximity of the shops and facilities as identified by its own inspection. Indeed, the Tribunal formed the view that it would be difficult to find a more suitable property anywhere for independent living by an elderly person.

32. The Tribunal determines, therefore, after taking into account the parties' submissions and the findings of fact made by the Tribunal, that the Respondent is entitled to rely on the exception to the right to buy contained within paragraph 11 of Schedule 5 to the Act as the Property is particularly suitable for occupation by an elderly person. Accordingly the Respondent's notice of denial is upheld. In practical terms this means that the Applicant does not have the right to purchase the Property.
  
26. In making their determination the Tribunal had regard to their inspection of the property, the submission by the parties, the relevant law and their knowledge and experience as an expert tribunal, but not any special or secret knowledge.

### **APPEAL**

27. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD BSc (Hons) FRICS Chairman