



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

Case number : BIR/17UJ/RTB/2019/0002

Property : 35 Pineview, Danesmoor, Chesterfield, Derbyshire, S45 9DB

Applicant : Mr Robbie Higginson

Respondents : Rykneld Homes (1)
North East Derbyshire District Council (2)

Type of Application : An Application under paragraph 11 of Schedule 5 to the Housing Act 1985 following denial of the Right to Buy under that Act because the property is particularly suitable for occupation by elderly persons

Tribunal Members : Judge David R Salter (Chairman)
Vernon Ward FRICS (Deputy Regional Valuer)

Date of Decision : 31 May 2019

DECISION

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Preliminary matter

- 1 Rykneld Homes is a company limited by guarantee which is controlled by North East Derbyshire District Council ('the Council'). It is responsible for the management of the Council's housing stock, including the property which is the subject of this application.

REASONS

Background

- 2 This is an application to the First-tier Tribunal (Property Chamber) ('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) applies to 35 Pineview, Danesmoor, Chesterfield, Derbyshire S45 9DB ('the Property').
- 3 The tenant, Mr Robbie Higginson, applied to the landlord, the Council, through Rykneld Homes to buy the freehold interest in the Property under 'right to buy' legislation.
- 4 By operation of law, Mr Higginson succeeded to the tenancy of the Property in 2015 following the death of his father who had entered into a secure tenancy agreement with the Council dated 4 April 2006.
- 5 The landlord replied by counter notice, Form RTB2 dated 15 January 2019, which was served on the tenant by Rykneld Homes denying the right to buy because it considered the Property particularly suitable for occupation by elderly persons. The Notice advised that the qualifying conditions for denial had been met as the Property had been first let before 1 January 1990 and routinely let for occupation by a person aged 60 or more or someone with an identified medical need for this type of accommodation.
- 6 Mr Higginson made an application to the Tribunal dated 19 January 2019, which was received by the Tribunal on 21 January 2019, ('the Application'), for a determination by the Tribunal as to whether the grounds in paragraph 11 had been satisfied.
- 7 The Tribunal sent a copy of the Application to Rykneld Homes on 25 January 2019.
- 8 Directions were issued by the Regional Judge on 11 February 2019 which were concerned, principally, with the processes associated with the preparation and submission of statements of case and related documents.
- 9 Statements of case were submitted by the Applicant and on behalf the Council in due course. The latter was written by Mr Kevin Eric Shillitto, Solicitor, Bolsover District Council ('Mr Shillitto').
- 10 A Hearing was not requested by any of the parties.

Relevant Law

- 11 The material parts of paragraph 11 of Schedule 5 of the 1985 Act are 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...

(6) This paragraph does not apply unless the dwelling-house concerned was first let before 1st January 1990.

12 ODPM Circular 7/2004 (Right to Buy: Exclusion of Elderly Persons' Housing) ('the Circular'), which was issued by the Office of the Deputy Prime Minister, gives guidance on the main criteria to be taken into account in determining the suitability of a dwelling-house for occupation by elderly persons. Such determinations were to be made by the Secretary of State. However on 1 April 2005, such jurisdiction was transferred to 'the appropriate tribunal or authority' under section 181 of the Housing Act 2004, which, presently, is this Tribunal. In anticipation of this transfer, the Circular states that 'the criteria set out in this circular will not be binding on the [appropriate tribunal or authority] but they will be guided by them in general terms'. Importantly, the Circular adds that each case will be decided on its own merits.

The following paragraphs of the Circular are particularly apposite to the determination by the Tribunal of this Application:

Particular suitability for occupation by elderly persons

"12. The main points on which the Secretary of State will normally expect to be satisfied in considering applications under paragraph 11 – as well as other features to which his attention is drawn – are as follows:

(a) there should be easy access on foot to the dwelling. In assessing ease of access, consideration should be given to:

- the number and size (in particular, the height) and curvature of any steps up to the dwelling itself, and also of any steps in its immediate vicinity where these must be negotiated to gain access to it;
- the presence or absence of handrails, or other means of support, alongside any steps up to the dwelling and in its immediate vicinity that need to be negotiated to gain access to it;
- the gradient of ramps, paths, pavements or other means of access to the dwelling and in its immediate vicinity, where these must be negotiated to gain access to it.

In general, access is unlikely to be regarded as easy if it is necessary to climb three or more steps (in addition to the threshold) and there is no handrail;

(b) the accommodation should normally be on one level. The Secretary of State is unlikely to regard a dwelling with two or more floors as being particularly suitable for occupation by an elderly person. However, he may be prepared to make exceptions for dwellings with up to three internal steps, or with stairlifts or similar devices provided by the landlord;

(c)...

(d) there should be no more than two bedrooms, designated as such in the tenancy agreement;

(e) there should be heating arrangements which:

- function reliably
- provide heat to at least the living room and one bedroom
- may safely be left on overnight;

(f) the dwelling should be located reasonably conveniently for shops and public transport, having regard to the nature of the area (the Secretary of State may take into account reliable means of transport other than those provided by public bodies – for instance, transport provided by shops or voluntary organisations):

- in an urban area, the dwelling should be located no more than 800 metres (half a mile) from both the nearest shop selling basic food items and the nearest public transport stop. ‘Basic food items’ include bread and milk;
- in a rural area, the dwelling should be located no more than 800 metres (half a mile) from the nearest public transport stop, and such transport should be available from this point frequently enough to provide at least three opportunities for shopping each week.

Letting test

18...It is important to reiterate that paragraph 11 of Schedule 5 of the Housing Act 1985 applies only if the dwelling in question was let ‘to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more’. The Secretary of State takes the view that this condition is only met if, when the current tenancy or that of the current tenant’s predecessor in title was granted, the landlord knew:

- that the tenant, or one or more of joint tenants, was aged 60 or more;

or

- that the dwelling was to be occupied by some other person known by the landlord to be aged 60 or more.”

The Property

- 13 The Tribunal inspected the Property, internally and externally, during the morning of 18 April 2019 in the presence of Mr Higginson and Mr Shillitto.
- 14 The Property is a traditionally constructed semi-detached bungalow located within Pineview, a discrete development which comprises around 40 semi-detached properties all of which are similar in structure and design. It is situate on a flat and level site.

The Property offers the following accommodation and benefits from upvc double glazing and gas fired central heating:

Hall

Lounge

Kitchen

2 bedrooms (double)

Bathroom comprising a wet room, shower, wash hand basin and low flush WC.

The Property has a small rear garden which is enclosed by mature and fairly dense hedges. There are footpaths leading from a side entrance to the back door and to a gate to the rear of the garden which gives access to a pedestrian right of way and, thence, to a housing estate which borders Pineview. In addition, there are two brick outbuildings which are proximate to and face the back door. Otherwise, the garden is laid, principally, to lawn. This garden would be easy to maintain.

- 15 The front of the Property is approached over a footpath which passes through an open plan communal lawn on either side. There is no front garden.
- 16 There is no step to either the front or the rear door of the Property. All the footpaths which provide access to and egress from the Property are level and easy to navigate.
- 17 Car parking is available within walking distance of the Property in an open tarmac car parking area within Pineview which is bordered by bungalows on each of its four sides. However, there is no designated car parking in this car parking area either for the Property or any of the other bungalows on Pineview. There are no significant gradients in the car parking area.
- 18 During a partial inspection of Pineview immediately after the inspection of the Property, the Tribunal noted that upvc windows had been installed in each of the bungalows it observed during this inspection and it was apparent that a fair number of those bungalows were unoccupied. The Tribunal also observed an industrial area adjacent to Pineview. However, the Tribunal detected only a very low level of noise emanating from this area.
- 19 A Nisa Local and Post Office are situated nearby in Pilsley Road and are approximately 600 metres and 500 metres respectively from the Property. The Property is within easy walking distance of bus stops on Cemetery Road that provide ready access to the surrounding area and, in particular, to amenities available within or proximate to the town centre of Clay Cross including a pharmacy, medical centre/surgery and supermarkets.

Submissions

The Applicant

- 20 Mr Higginson strongly disagreed with the proposition that the Property was particularly suitable for occupation by elderly persons. He cited the following reasons in support of his objection which were set out either in the Application or in his statement of case.

Location

Mr Higginson described the Property as ‘a bit out of the way’. He said that it was about three miles to the local shops. Further, Mr Higginson drew the attention of the Tribunal to the proximity of Pineview to what he described as a nearby industrial area which could be noisy, especially at night, and would, in his opinion, be a disturbance to most elderly persons. To his knowledge, one tenant had left Pineview because of the noise from the industrial area. Mr Higginson also believed that ‘getting out and about’ from Pineview would be difficult for some.

Parking

Mr Higginson stated that the Property lacks ‘car parking outside by means of a drive’, and that as the Property is set back from the road by about 100 metres there is no scope for creating a drive. Further, whilst there is a communal parking area this is sufficient only to

accommodate car parking for less than half of the 40 properties on Pineview. Mr Higginson also opined that, presently, Pineview has ‘only a handful of properties let to tenants’ and he estimated that there were ‘twenty odd bungalows empty out of forty’. Consequently, this meant car parking might be available but ‘a good distance’ away from the Property. Mr Higginson suggested that this car parking provision could be problematic for persons with limited mobility.

Lack of privacy and security

Mr Higginson stated that Pineview has ‘many entrances and is wide open’ with at least seven points of entry and this has provided the opportunity for many criminal acts and vandalism. He intimated that tenants had moved away from Pineview because they did not feel safe.

Mr Higginson said that the Property is ‘wide open with no fence and a hedge that is falling apart’ and that the rear of the Property backs onto a housing estate.

Regeneration and disturbance

Mr Higginson informed the Tribunal that regeneration of the bungalows located in Pineview had been taking place for five years and that many ‘older people’ had moved away from Pineview because of the disturbance caused by this regeneration. He indicated that the main aspect of the regeneration which would involve properties being replaced had not started, and that, therefore, the regeneration could take years to complete.

Second Respondent - the Council

- 21 Mr Shillitto opened the statement of case, which he submitted on behalf of the Second Respondent (hereafter, for ease of reference, the Council), with the statement that it was strongly asserted that ‘the Property is, and remains, particularly suitable for occupation by elderly persons.’

Thereafter, Mr Shillitto sought to verify this by placing reliance on what he described as the reasons for this assertion and a summary of the relevant facts referring, where appropriate, to pertinent paragraphs and sub-paragraphs of the Circular. In this respect, Mr Shillitto, initially, made the following points in relation to each of the above-cited sub-paragraphs of paragraph 12 of the Circular:

“Ease of Access

The premises is accessed from the highway by means of a footpath. The gradient is level, making it suitable for access by those with mobility difficulties and/or in need of assistance, e.g. by way of a walking frame or stick. The short distance from the highway to the property also lends itself to those with need of easy access. The property benefits from level access at the entrance. These features are consistent with easy access in accordance with the Circular at paragraph 12(a).

Levels of Property

The property is a single storey bungalow. This meets the requirements of the Circular in paragraph 12(b).

Bedrooms

The property has two bedrooms, again consistent with suitability for elderly persons in accordance with paragraph 12(d) of the Circular.

Heating

The property enjoys the benefit of a reliable central heating system throughout, again consistent with suitability for elderly persons in accordance with paragraph 12(e) of the Circular.

Location

The property is located 0.2 miles from local convenience stores. Public transport stops on Cemetery Road are even closer. Therefore the criteria is met in paragraph 12(f) of the Circular.

There are no adverse gradients on the route between the property and the nearest convenience store or public transport stops.”

22 Mr Shillitto also drew the Tribunal’s attention to ‘other features’ of the Property. First, he stated that the Property benefitted from an adapted wet room. This had been installed in 2013 following an upgrade to the bathroom as part of Decent Homes works. Secondly, he informed the Tribunal that the property is located in an area scheduled to benefit from significant planned regeneration works, some of which had already begun, including:

- new windows were fitted to the property in 2018;
- the estate will receive full roof replacements and upgrading to individual plots in order to provide level access parking and enclosed rear gardens; and
- the number of access paths to the estate will be reduced in order to reduce the footfall from neighbouring estates into this elderly community. Street lighting will be upgraded.

Further, Mr Shillitto referred the Tribunal to the following website where further details about the regeneration works may be found, namely <https://www.rykneldhomes.org.uk/regeneration/property-improvements/pine-view-regeneration/>.

23 Finally, Mr Shillitto submitted that the criteria in paragraph 18 of the Circular were met when the Property was let by the Council to Mr Higginson’s father in 2006 at which time he satisfied the restricted age criterion of being aged 60 or more. Mr Shillitto added that Mr Higginson succeeded to the tenancy of the Property in 2015 by operation of law upon the death of his father and not through any decision to relax the restricted age criterion. Mr Shillitto also intimated that to the best of the Council’s knowledge the Property had been previously let solely with a specific designation that it was suitable for elderly persons. More generally, Mr Shillitto informed the Tribunal that during 2018 that the bids received by the Council for properties on Pineview averaged 25 per month and that the Council does not have any difficulty in re-letting properties on Pineview to individuals who meet the relevant age criteria.

Determination

24 At the outset, the Tribunal considered the evidence relating to whether the Property is *particularly* suitable for occupation by elderly persons, having regard to its location, size, design, heating system and any other features to which the Tribunal’s attention may be drawn (‘the suitability test’).

25 In this respect, ‘elderly persons’ does not mean persons who are frail or severely disabled; provision is made in other paragraphs of Schedule 5 to the Act to exclude dwelling houses for such persons from the right to buy legislation. Consequently, the Tribunal is required

to examine suitability from the perspective of an elderly person who can live independently (see, paragraph 11 of the Circular) and not from one which imputes a degree of immobility or other impediment to that elderly person. The personal circumstances of the Applicant are not to be taken into account.

- 26 In the recent Upper Tribunal decision in *Milton Keynes Council v Bailey* [2018] UKUT 207 (LC), Mr P D McCrea FRICS in considering the exception to the right to buy under paragraph 11 of Schedule 5 to the 1985 Act observed:

“[25] I accept the Council’s submission that the characteristics of the property must be assessed in the aggregate, and not looked at individually. The question in a case such as this is whether the property is particularly suitable. Some features may tend in one direction, whilst 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.”

- 27 In relation to this Application, it is necessary for the Tribunal, when assessing the Property as a whole with a view to determining whether it is particularly suitable for occupation by elderly persons, to have regard to the satisfaction (or otherwise) of the specific criteria in the pertinent sub-paragraphs of paragraph 12 of the Circular (see above, paragraph 11) and also to ‘other features’ to which its attention is drawn.

In the former respect, the Tribunal is persuaded by the evidence adduced by Mr Shillitto on behalf of the Council and the outcome of its inspection of the Property and its environs that the specific criteria set out in those sub-paragraphs of paragraph 12 of the Circular by way of guidance on suitability for occupation by elderly persons are met. In short, there is easy access to the Property on foot and it is situated on a flat and level site on one level with two bedrooms. It benefits from a gas fired central heating system which, from enquiries made at the Tribunal’s inspection, appears to function reliably and to provide overnight heating if required, and also double glazing. Further, the Property is in a convenient location with local amenities reasonably near to hand.

The Tribunal is also satisfied that the upgraded bathroom (including the wet room) is a characteristic of the Property which, similarly, fosters its particular suitability for occupation by elderly persons.

On the other hand, the Tribunal does not find the ‘other features’ or factors upon which the Applicant relied to challenge the suitability of the Property for occupation by elderly persons to be compelling. Each of those factors (the level of noise pollution from the industrial area, the inadequacy of the provision for car parking, lack of privacy and security, and disturbance related to the regeneration of Pineview) may be concerns and some are acknowledged by Mr Shillitto and addressed in the Regeneration literature prepared by the Council. However, they are material to the question of whether or not an individual may be willing to enter into a tenancy of the Property (or, indeed, other bungalows on Pineview) rather than to the determination of whether the Property *per se* is particularly suitable for occupation by elderly persons.

In light of the above, the Tribunal finds that the Property is particularly suitable for occupation by elderly persons.

- 28 As to the so-called ‘letting test’, namely whether the Property was let ‘to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more’, the Tribunal had regard, in particular, to the most compelling evidence. This was presented by the Council or on its behalf by Mr Shillitto. Thus, the Council, in Form RTB2, averred that the Property had been first let before 1 January 1990 and routinely let for occupation

by a person aged 60 or more or someone with an identified medical need for this type of accommodation whilst Mr Shillitto intimated that Mr Higginson's father met the restricted age criterion of being aged 60 or more when the Property was let to him in 2006, and that, prior to the Applicant's tenancy by way of succession, the Property had to the best of the Council's knowledge always been let with a specific designation that it was suitable for elderly persons. The Applicant did not adduce any evidence pertaining to the letting test and did not challenge the evidence submitted by the Council, especially the evidence which was within his knowledge, namely the age of his father at the time when the tenancy of the Property was granted to him in 2006. In these circumstances, the Tribunal finds that the letting test is satisfied.

- 29 Accordingly, the Tribunal determines that the Council is entitled to rely on the exception to the right to buy contained within paragraph 11 of Schedule 5 to the Act and, thereby, to deny the Applicant of the right to buy the Property.

Judge David R Salter

31 May 2019

Appeal to the Upper Tribunal

- 30 If any party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
- 31 If the party wishing to appeal does not comply with the 28-day time limit, the party shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
- 32 The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the application is seeking.