



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

Case Reference : **MAN/OODB/RTB/2019/0006**

Property : **4 Park Avenue, Kirkthorpe, Wakefield,
WF1 5TG**

Applicant : **Mr Brian and Mrs Marilyn Watson**

Representative : **In person**

Respondent : **Wakefield District Housing**

Representative : **Kathryn Stretton,**

Type of Application : **Housing Act 1985, Schedule 5,
Paragraph 11-Right to Buy**

Tribunal Members : **Judge J. E. Oliver
Mrs S. A. Kendall MRICS (Valuer)**

**Date of
Determination** : **29th May 2019**

Date of Decision : **3rd June 2019**

DECISION

Decision

1. The Property is particularly suitable for occupation by elderly persons.
2. The requirements of Paragraph 11, Schedule 5 of the Housing Act 1985 (“the Act”) as to the date of the first letting and the age of the tenants are met as are the characteristics of the Property regarding the accommodation and location.
3. The Respondent is entitled to rely upon Paragraph 11, Schedule 5 of the Act to deny the Applicants their Right to Buy the Property.

Application

4. Mr Brian and Mrs Marilyn Watson (“the Applicants”) gave notice to Wakefield District Housing (“the Respondent”) of their wish to buy 4 Park Avenue, Kirkthorpe, Wakefield (“the Property”), pursuant to the Act.
5. The Respondent subsequently served a notice dated 18th January 2019, under section 124 of the Act, denying the Applicants their Right to Buy stating that the Property was particularly suitable for occupation by an elderly person as provided for in Paragraph 11, Schedule 5 of the Act.
6. By an application received on 20th February 2019 the Applicants applied to the Tribunal under paragraph 11(4) of the Act for a determination as to whether the grounds contained within Paragraph 11 were satisfied.
7. The Respondent confirmed their intention to oppose the appeal.

The Property

8. The Tribunal inspected the Property on 29th May 2019 in the presence of the Applicants and their daughter. The Respondent was not represented.
9. The Property is a brick built, semi-detached bungalow, having large gardens to both the front and rear. It is within an area of similar properties.
10. The Property has 1 double bedroom, kitchen, wet room and living room and has the benefit of double-glazing. The Applicants had replaced the original bathroom with the wet room.
11. The Property has gas central heating. The Applicants confirmed it operates reliably and could be safely left on at night, should this be required.
12. Access to the Property is from a path running from the pavement to both the front and side of the Property. The path is on a gentle gradient although there are no handrails. The entrance to the front door is via decking and a door installed by the Applicants. There is one step from the path to the decking measuring approximately 8 inches and the

entrance to the front door is then by a further step measuring approximately 6 inches. Access to the side (rear) door is by two steps, the lower one being approximately 8 inches and the upper step measuring approximately 7 inches. There are no handrails at either entrance.

13. The Property is approximately 20 yards from a recently opened convenience store selling sandwiches and basic food items, including bread and milk. If this store was not open then the nearest shop to sell food would be either in Normanton, a distance of 2.16 miles from the Property, or in Wakefield a distance of 4.45 miles away. There are two bus stops, both approximately 100 yards from the Property travelling to both Normanton and Wakefield. The Applicants confirmed the buses travel on a regular basis.
14. The route to the local shop is level.

The Law

15. Paragraph 11 of Schedule 5 of the Act provides 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 an elderly person, and
 - (b) was let to the Tenant or a predecessor in title of his for occupation by a person who is aged 60 years or more (whether the Tenant or a predecessor or another person).
16. The Circular from the Office of the Deputy Prime Minister dated December 2004 (ODPM Circular 07/2004) (“the Circular”) gives the criteria for establishing whether a dwelling house is particularly suitable for occupation by an elderly person as provided for within the Act.
17. The Circular states that when considering this, “elderly persons will be taken to mean individuals who are able to live independently despite some limitations owing to age. It will not mean individuals who are frail or severely disabled”.
18. The Circular states the “main points” that should be considered are:
 - There should be easy access on foot to the dwelling. In general, access is unlikely to be considered as easy if it is necessary to climb 3 or more steps and there is no handrail.
 - The accommodation should be on one level
 - Where a flat is above ground level, there should be a lift.
 - There should be no more than two bedrooms.

- There should be heating that is reliable and can be safely left on overnight
- The property should be located conveniently for local shops and public transport. This, in an urban area, should be no more than 800 metres (half a mile) from the nearest shop selling basic food items, i.e. milk and bread. In a rural area, the property should be no more than 800 metres from the nearest public transport shop that provides at least three opportunities for shopping each week.

Representations

19. The Applicants made detailed written representations in their original application. They stated that although it was said the Property was suitable for elderly persons, a similar bungalow in the immediate vicinity had been let to a person under the age of 60 and had been sold.
20. The Respondent made no submissions, other than to confirm the Property meets all the requirements set out in Schedule 5 of the Act and that it is “ideal” for “elderly/disabled persons”. Further, the Respondent needs to retain ownership of such properties in order to meet the demand for the type of property.

Determination

21. The Tribunal considered the requirements of the Act and found the Property fulfils the criteria in that it was first let before 1st January 1990. It was let to the Applicants when the eldest was over the age of 60 years. Consequently the requirement that the Property is let to someone over the age of 60 years is met.
22. The Property is on one level, has no more than two bedrooms, as specified by the Act and has a central heating system that operates satisfactorily and can be safely left on at night.
23. Access to the Property is not difficult for a person over the age of 60 years in reasonable health. Access to the front of the Property is by a path, on a gentle gradient and then two steps. The path leading to the rear of the Property is only slightly longer than to the front entrance and is, at that point, level. The rear door has two steps, neither of which are high.
24. The Circular in December 2004 suggests that access to a property is not easy if it has more than 3 steps and has no handrail. The Property does not fulfil this criteria.
25. The Property is within half a mile of a shop selling the basic food items, as set out in the Circular and also within walking distance of bus stops travelling to both Normanton and Wakefield. The Tribunal took note of the comments made by the Applicants, that the local store has had a chequered history and has previously closed on at least three occasions.

There are therefore periods when the Applicants have had no local access to basic food items. In such circumstances, the Property would fall outside the criteria set out within the Circular with regard to this particular matter. However, the Tribunal can only determine the position regarding the availability of a local store at the time of its inspection and determination. Consequently, it cannot take into account how long the recently opened store may remain viable.

26. The Tribunal did not consider the route to either of the bus stops to be unsuitable for a person over the age of 60. The routes to both are level.
27. The Tribunal considered the issue of age discrimination. It accepted the Applicants' submissions that they were aware of an identical property sold or let to tenants under the age of 60. The Act does not exclude tenants under the age of 60 from buying their property even if that property may be suitable for occupation by an elderly person. At the commencement of the Applicants' tenancy the Property was let on the basis it was suitable for a person over the age of 60. The Property is still designated as such by the Respondent. Consequently, the Property is still governed by the requirements of Paragraph 11, Schedule 5 of the Act.
28. The Tribunal considered The Equality Act 2010 and noted that under Schedule 22 of the Act there is specific provision relating to age discrimination that prevents its application if there is statutory provision for it. In this case the Act makes the provision for the refusal of a Right to Buy because of age.
29. In addition, the Tribunal also considered section 13 of the Equality Act 2010 that provides a more general right not to be discriminated against because of age. Section 13(2) provides that there is no discrimination if it can be shown by the Respondent that their refusal is a proportionate means of achieving a legitimate aim.
30. The Tribunal determined the Respondent's refusal of the Applicants' Right to Buy was proportionate in allowing them to maintain an adequate housing stock for elderly persons within its area.
31. The Tribunal considered the requirements of the Act and found that the criteria established by Schedule 5 Paragraph 11 were met such that the Property is particularly suitable for occupation by an elderly person and consequently the Applicants do not have the Right to Buy.

Tribunal Judge Oliver
29 May 2019