



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

Case Reference : **BIR/00CT/RTB/2019/0003**

Property : **25 Clifford Road, Bentley Heath, Solihull,
B93 8PF**

Applicants : **Beverley Jones & Christopher Platt**

Respondent : **Solihull Metropolitan Borough 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)
J Arain**

Date of Decision : **19 July 2019**

DECISION

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 Tenants, Beverley Jones and Christopher Platt (“the Applicants”) by notice applied to Solihull Metropolitan Borough Council (“the Respondent”) to buy 25 Clifford Road, Bentley Heath, Solihull B93 8PF (“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 Applicants denying the right of the Applicants to buy the Property as in their opinion paragraph 11 of Schedule 5 to the Housing Act 1985 applies. This form was dated 9 April 2019.
4. By an application dated 3 May 2019, and received on 7 May 2019, the Applicants 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. 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

6. The Tribunal inspected the Property on 2 July 2019 in the presence of the Applicants.
7. The Property comprises a modern mid-terraced bungalow offering the following accommodation, which benefits from double glazing and gas fired central heating:

Hall

Lounge

Kitchen

Double Bedroom

Box Room

Bathroom with suite including paneled bath, wash hand basin, and low flush WC (with regard to bathroom fitments please see below).

8. From the evidence provided to the Tribunal and gleaned at the inspection it appears that the Applicants have renovated and modernised the Property, including new flooring, and new kitchen work surfaces and tiling. As part of these renovations the existing bathroom was converted from a wet room with hand rail to a more traditional bathroom suite.
9. To the front of the Property is a garden laid primarily to lawn. There is a generally level paved path from the pavement to the front door. There is one 10 cm step and the door threshold is at 16 cm.

The rear garden is principally slabbed. There is one step to the rear door at 10 cm and the door threshold is at 20 cm. The Applicants carried out the slabbing and in addition erected new fencing around the rear garden.

There is on road car parking available outside the Property.

10. The Property forms part of a development of mixed dwelling types approximately 1.2 km from Dorridge village centre. Within the village centre, there are Tesco and Sainsbury's food stores and a pharmacy. There is a Doctors' surgery located within the village centre and a further one on Woodside Crescent approximately 1 km away. On Widney Road, there are bus stops within 300 m and a Post Office (on the corner of Slater Road) at approximately 600 m.

Dorridge is a large village with a good range of facilities including a train station which is located within the town centre.

The Submissions of the Parties

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

The Applicant's submissions

12. Submissions on behalf of the Applicants were as follows:

- a) The Applicants confirm the Property is a bungalow with the following accommodation; lounge, kitchen, one bedroom and bathroom. Local shops are approximately 300 yards away, petrol station 150 yards, doctors and train station $\frac{3}{4}$ of a mile.
- b) The Applicants have carried out the following modifications to the Property; patio, all flooring, new kitchen worksurfaces and tiling and works to the garden to make it maintenance free including new fencing.
- c) The Tribunal was advised that one of the reasons the Applicants sought to purchase the Property was due to the fact that Mr Platt is registered blind and Ms Jones suffers from palmo planter psoriasis and has had cancer in the recent past.
- d) In the vicinity of the Property, there are shops located on Widney Road. Widney Road itself is very busy and elderly people have difficulty in crossing the same.
- e) The only other shops and Doctors' surgeries are in Dorridge which involves navigating Poplar Road which is a steep hill and is difficult for the elderly.
- f) According to the Applicants', upon their initial approach to buy the property, the Respondent originally said they may consider the sale due to Mr Platt requiring security. The Applicants themselves have expended money to this end.
- g) Due to the illness suffered by Ms Jones, last year she spent a period in a wheelchair and the Property itself is suitable for use by someone in a wheelchair.
- h) The local bus route has recently been re-routed which has made it difficult for the local elderly.

The Respondent's submissions

13. Submissions on behalf of the Respondent were as follows:

- a) The Property was first built in 1970 for letting to tenants although unfortunately the Respondent no longer has records of the original tenant.
- b) The Property is particularly suitable for occupation by elderly persons; it is a bungalow and there have been adaptations to the Property to this end. These include grab rails, lever taps and a walk in shower although it should be noted that the latter item was changed to a bath following a health related request from the Applicants.
- c) The tenants of the Property prior to the Applicants were a couple aged 77 and 71. The Applicants were at the commencement of the tenancy, aged 51 and 52 notwithstanding that they were aged less than 60 years old because the legislation setting out that a bungalow may be let to a tenant aged 50 or above which creates an anomaly with the Act which refers to an age of 60 or over. The Respondent further submits that in the context of paragraph 11 of the Act, "predecessor in title" refers to the tenants of the Property immediately prior to the Applicants.
- d) The modifications carried out to the Property by the Applicants, listed above, are not relevant to this case.

The Law

14. 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 1st January 1990.*

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

15. The Property is a mid-terraced bungalow.
16. 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.
17. 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.
18. The Property is located conveniently close to all necessary amenities as listed above.
19. The Property was first let before 1990.

Determination by the Tribunal

20. 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.
21. 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 Applicants are not to be taken into account.
22. 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”.

23. The Tribunal noted the layout of the Property itself and also the proximity of the shops and facilities as identified by its own inspection, and considers that the Property is suitable for occupation by an elderly person who can live independently. Whilst the Applicants’ comments were noted regarding Widney and Poplar Roads, in the opinion of the Tribunal they were not factors of sufficient weight to offset the other advantages of the Property. In terms of an assessment of the Property as a whole, it is particularly suitable for occupation by an elderly person.
24. 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 Applicants do 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