



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

Case Reference : **MAN/00EJ/RTB/2019/0009**

Property : **27 Margaret Court, Bowburn, County Durham
DH6 5DX**

Applicant : **Ms Veronica Brain**

Respondent : **Believe Housing Limited**

Type of Application : **Determination as to whether a dwelling house
is particularly suitable for occupation by
elderly persons - Schedule 5, Paragraph 11,
Housing Act 1985**

Tribunal Members : **Mr S Moorhouse LLB
Mr IR Harris BSc FRICS**

Date of Determination : **16 July 2019**

Date of Decision : **31 August 2019**

DECISION

DECISION

The Property is particularly suitable for occupation by elderly persons within the meaning of Schedule 5, paragraph 11, to the Housing Act 1985 and the exception from the right to buy applies.

REASONS

The Application

1. By an application dated 3 May 2019 the Applicant seeks a determination by way of appeal pursuant to paragraph 11 of Schedule 5 to the Housing Act 1985 ('the Act') against the Respondent's decision dated 16 April 2019 to refuse the Applicant's right to buy.
2. A letter giving directions for determination of this case was sent to the parties by the Tribunal on 10 June 2019 (together with a copy of ODPM Circular 07/2004) for the matter to be determined on the basis of written evidence. Neither party requested a hearing.
3. Prior to its deliberations and paper determination the Tribunal inspected the Property. The Tribunal's observations at inspection are reflected in its determination.

Submissions

4. The Applicant challenges the Respondent's refusal of his right to buy, identifying within the application form and subsequent letters the following issues:
 - numbers 25 and 31 Margaret Court have already been sold and there has been no change to the legislation since those sales;
 - both properties had the same features as the Property save that the Property has a large step to the front door;
 - of 12 bungalows in the street 5 are occupied by people under 60, some of the occupiers being in their 20's; and
 - the Applicant successfully applied for the right to buy the Property previously (commented at inspection to have been around 10 years ago) but discontinued her purchase due to her circumstances at that time and was told that she could apply again in the future.
5. The Respondent had completed a written summary of its view as to the application of paragraph 11 of Schedule 5 to the Act in the present case. This included confirmation that in the Respondent's view the following criteria were met:

- the Property had been let for occupation by a person aged 60 or over - the first recorded tenancy was to a tenant aged 68 years, the joint tenants after that were both aged 70 years, the tenants after that were aged 71 years and 66 years and the Applicant herself was 64 years of age at the time she took her tenancy;
- the Property was first let before 1 January 1990 - the first recorded tenancy commencing in February 1965;
- the Property is an individual dwelling which is particularly suitable for an elderly person - it is a one bedroom bungalow with one small step to the front of the Property and has the benefit of a wet room and grab rails - it is also 185 metres from the nearest bus stop and less than 180 metres from local shops and amenities.

The Law

6. Schedule 5, paragraph 11, to the Housing Act 1985 provides:

(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 in title 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....

(3) (4) (5).....

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

7. ODPM Circular 7/2004 sets out, for guidance purposes, criteria for assessing the suitability of a dwelling-house for occupation by elderly persons. It defines an elderly person as one aged 60 or over who is not necessarily disabled but may have some physical disabilities. It covers the location, indicating that the property should be within a half mile of a shop selling basic food items; size, no more than two bedrooms; design, no more than one floor; heating system, which must function reliably, heat at least the living room and one bedroom and may safely be left on at night. It also addresses accessibility, with particular regard to the number, size and curvature of steps and the presence of handrails where there are more than three steps. Gradients of ramps, paths, pavements or other means of access are to be considered.

Determination

8. The appeal is in time since the application was made on 3 May 2019, falling within 56 days of the date of the Respondent's notice of its decision to refuse the right to buy.

9. The Respondent's submission that the Property was first let before 1 January 1990 is not contested and is consistent with the apparent age of the Property noted at inspection. The Tribunal finds that the test in paragraph 11(6) of Schedule 5 to the Act is met.
10. With reference to paragraph 11(1)(b) of Schedule 5 to the Act, the Respondent's submission that the Property has been let to persons aged 60 years or more, including the Applicant herself, is not contested. The Tribunal finds that the test in this paragraph is met.
11. The following findings are relevant to the test referred to at paragraph 11(1)(a) of the Act, namely whether the Property is particularly suitable for occupation by elderly persons.
12. The Tribunal finds that bread, milk and other basic essentials are available from a convenience store less than 180 metres from the Property and that a bus stop with numerous and frequent services is situated within 180 metres also.
13. The Tribunal finds that the Property is a single storey semi-detached bungalow comprising one bedroom, living room, kitchen and bathroom (with toilet sink and walk in shower). It is heated by way of modern radiator central heating from a combi boiler with reliable controls allowing it to be left on safely at night. The Property has the benefit of a good size rear garden.
14. Externally the front door to the Property has a single step of 6 inches in height. A grab rail is situated externally beside the front door. The Property has a side door, with a 2 inch step, leading to the rear garden or, via a gate, to the front. There are no significant gradients within the boundaries to the Property or in the vicinity of the Property.
15. The tribunal's remit is to determine whether the Property is particularly suitable for occupation by elderly persons and whether the exception from the right to buy applies in this case. Whilst the Applicant has raised concerns that the Respondent appears to be letting properties at Margaret Court to younger people and appears to have had a change of policy on the issue of right to buy, these matters are beyond the tribunal's remit.
16. Applying its above findings, the Tribunal determines that the Property is particularly suitable for occupation by elderly persons within the meaning of Schedule 5, paragraph 11, to the Housing Act 1985 and the exception from the right to buy applies.

S Moorhouse
Tribunal Judge