



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

Case reference : **BIR/00CT/RTB/2019/0006**

Property : **5 Wheeler Close, Chadwick End,
Solihull, West Midlands B93 0BW**

Applicant : **Jane Amanda Daniels**

Representative : **None**

Respondent : **Solihull Metropolitan Borough Council**

Representative : **Solicitor to the Council**

Type of application : **Application under paragraph 11 of
Schedule 5 of the Housing Act 1985 for a
determination as to whether a dwelling
house is suitable for occupation by
elderly persons**

Tribunal members : **Judge C Goodall
Mr V Chadha**

Date of inspection : **2 October 2019**

Date of decision : **16 October 2019**

DECISION

Background

1. The Applicant applied to purchase her council house under the provisions of the Housing Act 1985 (“the Act”) from the Respondent. By a notice dated 10 June 2019, the Respondent denied her right to do so on the grounds that an exception to the right to buy applied, namely that set out in paragraph 11 of Schedule 5 of the Act.
2. The Applicant appealed this decision. Neither party requested a hearing before the Tribunal, which has therefore made its decision on the basis of the written submissions by both parties.
3. The Tribunal inspected the Property on 2 October 2019 in the presence of the Applicant. The Respondent was not present.

The Law

4. A local authority may decline a request by a tenant to buy his or her council house on the ground set out in paragraph 11, which provides:

“11(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).
5. The condition in paragraph 11(1)(a) has sometimes been described as the “suitability test”. The condition in paragraph 11(1)(b) has been described as the “lettings test”.
6. Both the conditions in paragraph 11(1) must be satisfied before the local authority can deny a right to buy.

Facts

7. In her application form, the Applicant gives her date of birth as 31 January 1965. As at the date of this decision, she is therefore aged 54. This is not disputed by the Respondent.
8. The Applicant’s tenancy commenced on 9 July 2018. This is not the date given by the Applicant, but the Respondent has provided its own records of the tenancy, which the Tribunal prefers.
9. The Respondent has provided details of five previous tenancies of the Property, between December 1985 and 8 July 2018. The Respondent has

informed us, and we accept, that three of those tenants were over 60 at the start of their tenancies. The documentation provided by the Respondent gives a start date for each tenancy, and for the previous tenants, an end date.

10. Specifically in this case, the previous tenant to the Applicant was a Mr M Walsh. The Respondent's record shows that his tenancy started on 19 September 2016 and ended on 8 July 2018.

The issues

11. Whilst both parties made submissions about the nature of the Property, and whether it was particularly suitable for occupation by elderly persons, those submissions become irrelevant if the Respondent is unable to satisfy the Tribunal that the lettings test is satisfied. As the Tribunal is of the view that it is not, this decision will focus on that issue alone. We make no determination on the question of whether the Property is particularly suitable for occupation by elderly persons.

The lettings test

12. The Respondent argues that the lettings test is satisfied because some previous tenants were over 60 at the start of their tenancies. It argues that the previous tenants were "predecessors in title" to the Applicant, so paragraph (b) applies.
13. The Tribunal does not accept this argument. A lease is an interest in land (s1 Law of Property Act 1925), and a periodic tenancy, such as a council tenancy, is a species of lease. Once granted, such a tenancy continues until it is ended, usually in the case of council tenancies, by notice given by one of the parties, or by court order. In law, a lease can be assigned (though many tenancy agreements prohibit assignment either absolutely, or without the consent of the landlord). Some types of residential tenancy continue under statutory arrangements for the transmission of a tenancy.
14. The meaning of the phrase "predecessor in title" is therefore that it refers, in this context, to previous holders of a continuous leasehold legal interest (i.e. tenancy) in the Property.
15. In the Tribunal's view, we are required to look at whether the Property was "let to the tenant or a predecessor in title for occupation by a person who was aged 60 or more" in order to decide whether paragraph 11(1)(b) is met. The "tenant" in this phrase must refer to Mrs Daniels, the Applicant. It is not suggested that anyone else is the tenant, nor that the Property was let to be occupied by anyone other than the Applicant. So, we must look at her age when the tenancy commenced, and (if applicable) the age of any of her predecessors in title.
16. On the undisputed facts, the Applicant is not yet 60. It is clear from the papers provided that the Applicant took a new tenancy on 9 July 2018. The

previous tenant's tenancy ended on 8 July 2018. The old legal interest held by the previous tenant came to an end on 8 July 2018, and the new one started on 9 July 2018. Had the previous tenant assigned his tenancy to the Applicant, or had there been a statutory transmission of an existing tenancy to the Applicant, the previous tenant would have been a predecessor in title to the Applicant, and if that tenant had been 60 or over at the beginning of that tenancy, the lettings test would have been satisfied. But the facts here are that a brand new tenancy started on 9 July 2018. The Applicant had no predecessors in title. She was the first tenant under a new tenancy.

17. It is therefore the case on the facts that the Property was let to a tenant (the Applicant) for her occupation, and that she was not aged 60 or over at the commencement of that letting. Paragraph 11(1)(b) of the Act is therefore not satisfied, and the Respondent may not use Paragraph 11 to justify denying the Applicant the right to buy her council house.

Determination

18. The exception in paragraph 11 of Schedule 5 of the Housing Act 1985 does not apply in this case. The Respondent may not deny the Applicant her right to buy the Property, under the Act, on the ground that her house is suitable for occupation by elderly persons.

Appeal

19. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)