



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

Case Reference : **MAN/OOCC/RTB/2019/0012**

Property : **1 Rockingham Road, Gilroyd, Barnsley,
S75 3PG**

Applicant : **Mr John and Mrs Mary Bonnar**

Representative : **In person**

Respondent : **Barnsley MBC**

Representative : **Gillian Fearn**

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

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

**Date of
Determination** : **5th December 2019**

Date of Decision : **10th December 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 John and Mrs Mary Bonnar (“the Applicants”) gave notice to Barnsley Metropolitan District Council (“the Respondent”) of their wish to buy 1 Rockingham Road, Gilroyd, Barnsley (“the Property”), pursuant to the Act.
5. The Respondent subsequently served a notice dated 9th August 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 dated 2nd September 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 5th December 2019 in the presence of the Applicants. The Respondent was not represented.
9. The Property is a brick built, link bungalow, having a garden to the front and a small decked area to the 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 have undertaken a significant amount of work to the Property during their tenancy, including installing new double glazing and doors, removing internal doorways to reconfigure the kitchen, refitting the kitchen, replacing the central heating boiler and radiators, installing fitted wardrobes, tiling the bathroom, erecting a wrought iron fence to the front of the Property and building a small conservatory to the rear. The Applicants have also replaced all the internal doors and laid a solid oak floor in the living room. The Applicants state they have spent more than £37,000 refurbishing the Property during their 16 year tenancy.
11. The Property has gas central heating. The Applicants confirmed when they installed a new boiler this replaced an existing gas boiler. It

operates reliably and can be safely left on at night, should this be required. It is maintained and serviced by the Respondent.

12. Access to the Property is from a path running from the pavement to both the front and rear of the Property. The path is on a gentle gradient although there are no handrails. The entrance to the front door is a small step. Access to the rear of the Property is through the conservatory built by the Applicant. Access to the conservatory is from the small rear decking area and a small step. There are no handrails at either entrance.
13. The Property is approximately 0.2 miles from a parade of shops that includes a general store selling basic food items. There is a bus stop outside the parade of shops that has a regular bus service.
14. The route to the local shop is on a gentle gradient.

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 written representations in their original application and subsequent letter. In them, they accepted the Property is suitable for occupation by an elderly person, but it is also suitable for any other occupant. The Applicant provided two letters from neighbours, both of whom had purchased their bungalows from the local authority and supported the Applicants.
20. At the inspection the Applicants stated that when they were granted the tenancy, they had been told they would be entitled to purchase the Property and consequently had spent monies on it.
21. The Respondent made no submissions, other than to confirm the Property was let to the Applicants on 17th March 2003, when Mrs Bonnar was 63 years of age.

Determination

22. 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.
23. 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.
24. 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 one step.. The path leading to the rear of the Property is only slightly longer than to the front entrance and is, at that point, level. There is one step into the conservatory.
25. 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.
26. 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 Barnsley
27. The Tribunal did not consider the route to the bus stop to be unsuitable for a person over the age of 60.

28. The Tribunal is unable to take into account the fact their near neighbours have been allowed to purchase their properties; it has no knowledge of the circumstances relating to those particular tenants. The Tribunal accepts this can be a cause of concern, given the properties are said to be similar to the Property and in the immediate locality.
29. The Tribunal is aware there may be circumstances where tenancies are granted to persons under the age of 60.
30. The Tribunal considered the issue of age discrimination. It accepted the Applicants' submissions that they were aware of a similar properties 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.
31. 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 it's 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.
32. 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.
33. 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.
34. 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.

Judge J Oliver

5 December 2019