



**FIRST TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY**

Case Reference : CAM/33UG/RTB/2019/0004

Property : 32 Buckingham Rd Norwich, Norfolk NR4 7DQ

Applicant(s) : Sophie Emms

Respondent : Norwich City Council

Type of Application: For a determination as to whether the dwelling house is particularly suitable for occupation by elderly persons – Housing Act 1985, Schedule 5, paragraph 11

Tribunal : Mary Hardman FRICS IRRV(Hons) (Chair)
Chris Gowman BSc MCIEH MCMI

Date of Decision : 5 February 2020

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 FOR DECISION

The Application

1. Sophie Emms ('the Applicant') of 32 Buckingham Rd Norwich, Norfolk NR4 7DQ ('the Property') is the tenant of Norwich City Council ('the Respondent').
2. The Applicant made an application to the Respondent under the Right to Buy legislation in the Housing Act 1985 ('the Act') to buy the Property and, on 24 October 2019, the Respondent replied with a counter notice denying the right to buy by virtue of the provisions of paragraph 11 of Schedule 5 to the Act.
3. The Applicant made an application to the Tribunal on 7 November 2019 for a determination as to whether the Property is suitable for occupation by elderly persons.

4. Neither of the parties requested a hearing.

The Law

5. The relevant provisions in respect of jurisdiction of the Tribunal are found in Paragraph 11 of Schedule 5 to the Housing Act 1985.

Housing Act 1985

“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).

(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.

...

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

6. Circular 7/2004, Right to Buy: (Exclusion of Elderly Persons' Housing) issued by the Office of the Deputy Prime Minister, gives guidance on the main criteria to be taken into account in determining whether a dwelling is particularly suitable for occupation by elderly persons. The criteria are not binding on the Tribunal but the Tribunal will be guided by them in general terms. Each case is to be decided on its own merits.

7. *Particular suitability for occupation by elderly persons*

“12. The main points on which the Secretary of State will normally expect to be satisfied in considering applications under paragraph 11 – as well as other features to which his attention is drawn – are as follows:

- (a) there should be easy access on foot to the dwelling. In assessing ease of access, consideration should be given to:*

- the number and size (in particular, the height) and curvature of any steps up to the dwelling itself, and also of any steps in its immediate vicinity where these must be negotiated to gain access to it;

- the presence or absence of handrails, or other means of support, alongside any steps up to the dwelling and in its immediate vicinity that need to be negotiated to gain access to it;

- the gradient of ramps, paths, pavements or other means of access to the dwelling and in its immediate vicinity, where these must be negotiated to gain access to it.

In general, access is unlikely to be regarded as easy if it is necessary to climb three or more steps (in addition to the threshold) and there is no handrail;

(b) the accommodation should normally be on one level. The Secretary of State is unlikely to regard a dwelling with two or more floors as being particularly suitable for occupation by an elderly person. However, he may be prepared to make exceptions for dwellings with up to three internal steps, or with stairlifts or similar devices provided by the landlord;

(c)...

(d) there should be no more than two bedrooms, designated as such in the tenancy agreement;

(e) there should be heating arrangements which:

- function reliably*
- provide heat to at least the living room and one bedroom*
- may safely be left on overnight;*

(f) the dwelling should be located reasonably conveniently for shops and public transport, having regard to the nature of the area (the Secretary of State may take into account reliable means of transport other than those provided by public bodies – for instance, transport provided by shops or voluntary organisations):

- in an urban area, the dwelling should be located no more than 800 metres (half a mile) from both the nearest shop selling basic food items and the nearest public transport stop. ‘Basic food items’ include bread and milk;

- in a rural area, the dwelling should be located no more than 800 metres (half a mile) from the nearest public transport stop, and such transport should be available from this point frequently enough to provide at least three opportunities for shopping each week.

8. Letting test

It is important to reiterate that paragraph 11 of Schedule 5 of the Housing Act 1985 applies only if the dwelling in question was let ‘*to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more*’. The Secretary of State takes the view that this condition is only met if, when the current tenancy or that of the current tenant’s predecessor in title was granted, the landlord knew:

- that the tenant, or one or more of joint tenants, was aged 60 or more;*
- or*

• *that the dwelling was to be occupied by some other person known by the landlord to be aged 60 or more.*”

The Property

9. The Tribunal inspected the Property, internally and externally, during the morning of 8 January 2020 in the presence of the Applicant, Ms Emms.

10. The Property is a traditionally constructed ground floor flat in a block of 4 flats, two on the ground floor and two on the first floor. The block is brick built under a tiled pitched roof. It is situated on a flat and level site.

11. The Property has the following accommodation

Hall

Lounge

Kitchen

2 bedrooms (double)

Bathroom comprising a bath with shower over the bath, wash hand basin and low flush WC.

The property has UPVC windows and gas central heating with combi boiler

The worktop in the kitchen had been fitted by the previous tenant.

12. There is a small garden to the front and an enclosed garden to the rear laid mainly to lawn. There is a brick outbuilding adjacent to and opposite the back door which is shared with the first floor flat – although each flat has a separate and lockable area. There is a driveway and unrestricted on-road parking.

13. Access to the flat is via a level path from the public highway with a single step of 16cm into the property. There is a bus stop within 0.2 mile and a local convenience store also within this distance.

The Applicant's case

14. Ms Emms disagreed that the property was particularly suitable for occupation by elderly persons. She cited the following reasons in support of her objection which were set out in the Application.

Exterior of the property

15. Ms Emms stated that the pathway and driveway were uneven from broken paths, patio and gravel making this a possible trip hazard and there were no railings.

16. The front and rear garden required maintenance and were uneven and not easily accessible. Access to the bins could cause issues as this was situated to the rear of the property.

Interior of the property

17. Ms Emms said that there was a high step and high threshold on entering the property with no room to provide a ramp due to the access for the first floor flat.
18. The front door and doors within the property were small and the locking system on the windows was difficult to use. The bathroom was also small with the bath and WC in close proximity and the sink was behind the door.
19. The kitchen was small with no door due to its size and the windows were hard to reach – requiring someone to climb on a unit to reach them. Light switches were also hard to reach.

Location and Environment

20. Ms Simms stated that the closest shops were half a mile away and required the negotiation of traffic lights and pedestrian walk overs and the bus stop was in the same location. Access to the doctors was also difficult.
21. Ms Simms informed the Tribunal that the surrounding houses were occupied mainly by young families or students and that the previous occupiers had been a young family. The tenants in the first-floor flat were a young couple. She felt that the areas was unsuitable for the elderly because of noise from students and tenant turnover.

The Respondent's case

22. The Respondent set out its statement of case in brief stating that the Council intended to oppose the appeal. The property was considered by the council to be suitable for the elderly, being a single storey two bedroomed flat with the potential to be adapted to meet the needs of the tenant
23. It states that the property was first let before 1 January 1990 and that the current tenant did not acquire the tenancy by succession on the death of a previous tenant.
24. The current tenancy was granted originally on 24 May 1999 to a Mr G and Mrs D Walker whose respective ages at the time were 55 and 66. The property was then assigned on two occasions before the current assignment to Miss Emms on 28 January 2019.
25. The nearest bus stop was 0.2 miles away and there was a convenience store also 0.2 miles away with a parade of shops 0.4 miles away located on

the inner ring road. The nearest doctor's surgery was 0.6 miles away on Mile End Rd.

Determination

26. The Tribunal considered the evidence relating to whether the Property is particularly suitable for occupation by elderly persons, having regard to its location, size, design, heating system and any other features to which the Tribunal's attention were drawn.
27. In this respect, 'elderly persons' does not mean persons who are frail or severely disabled; provision is made in other paragraphs of Schedule 5 to the Act to exclude dwelling houses for such persons from the right to buy legislation. Consequently, the Tribunal is required to examine suitability from the perspective of an elderly person who can live independently (Paragraph 11 of the Circular 7/2004 referred to above) and not from one where there is a degree of immobility or other impediment to that elderly person. The personal circumstances of the Applicant are not to be taken into account.
28. The Tribunal is persuaded by the evidence on behalf of the Council and the outcome of its inspection of the Property and its location and surroundings that the Property is particularly suitable for occupation by elderly persons having regard to the criteria detailed in paragraph 11(1)(a) of Schedule 5 to the Act
29. In short, there is easy access to the Property on foot and it is situated on a flat and level site, it is in one level with two bedrooms. It benefits from a gas fired central heating system which, from enquiries made at the Tribunal's inspection, appears to function reliably and to provide overnight heating if required, and also has double glazing.
30. The Tribunal did not find that the paths or driveway were unduly uneven nor the garden of an excessive size or requiring high levels of maintenance.
31. Further, the Property is in a convenient location with local amenities reasonably near to hand
32. Whilst the Tribunal accepts that the bathroom and kitchen are both small and quite tight, it does not find these to be fatal to the suitability for an elderly person – as defined in paragraph 27 of this report.
33. The Tribunal does not find that the other factors upon which the Applicant relied to challenge the suitability of the Property for occupation by elderly persons to be compelling. Whilst each of those factors (the level of noise and tenant turnover) may be concerns, they are material to the question of whether or not an individual may be willing to enter into a tenancy of the Property rather than to the determination of whether the Property per se is particularly suitable for occupation by elderly persons.

34. In light of the above, the Tribunal finds that the Property is particularly suitable for occupation by elderly persons.
35. As to whether the Property was let 'to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more', the Tribunal had regard to the evidence presented by the Council, the Council. In its Statement of Case the Council stated that the Property had been first let before 1 January 1990 to a person who was aged 60 or more. Subsequent tenancies were by way of assignment by the previous tenant to the incoming tenant and the only grant of tenancy was to the original occupiers.
36. The Applicant did not adduce any evidence pertaining to the letting test and did not challenge the evidence submitted by the Council. In these circumstances, the Tribunal finds that the letting test is satisfied.
37. Accordingly, the Tribunal determines that the Council is entitled to rely on the exception to the right to buy contained within paragraph 11 of Schedule 5 to the Act and, thereby, to deny the Applicant of the right to buy the Property.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.