



**FIRST TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY**

Case Reference : CAM/33UH/RTB/2020/0001

Property : 10 Chequers Lane, Saxlington, Nethergate,
Norwich NR15 1TQ

Applicant(s) : Beverley Oakes and Lee Oakes

Respondent : Saffron Housing Trust

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)

Date of Decision : 28 May 2020

DECISION

For the reasons which follow the tenants' appeal against the denial of their right to buy the property is allowed.

REASONS FOR DECISION

The Application

1. Beverley Oakes and Lee Oakes ('the Applicants') of 10 Chequers Lane, Saxlington, Nethergate, Norwich NR15 1TQ ('the Property') are the tenants of Saffron Housing Trust ('the Respondent').
2. The Applicants made an application to the Respondent under the Right to Buy legislation in the Housing Act 1985 ('the Act') to buy the Property.
3. By Notice in Reply to the tenant's right to buy claim (Form RTB2) dated 27 November 2019 the respondent denied that they have the right to buy because paragraph 11 of Schedule 5 to the 1985 Act applies, viz
 - a. that the property was first let before 1990
 - b. that it is particularly suitable for occupation by elderly persons, and
 - c. that it was let for occupation by a person aged 60 or more.

4. The Applicant made an application dated 2 December 2019 to the Tribunal for a determination as to whether the Property is suitable for occupation by elderly persons.
5. This application was not received by the tribunal until 31 January 2020. This was ostensibly outside the 56-day statutory period as set out in Schedule 5 paragraph 11(4).
6. This was not however identified initially. The tribunal did however write to the respondent on 6 April 2020 seeking evidence that the property was let for occupation by a person aged 60 or more.
7. The tribunal, identifying that the application appeared to be out of time, then wrote to the tenant on 15 April 2020 seeking their response. The tenant responded and stated that the application had been posted in time – before Christmas- but was not able to provide any actual proof of posting.
8. The tribunal looked to the recent Upper Tribunal case of Salehaby v The Trustees of Eyre estate (2019), which is an application for a lease extension the legislation but equally refers to the application being ‘made’ by the tenant. In this case HHJ Berens said that *‘I agree that the word “made” in s 48(2) looks to a unilateral act by the applicant. In my view the applicant makes the application by starting the proceedings..... Thus, I agree that the relevant date is the date of posting. This is so even if the application notice is delayed in the post or does not arrive. Provided it is posted to the FTT proceedings have been started.’*
9. In the circumstances the tribunal wrote to the respondent on 30 April 2020 setting out the response from the applicant and that the procedural chair was minded to accept that the application was made on time, referring the respondent to the UT decision. A response by 11 May 2020 was requested.
10. The tribunal received a response on 21 May 2020 which was encrypted and which it was finally able to open with assistance from the respondent on 27 May 2020. The response was a copy of the tribunal form (Form RBo3), dated 26 February 2020. It stated that they did not intend to oppose the appeal, that the property was first let on 31 January 1977 and that the property was a bungalow suitable for elderly occupation.
11. There was no response to the points set out in the tenants’ application regarding the availability of facilities, the large garden, nor the further points in their supporting evidence of 7 February 2020 that that the environment was not suitable for elderly persons, that Mrs Oakes was 56 years old and had been in residence for 5 years.

The Law

12. 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.”

13. 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.

Letting test

14. 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

15. The property is a two bedroomed bungalow of brick construction with a tiled roof and has the following accommodation.

Hall
Lounge
Kitchen
2 bedrooms
Bathroom

Determination

16. The tribunal takes the view that if a landlord wishes to deny the right to buy then it must demonstrate that at least one of the statutory criteria apply that provide exceptions to the right to buy, as set out in Schedule 5 to the 1985 Act.
17. The landlord was requested to provide evidence to support its case and has not done so. In particular, the tribunal sought evidence that the property was let for occupation by a person aged 60 or more. It is not clear from the information provided as to whether the tenants were granted a new lease, in which the ages of the actual tenants would be relevant, or took one on assignment which may have been originally granted to an elderly person at some time in the past.
18. However as the respondent has failed to address this question or to adduce any evidence to support their assertion, the tribunal finds that one essential element of the exception in paragraph 11 of the Schedule does not apply, and the tenant's appeal is allowed.

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.