



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

**Case Reference** : **BIR/17UJ/RTB/2020/0003**

**Subject Property** : **7 Moorland View  
Apperknowle  
S18 4BL**

**Applicant** : **Mr. A Kistell**

**Respondent** : **North East Derbyshire District  
Council**

**Representative** : **Kevin Shillitto  
Bolsover District Council**

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

**Tribunal Members** : **Mrs. A. J. Rawlence MRICS  
Mrs. K. Bentley**

**Date of Decision** : **14 July 2020**

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**CORRECTED DECISION**

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## Introduction

1. This is a decision on whether the right to buy provisions contained in paragraph 11 of Schedule 5 to the Housing Act 1985 (“the Act”) are applicable to 7 Moorland View, Apperknowle, S18 4BL (“the Property”).
2. Mr. Kistell (“the Applicant”) is the tenant of the Property which he holds from North Easter Derbyshire District Council (Rykneld Homes).
3. In late January 2020, the Tenant served a notice claiming the Right to Buy the property.
4. On 12 February 2020, the Respondent wrote to the Applicant stating that the application was denied on the grounds that the Property was considered particularly suitable for occupation by elderly person/s in accordance with paragraph 11 of Schedule 5 to the Act.
5. On 1 April 2020, the Applicant made an application to the Tribunal to determine whether the exception to the right to buy in the Act – property particularly suitable for occupation by elderly persons and let to the tenant for occupation by a person aged 60 or more - applied to the Property.
6. On 21 April 2020 Directions were issued to both parties. These stated that the Tribunal might conduct an external “drive by” inspection. Further directions dated 4 June 2020 varied the earlier Directions in the light of Covid 19 arrangements. These directions confirmed that the Respondent’s statement of case sent by e-mail rather than in writing was compliant.

## The Law

7. The relevant law is contained in paragraph 11 of Schedule 5 to the Act as follows:
  - (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 1<sup>st</sup> January 1990.*
8. The Office of the Deputy Prime Minister Circular 07/2004 entitled Right to Buy: Exclusion of Elderly Persons’ Housing (“eCircular”) gives guidance on the criteria to be adopted in determining the suitability of a dwelling-house for occupation by elderly persons. The Tribunal is not bound by the eCircular and decides each case on its merits but has regard to the eCircular for guidance.

9. The term “elderly persons” is taken to mean individuals who are able to live independently despite some limitations owing to age. It does not mean individuals who are frail or severely disabled. Provision is made in other paragraphs of Schedule 5 to the Act for dwelling houses and are designed to make them suitable for such individuals (paragraph 11 of the eCircular). The personal circumstances of the Tenant are not taken into account.
10. The Circular also states in a rural area the dwelling should be located no more than 800 metres 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.

### **The Property**

11. The Tribunal Chair carried out an external inspection of the Property on 13 July 2020.
12. Apperknowle is a small community with 18 bungalows set amidst other local authority properties including houses. There is limited non-designated parking on the cul-de-sacs that serve this development. The estate is located on an incline.
13. The Property is situated on a slight incline at the end of Moorland View where there is non-designated parking. A concrete path leads to the Property. It is possible to step-free access the wheelie bins which are stored just outside the Property.
14. The Property is ground floor bungalow in a purpose-built block with flat roof, PVCu double glazing and its own access. The Property has the benefit of a small patio area.
15. Inside the Property it is understood that the accommodation comprises: Hall, one Bedroom, Bathroom with bath, basin and WC, Living Room and Kitchen.
16. The Property has the benefit of full gas central heating and the Applicant said that it is possible to leave the heating safely on at night.
17. There is no resident warden and the call alarm system had been removed 5 years according to the Applicant
18. As stated, there is pedestrian access to the car parking. On Moorland View is also situated a small community centre.
19. Access to the bus stops on the High Street, behind the Property is up 12 concrete steps with a handrail. There is a street light at the top of the flight of steps. It is possible to avoid the steps albeit a longer walk. The bus stops are close by (within 30 metres) and there are buses 6 times a day Monday to Saturday to Marsh Lane,

3 of which go onto Chesterfield. The bus service to the west is 5 times a day Monday to Saturday to Holmesdale (the nearest shop 9 mins away) and onto Dronfield Civic Centre, some 15 minutes away. There is no Sunday bus service.

20. In addition to the two bus shelters is a post box. Apperknowle also had one pub.

### **Representations by the parties**

21. The Tribunal noted the Applicant's submissions as follows:

- Development situated on a steep hillside and no level walking areas
- No shops or Post Office
- Access to the bus stops is up a flight of concrete steps
- No support railings or wheelchair access
- 1 street light is 45 yards away
- Property needs a wet/shower room and a new kitchen
- There is no alarm system
- Recently a similar property was let to someone in their early 50s in good health with no known disabilities.

22. The Tribunal noted the Respondent's submissions

- Premises benefit from level access. However, there are steps and footpaths with gradual inclines in the nearby vicinity, some of which had handrails.
- The property is a single storey bungalow and has one bedroom
- There is a reliable central heating system
- Public transport is nearby with mild gradients.
- Good road networks
- The property was let in 2005 to the Applicant who met the restricted age criteria.
- Before that to the best of the Respondent's knowledge, the Property was previously let to a person who was aged 60 or more.

### **Findings of fact by the Tribunal relevant to the ODPM Circular 07/2004**

23. 7 Moorland View is on the ground floor and there is a slight incline in the access to the property.

24. The accommodation is all on one level

25. There is only one bedroom.

26. The heating system functions reliably. It provides heat to the Living Room, Hall, Bathroom, Kitchen and Bedroom and may be safely left on overnight.

27. The Tribunal finds that the Property is located conveniently for public transport and thus it is possible to shop at least three times a week.

28. The Property was first let before 1 January 1990 to someone over 60 years old.

### **Issue for Determination by the Tribunal**

29. The issue for determination is whether the Property is particularly suitable having regard to its location, size, design, heating system and other features, for occupation by elderly persons.

### **Decision**

30. The Tribunal, having had regard to its findings of fact in paragraphs 23 to 28, finds that the Property is particularly suitable for occupation by elderly persons.

31. The Tribunal therefore determines that the Applicant is not entitled to exercise their right to buy as the Property is particularly suitable for occupation by elderly persons.

32. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date of this decision stating the grounds on which that party intends to rely in the appeal.

Anthea J Rawlence  
Chairman