



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

Case Reference : **BIR/00FN/RTB/2020/0009P**

Property : **14 Sketchley Close, Leicester. LE5 2ND**

Applicant : **Arjan Khunti**

Representative : **None**

Respondent : **Leicester City Council**

Type of Application : **Under s120 & Paragraph 11 of Schedule 5
Housing Act 1985 for a determination
whether a dwelling house is suitable for
occupation by elderly persons**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member Mr R.P. Cammidge FRICS.**

Date of Hearing : **19 October 2020**

Date of Decision : **22 October 2020**

DECISION

The Tribunal determines that the dwelling house situate at and known as 14 Sketchley Close Leicester LE5 2ND is suitable for occupation by elderly persons and excepted from the right to buy by reason of s120 Housing Act 1985,

1. This is an application for a determination as to whether a dwelling house is suitable for occupation by elderly persons pursuant to Paragraph 11 to Schedule 5 of the Housing Act 1985 (the Act).
2. The Applicant is Arjan Khunti, the present tenant of the subject property, which is 14 Sketchley Close Leicester LE5 2ND (the Property). The Applicant has occupied the Property as a tenant since 5 May 2003 with his wife until her death in 2018. The Applicant was aged 83 at the commencement of his tenancy.
3. The Respondent is Leicester City Council who first let the Property in 1961. It has records of tenants of the Property from 1 April 1985. So far as is known to the employees of the Respondent from records in its possession the Property was always occupied by elderly persons.
4. The Applicant made his application to the Respondent to buy the Property on 7 November 2019. The Respondent acknowledged the application on 13 November 2019. It admitted the right to buy by notice in form RTB 2 on 3 December 2019 and issues an offer to sell on 23 January 2020. The Applicant's notice of intent to exercise the right to buy was received by the Respondent on 27 January 2020. The Applicant then instructed legal representatives in connection with the transaction.
5. On 16 July 2020 after a file review the Respondent notified the Applicant's legal representative that the Property should be excluded from being purchased under Right to Buy on the ground of paragraph 11 of Schedule 5 to

the Act because the Property was first let before 1 January 1990, it is particularly suitable for occupation by elderly persons and was let for occupation by a person aged 60 or more.

6. The Applicant issued this application on 31 July 2020. The Tribunal has not inspected the Property and the parties did not request an oral hearing. Each side made written representations which were considered by the Tribunal in making this decision.

The Property and the nearby area

7. The Respondent's bundle included photographs of the Property and a map of the nearby area taken from a well-known internet mapping service highlighting local features. The Tribunal relied upon the parties' description of the Property and its own knowledge and experience.
8. The property comprises a single-story bungalow residence constructed c1961 which from the photographs provided appears to have brick or rendered finishes to the walls with the structure being surmounted by a pitched interlocking concrete tiled roof. Again, from looking at the pictures provided by the respondent the doors and windows would appear to be upvc.
9. There is a paved path giving access to the front door and to the rear of the property there is a paved area with a side gate and access ramp.
10. Internally, the Tribunal was informed, that the accommodation comprises; sitting room, kitchen, bathroom, wc and one bedroom and benefiting from gas fired central heating.
11. Whilst access to the property is off Thurncourt Road the property faces into Sketchley Close which comprises properties of a similar age and nature. The property overlooks a grassed area to the front with Sketchley Close providing access to the other properties as well as some parking facilities. Basic facilities would appear to be within a reasonable distance and comprehensive services in Leicester City centre.

12. By its unchallenged evidence, the Respondent described features of the Property having regard to paragraph 12 of the Office of the Deputy Prime Minister's circular which is referred to below. The relevant features are:
- a. Access to the property is by a tarmac path from the pavement. The path has very little gradient and there are no steps along its course. The property itself is entered at the front by negotiating one threshold step adjacent to which is a handrail
 - b. The accommodation is arranged over one floor
 - c. The property comprises one bedroom
 - d. It has gas central heating providing heating in all rooms and is timer controlled enabling it to be safely left on overnight
 - e. It is located less than 400 metres from Central England Cooperative food store which sells a wide variety of food items
 - f. It is located within 200 metres of a bus stop

The Statutory Provisions and Ministry Circulars

13. In *Milton Keynes Council v Baily* [2018] UKUT 0207 (LC) Case No: HA/15/201 the Upper Tribunal considered a similar case where the local authority opposed a right to buy claim where the property is "particularly suitable..... for occupation by elderly persons". The Upper Tribunal identified the relevant provisions of the Act and the Ministerial Circulars and the Tribunal respectfully reproduces its summary.

"Statutory Provisions and Ministerial Circulars

4. Insofar as relevant, Part V of the Act provides:

"118. The right to buy

(1) A secure tenant has the right to buy, that is to say, the right, in the circumstances and subject to the conditions and exceptions stated in the following provisions of this Part—

(a) if the dwelling-house is a house and the landlord owns the freehold, to acquire the freehold of the dwelling-house; ...

120. Exceptions to the right to buy The right to buy does not arise in the cases specified in Schedule 5 (exceptions to the right to buy)."

5. Paragraph 11 of Schedule 5 to the Act creates the relevant exception:

“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.

(3) ...any question arising under this paragraph shall be determined as follows.

(4) If an application for the purpose is made by the tenant to the appropriate tribunal or authority before the end of the period of 56 days beginning with the service of the landlord's notice under section 124, the question shall be determined by the appropriate tribunal or authority. ...

(5A) In this paragraph “the appropriate tribunal or authority” means—

(a) in relation to England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; ...

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

6. The reference in paragraph 11(4) above to a landlord’s notice under section 124 is to the notice which a landlord is required to serve under that section either admitting or denying that the tenant has the right to buy.

14. After a paragraph not relevant to this case the Upper Tribunal continued at paragraph 8

8. Prior to 1 April 2005, determinations under paragraph 11(4) of Schedule 5 were made by the Secretary of State, who provided guidance on how applications would be dealt with in DoE Circular 13/2003. This was updated in December 2004 by the Deputy Prime Minister’s Office in ODPM Circular 07/2004. On 1 April 2005, responsibility for the determination of appeals was transferred to the “appropriate tribunal or authority” under section 181

of the Housing Act 2004. Circular 07/2004 was alive to this impending change, indicating that “the criteria set out in this circular will not be binding on [the appropriate tribunal or authority] but they will be guided by them in general terms. Each case will, however, be decided on its own merits.

9. Circular 07/2004 outlined the main points on which the Secretary of State would normally be expected to be satisfied in considering applications under paragraph 11 of Schedule 5:

“a) There should be ease of 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 the immediate vicinity where these must be negotiated to gain access to it (the dwelling);*
- 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 gradients 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 stair-lifts or similar devices provided by the landlord;

c) in the case of a flat above ground floor level, there should be access by a lift which is available at all times (except for very short periods of routine maintenance or occasional breakdowns);

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.”

15. In the *Milton Keynes* case the FTT had decided that a property otherwise suitable for occupation by the elderly was rendered unsuitable because it considered that the level of manual handling required to operate the heating system in the normal course of occupation exceeded the that which an elderly person “able to live independently despite some limitation owing to age” would be able to undertake. There was also some criticism of the position of a thermostat.

16. When the appeal was heard the Upper Tribunal said:

“In my judgment it would be surprising if the appeal property, which in all other respects was suitable to house an elderly person, and is located in a cul-de-sac of similar properties all of which appear to have been designed specifically for that purpose, was prevented from being considered particularly suitable for occupation by elderly persons because of one individual feature. That cannot have been the intention of the parliamentary draftsman who adopted a non-prescriptive approach which invites consideration of the suitability of the property in the round. I accept the Council’s submission that the characteristics of the property must be assessed in aggregate, and not looked at individually. The question in a case such as

this is whether the property is particularly suitable. Some features may tend in one direction, while others point the other way. Some features may be so significant in themselves that they make the property positively unsuitable (for example that it could only be reached by a very steep staircase). But what is required is an assessment of the whole. By focusing on a single feature, the FTT did not make such an assessment.....”

Decision

17. In the application form the Applicant admits that the Property is fitted with gas central heating. It is less than 10 minutes walk from local shops, the GP and Thornby Lodge which appears on the map supplied by the Respondent as a community centre.
18. Neither side adduced evidence of the occupiers of neighbouring and nearby properties but from the unchallenged evidence and pictures produced by the Respondent it is apparent that properties nearby are of similar size and construction to the subject Property. It is also apparent, from photographs supplied, the Property has had a grab handle fixed near the front door to assist elderly or frail people to enter and leave the building.
19. The Tribunal has adopted Upper Tribunal’s observations in the *Milton Keynes* case that the characteristics of the property must be assessed in the aggregate. The Tribunal has not inspected the Property internally or externally. The findings of fact regarding the Property in connection with deciding whether it is suitable for occupation by an elderly person, rely upon the unchallenged information supplied by the Respondent and the admissions of the Applicant.
20. The Tribunal is satisfied the Property is suitable for occupation by elderly persons. The Tribunal finds on the evidence it has seen as explained in paragraph 19 above, that access to the Property is on the flat with one low step, heating is to a decent standard and can be operated through the night, it is in reasonable condition with a good bathroom and kitchen. There is a small low maintenance paved area to the rear. The Tribunal was not informed of any significant trip hazards.

21. The Applicant stated that the Property has gas central heating and is close to the shops. The Tribunal has not treated those statements as admissions as they may have been made without a full understanding of their significance. However, they are honest observations about the Property and its location and explain why the Applicant who is 100 years old wishes to exercise a right to buy.
22. The Applicant did not deny the Respondent's evidence of occupation of the Property from before 1 January 1990.
23. In this case the Tribunal determines that the Property is suitable for occupation by the elderly, that it was first let before 1 January 1990 and as the Applicant was himself over 80 years of age at the date of taking up possession, the Property was let for a person over 60 years.

Appeal

24. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge PJ Ellis
Chair