



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

Case Reference : BIR/00CW/RTB/2020/0007

Property : 101 Green Lanes, Wolverhampton, WV14
6BZ

Applicant : Pastor Calvin Warner

Respondent : Wolverhampton City Council

Type of Application : Application under paragraph 11 of
Schedule 5 to the Housing Act 1985 (as
amended) for a determination as to
whether a dwelling house is suitable for
occupation by elderly persons

Tribunal Members : Judge M K Gandham
Mr D Douglas

Date of Decision : 5th November 2020

DECISION

DECISION

1. The Tribunal determines that Wolverhampton City Council can deny the Right to Buy by virtue of the provisions of paragraph 11 of Schedule 5 to the Housing Act 1985.

REASONS FOR DECISION

Background

2. Pastor Calvin Warner ('the Applicant') of 101 Green Lanes, Wolverhampton, WV14 6BZ ('the Property') is the tenant of Wolverhampton City Council ('the Respondent').
3. 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 12th June 2020, the Respondent replied with a counter notice in Form RTB2 denying the right to buy by virtue of the provisions of paragraph 11 of Schedule 5 to the Act.
4. The Applicant made an application to the Tribunal on 4th July 2020 for a determination as to whether the Property is suitable for occupation by elderly persons.
5. Directions were issued by the Tribunal on 7th July 2020 and, in accordance with the same, the Respondent provided a Statement of Case and bundle on 29th July 2020. The Application form and accompanying documents formed the Applicant's Statement of Case.
6. In accordance with the Pilot Practice Direction: Contingency Arrangements in the First-Tier Tribunal and the Upper Tribunal – Amendment relating to Inspections by the First-Tier Tribunal Property Chamber, dated 23rd June 2020, it was determined that the Tribunal would carry out an external inspection of the Property.
7. As the Tribunal was not carrying out an inspection of the interior of the Property, a Directions Order, dated 9th September 2020, requested the Applicant to provide photographs of the boiler and interior of each room, together with a statement confirming details of the heating system and any improvements carried out by the Applicant or any predecessor in title. In reply to that order, the Applicant provided two letters, a plan of the property and photographs of the radiators, electric heater and boiler installed at the Property.
8. Neither party requested an oral hearing and the Tribunal made its determination based on its inspection and the written submissions received from both parties.

The Law

9. 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

Schedule 5, paragraph 11

“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.”

The Inspection

10. The Tribunal carried out an external inspection of the Property on the morning of 9th October 2020. The Applicant was present and allowed the Tribunal access to the rear of the Property from the front garden via a side gate. The Respondent did not attend.
11. The Property is a two-bedroom, brick-built, semi-detached bungalow, in a row of eight similar properties on the corner of Green Lanes with Etheridge Road in Bilston, Wolverhampton. The Property is accessed from Green Lanes via a shared driveway which is reasonably level. Externally, there is a small front garden and a fair sized rear garden.
12. The house is accessed via a porch to the side of the Property. To gain access to the porch, there is a small concrete ramp (with a gentle gradient) from the drive and a handrail by the porch door. Both the porch door and front door to the Property have a small threshold to gain access to the house.
13. A back door to the Property gives access to the rear garden from the house. There is a single, five-inch, brick and concrete step to the door and a further small threshold to gain access to the house. There is a large handrail located on the wall next to the door.
14. The nearest bus stops to the Property are situated on Wellington Road, within 0.3 miles of the Property, where buses are fairly frequent. The nearest store

selling food and drink is located on Middleway Green, also within 0.3 miles of the Property. The paths to both the bus stops and the shop are fairly level and within six minutes' walking distance from the Property.

Submissions

The Applicant's submissions

15. The Applicant had provided, with his Application Form to the Tribunal, a Response as to why he believed he had a right to buy the Property. He stated that he had resided in the Wolverhampton area since 2001. He stated that, between 2001 and 2005, he resided at 22 Hawthorn House. As that property was overcrowded, he stated that he had applied for a larger property. He then relocated to 14 Jeffs Avenue. He stated that, whilst residing there, he started experiencing difficulty navigating the stairs in the house due to early stages of arthritis in his joints. He confirmed that, at that time, he applied for a bungalow but was told he was not eligible because he was 47 years old.
16. Between 2012 and 2017, he stated that he resided at 76 Campion House, which was a two-bedroom apartment located on the sixth floor. He stated that in December 2012 his mother, who resided in sheltered accommodation at 10 Verona Court, came to live with him due to problems she was encountering at her accommodation. He stated that, as he was located on the sixth floor and due to repeated elevator malfunctions, the apartment was not appropriate for him or his mother, so he repeatedly applied for a bungalow but was told that he was not eligible and that he should consider applying to other housing organisations or authorities.
17. He stated that the Property (101 Green Lanes) was never offered to him by Wolverhampton Homes Authority, but by an MP. He also stated that the Property was given to him, for him to reside in, and that he was 52 years at the time. He stated that he was informed that the Property had not been given to his mother, who was 88 years old at the time, nor had it been given to him on the grounds that his mother would be residing with him. He stated that he was informed that his mother would not be detailed as a tenant as she was residing at 10 Verona Court.
18. The Applicant provided a plan of the Property together with various photographs. The plan indicated that the Property comprised of a hallway/passageway, which led to a bathroom, kitchen, living room and two bedrooms. The photographs showed that the boiler was located in the kitchen, that radiators were installed in each of the rooms and that there were two radiators in the hallway/passageway. The photographs also showed that, in addition to the radiator in the living room, the Property benefitted from an electric heater in the lounge. The Applicant confirmed that the heating system was working as expected and that any issues were handled by Wolverhampton Homes' contractors.
19. In relation to any improvements to the Property, the Applicant stated that he had replaced the curtains and curtain fittings, that he had installed carpets, that he

had decorated the interior of the Property and that he had removed some dead trees from the garden.

20. In the Application form, the Applicant had indicated that no *features* at the Property had been provided by him and, during the Tribunal's inspection, he confirmed that the central heating, electric fire and handrails had all been installed at the Property prior to his occupation. In the Application Form, he had provided no details as to why he believed that the Property might be unsuitable for occupation by the elderly.

The Respondent's submissions

21. The Respondent's bundle included the Respondent's Statement of Case and a witness statement from Darren Reade, the Principal Home Sales and Leases Officer for Wolverhampton Homes. Exhibited to Mr Reade's witness statement was a number of documents which included a copy of the tenancy agreement, a Sign Up Checklist, the Respondent's Housing Allocations Policy, a copy of a 2017 letting advertisement for the Property and email correspondence between Wolverhampton Homes and the Applicant from March 2017.
22. Both the Statement of case and Mr Reade's witness statement ('the Statements') confirmed that the Applicant was a secure tenant of the Property and that the Applicant had transferred to the Property from another Wolverhampton Homes' property. The Statements also submitted that the Applicant's mother was residing with him at the time of the transfer, as he was caring for her, and that this was the reason he was allocated the Property.
23. The Statements confirmed that the Property was a two-bedroom, semi-detached bungalow, heated by gas central heating and constructed in 1983. They stated that the Property had level entry access, a level driveway to the front, a small step to the side porch and a small step leading from the back door to the rear. The Statements also referred to a mini supermarket and two hairdressers being located within five minutes' walk from the Property, the Property being located close to three major bus routes, it being 0.8 miles away from Bilston town centre and it being a nine minutes' walk from the closest Midlands Metro stop with routes directly into Birmingham and Wolverhampton.
24. The Statements also confirmed that a single man under pensionable age would not have been entitled to this type of property under the Respondent's Housing Allocation Policy and that it was made very clear in the advertisement for the Property, a copy of which was exhibited to Mr Reade's statement, that eligibility was for those who were sixty or over or registered disabled.
25. The Respondent's Statement of Case referred the Tribunal's attention to the Office of the Deputy Prime Minister's (ODPM) Circular 07/2004 which stated that the size of a garden was not an issue that should be taken into account when determining appeals.
26. Mr Reade, in his witness statement, confirmed that the right to buy application was made on 14th April 2020 and that, after careful consideration, the application was declined because the Property had first been let prior to 1st January 1990, the

Property was particularly suitable for occupation by elderly persons and it was let as accommodation for a person aged 60 or over.

27. Mr Reade referred the Tribunal to the email exhibited to his witness statement dated 23rd March 2017 from Jon Cooper (the Principal Lettings Officer at Wolverhampton Homes) to the Applicant, which, he stated, made it clear that it was only due to the Applicant's mother moving into the Property with him, and due to her medical condition, that the Applicant had been given Emergency priority and was being considered for a bungalow.
28. Finally, the Statements submitted that, to meet the needs of an ever-increasing elderly population, it was essential that the Respondent retained as many suitable properties as possible.

The Tribunal's Deliberations

29. The Tribunal considered all of the evidence submitted by the parties and briefly summarised above. The Tribunal also considered the guidance contained in the Office of the Deputy Prime Minister's (ODPM) Circular 07/2004 in light of the decision of the Upper Tribunal in *Milton Keynes Council v Bailey* [2018] UKUT 207 (LC), noting that the Tribunal must, when considering whether a particular property is suitable for occupation by the elderly, assess the characteristics of the property as a whole.
30. In relation to the criteria detailed in paragraph 11(1)(a) of Schedule 5 to the Act, the Applicant had provided no information in his Application Form or in his submissions as to why he believed that the Property might be unsuitable for occupation by the elderly.
31. The Tribunal notes that the Property is a two-bedroom bungalow with easy access on foot to the house via a ramp with a gentle gradient to the front porch and a single step and threshold to the rear. Handrails are fitted next to both exits for additional support.
32. The Property also has reasonable heating arrangements. It benefits from gas central heating, with radiators to every room, as well as an electric heater in the lounge. The Applicant confirmed that the heating system was working as expected and that any issues were dealt with by the Respondent's contractors.
33. The Tribunal considers that the Property is located reasonably conveniently for shops and public transport. The nearest bus stops and grocery store are both situated within 0.3 miles (less than 500 metres) of the Property and the pathways to both the bus stops and the shop are reasonably level.
34. Having considered all of the evidence submitted, and taking into account the Tribunal's inspection of the Property, the Tribunal determines that the Property is particularly suitable for occupation for elderly persons having regard to the criteria detailed in paragraph 11(1)(a) of Schedule 5 to the Act. In making this determination the Tribunal considered the Property as a whole and did not, as far as it was made aware, take into account any improvements made to the Property by the Applicant or any predecessor in title.

35. In relation to the criteria detailed in paragraph 11(1)(b) of Schedule 5 to the Act, the Applicant submitted that the Property was let to him, for his occupation, not for occupation by his mother, and that he was under 60 years of age at the time. He also stated that the Property was not offered to him by Wolverhampton Homes but was given to him by an M.P.
36. The Respondent submitted that the Property was let to the Applicant for occupation for him and his mother, who was over sixty years of age at the time. Mr Reade had exhibited three emails to his witness statement. The first email, timed and dated 10:30 on 22nd March 2017, was from Mrs Sohal (a Lettings Officer at Wolverhampton Homes) and was addressed to the Applicant. This email referred to “*a bid that was placed for you at 101 Green Lanes Bilston*”.
37. The second email, timed and dated 17:13 on 22nd March 2017, was from the Applicant to Mrs Sohal and stated as follows:

“Dear Mrs Sohal

Thanks for letting me know which property i bid on behalf of my mother, Mrs Violet Warner, as it was not in the Ad. In doing so I also know you are aware it is her benefit paying for this present property since December 2012, as i am not on JSA, I am been paid a carer allowance from my mother benefit to care for her.

I will fill in the form accordingly and any paperwork will be looked over by a lawyer, to make sure the paper work reflect it is my mother property, as I am her live-in carer.

When would be we allowed to view 110 Green Lane, Bilston WV14 6BZ so i can assess it is appropriate to meet our needs?

Sincerely Yours
Mr Calvin Warner” [sic]

38. Although, the Applicant’s email refers to 110 Green Lane, rather than 101 Green Lanes, as stated by Mrs Sohal in her email to him, the Tribunal considers this to simply be a typographical error, as the Applicant’s email is in response to the email received from Mrs Sohal and the subject line states that it is “*Re: Possible offer of 101 Green Lanes Bilston*”.
39. The Tribunal notes that the Applicant’s email, firstly, confirms that the Applicant had made a bid on the Property, secondly, states that the bid was made on his mother’s behalf and that it was to be her property and, thirdly, that, as he was her live-in carer, he wished to assess the Property so that it met both of their needs.
40. The third email, which Mr Reade specifically referred to in his witness statement, was from Jon Cooper (the Principal Lettings Officer at Wolverhampton Homes) to the Applicant, timed and dated 13:27 on 23rd March 2017, which stated as follows:

“In terms of who the property will be allocated to; as you are the main applicant on your application any offer of tenancy will be made to you. As the tenant of the home you can then decide who lives with you. Clearly we are understand that your mother will be moving with – your mother’s medical conditions are the reason you have Emergency priority and the reason you are being considered for a bungalow. If you are made the tenant of this property this will preserve your security of tenure so should your mother pass away in the future you will be able to remain at the home as this would not affect the tenancy of the property...”

*...
In terms of assuring that both you and your mother have secure accommodation for the foreseeable future the best option is for you to be the tenant of the property.” [sic]*

41. The Tribunal notes that this email confirms that the Applicant was only considered for a bungalow due to the fact that his mother would be occupying the Property with him and that the Applicant was advised to be the tenant to provide him with security of tenure. The Tribunal also notes that the email correspondence between the Applicant and Wolverhampton Homes directly contradicts the submissions made by the Applicant to the Tribunal, that he was not given the Property because his mother was to reside with him.
42. The tenancy agreement, which was exhibited to Mr Reade’s statement, detailed the Applicant as the sole tenant, however, the Sign Up Checklist for the Property detailed Mrs Violet Warner, the Applicant’s mother, as a member of the household. The Sign Up Checklist also detailed, in the ‘Comments’ section, that Mrs Warner would be moving in with the Applicant and the ‘Income Details’ section referred to Mrs Warner’s income support together with the Applicant’s carers allowance.
43. The exhibits also contained a copy of the advertisement relating to the Property which detailed that eligibility was “60 Plus/Registered Disabled” and the Respondent’s Housing Allocations Policy detailed that bungalows were only offered to applicants aged 60+ or disabled persons/families.
44. Based on the evidence before it, the Tribunal is satisfied that the Property was let to the tenant for occupation for both him and his mother, who was 88 years of age at the time. As such, the criteria detailed in paragraph 11(1)(b) of Schedule 5 to the Act are also satisfied.
45. The Respondent stated that the Property was first let before 1st January 1990, as required by paragraph 11 (6) of Schedule 5 to the Act, and, in the absence of any evidence to the contrary, the Tribunal accepts the same.
46. The Tribunal, therefore, determines that the Respondent was able to deny the right to buy on the grounds set out in paragraph 11 of Schedule 5 to the Act.

Appeal

47. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in

writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision stating the grounds on which that party intends to rely in the appeal.

M. K. GANDHAM

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Judge M K Gandham