



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

**Case Reference** : **MAN/00EJ/RTB/2020/0012**

**Property** : **66 St Paul's Gardens, Spennymoor,  
County Durham DL16 7LR**

**Applicant** : **Mrs Graydon**

**Respondent** : **Livin (a private registered provider of social  
housing)**

**Type of  
Application** : **Determination of Right to Buy Housing Act  
1985, Schedule 5, Paragraph 11, as amended  
by Housing Act 2004, Section 181**

**Tribunal  
Members** : **Mr I D Jefferson TD BA BSc FRICS  
Mrs K Usher**

**Date of Decision** : **26 March 2021**

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**DECISION**

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## **DECISION**

The Tribunal were not presented with any evidence to confirm that the Tenant or a predecessor in title for occupation was aged 60 or more at the time the tenancy was granted to the Applicant Tenant. Thus the Respondent Landlord may not rely on Schedule 5 Para 11 of the Housing Act 1985 and the Tenant's appeal against the denial of the Right to Buy succeeds.

## **Reasons**

### **Application and Background**

1. The Applicant is the Tenant and occupier of the Property and gave notice to the Landlord of intention to exercise the Right to Buy.
2. The Landlord then served a Notice (form RTB 2) dated 13 November 2020 upon the Applicant under Section 124 of the Act denying the Right to Buy on the grounds set out in paragraph 11 to Schedule 5 of the Act.
3. By an application dated 30 November 2020 the Applicant applied to the Tribunal for an appeal against the Landlord's denial of the Right to Buy.

### **Representations and hearing**

4. Owing to COVID the Parties were made aware that the Tribunal were unable to undertake any internal inspection but this did not present any difficulty given that both Parties forwarded written representations and the internal accommodation of the property was clear to the Tribunal.
5. The Tribunal inspected externally on 16 March 2021. Neither Party requested a hearing. The Tribunal deliberated later the same date to make its determination.

### **The Property**

6. The Tribunal inspected the Property as above, and considered the written representations to identify the internal layout, accommodation and method of heating. They also identified the location of nearby shops and bus routes in the surrounding locality.
7. The Property is a single storey detached bungalow built around 1965 under a low pitched roof. The accommodation comprises living room, two bedrooms, kitchen, and bathroom. Externally there is a metal ramp to the front door, and a further side door with two steps. The front garden is open grass verge, and there is an enclosed rear and side garden.

8. For reasons which will become apparent later in this determination the Tribunal do not intend to deliberate further in respect of the nature of the Property or the surrounding facilities.

### **The Law**

9. Paragraph 11 of Schedule 5 of the Housing Act 1985 provides that:-
  - (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 a predecessor of 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 .....*
  - (6) *This paragraph does not apply unless the dwelling house concerned was first let before 1<sup>st</sup> January 1990*
10. The Office of the Deputy Prime Minister (ODPM) ( now the Department of Communities and Local Government) issued Circular 7/2004 (Right to Buy: Exclusion of Elderly Persons' Housing), which sets out the main issues relating to the particular suitability of an individual dwelling house for occupation by elderly persons (paragraph 12). The Tribunal is not bound by this circular, deciding each case on its merits, but does have regard to the criteria contained in the circular as a guide.

### **Tribunal's Determination**

11. The Respondent confirmed that the tenancies prior to that granted to the Applicant were all to tenants aged 60 or over.  
  
The Applicant confirmed that at the date of taking the tenancy, and indeed still, she is not yet 60 years of age.
12. The Tribunal have carefully considered Paragraph 11 of Schedule 5 to the Act and the meaning of predecessor in title. Predecessor in title means a previous tenant under that tenancy for example where the original tenant died and her daughter succeeded to the tenancy on the death of the mother.

13. There is no evidence before the Tribunal to suggest that the earlier tenants were in any way related to the current tenant.

The Respondent has therefore failed to satisfy condition 11(1)(b) of the Law Section set out earlier in this Decision and is therefore prevented from relying on Paragraph 11 of Schedule 5 of the Act.

14. This renders any consideration of whether or not the property is particularly suitable for occupation by the elderly unnecessary.

The Tenant's appeal is successful.

I D Jefferson  
Tribunal Chairman  
26 March 2021