



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

**Case Reference** : **MAN/00CG/RTB/2020/0001**

**Property** : **160 Westminster Crescent, Sheffield  
S10 4EZ**

**Applicant** : **Ms Patricia Ann Lawler**

**Representative** : **In person**

**Respondent** : **Sheffield City Council**

**Representative** : **Mr Andrew Routley**

**Type of Application** : **Housing Act 1985, Schedule 5,  
Paragraph 11-Right to Buy**

**Tribunal Members** : **Judge J. E. Oliver  
Mrs S. A. Kendall MRICS (Valuer)**

**Date of Determination** : **25<sup>th</sup> August 2021**

**Date of Decision** : **21<sup>st</sup> September 2021**

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**DECISION**

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## **Decision**

1. The Property is particularly suitable for occupation by elderly persons.
2. The requirements of Paragraph 11, Schedule 5 of the Housing Act 1985 (“the Act”) as to the date of the first letting and the age of the tenant are met as are the characteristics of the Property regarding the accommodation and location.
3. The Council is entitled to rely upon Paragraph 11, Schedule 5 of the Act to deny the Applicant her Right to Buy the Property.

## **Application**

4. Ms Patricia Ann Lawler (“the Applicant”) gave notice to Sheffield City Council (“the Respondent”) of her wish to buy 160 Westminster Crescent, Lodge Moor, Sheffield S10 4EZ (“the Property”), pursuant to the Act.
5. The Respondent subsequently served a notice dated 22<sup>nd</sup> April 2020, under section 124 of the Act, denying the Applicant her Right to Buy stating that the Property was particularly suitable for occupation by an elderly person as provided for in Paragraph 11, Schedule 5 of the Act.
6. By an application received on 11<sup>th</sup> May 2020 the Applicant applied to the Tribunal under paragraph 11(4) of the Act for a determination as to whether the grounds contained within Paragraph 11 were satisfied.
7. The Respondent confirmed its intention to oppose the appeal.
8. The Tribunal inspected the Property on 16<sup>th</sup> June 2021 but issued directions for further information to be provided following the submissions provided by the parties.
9. The Tribunal reconvened to determine the application on 25<sup>th</sup> August 2021.

## **The Property**

10. The Tribunal carried out an external inspection of the Property on 16th June 2021 without the parties, but with their agreement. The Tribunal was unable to undertake an internal inspection in the presence of the parties due to the restrictions imposed by the COVID-9 pandemic.
11. The Property is a brick built, ground floor one bedroomed flat in a block of flats forming part of a large housing estate built by the local authority in Lodge Moor Sheffield.
12. The Property has gas central heating and nothing was submitted to the Tribunal to indicate it was not reliable and could not safely be left on overnight.
13. Access to the entrance lobby to the Property is from paths running from the pavement on Westminster Crescent and Redmires Road. The paths are on a downward gradient but are not steep. The rear entrance to the entrance lobby is past the rear of other properties and then down a flight of steps to a path leading to the rear entrance. The flight of steps comprise of 15 steps in sequences of 1 or 2 steps at the top and then two sequences of 5 and 7 at the

bottom. There are hand-rails on the bottom two sequences, but none at the top.

14. The Property is approximately 0.3 miles to the local shopping precinct where there is a Post Office and a general store that sells basic food items including bread and milk. There is a bus stop approximately 100 yards from the flat from which there is a frequent bus service to the city centre. The Applicant advised that Lodge Moor is an area susceptible to bad weather and when snow falls the buses are usually suspended. The route to the local shop and bus stop is on a gentle gradient.

### **The Law**

15. Paragraph 11 of Schedule 5 of the Act provides 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 an elderly person, and

- (b) was let to the Tenant or a predecessor in title of his for occupation by a person who was aged 60 years or more (whether the Tenant or a predecessor or another person).

16. The Circular from the Office of the Deputy Prime Minister dated December 2004 (ODPM Circular 07/2004) (“the Circular”) gives the criteria for establishing whether a dwelling house is particularly suitable for occupation by an elderly person as provided for within the Act.

17. The Circular states that when considering this, “elderly persons will be taken to mean individuals who are able to live independently despite some limitations owing to age. It will not mean individuals who are frail or severely disabled”.

18. The Circular states the “main points” that should be considered are:

- There should be easy access on foot to the dwelling. In general, access is unlikely to be considered as easy if it is necessary to climb 3 or more steps and there is no handrail.
- The accommodation should be on one level
- Where a flat is above ground level, there should be a lift.
- There should be no more than two bedrooms.
- There should be heating that is reliable and can be safely left on overnight
- The property should be located conveniently for local shops and public transport. This, in an urban area, should be no more than 800 metres (half a mile) from the nearest shop selling basic food items, i.e. milk and bread. In a rural area, the property should be no more than 800 metres from the nearest public transport shop that provides at least three opportunities for shopping each week.

19. The Circular refers to the “Letting Test” that, in particular, refers to properties let to persons under the age of 60 years. It states:

*“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 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.*

### **Representations**

20. The Applicant made written representations to the Tribunal. She confirmed she acquired the tenancy on 10<sup>th</sup> February 2020 when she was 77 years of age. She made detailed submissions regarding the circumstances her acquisition of the tenancy. In particular, she advised that when applying for the tenancy, it was classified as a “General Let”, such that it could be let to a tenant under the age of 60 years. The previous tenant was said to be one in his 50’s. She also stated she was not advised that, in taking the tenancy, she would not have a Right to Buy, a requirement of the Act.
21. The Applicant also referred to the fact that other tenants had been allowed to buy similar properties on the estate.
22. The Applicant further submitted the Property was not particularly suitable for occupation by an elderly person due to its location. The bus service was unreliable in the bad weather. The rear access to the entrance lobby was unsuitable having 15 steps and only part of them having a handrail. Further, the steps were impassable in bad weather.
23. The Respondent confirmed the Council had reviewed the banding of properties resulting in the removal of the 40+ band and other properties were reclassified. This caused some to be removed from the 60+ banding, whilst others were added. It was confirmed the Property currently has no letting classification. The Council submitted that, despite this, the Property meets all the requirements set out in Schedule 5 of the Act and the Respondent needs to retain ownership of such properties in order to meet the demand for the type of property.

### **Determination**

24. The Tribunal considered the requirements of the Act and found the Property fulfils the criteria in that it was first let before 1<sup>st</sup> January 1990.

25. The Property is on one level, has no more than two bedrooms, as specified by the Act and has a central heating system that operates satisfactorily and can be safely left on at night.
26. Access to the Property is not difficult for a person over the age of 60 years in reasonable health. Access to the front of the Property is by a path, on a gentle gradient. The path leading to the rear entrance to the Property is difficult. The 15 steps that do not all have handrails mean this route is outside the scope of that which is considered suitable under the Act. However, the rear access is not the only route to the Property and, as stated above, access at the main front entrance is easy. Consequently, the Tribunal does not find that, because of this, that it is unsuitable for occupation by an elderly person.
27. The Property is within half a mile of a shop selling the basic food items, as set out in the Circular and within walking distance of bus stops for a bus service that provides at least three opportunities for shopping each week.
28. The Tribunal did not consider the route to either of the bus stops to be unsuitable for a person over the age of 60. The routes to both are on a gentle gradient.
29. The Tribunal considered the issues of inclement weather as raised by Ms Lawler but did not find this to be sufficient to find the Property was unsuitable for occupation by an elderly person. Inclement weather will, potentially, cause issues for everyone, but snow is not usually present other than for a few days in each year. It is therefore not a factor which the Tribunal found to be relevant in making its determination.
30. The Tribunal considered the issue of the letting of the Property to the Applicant, in that it was not a Property categorised for occupation by an elderly person but was on the "General Let" list. The Applicant argued that, as such, the Council could not now say it was a property that was suitable for occupation by an elderly person. The Tribunal does not accept this argument. Paragraph 11(b), Schedule 5 of the Act provides that the Right to Buy does not arise if the relevant property has been let to a tenant who was aged 60 or more. Here, when the Property was let to Ms Lawler she was 77 years of age. The criteria within Paragraph 11(b) is therefore fulfilled.
31. The Tribunal further considered the submission that the Council had not advised Ms Lawler that she would not have the Right to Buy the Property when she was granted the tenancy. The Council did not respond to this. The Tribunal does not make any finding upon this allegation, but does not consider it to be a relevant factor when considering the requirements of Paragraph 11 Schedule 5 of the Act.
32. The Tribunal also considered the issue of age discrimination. It accepted the evidence given by Ms Lawler that she is aware of nearby properties being sold to persons under the age of 60. There was no response to this issue by the Council. However, the Act does not exclude tenants under the age of 60 from buying their property even if that property may be suitable for occupation by an elderly person.

33. The Tribunal considered The Equality Act 2010 and noted that under Schedule 22 of the Act there is specific provision relating to age discrimination that prevents its application if there is statutory provision for it. In this case the Act makes the provision for the refusal of a Right to Buy because of age.
34. In addition, the Tribunal also considered section 13 of the Equality Act 2010 that provides a more general right not to be discriminated against a person because of age. Section 13(2) provides that there is no discrimination if it can be shown by the Council that their refusal is a proportionate means of achieving a legitimate aim.
35. The Tribunal determined the Council's refusal of the Right to Buy is proportionate in allowing them to maintain an adequate housing stock for elderly persons within its area.
36. The Tribunal considered the requirements of the Act and found that the criteria established by Schedule 5 Paragraph 11 are met such that the Property is particularly suitable for occupation by an elderly person and consequently the Applicant does not have the Right to Buy

**Tribunal Judge J Oliver**  
**25 August 2021**