



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

Case Reference : **MAN/36UD/RTB/2021/0003**

Property : **9 Nidd View, Lofthouse, Harrogate HG3 5SB**

Applicants : **Michael Walter Bradshaw and
Ruth Margaret Bradshaw**

Respondent : **Harrogate Borough Council**

**Type of
Application** : **Determination As To Exception Of The
Property From “Right To Buy”**

Tribunal Members : **A M Davies, LLB
W Reynolds, MRICS**

Date of Decision : **16 September 2021**

DECISION

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DECISION - Paragraph 11 (1)(b) of Schedule 5 to the Housing Act 1985 does not apply to the Property, and consequently the Respondent may not rely on the exception to the right to buy set out in that paragraph.

REASONS

1. This is an application made by the tenant to the Tribunal to determine whether the exception to the right to buy in paragraph 11 of Schedule 5 to the Housing Act 1985 (“the Act”) applies to 7 Nidd View, Lofthouse (“the Property”).
2. The Respondent council leased the Property to the Applicants in 2012. Early in 2021 the Applicants applied to the Respondent to exercise their right to buy the Property pursuant to section 118 of the Housing Act 1985. On 1st March 2021 the Respondent refused the application.
3. On 29 March 2021 the Applicants filed this appeal against the refusal.
4. In refusing the application, the Respondent relied on paragraph 11 of Schedule 5 to the Act, which provides an exception to the right to buy if the dwelling
 - (a) is particularly suitable for occupation by elderly persons; and
 - (b) was let to the tenant or a predecessor in title of the tenant for occupation by a person who was aged 60 or over; and
 - (c) was first let prior to 1st January 1990.

The paragraph gives the Tribunal jurisdiction, on appeal by either party, to determine whether or not this exception applies.

5. With the consent of the parties the Tribunal has made this decision on the basis of paper representations and (as appears below) its own enquiry. No inspection of the Property has taken place.
6. The parties agree that the Property was first let prior to 1st January 1990, and that it was let to the Applicants at a time when one of them was aged 60. The issue before the Tribunal is whether the Property is particularly suitable for occupation by elderly persons.
7. In making the determination, the Tribunal is required to consider the Guidelines issued by the Office of the Deputy Prime Minister in December 2004. The parties agree that the Property meets those Guidelines in terms of its structure and accommodation, heating facilities, and the relevant floor and ground levels.
8. The expression “elderly persons” is defined in the Guidelines as people who are able to live independently despite some limitation owing to age. It does not mean people who are frail or severely disabled.

9. The Guidelines state that a dwelling in a rural area such as Lofthouse “should be located no more than 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.” The guidelines also state (in parenthesis) that “ 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”.
10. The Applicants say that the nearest shop for food is at Pateley Bridge, some 7 miles from their home. The Respondent says that the distance is 6.5 miles and claims that the grocery store in Pateley Bridge, which is a Spar, provides home deliveries. As no evidence of this was provided to the Tribunal, on 19 August 2021 a telephone call was made to the Spar in Pateley Bridge, whose proprietor confirmed that they had no facilities for home deliveries, as the volunteers they had been relying on “had gone back to work”. They could only offer deliveries to people who were required to isolate under Covid regulations. The Tribunal notified the parties of this telephone call and invited them to make representations regarding the evidence thus obtained. No representations were received.
11. There is no public bus service or other public transport available in the small village of Lofthouse, which is located in Nidderdale north of Pateley Bridge. The 2011 Census identifies Lofthouse as having a population of 197 with the village classified in the Rural Urban Classification for Output Areas as ‘Rural hamlets and isolated dwellings’. The Respondent referred the Tribunal to a community transport service operated by Nidderdale Plus and provided the website address for that organisation, which the Tribunal visited for further information. The website states that in partnership with North Yorkshire County Council Nidderdale Plus provides a community car “for use by residents who have no access to public or private transport and require door-to-door assistance with local transport needs”. The charge is 45 pence per mile plus a £1 booking fee, so that a round trip from Lofthouse to Pateley Bridge would cost £6.85, assuming that only one booking fee was required. Potential users of the service are asked to “Contact us on [telephone number] and tell us your travel needs – we will try to find a volunteer driver for you”. The Tribunal notes that whilst Nidderdale Plus offer a valuable and very worthwhile service, they expressly identify that they can only try to find a volunteer driver and offer no commitment in this respect.
12. The Respondent states that “in addition there are community transport services which are bookable through North Yorkshire County Council [website address]”. However that online facility simply refers the enquirer back to Nidderdale Plus, and the Tribunal finds that this is not an additional transport service.
13. The Tribunal finds that there is no public transport available for residents of Lofthouse, and that the volunteer-run community transport system does not provide regular, reliable or necessarily affordable access to food shops so as to provide at least three opportunities for shopping each week.

14. Finally, the Respondent refers the Tribunal to the decision of Mr McCrea in *Milton Keynes Council v Bailey* [2018] UKUT 207(LC), in which he confirms at paragraph 8 of the decision that although the Guidance is to be taken into account it is not binding on the Tribunal, and each case is to be decided on its own merits. He cites *R v Secretary of State for the Environment Ex p. West Oxfordshire DC* (1994) 26 L.L.R. 417 in which the Secretary of State, in denying a right to buy application was said to have failed to take into account “the nature of the area”, which was rural, and had wrongly refused a right to buy without considering all the relevant factors. In that case there was no public transport available, but there was a village shop one mile from the relevant property, and it provided a delivery service. The facts were therefore very different from those relating to the Property under discussion.
15. Mr McCrea went on to consider at paragraph 25 of his decision whether a property should be “prevented from being considered particularly suitable for occupation by elderly persons because of one individual feature”. He thought that that cannot have been the intention of parliament, and that suitability of the property had to be considered “in the round”. He conceded that some features (such as, in his example, a very steep staircase) might be “so significant in themselves that they make the property positively unsuitable” but adds “what is required is an assessment of the whole. By focusing on a single feature, the FTT did not make such an assessment”.
16. The Tribunal has considered all aspects of the Property, which, on the evidence before the Tribunal, appears to be in almost all respects particularly suitable for occupation by the elderly. However the lack of a reliable transport service expressly available for the provision of at least three opportunities for shopping in each week is a factor so significant as to outweigh the positive attributes of the Property.
17. It follows that the conditions for excluding the right to buy have not been met, and that the Respondent may not rely on paragraph 11 of Schedule 5 to the Act.

AM Davies
Tribunal Judge
16 September 2021