



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

**Case Reference** : **BIR/17UC/RTB/2021/0009**

**Property** : **47 Harlethorpe Avenue, Clowne, Chesterfield,  
S43 4AF**

**Applicant** : **David Glynn Waller**

**Respondent** : **Bolsover District Council**

**Type of Application** : **An application under paragraph 11 of Schedule 5 to  
the Housing Act 1985. (Denial by Landlord of the  
Right to Buy provisions of the Act because the  
property is particularly suitable for occupation by an  
elderly person).**

**Tribunal Members** : **V Ward BSc (Hons) F.R.I.C.S. – Regional Surveyor  
Mrs K Bentley**

**Date of Decision** : **14 February 2022**

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**DECISION**

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## Background

1. The Applicant, David Waller (“the Applicant”), applied to Bolsover District Council (“the Respondent”) to buy 47 Harlethorpe Avenue, Clowne, Chesterfield S43 4AF (“the Property”) under the Right to Buy provisions contained in the Act.
2. By way of an RTB2 Form – Notice in Reply to Tenant’s Right to Buy Claim, the Respondent served notice on the Applicant denying the right of the Applicant to buy the Property as in their opinion, paragraph 11 of Schedule 5 to the Housing Act 1985 applies. This form was dated 15 September 2021.
3. By an application received on 5 October 2021, the Applicant applied to the Tribunal pursuant to section 181 of the Housing Act 2004 for a determination as to whether the Property was excluded from the Right to Buy (RTB) provisions contained in the Act on the grounds that the dwelling:
  - was first let before 1 January 1990
  - is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons; and
  - was let to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more.
4. The Office of the Deputy Prime Minister Circular 07/2004 entitled Right to Buy: Exclusion of Elderly Persons’ Housing (“the Circular”) gives guidance on the criteria to be adopted in determining the suitability of a dwelling house for occupation by elderly persons. The Circular also provides details of the “*Lettings Test*”: it is reiterated 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 to 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 of 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.

5. The Tribunal is not bound by the Circular and decides each case on its merits but has regard to the Circular for guidance.

#### Hearing

6. The Applicant had indicated that they were content with a paper determination. The Tribunal advised the Respondent that if they required an oral hearing to advise the Tribunal upon submitting their statement. No request was made.

#### Inspection

7. Due to the effects of the Covid-19 Pandemic, prior to carrying out an inspection, the Tribunal requires a Health and Safety Risk Assessment completed by the occupier in order to protect the occupiers and the parties. The Risk Assessment in respect of this matter indicated that someone classed as clinically vulnerable or extremely vulnerable was at the Property. Accordingly, to safeguard that person, the Tribunal decided not to carry out an inspection of the Property but would instead rely on the written submissions of the parties. The parties were invited, if they wished, to make additional photographic submissions to mitigate for the lack of an inspection.
8. The Tribunal therefore determines this matter on the basis of the written submissions of the parties and without an inspection of the Property.

### **The Submissions of the parties**

#### The Applicant

9. Within their application form, the Applicant had made the following comments.
10. The Property is a brick built semi-detached bungalow with the following accommodation:  
2 bedrooms, 1 living room, kitchen and bathroom with gas central heating.
11. The Property is located approximately a mile from the village of Clowne, which has two supermarkets and a doctor's surgery plus other amenities including a leisure centre.
12. The Applicant considers it discriminatory to label these properties as elderly persons bungalows as out of the eight in the immediate area many have either been bought and/or have residents that wouldn't be classed as elderly. There is also one property that has been vacant for approximately 12 months which indicates a lack of demand.

13. The Applicant states that they have carried out a significant number of improvements to the Property including the following:
  - a) General Decoration - Connecting walls (party walls) fitted with sound-absorbing plasterboard – all radiators have replaced and upgraded – architraves and skirting boards replaced - French doors fitted to lounge - electrics and lighting have been increased and upgraded throughout - all internal doors replaced with solid oak fire doors - all rooms re-plastered.
  - b) Flooring – Engineered wood flooring laid in majority of the rooms, except Kitchen and bathroom where the Applicant has laid a tiled floor.
  - c) Kitchen Fittings – fitted additional units including built in oven and microwave - upgraded the hob and fitted an extractor fan - flooring replaced with ceramic tiles - splash back tiled and area between base and wall units.
  - d) Bathroom - fitted a vanity unit with fitted basin and toilet - shower cubicle fitted with full height glass doors - fully tiled walls and floor.
  - e) Garden - built patio and raised beds – to the front of the bungalow, permission has been granted to lay a driveway, pavement has been lowered in readiness.
14. In respect of the Property’s suitability for occupation by elderly persons, the Applicant makes the comment that the entrance to bungalow is only accessed via a high step, which the Applicant’s elderly parent cannot manage. The internal layout e.g. doors and size make it difficult to manoeuvre with any walking aid and the elderly parent has stopped visiting because of these issues.
15. The garden is extremely large for any elderly person to maintain.
16. The Applicant states that the structure of the bungalow has traces of asbestos.
17. Local amenities including supermarkets would be difficult to get to if walking, e.g. approx. 25mins for an able-bodied person.

### The Respondent

18. Initially, the Respondent landlord strongly asserts that the Property is, and remains, particularly suitable for occupation by elderly persons. The reasons for this assertion, together with a summary of the relevant facts, are as set out below. Photographs of the front and rear elevations of the Property were provided.

### Ease of Access

19. The premises is accessed from the highway by means of a footpath. The gradient is only a slight incline, making it suitable for access by those with mobility difficulties and/or in need of assistance, e.g. by way of a walking frame or stick. The short distance from the highway to the property also lends itself to those with need of easy access. The property benefits from level access at the exterior entrance. There is a single step from the brick-built porch area into the rest of the property which should be considered accessible by an elderly person who can live independently and is not frail or disabled. Access to the rear garden is also level. These features are consistent with ease of access in accordance with the Circular at paragraph 12(a).

### Levels of Property

20. The property is a single storey bungalow. This meets the requirements of the Circular in paragraph 12(b).

### Bedrooms

21. The property has two bedrooms, again consistent with suitability for elderly persons in accordance with paragraph 12(d) of the Circular.

### Heating

22. The property enjoys the benefit of a reliable central heating system throughout, again consistent with suitability for elderly persons in accordance with paragraph 12(e) of the Circular.

### Location

23. The property is located 0.3 miles from a local convenience store, and 0.7 miles from a Tesco supermarket. Public transport stops are on Harlethorpe Avenue and Creswell Road are even closer at under 0.2 miles. Therefore, the criteria in paragraph 12(f) of the Circular is met. There are no adverse gradients on the route between the property and the nearest convenience store, supermarket or public transport stops.

### Other features of the Property

24. The property benefits from a low profile shower tray.

## Original Letting

25. The property was first let prior to 1990. Council records go back as far as a tenancy granted in 1968. The tenancy to the Applicant was granted in 2017 when he was aged 61. To the best of the Respondent's knowledge the property has always been let solely with specific designation as suitable for elderly persons.

## Additional Points

26. The Respondent notes the Applicant's comments in respect, of the (large) size of the garden contained with the application form and does not challenge the Applicant's assertion. However, the Tribunal's attention is drawn to paragraph 14 of the Circular which states that the size of garden should not be taken into account.

The Applicant's further comments (where they take issue) in respect of the Respondents statement are as follows. Photographs had been provided to endorse the comments made.

## Ease of Access

27. The Applicant advises that on occasion, a stick is used due to disability in negotiating the inclines. The front and back access can only be accessed via a motorised chair, the back garden was not flagged and the high step to access the property is far too high. The Applicant therefore considers that these features are inconsistent with ease of access in accordance with the Circular at paragraph 12(a).

## Heating

28. The Applicant agrees that the Property benefits from central heating but notes that heat is lost due to the state of the roof, facias and windows.

## Location

29. The only comment the Applicant makes in reference to the Respondent's statement on the location of the Property in respect of local facilities is that "Public transport is only accessed via Harlethorpe Avenue on one route, the return would necessitate a journey on foot of 0.3 miles".

## Additional Points

30. The Applicant indicates that they question the Respondent's comments that the large garden size is not a factor in this matter but does not provide substance to this point save for providing photographs of the same.

## The Law

31. The relevant law is contained in paragraph 11 of Schedule 5 of the Act as follows:

*(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) This paragraph does not apply unless the dwelling-house concerned was first let before 1<sup>st</sup> January 1990.*

## The Tribunal's Findings (including those relevant to the Circular)

32. The Property is a semi-detached bungalow.
33. The Property benefits from a gas fired heating system which, from the information provided, appears to function correctly and provide overnight heating if required.
34. From the information provided to the Tribunal and the use of online resources, the immediate area around the subject Property is of a gradient reasonable from the viewpoint of an elderly person who can live independently and is not frail or disabled.
35. There is on street car parking outside the Property.
36. The Property was first let before 1990.
37. The *Lettings Test* was satisfied as the Tenant was aged 61 on occupation.

## Determination by the Tribunal

38. Whilst the Tribunal has much sympathy for the Applicant in view of the amount of money and effort invested in the Property, the matter to be decided is whether the Property is **particularly** suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons.
39. The term “elderly persons” does not mean persons who are frail or severely disabled; provision is made in other paragraphs of Schedule 5 of the Act to exclude dwelling houses for such persons from the right to buy legislation. The Tribunal is obliged to examine suitability from the perspective of an elderly person who can live independently. The personal circumstances of the Applicant are not to be taken into account.
40. The Applicant makes mention of the presence of asbestos in the Property but does not state how this will impact the Tribunal’s consideration as to whether the Property is suitable for occupation for elderly persons or give details as to its location or type. Asbestos is present in many properties constructed before the turn of the century and its impact on health depends upon the type of asbestos and the building material it is present in. The Tribunal cannot see how the presence of asbestos will affect its consideration of the Property for elderly persons particularly. If the Applicant has concerns about the presence of this material then they should contact the Respondent landlord.
41. In the Upper Tribunal decision, *Milton Keynes v Bailey* [2018] UKUT 207 (LC), P D McCrea commented:
- “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”.*
42. The Tribunal considers that, when assessing it as a whole, the Property is suitable for occupation by an elderly person who can live independently and noted the proximity of the shops and facilities as identified by the parties and the Tribunal’s own research which satisfy paragraph 12 f) of the Circular.
43. The Tribunal determines, therefore, after taking into account the parties' submissions and the findings of fact made by the Tribunal, that the Respondent is entitled to rely on the exception to the right to buy contained within paragraph 11 of Schedule 5 to the Act as the Property is particularly suitable for occupation by an elderly person. Accordingly,



the Respondent's notice of denial is upheld. In practical terms this means that the Applicant does not have the right to purchase the Property.

44. In making their determination the Tribunal had regard to the submission by the parties, the relevant law and their knowledge and experience as an expert tribunal, but not any special or secret knowledge.

## **APPEAL**

45. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD BSc (Hons) FRICS Chairman