



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

**Case Reference** : CHI/00HB/RTB/2021/0005

**Property** : Flat 37, Armada House, Dove Street,  
Bristol, BS2 8JY

**Applicant** : Douglas Findlay

**Representative** :

**Respondent** : Bristol City Council

**Representative** :

**Type of Application** : Appeal against the denial of the Right to  
Buy

**Tribunal Member(s)** : D Banfield FRICS  
Regional Surveyor

**Date of Decision** : 24 February 2022

---

**DECISION**

---

**The Tribunal determines that the Applicant is not entitled to purchase the subject property under the provisions of Paragraph 11 of Schedule 5 to the Housing Act 1985.**

## **Background**

1. On 6 December 2021 the Tribunal received an appeal from the Applicant against the denial of the right to buy the property. The denial was issued by Bristol City Council on the grounds in paragraph 11 of Schedule 5 of the Housing Act 1985 (as amended) (“the Act”) and is dated 8 November 2021.
2. The Tribunal issued Directions on 31 December 2021 indicating that it considered that the application was likely to be suitable for determination on the papers alone without an oral hearing and would be so determined in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing within 28 days. No objection has been received and the application is therefore determined on the papers.
3. The Directions also required the Respondent to prepare a hearing bundle and it is on the contents of this bundle that the Tribunal’s determination is made. Reference to page numbers in the bundle are shown as [\*]
4. The Tribunal indicated that it would not inspect the property and required the Applicant to send to the Respondent a plan showing the layout of the property and indicating whether central heating and double glazing was provided.

## **The Issue**

5. The application is based on the Respondent’s decision to deny the Applicant the right to buy the Property on the grounds in paragraph 11 of Schedule 5 to the Housing Act 1985.[24] The Applicant requires the Tribunal to determine whether the exception from the right to buy for occupation by elderly persons applies to the Property.
6. The Respondent has denied the Applicant the right to buy the Property on the grounds that it was first let before 1 January 1990, is particularly suitable for occupation by elderly persons and was let for occupation by a person aged 60 or more all in accordance with paragraph 11 of schedule 5 of the Housing Act 1985.

## **The Law**

7. The material parts of paragraph 11 to Schedule 5 to the Act are 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 a 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) .....

(4) .....

(5) .....

(6) This paragraph does not apply unless the dwelling house was let before the 1st January 1990.

8. The Office of the Deputy Prime Minister (ODPM) has issued circular 7/2004 (Right to Buy: Exclusion of Elderly Persons Housing), which sets out the main criteria to be taken into account in determining the particular suitability of an individual dwelling house for occupation by elderly persons. The Tribunal is not bound by the circular, deciding each case on its merits, but it does have regard to the criteria contained in the circular as a guide.

### **The Submissions and Evidence**

9. In his application to the Tribunal [25] Mr Findlay explained that the property was a 2 bedroom 10<sup>th</sup> floor flat with full disabled access including lifts from 2+ entrances, close to shops and buses (100 yds), 800 yds to BRI hospital and that he had carried out a mutual exchange of properties to be close to the hospital where he was undergoing treatment.

10. In a witness statement by Mr James Bannerman of Bristol City Council dated 27 January 2022 [36] it is stated that;

- The flat is on the 10<sup>th</sup> floor of a large block of flats built in 1967 near Bristol city centre. The flat has electric storage heating and double glazing.
- The grounds of refusal were that the property is particularly suitable for occupation by elderly persons as provided for in Paragraph 11, Schedule 5 of the Act.
- The ODPM Circular states that the “main points” to 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 2 bedrooms.
  - There should be heating that is reliable and can be safely left overnight.

- The dwelling house should be located conveniently for local shops and public transport. In an urban area, this should be no more than 800 metres from the nearest shops selling basic food items i.e. milk and bread.
  - In considering the application the Respondent considered the following before refusing the application;
    - Was the Tenant 60 or over when the tenancy was granted? – Yes
    - Was the property first let before 1 January 1999 – Yes
    - Was the property particularly suited for an elderly person? – Yes, the property has 2 bedrooms, has full disabled access including lifts from 2 + entrances, reliable heating that may be left on overnight, is conveniently located with shops and public transport within 100 yards and Bristol Royal Infirmary within 800 yards.
  - The Applicant acknowledged in Paragraph 5 of his Appeal Application that the property is located conveniently for shops and public transport.
11. In an email dated 23 January 2022 [67] in response to the Respondent’s application for an extension of time to comply with directions Mr Findlay states “My reason for appeal are;
- The property is not particularly suitable for elderly people: it has no adaptations for elderly people; it’s on the 10<sup>th</sup> floor, it has a bath and not a wet room or walk in shower not particularly suitable for the elderly and a key meter (not a smart meter) for electricity and closest top ups are available from a shop at the bottom of the hill. Also, the majority of residents in Armada House are not elderly.
  - The majority of residents in Armada House are not elderly
  - The previous tenant I exchanged with was not elderly (i.e. over 60)
  - Similar flats in the block have been sold through the Right to Buy Scheme.”
12. In a response from the Applicant dated 6 February 2022 [48] Mr Findlay says;
- He had been informed that “the flat had right to buy” when considering an exchange.
  - That Armada House is one of 3 identical blocks each with 85 1-2-bedroom flats - all of which “Are particularly suitable, having regard to its location, size, design heating system and other features, for occupation by elderly persons” as is 37 Armada House.
  - The mutual exchange was based on the Right to Buy situation and he wouldn’t have exchanged if he had known that he wouldn’t have the right to buy.

- 18 flats within the 3 blocks have been bought through the RTB scheme.

## **Decision**

13. There are clearly issues raised in this case that go beyond the Tribunal's jurisdiction which is simply to determine whether the conditions contained in paragraph 5 of Schedule 11 of the Housing Act 1985 are met.
14. Mr Findlay has referred to other sales in the block however this is not a factor that the Tribunal will consider in making its determination. Likewise, the discussions which may have taken place prior to the exchange; whilst clearly important to Mr Findlay is not a factor for the Tribunal.
15. The Respondent accepts that the tenancy conditions are met and has denied Mr Findlay's application solely on the physical characteristics of the property and its suitability for occupation by the elderly.
16. In making its determination the Tribunal is guided by but not bound by the ODPM circular [72] referred to in paragraph 10 above.
17. The Respondent considers all of the requirements are met and initially from the entry in his application form and his response of 6 February the Applicant appeared to agree. In his email of 23 January however, Mr Findlay raises two points; that the flat only has a bath rather than a wet room or shower and that electricity is supplied by a key meter, top ups for which are only available from a shop "at the bottom of the hill"
18. 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. Whilst a wet room or shower may be favoured by some, they are not an essential facility for the elderly. Likewise, the availability of key meter top ups is not considered to be unduly onerous. At essence this is a 2 bedroom city centre flat with double glazing and storage heating close to all amenities and complying with the guidance given in the ODPM circular.
19. 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”.

20. The Tribunal considers that, when assessing it as a whole, the Property is particularly 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.
21. **In view of the above the application must fail and the Tribunal determines that the Applicant is not entitled to purchase the subject property under the provisions of Paragraph 11 of Schedule 5 to the Housing Act 1985.**

D Banfield FRICS  
24 February 2022

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.