



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

Case Reference : **MAN/00DB/RTB/2021/0011**

Property : **42 Grove Mount, South Kirby, Pontefract,
WF9 3PP**

Applicant : **Mrs June Shearon**

Respondent : **Wakefield and District Housing**

Type of Application : **Right To Buy a Dwelling, Housing Act 1985,
Schedule 5, Paragraph 11, As Amended By
The Housing Act 2004, Section 181.**

Tribunal Members : **Judge C. P. Tonge, LLB, BA.
Mr A. Hossain, BSc, MRICS.**

Date of Decision : **2 March 2022**

Date of Determination : **4 March 2022**

DECISION

Application and Background

1. Mrs June Shearon, the Tenant of 42 Grove Road, South Kirby, Pontefract, WF9 3PP gave notice under section 122 of the Housing Act of 1985 (the Act) to the Landlord, Wakefield and District Housing, of her intention to exercise her right to buy her dwelling.
2. The Council then served a notice (form RTB reference 5/2012 05283042020) dated 12 August 2021 on Mrs June Shearon under Section 124 of the Act denying the Tenant's right to buy on the grounds set out in paragraph 11 of Schedule 5 of the Act.
3. By an application dated 25 August 2021 and received 2 September 2021, the Tenant applied to the First-tier Property Tribunal under paragraph 11(4) of Schedule 5 of the Act for a determination as to whether the grounds set out in paragraph 11 are satisfied.
4. The Tenant's application was copied to the Landlord by the Tribunal. In reply the Landlord served a notice, dated 6 December 2021, indicating an intention to oppose the Tenant's appeal.

Dispensing with the Oral Hearing

5. By letters dated 5 November 2021 the Tribunal notified the parties under rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013 Number 1169), of the Tribunal's intention to proceed without an oral hearing if neither party requested a hearing. The parties did not request a hearing.
6. The Tribunal has received written representations for the Landlord and Tenant and these have been copied to the other party. The Tenant's representations are contained in her application to the Tribunal with additional evidence on a page of representations, undated, but referring to properties already sold by the Landlord. The Respondent's representations are contained in a document dated 6 December 2021. On 18 February 2022 Judge Tonge received the case papers and reviewed them in preparation for the determination of the issues in the case. Directions were then issued requiring additional information to be provided. These Directions have been complied with and additional information served as to the fixtures at the property and a street plan of the area, marking bus stops and a nearby shop.

The Property

7. The Tribunal inspected the property and surrounding area at about 10.50 am on 2 March 2022. It had previously been determined that an external inspection of the property would suffice along with an inspection of the surrounding area. The Tribunal conducted this inspection in the absence of the parties.
8. The property is a semi-detached bungalow with brick walls and a clay tiled roof. The bungalow is on one level built in an area that is generally flat land. Access to the front of the bungalow is along a block paved drive and a path, these being flat and level. The front door is slightly recessed into the building and at this point, in front of the front door, there is one step with handrails on the walls to either side of the step.
9. The bungalow has a 'lean to' building at the side of it that fills the remainder of the available land, so it was not possible for the Tribunal to gain access to the rear of the bungalow.
10. The exterior windows at the front of the building are uPVC double glazed. The Tribunal is aware that the Tenant suggests that one of the replaced panes of glass in a front bedroom window is single glazed, but this was not apparent to the Tribunal. The Tribunal has been informed that the property has full gas central heating and two bedrooms.
11. The Tribunal then inspected the nearby area. The Tribunal paced out the distance to a nearby bus stop, walking along Grove Mount, turning left onto an adjoining street and then right onto Stockingate. On the side of the road nearest to the property there is a bus shelter, on the opposite side of the road there is a bus stop sign on a pole. These are 412 paces from the property (approximately 274 yards). The Tribunal then continued to pace out the distance to the nearby McColl's general store, being a total of 533 steps from the property (approximately 355 yards). The Tribunal notes that this store does sell all the normal basic shopping items.
12. The bus stops are served by the 197 bus service that provides a frequent service. One such bus was seen to pass during the inspection.
13. The route to the bus stop and the route to the shop are along pavements which have, at worst, very slight gradients and they can be walked by an elderly person who is able to live independently despite some limitations owing to age.

The Law

14. Paragraph 11 of Schedule 5 of The Housing Act 1985 “the Act” provides that:-

1) The right to buy does not arise if the dwelling-house

a) is particularly suitable, having regard to size, design, heating system, and other features, for occupation by elderly persons, and

b) was let to the Tenant or 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 the title of his...

6) This paragraph does not apply unless the dwelling house concerned was first let before the 1st day of January 1990.

The Issues

15. The Landlord in the document dated 24 July 2017 states that the premises had first been let prior to the 1 January 1990 and this has not been challenged by the Tenant. The Applicant's tenancy commenced on 7 July 2007, when the oldest occupier of the property was 66 years of age (born 31 August 1940) and Mrs Shearon was 61 years of age (born 28 March 1946).

16. The only matter for the Tribunal to determine is whether under Paragraph 11(1) (a) of the Act the dwelling house is particularly suitable... for occupation by elderly persons. In this regard the principal submission made by the Tenant is that three properties that may be similar properties have been sold by the Landlord in the past.

Written Submissions

The Applicant Tenant

17. The Tenant states that three properties have been sold by the Landlord in the past, namely, 106 Grove Road, 37 Grove Lane and 34 Grove Lane, but no information other than the three addresses is provided.

The Respondent Landlord

18. The Respondent submits that the property is particularly suitable for occupation by elderly persons and the Applicant's right to buy is being denied because of that.

19. The Respondent provides details as to the central heating, glazing and a general description of the area with a street plan, measuring distances that have already been dealt with by the Tribunal pacing out the distances involved.

The Deliberations

20. The Tribunal's own observations and the written evidence considered are such that the Tribunal determines that the property itself is particularly suitable for occupation by elderly persons, being persons who are 60 years of age or older and are able to live independently despite some limitations owing to age.
21. The Tribunal decides that the paths to the nearby bus stop and shop can be walked by elderly persons, both Tribunal members falling within that definition. The bus services stopping at these bus stops provide a frequent bus service.
22. The Tribunal takes account of the Applicant's representations as to the fact that three properties that are similar have been sold by the Landlord in the past. The Tribunal acknowledges that the Applicant may consider this to be persuasive evidence that this property should also be sold. However, the Tribunal does not come to this conclusion. The Tribunal does not know how similar the three prior dwellings are, does not know the circumstances in which those dwellings came to be sold, does not know if those properties were in fact considered to be particularly suitable for occupation by elderly persons and does not know if the requirements as to first letting and the age of occupier when let satisfied the requirements of the Act. The Tribunal has to determine whether or not this property is particularly suitable for occupation by elderly persons.
23. Having regard to all the above, the Tribunal determines that the property is particularly suitable for occupation by elderly persons.

The Decision

24. The requirements of Paragraph 11 (1) (b) of the Act as to date of the first letting and the age of the occupier are met.
25. The bungalow does provide a home that is particularly suitable for occupation by elderly persons.
26. The Tribunal therefore determines that the grounds set out under paragraph 11 of schedule 5 of the Act are satisfied and that Wakefield and District Housing may rely on those grounds to deny the Applicant her right to buy this bungalow.

27. This case has been conducted during the Covid-19 and Omicron Pandemic. The only difference to Tribunal procedure that has resulted from this is that the Tribunal did not inspect the interior of the property. However, Directions were issued to establish the facts that were required by the Tribunal. There has been no injustice to either party.
28. Appeal against this Decision is to the Upper Tribunal on a point of law only. Should either party wish to appeal against this Decision then that party has 28 days from the date that this Decision was sent to the parties to deliver to this First-tier Tribunal an application for permission to appeal, stating the grounds of the appeal, particulars of those grounds and the result that the party seeks to achieve by making the appeal.

Judge Tonge

Date that this Decision has been sent to the parties 4 March 2022.