



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

Case Reference : **MAN/00CE/RTB/2021/0010**

Property : **8 Garden Lane, Cadeby, Doncaster, DN5 7SN**

Applicant : **Mr John Thompson**

Represented by : **Ms Kerry Mullen**

Respondent : **Doncaster Metropolitan Borough Council**

Represented by : **Ms Helen Potts, Solicitor**

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 : **16 March 2022**

DECISION

Application and Background

1. Mr John Thompson (the Applicant) gave notice under section 122 of the Housing Act of 1985 (the Act) to the landlord, Doncaster Metropolitan Borough Council (the Respondent), of his intention to exercise his right to buy his dwelling, 8 Garden Lane, Cadeby, Doncaster, DN5 7SN (the property).
2. The Council then served a notice (form RTB) dated 9 June 2021 on the Applicant 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 19 July 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 Respondent by the Tribunal. In reply the landlord served a notice, indicating an intention to oppose the tenant's appeal.

The Property

5. The Tribunal inspected the exterior of the property and its surrounding area at about 10.30 am on 23 February 2022. The Applicant was present, no one attended to represent the Respondent. The Tribunal members introduced themselves to the Applicant and reminded him of the purpose of their visit, but otherwise did not converse with the Applicant.
6. The property is a semi-detached bungalow with brick walls and a pan tiled roof. Windows are double glazed. The property is built on a relatively flat street. Access to the front of the property is along a flat drive or path. Front and rear exterior doors are provided with access ramps suitable for wheelchair use and there are also grab rails and handrails.
7. Cadeby is a rural area between the towns of Mexborough, Sprotbrough and Doncaster. There is no shop within the village of Cadeby that could provide the Applicant with the necessary shopping opportunity. There is however a bus service that runs at 9.59 am each day (Monday to Friday) providing transport to Sprotbrough and Doncaster. Both of these towns do have the type of shopping facilities and health care facilities that are required. This being a rural area, this bus service is classed as a frequent bus service as required by the Circular From The Office Of The Deputy Prime Minister.

8. The Tribunal paced out the distance to the nearest bus stops that are situated on either side of the crossroads at the top of Garden Lane and found the bus stop on the side of the road towards Doncaster to be approximately 182 yards from the property, up a very slight incline, with a foot path provided and streetlights. This footpath can be walked by an elderly person who is able to live independently despite some limitations owing to age. Both members of the Tribunal fall within that definition.
9. The interior of the bungalow is built on one level and has two bedrooms. The central heating system is an air pump heated system and there has not been any challenge as to its serviceability.

The Law

Paragraph 11 of Schedule 5 of 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

10. The Respondent states that the premises had first been let prior to 1 January 1990 and this has not been challenged by the Applicant. The Applicant's tenancy commenced when the Applicant was 70 years of age.
11. One 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. The Tribunal also notes that the Applicant has stated in submissions made to the Tribunal that he has been led to believe that he has the right to buy the property. The Tribunal will also have to consider this issue.

Written Submissions

The Applicant

12. The Applicant in the application form points out that the property is approximately 3 miles from any shops.

The Respondent

13. 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.
14. The Respondent points out that this is a rural area, served by one bus Monday to Friday that provides a bus service to Sprotborough and Doncaster.
15. The Respondent provides details as to the interior of the bungalow.
16. The Applicants' tenancy of this property commenced on 11 December 2013, when the Applicant (who's date of birth is 3 June 1942) was 70 years of age.

The Hearing

17. The hearing commenced at 1 pm on 23 February 2022, via the Tribunal video hearing platform. The Applicant was not present, being incapable of easily joining the hearing, but was represented by Kerry Mullen, accepted by the Tribunal as being authorised to act on behalf of the Applicant. Present on behalf of the Respondent were, Christine Tolson, Head of Asset Management for St. Ledger Homes, this being an arm's length management organisation dealing with housing on behalf of the Respondent and also by Helen Potts, a solicitor.
18. The Respondent explained that the property is a property that is reserved for occupation by the elderly and that when the property was to be let in 2013 that would have been made very clear. Further, the Applicant should have been told that in taking on this letting he would lose his right to buy this property. The Respondent explained the bidding system that had taken place during advertising that the property was available to let. The Respondent could not provide any documents to support their submissions and they could not be obtained without an adjournment.

19. Judge Tonge read out the description of the interior of the property as provided by the Respondent and this was agreed as being accurate by Ms Mullen. The Applicant did not seek to challenge that the property itself was particularly suitable for occupation by elderly persons, his case was that he had been led to believe that he would be able to buy the property. The Applicant was not present at the hearing to give evidence himself and the Tribunal considering this issue decided that it would be fair and just to adjourn the case to provide time to both Parties to further deal with this issue. It was agreed that the next hearing could take place without the Parties attending upon the Tribunal considering the written evidence served as a result of Directions given.
20. Directions were issued orally and confirmed in writing.
21. The Parties complied with the Directions. The Applicant served a screen shot from a mobile telephone. The Applicant indicated that he had been assisted in 2013 by his daughter in law, Maxine who did have internet access. The Applicant cannot remember the signing of the tenancy or whether the right to buy was mentioned. Further, the Applicant raised the additional point that in Denaby Main (a few miles away from Cadeby) bungalows have been sold. No other information was given as to this additional point.
22. The Respondent served a summary of its submissions and 9 documents dealing with the information that was provided to the Applicant, including a witness statement from Kimberley Hudson a Housing Assistant for St Ledger Homes. Ms Holmes states that the Applicant viewed the property on 20 November 2013 and signed the tenancy agreement at Adwick Town Hall on 11 December 2013. The witness had not provided any misleading information as to the right to buy this property.

The Deliberations

23. The Tribunal met again in private session on 16 March 2022 to consider all the evidence in the case.
24. In the determination of whether or not the interior of the property is particularly suitable for occupation by elderly persons, the Tribunal takes into account the agreed description of the interior of the property and the fact that this part of the case is not in issue. The Tribunal determines that the bungalow is particularly suitable for use by an elderly person.
25. The Tribunal decides that the footpath to the nearby bus stops can be walked by a person of 60 years of age, or older, who is capable of living independently despite some limitations owing to age. The bus services stopping at these bus stops in this rural area provides a frequent bus service to Sprotborough and Doncaster.

26. The Tribunal then considers the issue as to whether the Applicant has been misinformed as to his right to buy this property.
27. The Tribunal notes that the Applicant has no clear memory as to what happened in the process leading up to him signing the tenancy for this property.
28. The Tribunal has inspected the Housing Application, signed by the Applicant on 19 September 2011. The Applicant indicated that he would like to be re-housed in a bungalow, that he was of poor health and might need wheelchair access. The allocation for viewing sheet makes it clear that the Applicant was assisted by Maxine. The Allocation Checklist or Tenancy Sign Up Checklist makes it clear that the conditions of the tenancy were explained to the Applicant, signed by the Applicant on 11 December 2013. Most importantly, the Tenancy Agreement Handbook (2010 edition) makes it clear at section 8.3 that a tenant of a bungalow will not have the right to buy that bungalow.
29. Taking all the above into account the Tribunal determines that the Applicant was informed at the time that he signed the lease for the property that he would not be able to purchase this bungalow.
30. The Tribunal determines that the property is particularly suitable for occupation by elderly persons and that the applicant was informed at the time of signing the lease on the property that he would not be able to buy this property.
31. The issue raised as to bungalows being sold in the nearby town of Denaby Main does not take the Applicant's case any further. The Tribunal does not know if these properties were reserved for occupation by the elderly, or any detail as to the terms of the letting, age of the tenant etc.

The Decision

32. 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.
33. The bungalow does provide a home that is particularly suitable for occupation by elderly persons.
34. The Tribunal therefore determines that the grounds set out under paragraph 11 of schedule 5 of the Act are satisfied and that Doncaster Metropolitan Borough Council may rely on those grounds to deny the Applicant's right to buy.

35. This case has been conducted during the Covid 19 pandemic. The Tribunal's procedures have been modified with this in mind by the Tribunal arranging to inspect only the exterior of the property and its location and holding the hearing via the tribunal's video hearing platform. There has been no prejudice caused to either Party as a result of these modifications.
36. Appeal against this Decision is to the Upper Tribunal, against an error in a point of law only. Any Party seeking to appeal must deliver to this First-tier Tribunal within 28 days of this Decision being sent to the Parties, an application for permission to appeal, stating the grounds of appeal, particulars of those grounds, the paragraph numbers appealed against and the result that the Party seeks in making the appeal.

Judge Tonge

Date this Decision sent to the Parties 31 March 2022.