



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

Case Reference : CHI/00HB/RTB/2022/0001

Property : 38 Southbow House, Duckmoor Road,
Bristol, BS3 2EN

Applicant : Christopher Graham Harper

Representative : -

Respondent : Bristol City Council

Representative : -

Type of Application : Refusal of Right to Buy
Paragraph 11 of Schedule 5 of the Housing
Act 1985 (as amended) (“the Act”).

Tribunal Member : D Banfield FRICS
Regional Surveyor

Date of Decision : 29 March 2022

DECISION

The application is refused, 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.

Background

1. The Tribunal received an appeal on 26 January 2022 from the Applicant against the denial of the right to buy of 38 Southbow House, Duckmoor Road, Bristol, BS3 2EN.
2. The denial, dated 4 January 2022, was issued by the Respondent, Bristol City Council, on the grounds in paragraph 11 of Schedule 5 of the Housing Act 1985 (as amended) (“the Act”).
3. The Tribunal issued Directions on 11 February 2022 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.
4. 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 [*]
5. The Tribunal indicated that it would not inspect the property but that if the condition of the property was salient to the issues the parties had permission to include photographs. None were received and there has been no request for the Tribunal to make an external inspection.

The Issue

6. 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.[17] The Applicant requires the Tribunal to determine whether the exception from the right to buy for occupation by elderly persons applies to the Property.
7. 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

8. 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.

9. 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

10. In his application to the Tribunal [22] Mr Harper explained that the property is a 2-bedroom 6th floor flat with separate kitchen, living room and bathroom and toilet. It has modern lifts to each floor. There is a centralised heating system via radiators serving 3 blocks. It is located in an inner-city suburb with good bus services and local shopping 5 minute's walk away.

11. Mr Harper adds that that the bath has been removed and replaced by a disabled shower unit and heater and he has had cushioned flooring fitted throughout. He considers it suitable for occupation by the elderly [25] and 4 of the tenants have already been granted the Right to Buy their apartments. Lettings are now granted to tenants under 60 and the other two blocks forming this development are identical with the same facilities and all have both Council and RTB tenants. All are suitable for elderly occupation.

12. In a witness statement by Mr James Bannerman of Bristol City Council dated 18 February 2022 [28] it is stated that;

- "The property is a flat in Southbow House a large multi-story(sic) block of flats built in 1962 in the Southville area of Bristol owned and tenanted by the Respondent. The property is a two bedroomed flat on the 6th floor of Southbow House with electric storage heating and double glazing. The Applicant has lived at the property under a secure tenancy since 19th August 2013"

- 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.
13. 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, date of birth 18th October 1953
 - Was the property first let before 1 January 1999 – Yes, December 1962 in evidence of which is the “Rent Accounting System Property Screen” [41]
 - Was the property particularly suited for an elderly person? – Yes, “The property is 2 bedroom only, 6th floor flat with full access including lifts from a level access entrance; level access shower, central communal heating which as I am aware, functions reliably, providing heat to all rooms, in the tribunal application the Tenant has stated that the flooring has been replaced with cushioned flooring; it is located conveniently for shops and public transport within 530 yards. The Applicant confirms that the property has good bus services and that local shops are located withing 5 minutes walking distance.”
 - There is no relevance to “4 other persons” exercising Right to Buy as they were all under 60 when the tenancies were granted.
 - Southbow House has never been an “over 60” block and it depends on the age of the tenant when the tenancy was first granted.
14. In an email dated 7 March 2022 [43] Mr Harper says that his family are providing the funds to purchase his flat which will in turn reduce his outgoings, his income being limited. He says that he has been a Council tenant since 2009 occupying three different properties and that he was only 6 months over 60 when he took on this tenancy.

Decision

15. The Tribunal's jurisdiction is to determine whether the conditions contained in paragraph 5 of Schedule 11 of the Housing Act 1985 are met.
16. In making its determination the Tribunal is guided by but not bound by the ODPM circular [55] referred to.
17. In summary the Council may refuse an application where the property was first let before 1 January 1990, the tenant is 60 or over and the property is particularly suitable for persons aged 60 or over.
18. Mr Harper has referred to other sales in the block however this is not one of the factors referred to above that the Tribunal will consider in making its determination, whether or not the tenants were over 60 at the time of entering into their tenancies.
19. Mr Bannerman refers to the document at [41] as evidence that the property was first let before 1 January 1990. On inspection, I can find nothing that refers to its original letting date. The only dates present are "15 Nov 18" the relevance of which is unspecified and the build date of 10 December 1962. However, given the date of build and the lack of challenge that the first letting date was prior to 1 January 1990, despite the lack of documentary evidence from the Respondent the Tribunal is satisfied that the property was so let. The Tribunal also finds that Mr Harper was aged "60 or over" when the tenancy was first granted which is not disputed by the Applicant.
20. The remaining test is whether the property is particularly suitable for elderly persons.
21. In considering the ODPM circular's section on whether a property is "particularly suitable" 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.
22. 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".
23. The parties agree the description of the property and its location namely a two bedroom centrally heated flat with lift access convenient to shops and public transport. There is no suggestion that the property does not comply with any of the matters referred to in paragraph 12 of

the circular regarding access, heating and location and as such is particularly suitable for occupation by elderly persons.

24. **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
29 March 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 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.