



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

**Case Reference** : BIR/00CN/RTB/2022/0001

**Property** : 108 Whitehall Road, Small Heath,  
Birmingham, B9 5EH

**Applicant** : Qarshi Mohamed Osman

**Applicant's  
Representative** : Mohamed Aden

**Respondent** : Birmingham City Council

**Type of Application** : Application under paragraph 11 (4) of  
Schedule 5 of the Housing Act 1985 (as  
amended) for a determination as to  
whether a dwelling house is particularly  
suitable for occupation by elderly persons

**Tribunal Members** : Judge C Kelly  
Judge M Gandham  
Mr N Wint FRICS ACI Arb

**Date of Decision** : 12 April 2022  
(hearing date 31 March 2022)

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**DECISION**

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## DECISION

1. The decision of the Tribunal is that the Property is particularly suitable for occupation by elderly persons, therefore, Birmingham City Council (“the Respondent”) is entitled to deny the Right to Buy.

## REASONS FOR DECISION

### Background

2. Mrs Qarshi Mohamed Osman (“the Applicant”) of 108 Whitehall Road, Small Heath, Birmingham, B9 5EH (“the Property”) is the tenant of Birmingham City Council, having entered into a tenancy agreement on 17 October 2011.
3. By her application notice dated 11 January 2022, the Applicant made an application to the Tribunal for a determination under paragraph 11 of Schedule 5 to the Housing Act 1985 (as amended) (“the Act”). (By its letter dated 6 January 2022, enclosing RTB2, the Respondent had, previously, advised the Applicant that her Right to Buy was being denied by reason of the provisions in paragraph 11 of Schedule 5 of the Act).
4. The Tribunal issued directions on 14 January 2022 and, in accordance with those directions, the Applicant submitted a statement of case on 2 February 2022. The Respondent submitted its statement of case on 1 February 2022.
5. The Tribunal carried out an inspection of the Property on 31 March 2022. A video hearing was subsequently held later that day, at which representations were made by the Applicant (with the assistance of her son (and representative), Mr Aden), and by the Respondent (by Mr Naveed). The Applicant and Mr Aden had the benefit of an interpreter arranged by the Tribunal.

### The Law

6. The relevant provisions in respect of jurisdiction of the Tribunal are to be found in paragraph 11 of Schedule 5 to the Housing Act 1985. The relevant text is extracted as follows:

*“11 (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.*

...

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

## **The Inspection**

7. The Tribunal carried out both an internal and external inspection of the Property and the surrounding areas. The Applicant was present, with Mr Aden, and permitted the Tribunal access to all relevant areas. The Respondent did not attend.
8. The Property is a one bedroom, brick built, ground floor maisonette within a block of four properties. The Property sits at the northern most end of Whitehall Road, most near to the Bordesley Green Road. The Property benefits from a triangular garden which is for the exclusive use of the Applicant.
9. The Property is accessed via Whitehall Road via a wooden gate, which sits atop a small step, with an approximate depth of four inches. Approximately one meter beyond the gate, towards the property entrance, there is a raised area with a further step (to reach that area) of approximately six inches of depth, and a further rise of approximately six inches from this raised area to cross over the threshold to gain entry to the Property.
10. There were two concrete slabs next to the entrance to the Property and a further two concrete slabs next to the raised area within the front grounds. Mr Aden explained to the Tribunal that he had placed those to assist his mother in managing those two steps.
11. The nearest bus stop to the Property is approximately two to three minutes' walk away, within 0.1 miles, and situated on the Bordesley Green Road. The gradient is neutral from the Property to the bus stop, which provides regular services every ten minutes or so (according to the National Express website which is responsible for the relevant services). The number 92 bus is the only service that stops at that bus stop, although it appears to provide ready access to the city centre and surrounding areas.
12. The gradient of the land is neutral throughout the Property and indeed the surrounding area outside of it.

## **SUBMISSIONS**

13. The Tribunal considered it appropriate for the Respondent to set out its position for the Applicant to respond to, the rationale being that there was no dispute that the Applicant qualified for the Right to Buy, subject to an exception arising, and that it was therefore for the Respondent to demonstrate to the Tribunal's satisfaction that the exemption did indeed apply.

## **The Respondent's Submissions**

14. The Respondent argued that the Property was particularly suitable for the elderly, by highlighting the following in its statement of case:
  - (a) that the Property is a ground floor flat;
  - (b) that it has one bedroom;
  - (c) that Property has ease of access on foot, in that there is a level gradient to the entrance and there are less than three steps to access the Property;
  - (d) that the Property benefits from double glazed windows;
  - (e) that the Property benefits from full gas central heating;
  - (f) that the Property is located approximately 135 meters from the nearest bus stop from which there is a regular service; and
  - (g) that the Property is located approximately 146 meters from the nearest shop selling basic food items.
15. At the hearing, the Respondent identified, in response to submissions made subsequently by the Applicant as set out below at paragraph 20 of this decision, that, subject to the Applicant undergoing an occupational therapy assessment, it may be willing to consider undertaking various alterations to the bathtub and toilet if these were difficult for the Applicant to use.
16. The Respondent highlighted that it sought to protect limited housing stock which was particularly suitable for the elderly and that this was its motive in denying the Right to Buy.
17. Additionally, the Respondent's statement of case averred that:
  - (a) the Property was first let before 1 January 1990, with the first tenancy commencing on 1 April 1974; and
  - (b) the Applicant was over 60 when the tenancy was granted on 17 October 2011.
18. These two criteria must be satisfied in order to deny the Right to Buy (paragraphs 11(6) and 11(1)(a) of Schedule 5 to the Act).

## **The Applicant's Submissions**

19. The Applicant's primary submissions, as reflected in her statement of case, were as follows:
  - (a) that the adjoining properties, comprising the block in which she is situated, namely numbers 110, 112 and 114, have all previously been sold by the Respondent, presumably pursuant to the Right to Buy scheme;

- (b) that the Respondent had previously made offers to the Applicant to transfer her to elderly accommodation, which suggested that the Respondent did not truly consider the Property to be suitable for the elderly;
  - (c) that the Property was not suitable exclusively for elderly tenants, as younger people were in bid positions two and three at the point at which she accepted the Property, being a successful bidder in 2011;
20. During the course of submissions at the hearing, the Applicant expanded her submissions to highlight the following:
- (a) that the toilet flush was difficult to use, it being a rope based system, that sometimes would work and others times would not;
  - (b) that the bathtub, which was of standard height, was difficult for her to step into; and
  - (c) that Mr Aden had placed slabs next to the raised area and the entranceway as, for approximately two years, she had found these two areas difficult to navigate.

## **THE TRIBUNAL'S DELIBERATIONS**

- 21. The Tribunal considered all of the evidence submitted by the parties as briefly summarised above.
- 22. The Respondent provided a print out from its computer database showing that the Property was first let out in 1974 and the Applicant advised that she had no evidence to contradict this. The Applicant accepted that she was over 60 when the Property was let out to her in 2011. Hence, if the Property was particularly suitable for the elderly persons, there was an entitlement to deny the Right to Buy.
- 23. The Tribunal considered the guidance contained in the Office of the Deputy Prime Minister's Circular 07/2044 in light of the decision of the Upper Tribunal in *Milton Keynes Council -v- Bailey* [2018] UKUT 207 (LC), noting in particular, that the Tribunal must carry out an assessment holistically, considering the characteristics of the Property as a whole.
- 24. The Tribunal considered that the three principal grounds of objection advanced in the Applicant's statement of case were not relevant to whether the Property was particularly suitable for accommodation by the elderly. Decisions that the Respondent may have made as regards other properties in the same block as the Applicant's property, have no direct bearing upon the actual suitability, when determined objectively, of the Property for use by elderly persons.
- 25. Similarly, the age of any potential competitors when bidding for the Property in 2011 has no bearing today as to whether the Property is, at the present time, particularly suitable for the elderly.

26. That offers may have been made by the Respondent to transfer the Applicant to elderly accommodation, which the Applicant suggested indicated the Respondent's view that it was not particularly suitable for elderly persons, the Tribunal considered irrelevant. The question as to whether the Property is particularly suitable is determined by the Tribunal, acting objectively. In this case, the Tribunal considered that the offers made by the Respondent are likely to have been made with regard to specific needs of the Applicant, who suffers from a number of health conditions, rather than its assessment of the suitability for elderly persons generally. Consequently, the Tribunal considered that, although the Applicant found the standard height bathtub and toilet flush difficult to manage, these did not make the Property unsuitable for occupation by the elderly in general.
27. The Tribunal disregarded the concrete slabs placed by the Applicant's son on her behalf when assessing suitability. The Tribunal found that the depth of the steps and, given that there was only one step high in any location, they were not likely to be difficult for elderly persons in general to manage. The Tribunal did recognise the particular difficulties that the Applicant suffered with these steps by reason of her own mobility/medical conditions, however, noted that (as Mr Aden had stated that he had only installed the concrete slabs approximately two years ago) she had been able to negotiate the steps without this assistance for several years, despite being over the age of 70 when commencing her tenancy.
28. The Tribunal considered the general nature of the Property, being the double glazing, the fully functional central heating with timer function, to be of the kind ought to be expected in properties particularly suitable for the elderly.
29. The availability of local bus services, with a frequent service (especially on weekdays) and the proximity of shops and various pharmacies, were such that, in the round, the Property was indeed particularly suitable for the elderly.
30. Accordingly, the Tribunal's decision is that the Respondent is entitled to deny the Right to Buy on the grounds set out in paragraph 11 of Schedule 5 to the Act.

## **Appeal**

31. Any appeal against this decision must be made to the Upper Tribunal (Land Chamber). Prior to making such an appeal, the party wishing to appeal must apply, in writing, to this Tribunal for permission to appeal within 28 days of the issue of this decision. Any such application for permission to appeal must state the grounds upon which that party intends to rely in the appeal.

Judge C Kelly