



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

Case Reference : **MAN/00CE/RTB/2021/0015**

Property : **9 Coventry Road, Thorne, Doncaster,
DN8 5JB**

Applicant : **Mr Thomas Sheridan and Mrs Pamela
Sheridan**

**Respondent
Represented by** : **Doncaster Metropolitan Borough Council
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 : **19 April 2022**

DECISION

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Application and Background

1. Mr Thomas Sheridan and Mrs Pamela Sheridan, the Applicant Tenant's of 9 Coventry Road, Thorne, Doncaster, DN8 5JB (the property), gave notice under section 122 of the Housing Act of 1985 (the Act) to the Landlord, Doncaster Metropolitan Borough Council, of their intention to exercise their right to buy their dwelling.
2. The Council then served a notice, dated 14 September 2021, on the Applicant Tenant's 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 29 October 2021 and received by the tribunal office on 31 October 2021, the Tenant's 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. The Tenant's indicated that they required an oral hearing to be held.
4. The Tenant's application was copied to the Landlord by the Tribunal. In reply the Landlord served a notice, dated 17 December 2021, indicating an intention to oppose the Tenant's appeal.
5. The Tribunal has received written representations from the Landlord and Tenant's. The Tenant's representations are contained in their application to the Tribunal with additional evidence in a 20 page document, sent to the Tribunal by email on 2 April 2022, containing internal and external photographs of the property, the adjoining property of number 11 Coventry Road, Thorne and generally the street in question.
6. The Respondent's representations are contained in a document that is undated, containing 10 bullet points, served on or about 17 December 2021. There is also a bundle of 11 documents shared in a folder on 1 April 2022. The Tribunal accepts that an email was sent to the Tenant's with a view to them downloading this evidence from the shared portal, but it became clear in the hearing of this case that the Tenant's had not received that email or had not realised that the Council intended that evidence be downloaded in this manner. The end result was that the hearing had to be adjourned part-heard so that these documents could be personally served on the Tenant's. The Tribunal takes the view that serving evidence by a shared portal is not sufficient as it does not take into account the fact that some Parties to a case may not be able to use a shared portal. Further, bundles of evidence should be paginated for ease of reference to individual pages, this was not done in the shared bundle so that the case took longer to deal with than would otherwise have been the case.

The Property

7. The Tribunal inspected the exterior of the property and its surrounding area commencing at 10.30 am on 8 April 2022. It had previously been determined that an external inspection of the property would suffice and the Parties had been informed of this fact. The Tribunal saw Mr Sheridan at the inspection and introductions were made, referring to the purpose of our visit, but there was no conversation about the case. The Tribunal conducted the inspection in the absence of the parties.
8. The property is a semi-detached bungalow, being at the end of a terrace of similar properties, with brick walls and a pan tiled roof. The windows are uPVC double glazed. The bungalow is on one level built in an area that is generally flat land. It has two bedrooms and gas central heating. Access to the bungalow from the pavement is along a flat and level path. The front and side exterior entrance doors both have two steps. The steps to the front door have a rise of approximately five inches and three and a half inches. The steps to the side door have a rise of approximately four inches and three and a half inches. Front, side and rear gardens are mostly grass. There is no drive so that any motor vehicle must be parked on the street.
9. Coventry Road has on street parking provided on the same side of the road as this row of bungalows, but adjacent to a central off road area in the road, rather than being attached to the kerb outside the bungalows. There is also a parking area at the end of the cul-de-sac. The road is generally flat and these parking areas can be easily reached from the property by an elderly person who is capable of living independently despite some limitations owing to age.
10. The Tribunal then inspected the nearby area. The Tribunal paced out the distance to a nearby shop that is capable of providing all essential shopping items, the Haynes “all day and everyday store”. That shop is open from 7 am to 9pm each day and is approximately 83 yards away from the property. The nearest bus stop is approximately 100 yards away from the property and is served by the 87a and 87b bus services that provide frequent bus services to Doncaster. The bus stop for the return journey is just across the street. The roadside foot paths to the shop and bus stops are without any significant gradients and are lit by street lighting. They can easily be walked to from the property by an elderly person who is capable of living independently despite some limitations owing to age. Both Tribunal members fall within the definition of elderly persons.

The Law

11. 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 hearing

12. The hearing commenced at 1 pm on 8 April 2022, by use of the Tribunal's video platform. Both Applicant Tenants were present, assisted by their daughter, Ms Simona Vigrass, who made it possible for the Applicants to attend the video hearing, but took no other part in the case. The Respondent being represented by Mrs Christine Tolson an employee of St Ledger Homes of Doncaster (being a company appointed to deal with housing issues on behalf of the Respondent) and a Solicitor, Mrs Helen Potts.
13. Judge Tonge introduced the case, dealt with the Tribunal's observations made during the inspection and outlined the written evidence submitted by the Parties, indicating that these were accepted by the Tribunal as being the evidence in chief of each Party, before cross examination took place. It became clear that the Applicant's did not have the long evidential bundle containing 11 documents as already referred to above.
14. That missing set of documents is substantial. It includes a summary of the evidence as served by the Respondent, with a list of documents that includes: The housing registration form and assessment form, completed by the Applicants. An application for medical priority in relation to re-housing. An accessible housing registration form dated 14 October 2010. Documents relating to viewing of the property and to the signing the tenancy agreement. The tenancy agreement, dated 6 September 2011, signed by both Applicants and Miss Emily Woods on behalf of the Respondent (this document makes it clear that the tenancy was an introductory tenancy converting to a secure tenancy on 6 September 2012 and lists the matters explained during the sign up procedure). A witness statement made by Miss Emily Woods. A 20 page document entitled 'Secure Tenancy Agreement 2010' setting out the terms on which the tenancy was granted. Screen shots from the Respondent's right to buy computer home pages. A copy of the standard terms for this type of tenancy that were issued to the Applicants in 2017, explaining the terms of the tenancy that applies in this case.

15. The Tribunal decided that there was no alternative but to adjourn the hearing for personal service of the missing documents on the Applicants with oral Directions being given to that effect. The hearing to resume on 19 April 2022, to allow time for the Applicant's to read the missing evidence.
16. At 10 am on 19 April 2022 the hearing resumed with the same persons in attendance, the Applicant's confirming that they had now received all the evidence in the case and that they had read that evidence.
17. The case on behalf of the Respondent is that the property was advertised on the Council's web site as a property reserved for elderly persons. The Respondent accepts that the medical problems that Mrs Sheridan had in 2011 were assessed and resulted in the Applicants being listed as the thirteenth couple to be permitted to view the property, but illness simply put the couple higher on the housing list, this was not a tenancy granted because of illness. The Applicant's agreed to rent the property and it was let to them as an age restricted property, Mrs Sheridan being 61 years of age at the time of the tenancy agreement being signed on 6 September 2011. The pre-printed Secure Tenancy Agreement 2010 document that was given to the Applicant's deals with the right to buy at section 8.(3) and at paragraph 8.3(c) it states, "You will not have the Right to Buy your property if you live in sheltered accommodation, an adapted property, a bungalow or any other housing excluded from this legislation." The Respondent denies the Applicant's right to buy on the basis that this is a property that is particularly suitable for occupation by elderly persons.
18. The Secure Tenancy Agreement 2017 pre-printed document follows the same general format as the earlier 2010 document but describes the loss of the right to buy at paragraph 8.3 (c) in a less specific way. The Tribunal prefers the wording in the 2010 version of this document, but on the balance of probability the 2017 wording is sufficient to warn a tenant that the right to buy will be lost if residing in a bungalow.
19. The Applicant's submit that they were permitted to rent this property as a result of Mrs Sheridan's medical condition. Further, they have adapted the kitchen, extending it into what was originally an outbuilding resulting in the kitchen being larger and able to house a radiator, making the kitchen warmer than it was before. The Tribunal will disregard this tenant's improvement assessing the property as if it is a property with a smaller kitchen that does not have a central heating radiator and is therefore colder than the present kitchen.
20. The Tenant's have also fitted a new suite to the bathroom and tiled the room. The Tribunal will disregard this tenant's improvement assessing the property as if it is a property without these improvements.

21. The Tenant's complain that there is not enough parking on Coventry Road, so that it is not always possible to park outside their bungalow.
22. The Tenant's also submit that the adjoining property, number 11, is a similar building and has recently been sold to the tenant of that property. They submit photographs to support the similarity that exists between the two properties. The Respondent accepts that this is the case. They indicate that this was an error. That tenant's right to buy should also have been denied. However, the fact that an error was made in relation to number 11 does not prevent this property from being a home particularly suitable for occupation by elderly persons. The Respondent does not resist the Tribunal's intention in any event to order that any fees paid by the Applicant's in this case be refunded by the Respondent and they apologise for the error that was made.
23. The Tenant's complain that the property is not adapted for the use of a wheelchair, does not have a warden service, does not have any pull cords or similar capable of alerting a warden style service that an occupant is in distress, does not have any handrails fitted at the entrances and does not have any community hall in which elderly persons could then gather.

The issues

24. The Landlord in the document containing ten bullet points states that the premises had first been let prior to the 1 January 1990, being let in the 1940's and this has not been challenged by the Tenant. The Applicant's tenancy commenced on 6 September 2011, when Mrs Sheridan was 61 years of age (born 17 August 1950).
25. 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. An elderly person is defined in the Circular from The Office of The Deputy Prime Minister, dated 7 February 2004, paragraph 11 as an individual who is able to live independently despite some limitations owing to age. It does not mean individuals who are frail or severely disabled.

The Deliberations

26. The Tribunal's own observations and the written and oral 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. The Respondent does not have to provide handrails at entrances, or a community hall or warden services or a warden call service or a drive to park a car on. The property does not have to be able to accommodate wheelchair use. The property being assessed without the tenant's improvements is particularly suitable for occupation by elderly persons.

27. The near by bus stops and shop can be easily walked to 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. The bus service provided at those bus stops is a frequent bus service.
28. The Tribunal agrees with the Respondent that the fact that number 11 Coventry Road was sold under the right to buy scheme when that right buy should have been denied does not prevent the Respondent submitting that this property is particularly suitable for occupation by elderly persons. However, the Tribunal decides that this error made these Applicant's confident that they too would be able to buy their home and has contributed to their decision to make this application to buy their property. As such the Tribunal decides that it is fair and just to order that any fees paid to the Tribunal in pursuit of this case by the Applicant's should be refunded to them by the Respondent pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013 Number 1169). The Tribunal notes that during the hearing the Respondent's representative indicated that such an order would not be resisted.
29. Having regard to all the above, the Tribunal determines that the property is particularly suitable for occupation by elderly persons and that the Respondent may rely upon the grounds set out under paragraph 11 of schedule 5 of the Act, to deny the Applicant's right to buy the property.

The Decision

30. 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.
31. The bungalow does provide a home that is particularly suitable for occupation by elderly persons.
32. 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 their right to buy this bungalow.
33. The Respondent is required to reimburse any fees paid by the Applicants to the tribunal office pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013 Number 1169). The tribunal office will supply details as to the amount of such reimbursement. The Respondent is given 14 days from the date that the tribunal office sends this information to the Respondent to reimburse the Applicants.

34. 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, photographs were served by the Applicant's to further their submission that the property and number 11 Coventry Road are similar and to support other submissions made. There has been no injustice to either party.
35. 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 25 April 2022.