



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

Case Reference : **MAN/OOCE/RTB/2021/0012**

Property : **54 Fernhurst Road, Doncaster,
DN2 5QQ**

Applicant : **Mrs Sharon Ann Potter**

Representative : **In person**

Respondent : **St. Leger Homes**

Representative : **Helen Potts, Principal Legal Officer,
Doncaster Borough Council**

Type of Application : **Housing Act 1985, Schedule 5,
Paragraph 11-Right to Buy**

Tribunal Members : **Tribunal Judge J. E. Oliver
Tribunal Member S. A. Kendall**

**Date of
Determination** : **26th April 2022**

Date of Decision : **26th April 2022**

DECISION

Decision

1. The Property is particularly suitable for occupation by elderly persons.
2. The requirements of Paragraph 11, Schedule 5 of the Housing Act 1985 (“the Act”) as to the date of the first letting and the age of the tenants are met as are the characteristics of the Property regarding the accommodation and location.
3. The Respondent is entitled to rely upon Paragraph 11, Schedule 5 of the Act to deny the Applicant her Right to Buy the Property.

Application

4. Mrs Sharon Ann Potter (“the Applicant”) gave notice to St. Leger Homes “the Respondent”) of her wish to buy 54 Fernhurst Road, Doncaster (“the Property”), pursuant to the Act.
5. The Respondent subsequently served a notice dated 9th August 2021 under section 124 of the Act, denying the Applicant her Right to Buy stating that the Property was particularly suitable for occupation by an elderly person as provided for in Paragraph 11, Schedule 5 of the Act.
6. By an application received on 27th September 2021 the Applicant applied to the Tribunal under paragraph 11(4) of the Act for a determination as to whether the grounds contained within Paragraph 11 were satisfied.
7. The Respondent confirmed its intention to oppose the appeal.
8. The application was listed for an external inspection and a hearing on 26th April 2022.

The Property

9. The Tribunal undertook the external inspection of the Property on 26th April 2022 in the presence of the Applicant. Mrs Tolson, the Head of Asset Management employed by the Respondent was also present to assist the Tribunal but did not attend the external inspection.
10. The Property is a brick built, two-bedroomed end-terraced bungalow, having gardens to both the front and rear. It is within an area of similar properties.
11. The Property has electric central heating provided by a district heating system that functions reliably and can be left on at night. It is double glazed throughout.
12. Access to the Property is from a level path running from the pavement to both the front and rear of the Property. There is a ramp to the front door and level access then into the Property. There is off-road parking that has been installed by the Applicant.
13. The Property is approximately 0.40 miles from a Tesco Express store selling basic food items. It is 0.23 metres to the nearest bus stop where there is a regular bus service to Doncaster town centre. The local pharmacy and Post Office are 0.5 miles from the Property.

14. The route to the bus stop is level and to the local shop is on a slight gradient.

The Law

15. Paragraph 11 of Schedule 5 of the Act provides 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 an elderly person, and

(b) was let to the Tenant or a predecessor in title of his for occupation by a person who is aged 60 years or more (whether the Tenant or a predecessor or another person).

16. The Circular from the Office of the Deputy Prime Minister dated December 2004 (ODPM Circular 07/2004) (“the Circular”) gives the criteria for establishing whether a dwelling house is particularly suitable for occupation by an elderly person as provided for within the Act.

17. The Circular states that when considering this, “elderly persons will be taken to mean individuals who are able to live independently despite some limitations owing to age. It will not mean individuals who are frail or severely disabled”.

18. The Circular states the “main points” that should 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 two bedrooms.
- There should be heating that is reliable and can be safely left on overnight
- The property should be located conveniently for local shops and public transport. This, in an urban area, should be no more than 800 metres (half a mile) from the nearest shop selling basic food items, i.e. milk and bread. In a rural area, the property should be no more than 800 metres from the nearest public transport shop that provides at least three opportunities for shopping each week.

19. Section 121AA of the Act provides what information should be provided to a tenant to help them decide whether to exercise their right to buy as follows:

(1) Every body which lets dwelling-houses under secure tenancies shall prepare a document that contains information for its secure tenants about such matters as are specified in an order made by the Secretary of State.

- (2) *The matters that may be so specified are matters which the Secretary of State considers it would be desirable for secure tenants to have information about when considering whether to exercise the right to buy or the right to acquire on rent to mortgage terms.*
- (3) *The information contained in the document shall be restricted to information about the specified matters, and the information about those matters-*
- (a) *shall be such as the body concerned considers appropriate, but*
- (b) *shall be in a form which the body considers best suited to explaining those matters in simple terms.*
- (4) *Once a body has prepared the document required by subsection (1), it shall revise it as often as it considers necessary in order to ensure the information contained in it-*
- (a) *is kept up to date so far as is reasonably practicable, and*
- (b) *reflects any changes to the matters for the time being specified in an order under this section.*
20. The Circular provides that, as a matter of good practice, a landlord should advise a tenant or prospective tenant an exclusion from the right to buy if they consider that a particular property will be exempt from the scheme.

The Hearing

21. The hearing was attended by the Applicant who was supported by Councillor Jane Kidd. The Respondent was represented by Mrs Potts, Principal Legal Officer from Doncaster Borough Council and instructed by the Respondent and Mrs Tolson.
22. Prior to the hearing both parties made detailed written representations in respect of the application.
23. The Applicant stated that when acquiring the tenancy of the Property she was not advised that she would be unable to exercise her right to buy. She further stated that during the first year of the tenancy it was inspected by one of the Respondent's officers called June who advised she would be able to buy the Property after being a secure tenant for 3 years.
24. The Applicant confirmed she had undertaken considerable work to the Property, expending more than £20,000 to include the installation of a new kitchen and bathroom, new flooring throughout, new internal wooden doors and significant work to the outside of the Property. This included relaying slabs to both the front and rear of the Property and erecting a 6 foot wooden fence to the rear garden area. Within that area she had then laid gravel, decking and erected a garden shed and a decked seating area. The kerb to the front of the Property had been dropped to create off-road parking. She had also decorated the Property throughout at considerable cost. The previous tenant had been a heavy smoker and everything was affected by smoke damage.

25. At the hearing the Applicant again confirmed that when she accepted the tenancy of the Property it was in a poor state of repair and cleanliness. Whilst the Respondent had undertaken some work prior to the handover, it was of a poor quality and unfit to occupy. She spent the first three months living elsewhere whilst the necessary work was carried out.
26. Councillor Kidd confirmed she had visited the Property when occupied by the former tenant and could vouch for its poor condition.
27. The Applicant advised that when she had carried out works at the Property she had required permission from the Respondent to do so. When applying for those permissions, she had never been told she would not be able to buy her property and it was unfair for her to be allowed to spend monies on the Property when there was no prospect of being allowed to buy it.
28. When she applied to buy the Property in August 2021, her application was refused despite having been told by June that she would have the right to buy.
29. The Applicant referred the Tribunal to paragraph 17 of the Circular that states it is good practice for a prospective tenant to be advised of any exclusion from the Right to Buy scheme and this had not been done.
30. The Property continues to have issues, including rain penetration at the front door which is causing the hall flooring to lift which is a trip hazard. She is still awaiting a repair.
31. Mrs Tolson advised that when a property is available for let, the Respondent will undertake a basic clean and repairs. The Property also had some decorating, but this isn't usually carried out given it is normally the tenant's responsibility.
32. Mrs Potts advised that when the Applicant bid for the tenancy of the Property, it was advertised as one available to a person over the age of 60 years.
33. The Applicant signed her tenancy agreement on 13th April 2017. Her initial tenancy was an introductory tenancy when she had no right to buy within the first 12 months of that tenancy. When signing the tenancy agreement she would have been provided with a Tenancy Agreement Handbook which would have been the 2010 version. This was revised on 1st May 2017 and all tenants were advised of those changes by post. This would have been in the form of a letter that included details of where the amendments to the Handbook had been made. The Applicant confirmed she had received the original Handbook but had no recollection of having received the amended version.
34. Mrs Potts confirmed the original Handbook where, at section 8.3(c) it stated:

“You will not have the Right to Buy if you live in housing excluded from this legislation”

In the 2017 amended version it states:

“1.5 (a) By law, during your introductory tenancy you do not have the same rights as a secure tenant. You cannot:

- *apply for the Right to Buy or have the right to acquire your home*
- *apply to do a mutual exchange 3*
- *take in lodgers*
- *make any improvements*
- *claim compensation for improvements*
- *assign (which means to transfer) the tenancy to another person*
- *sublet your property*
- *transfer to another property”*

And:

“8.3(c) You will not have the Right to Buy your property if you live in housing excluded from this legislation”

35. Mrs Tolson confirmed that whilst a lady named June did visit the Applicant approximately 6 weeks after the commencement of her tenancy, she was not from the Right To buy team and, as such, had no authority to make any assurances regarding a right to buy.
36. Mrs Potts advised the Applicant had applied for the permissions to carry out the majority of the works, including the new kitchen, bathroom, fencing, shed and decking area 2 weeks after the commencement of the tenancy. This was before the visit made by June in May 2017.
37. The Applicant confirmed that regarding the other criteria set out in the Circular, the Property did have a reliable heating system, it was less than 0.5 miles to a shop selling basic food items and was easily accessible.

Determination

38. The Tribunal considered the requirements of the Act and found the Property fulfils the criteria in that it was first let before 1st January 1990, the date of the first let being 3rd September 1979. It was let to the Applicant when she was over the age of 60 years. Consequently, the requirement that the Property is let to someone over the age of 60 years is met.
39. The Property is on one level, has no more than two bedrooms, as specified by the Act and has a central heating system that operates satisfactorily and can be safely left on at night.
40. Access to the Property is not difficult for a person over the age of 60 years in reasonable health. Access to the front of the Property is by a ramp with level access into the Property. The path leading to the rear of the Property is level. The rear door has no more than two steps
41. The Circular in December 2004 suggests that access to a property is not easy if it has more than 3 steps and has no handrail. The Property does not fulfil the criteria.

42. The Property is within half a mile of a shop selling the basic food items, as set out in the Circular and also within a short walking distance to the bus stop where buses travel to central Doncaster.
43. The Tribunal did not consider the route to the bus stop to be unsuitable for a person over the age of 60.
44. The Act (with the Circular) only requires a property to be suitable for “elderly persons” The Circular continues:
“In this connection “elderly persons” will be taken to mean individuals who are able to live independently despite some limitations owing (sic) to age. It will not mean individuals who are frail or severely disabled.”
45. The Tribunal considered the Applicant’s position that she had been informed that she would be able to buy the Property but, when applying in August 2021, was then advised that she would not. She stated that had she known this, she would not have expended the monies she had done on improving the Property. It had been necessary to do so because the Property was in a bad state of repair and condition when the tenancy was granted.
46. The Tribunal understood the Applicant’s position but did not find she had relied upon the statement made by June in deciding to undertake the work. In evidence, the Respondent had been able to confirm from its records the permissions to do the major works had been made approximately 2 weeks after the commencement of the tenancy and therefore before the visit from June in May 2017.
47. The Tribunal considered whether the Applicant had been advised, as required by paragraph 17 of the Circular, and determined that she had. Both the 2010 Tenancy Agreement Handbook and subsequent version both said a tenant may not have a right to buy should their property be excluded from the legislation. At the hearing the Applicant confirmed she had received the Handbook and the Tribunal therefore finds she had been correctly notified by the Respondent whether she had read the relevant section, or otherwise.
48. The Tribunal considered the requirements of the Act and found that the criteria established by Schedule 5 Paragraph 11 were met such that the Property is particularly suitable for occupation by an elderly person and consequently the Applicant does not have the Right to Buy.

Tribunal Judge J Oliver
26 April 2022