



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

Case Reference : **MAN/00CM/RTB/2022/0001**

Property : **35 Dunelm Road, Hetton-le-Hole DH5 9LB**

Applicant : **Julie Scorer and Michael Scorer**

Respondent : **Gentoo Group Limited**

Type of Application : **Determination of Right to Buy Housing Act 1985, Schedule 5, Paragraph 11, as amended by Housing Act 2004, Section 181**

Tribunal Members : **Mr I D Jefferson TD BA BSc FRICS
Mrs K Usher**

Date of Decision : **6 April 2022**

DECISION

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DECISION

The Tribunal find that the property was not let to the Tenant or a predecessor in title for occupation by a person who is aged 60 or more at the date of letting namely 3 November 2000. The Landlord may not therefore rely on paragraph 11 of Schedule 5 of the Housing Act 1985 as amended by the Housing Act 2004 Section 181. The Landlords decision denying the Right to Buy is therefore set aside.

REASONS

Application and Background

1. The Applicant are the Tenants and occupier of the Property and gave notice to the Landlord of intention to exercise the Right to Buy. The papers are not before the Tribunal but the Tribunal assume that the Application was received.
2. The Landlord then served a Notice (form RTB 2) dated 30 November 2021 on the Applicant under Section 124 of the Act denying the right to buy on the grounds set out in paragraph 11 to Schedule 5 of the Act.
3. By an application dated 24 January 2022 the Applicant applied to the Tribunal for a determination as to whether the dwelling house is suitable for occupation by elderly persons.
4. The Application was copied to the Landlord.

Representations and hearing

5. Apart from the papers referred to above the Tribunal have not received written representations from either Party.
6. Neither Party requested a hearing. The Tribunal met to determine the matter on 4 April 2022.

The Property

7. The Tribunal wrote to both Parties on 30 March 2022 referring to previous correspondence dated 17 February 2022 and setting out that the matter would be determined on 4 April 2022. Neither Party requested a Hearing. In view of facts set out later there was no requirement for the Tribunal to make an inspection of the Property.

8. However, from the Application before the Tribunal the Property would appear to be a 1930s era red brick bungalow. Internal accommodation comprises Reception Room, Kitchen, three Bedrooms and Bathroom. The bungalow is heated by way of a gas fired combi boiler to radiators. Access would appear to be by way of some steps to the front of the Property, rear unknown.

The Law

9. Paragraph 11 of Schedule 5 of the Housing Act 1985 provides that:-
 - (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 of 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*
 - (6) *This paragraph does not apply unless the dwelling house concerned was first let before 1st January 1990*
10. The Office of the Deputy Prime Minister (ODPM) (now the Department of Communities and Local Government) issued Circular 7/2004 (Right to Buy: Exclusion of Elderly Persons' Housing), which sets out the main issues relating to the particular suitability of an individual dwelling house for occupation by elderly persons (paragraph 12). The Tribunal is not bound by this circular, deciding each case on its merits, but does have regard to the criteria contained in the circular as a guide.

Tribunal's Determination

11. The Tribunal has jurisdiction to make a determination on the application by the Applicants as the denial of the right to buy was under paragraph 11 of Schedule 5 of the Act. In doing so it has to consider:
 - (i) whether the dwelling-house was first let before 1 January 1990: and
 - (ii) whether the dwelling-house is particularly suitable for elderly persons aged 60 or over; and
 - (iii) was let to the tenant or a predecessor for occupation by a person who was aged 60 or more.

12. The Respondent confirmed that the Property had been first let before 1 January 1990 and that has not been challenged.
13. The Applicants states that it was first granted a Tenancy on 3 November 2000, both stating their date of birth as 1972. Thus, neither Tenants were aged over 60 at the time of the commencement of the Tenancy.
14. The legislative preconditions are therefore not satisfied for the Landlord to deny the right to buy. There is therefore no requirement for the Tribunal to inspect the Property and we do not intend to detail any of the tests set out in Circular 7/2004 of the Office for Deputy Prime Minister regarding location, size, design, heating and other features.
15. The Tribunal found that both Tenants in 2000 were not aged over 60 when the Tenancy commenced.
16. The requirement of paragraph 11 (1)(b) namely that the dwelling house was let to a Tenant who was aged 60 or more was not met.
17. The Landlord may not therefore rely on paragraph 11 and the Tenants Application succeeds.

Mr I Jefferson
Tribunal Judge
6 April 2022