



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

Case Reference : **BIR/00CU/RTB/2022/0003**

Property : **10 Roche Way, Bloxwich, Walsall, WS3 2QS**

Applicant : **William Alan Groom**

Respondent : **Walsall Housing Group Ltd (ref:RTB36429)**

Type of Application : **An application under paragraph 11 of Schedule 5 to the Housing Act 1985 (“The Act”). (Denial by Landlord of the Right to Buy provisions of the Act because the property is particularly suitable for occupation by an elderly person).**

Tribunal Members : **V Ward BSc (Hons) F.R.I.C.S.
J Rossiter M.B.A M.R.I.C.S.**

Date of Decision : **12 August 2022**

DECISION

Background

1. The Applicant, William Alan Groom (“the Applicant”), applied to Walsall Housing Group (“the Respondent”) to buy 10 Roche Way, Bloxwich, Walsall WS3 2QS (“the Property”) under the Right to Buy provisions contained in the Act.
2. By way of an RTB2 Form – Notice in Reply to Tenant’s Right to Buy Claim, the Respondent served notice on the Applicant denying the right of the Applicant to buy the Property as in their opinion, paragraph 11 of Schedule 5 to the Act applies. This form was dated 9 March 2022.
3. By an application received on 25 April 2022, the Applicant applied to the Tribunal pursuant to section 181 of the Housing Act 2004 for a determination as to whether the Property was excluded from the Right to Buy (RTB) provisions contained in the Act on the grounds that the dwelling:
 - was first let before 1 January 1990
 - is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons; and
 - was let to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more.
4. The Office of the Deputy Prime Minister Circular 07/2004 entitled Right to Buy: Exclusion of Elderly Persons’ Housing (“the Circular”) gives guidance on the criteria to be adopted in determining the suitability of a dwelling house for occupation by elderly persons. The Circular also provides details of the “*Lettings Test*”: it is reiterated that paragraph 11 of Schedule 5 of the Housing Act 1985 applies only if the dwelling in question was let ‘to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more’. The Secretary of State takes to view that this condition is only met if, when the current tenancy or that of the current tenant’s predecessor in title was granted, the landlord knew:
 - that the tenant, or one or more of joint tenants, was aged 60 or more;or
 - that the dwelling was to be occupied by some other person known by the landlord to be aged 60 or more.

5. The Tribunal is not bound by the Circular and decides each case on its merits but has regard to the Circular for guidance.

Hearing

6. The Applicant had indicated that they were content with a paper determination. The Tribunal advised the Respondent that if they required an oral hearing to advise the Tribunal upon submitting his statement. No such request was made. Accordingly, the Tribunal makes its determination on the basis of the written submissions of the parties and its own inspection of the Property

The Property

7. The Tribunal inspected the Property on 21 July 2022 in the presence of the Applicant, Mr David Groom and Ms Pip Hughes, employed by the Respondent as a Market and Leasehold Services Manager.
8. The Property comprises a semi-detached bungalow offering the following accommodation, which benefits from double glazing and gas fired central heating:

Porch

Lounge

Kitchen

Double Bedroom

Single bedroom

Wet Room incorporating electric shower, wash hand basin, and low flush WC. There are grab rails fitted to the wet room.

Conservatory*

Rear storage area*

Externally

Car Port with block paved driveway*

9. From the evidence provided to the Tribunal and gleaned at the inspection, the Tribunal understands that the Applicant has renovated and modernised elements of the Property at his own expense. These renovations include the items marked * above and the paved area to the rear.

10. To the front of the Property is a garden laid primarily to lawn. There is a block paved driveway which has a reasonable slope upwards from the footway to the car port and Property. The terraced paved area lies immediately to the rear of the Property with the remainder laid to a lawned area.
11. The step from the Porch up into the lounge is 18 cm. There are no other steps of consequence.
12. The Property forms the front part of a small development of five similar dwellings fronting onto Roche Way approximately one mile to the west of Bloxwich town centre. There is a One Stop convenience store (incorporating a Post Office), Chemist and Bus Stops on Cresswell Crescent and further Bus Stops on Sneyd Lane, all within 200m.

The Submissions of the parties

The Applicant

13. Within his application form, the Applicant had made the following comments with regard to the Property's lack of suitability for elderly persons and provided photos to endorse the same.
 - a) The property can only be accessed by a particularly steep drive.
 - b) To enter the porch being the first entry point at the front of the property, there is a slight step.
 - c) Once inside the porch because of a considerable difference in floor levels, a further large step has to be encountered to access the living room.
 - d) All the doorways are narrow and the angles make manoeuvrability difficult to move from room to room.
 - e) A further step has to be encountered to exit the rear of the property.
 - f) The only aids fitted for assistance to disabled or elderly persons are a walk in shower and outdoor wooden handrail. No special adaptations have been made to overcome the health and safety issues of suitable for elderly persons.
 - g) Adaptations would be required to be made by the Landlord to the Property to satisfy the current and up to date specifications so that it could be considered suitable for future elderly tenants which would be extremely costly.

The Applicant makes the general comment that in its current state, he believes the Property is unsuitable for occupation by elderly persons and would require considerable structural alterations to make it so.

14. The Applicant also draws the Tribunal's attention to the fact that a Local Authority property known as 17 Bentley Place, Walsall WS2 8RZ was purchased by the Tenant

The Respondent

15. Initially, the Respondent explained that in March 2003, the housing stock owned by Walsall Metropolitan Borough Council was the subject of a large-scale voluntary stock transfer (LSVT) to five local housing trusts. In January 2009, these trusts amalgamated as Walsall Housing Group Limited (WHG). WHG is a registered provider of social housing with charitable status and in the opinion of the Respondent should be regarded as the successor in title to those tenancies granted by Walsall Council insofar as they pertain to this application.
16. The Respondent then set out the test to be applied to determine the right to buy does not apply.
 - Was the Property first let before January 1990?
 - Is the Property particularly suitable, having regard to its location, size, design, heating system and other features for elderly persons aged 60 or over;
 - Was the Property let for occupation by a person who was aged 60 or more (whether or not that person was the tenant).

17. Was the Property first let before January 1990?

The Property was first let in 1986.

18. Is the Property particularly suitable, having regard to its location, size, design, heating system and other features for elderly persons aged 60 or over;

The Respondent stated that it is understood that the bungalows on Roche Way were originally constructed in the 1960s. With regard to the subject Property itself, a combi gas fired boiler was fitted in 2007, UPVC double glazed windows installed at the start of 2022 and the electrical wiring renewed/replaced in 2009 with a new consumer unit fitted more recently. The kitchen units were replaced in 2007 and the adaption of the bathroom into a wet room in 2020.

Continuing, the Respondent sets out the location of the Property with regard to amenities as set out in the *Circular* which have been confirmed by the Tribunal's own inspection.

The Respondent acknowledges that the gradient from the footpath to the dwelling would not be suitable for permanent wheelchair users however, in their opinion, it is not steep enough to adversely affect access to the dwelling.

The Respondent does not accept the Applicant's comments that the Property requires significant adaptations to render it suitable for occupation by elderly persons; it is the policy of the Respondent to continually invest in the properties within its portfolio.

19. Was the Property let for occupation by a person who was aged 60 or more (whether or not that person was the tenant).

In order to put the current tenure of the Property into context, the Respondent provided historical background to the occupation of the Property.

In 1968, Walsall Council granted a tenancy of the Property to a couple. On 19 January 1986, that couple took part in an exchange with Mr and Mrs Shanagher. Mr Shanagher is believed to have been born in 1916; Mrs Shanagher was born on 16 September 1927. The mutual exchange was permitted by the Council as Mr Shanagher was 69 years old (and also in poor health). Mr and Mrs Shanagher thus became the joint tenants of the property. Mrs Shanagher became the sole tenant by right of survivorship later in 1986 when Mr Shanagher passed away.

In 1989, Mrs Shanagher married Mr Groom (and thereby became Mrs Groom). Mr Groom was born on 14 November 1930. On 9 October 1989 Mr and Mrs Groom were granted a joint secure tenancy of the property from Walsall Council, until the large-scale voluntary stock transfer (LSVT) whereupon all relevant secure tenancies became assured tenancies. Mr Groom was 58; Mrs Groom was 62. Following the LSVT, all tenants were invited to sign a new tenancy agreement reflecting their new tenancy conditions. Mr and Mrs Groom signed a new assured tenancy agreement in respect of the property on 18 September 2003 with Bloxwich Housing Trust (the Respondent's predecessor in title). Mr Groom was then 72 years old; Mrs Groom was 75. When Mrs Groom passed away on 14 February 2022, Mr Groom became the sole tenant of the property.

The Law

20. The relevant law is contained in paragraph 11 of Schedule 5 of the Act 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 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) *This paragraph does not apply unless the dwelling-house concerned was first let before 1st January 1990.*

The Tribunal's Findings (including those relevant to the Circular)

- 21. The Property is a semi-detached bungalow.
- 22. The Property benefits from a gas fired heating system which, from the information provided, appears to function correctly and provide overnight heating if required.
- 23. When considering the gradient to the Property from the footpath, the Tribunal must consider paragraph 12 of the Circular:

12. In this connection, '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. Provision is made separately in other paragraphs of Schedule 5 for dwelling-houses and are designed to make them suitable for such individuals.

The Tribunal accepts that the driveway gradient would cause issues for individuals who are frail or severely disabled but not for individuals that can live independently.

- 24. The dwelling is located conveniently for shops and public transport.
- 25. The Property offers car parking.
- 26. The Property was first let before 1990.
- 27. With regard to the *Lettings Test*, the Tribunal notes that on 9 October 1989, Mr and Mrs Groom were granted a joint secure tenancy of the property from Walsall Council. At this time, Mr Groom was 58 and Mrs Groom was 62. The latter was an existing Tenant of

the Property as Mrs Shanager (see above). Mr and Mrs Groom signed a new assured tenancy agreement in respect of the property on 18 September 2003. Mr Groom was then 72 years old and Mrs Groom was 75. When Mrs Groom passed away on 14 February 2022, Mr Groom became the sole tenant of the property.

Following the guidance from the Circular with regard to the Lettings Test given in 4. above, at the time of the 1989 tenancy, Mrs Groom was 62 thus satisfying the first limb of the test, “*that the tenant, or one or more of joint tenants, was aged 60 or more*”. At the time of 2003 tenancy, both occupiers were over 60.

The Tribunal therefore considers the lettings test satisfied.

28. The Tribunal considered the width of doorways within the Property and the circulation space during its inspection. Whilst the doorways are narrow compared to those of more recently constructed properties, they would not prevent occupation of the Property as defined by the *Circular*.
29. The purchase of 17 Bentley Place, Walsall by its Local Authority tenant is not a relevant matter for the Tribunal to take into account. The Tribunal is only concerned with the subject Property itself and factors relating to the same.

Determination by the Tribunal

30. Whilst the Tribunal has much sympathy for the Applicant in view of the amount of money and effort invested in the Property, the matter to be decided is whether the Property is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons.
31. 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. The personal circumstances of the Applicant are not to be taken into account.
32. 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”.

33. The Tribunal considers that, when assessing it as a whole, the Property is suitable for occupation by an elderly person who can live independently and noted the proximity of the shops and facilities as identified by the parties and the Tribunal’s own research which satisfy paragraph 12 f) of the Circular.
34. The Tribunal determines, therefore, after taking into account the parties' submissions and the findings of fact made by the Tribunal, that the Respondent is entitled to rely on the exception to the right to buy contained within paragraph 11 of Schedule 5 to the Act as the Property is particularly suitable for occupation by an elderly person. Accordingly, the Respondent’s notice of denial is upheld. In practical terms this means that the Applicant does not have the right to purchase the Property.
35. In making their determination the Tribunal had regard to the submission by the parties, the relevant law and their knowledge and experience as an expert tribunal, but not any special or secret knowledge.

APPEAL

36. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD BSc (Hons) FRICS Chairman