



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

**Case Reference** : **MAN/00CL/RTB/2022/0003**

**Property** : **15 Millais Gardens, South Shields NE34 8RX**

**Applicant** : **Mr Norman Mosley & Mrs Christina Mosley**

**Respondent** : **South Tyneside Council**

**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** : **25 August 2022**

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**DECISION**

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The Tribunal is satisfied that the Property is particularly suitable for occupation by elderly persons and that the Respondent is able to rely upon Schedule 5 paragraph 11 of the Housing Act 1985. The Applicant is therefore denied the right to buy.

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## **Reasons**

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### **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 24 February 2022 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 7 April 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. In addition to the papers referred to above the Tribunal received written representations from both Parties.
6. The Applicant identified various improvements which they have undertaken at their own cost, namely new windows throughout, replacement front and rear doors, electric fire and new flooring. They also confirmed that their daughter lived at the property and was registered as so doing.
7. The Respondents representations reiterated that they considered that the property was first let before January 1990, both Tenants were aged over 60 at the time their Tenancy commenced, and that the property was particularly suitable for occupation by an elderly person.

The Respondents confirmed the ages of the Tenants at the commencement of their Tenancy; a description of the bungalow; easy access on foot to the property at the front, no steps, and no discernible gradient nearby; bus stops 0.3 miles away with services to South Shields and elsewhere; Local Convenience Store on Whiteleas Way and a pharmacy including a plan showing the location of the bungalow and nearby facilities

8. Neither Party requested a hearing. The Tribunal met to determine the matter on 25 August 2022.

## **The Property**

9. The Tribunal wrote to both Parties on 8 June 2022 regarding any further comments, and again 29 July 2022 setting out that the matter would be determined on 25 August 2022. Neither Party requested a Hearing.
10. From the Application before the Tribunal and from the external inspection undertaken by the Tribunal the Property is a 1930s era red brick bungalow. Internal accommodation comprises Reception Room, Kitchen, two Bedrooms and Bathroom. The bungalow is heated by way of gas fired central heating to radiators. Easy access is provided without any significant gradients nearby. Local shops and bus stops are within easy walking distance.

## **The Law**

11. 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 1<sup>st</sup> January 1990*
12. 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**

13. 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.
14. The Respondent confirmed that the Property had been first let before 1 January 1990 and that has not been challenged.
15. The Parties state that the Applicants were first granted a Tenancy on 28 March 2011 and both Mr and Mrs Mosley were aged over 60 on that date.
16. The legislative preconditions are therefore satisfied for the Local Authority to deny the right to buy, but it remains for the Tribunal to determine whether the dwelling is particularly suitable in physical terms for occupation by elderly persons.

The tests are set out in Circular 7/2004 of the Office for Deputy Prime Minister although these are simply guidelines not mandatory. Nonetheless the Tribunal did have regard to all of those matters including location, size, design, heating, and other features.
17. The Tribunal found that both Applicants were aged over 60 when the joint tenancy commenced. The property is one of a group of bungalows which are particularly suitable for elderly persons in an area which is well served by local buses and has local shops nearby. The bungalow is on one level, it is physically attractive to elderly persons, and is close to local amenities.
18. The requirement of paragraph 11 (1)(b) namely that the dwelling house was let to a Tenant who was aged 60 or more was met.
19. The Tribunal were satisfied that there was no dispute that the property had been first let before 1 January 1990 and that the requirement of paragraph 10 (6) was met.
20. The Tribunal disregarded all of the improvements undertaken by the Applicants when considering the physical attributes of the property as to whether it was particularly suitable for the elderly.

21. The Tribunal is satisfied that the Property is suitable for occupation by elderly persons. Accordingly the Tribunal determines that the Respondent may rely on Schedule 5 paragraph 11 to deny the Applicants the right to buy.

**Mr I Jefferson**  
**Tribunal Judge**  
**25 August 2022**