



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

Case Reference : **MAN/00CL/RTB/2022/0007**

Property : **17 Lily Crescent, Whitburn,
Sunderland SR6 7HN**

Applicant : **Mr Alan George Waugh**

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**

DECISION

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

Reasons

Application and Background

1. The Applicant is the Tenant 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 13 May 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 15 June 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 he has undertaken at his own cost, namely new windows to the Kitchen and Bathroom, and built-in wardrobes to the Bedroom. These have been ignored in arriving at our decision.
7. The Respondents representations reiterated that they considered that the property was first let before January 1990, the Tenant was aged over 60 at the time the Tenancy commenced, and that the property was particularly suitable for occupation by an elderly person.
The Respondents confirmed the age of the Tenant at the commencement of the Tenancy; a description of the bungalow; bus stop 0.1 mile away with services to South Shields and Sunderland; Premier Convenience Store on Mill Lane.
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 22 July 2022 regarding any further comments, and again 29 July 2022 setting out that the matter would be determined on 25 August 2022, without an internal inspection. 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 semi-detached bungalow built in 1933 on a small estate of similar bungalows. Internal accommodation comprises Reception Room, Kitchen, single Bedroom and Bathroom. The bungalow is heated by way of gas fired central heating to radiators. Access to the front of the bungalow is by way of 6 steps, with gentle risers, and handrail. Rear access is similar, but with 7 steps and handrail. Local shops and bus stops are within a short distance with gentle gradient to Mill Lane.

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 1st 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 Applicant was first granted a Tenancy of this bungalow on 6 March 2006 (previously in a different property from 16 July 2001), and Mr Waugh was aged over 60 in 2006.
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 in particular access to the bungalow.
17. The Tribunal found that the Applicant was aged over 60 when the 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 a local convenience store 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. Whilst the bungalow has 6 or 7 steps to access either door the risers are gentle, and a handrail is provided to each. The guidelines within Circular 07/2004 are therefore met.

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**