



**FIRST TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY**

Case Reference : CAM/34UF/RTB/2022/0001

Property : 15 Church Close Braybrooke Market
Harborough LE16 8LD

Applicant(s) : Elizabeth Branagh (tenant)

Respondent : North Northamptonshire Council (landlord)

Application : For a determination as to whether the dwelling
house is particularly suitable for occupation by
elderly persons – Housing Act 1985, Schedule 5,
paragraph 11

Tribunal : Mary Hardman FRICS IRRV(Hons)
Lyn Ajanaku LLB, LLM, MCI Arb, JP

Date of Decision : 28 June 2022

DECISION

For the reasons which follow the tenant’s appeal against the denial of their right to buy the property is allowed.

REASONS FOR DECISION

The Application

1. Elizabeth Branagh (‘the Applicant’) of 15 Church Close, Braybrooke, Market Harborough LE16 8LD (‘the Property’) is the tenant of North Northamptonshire Council (‘the Respondent’).
2. The Applicant made an application to the Respondent under the Right to Buy legislation in the Housing Act 1985 (‘the Act’) to buy the Property.
3. By Notice in Reply to the tenant’s right to buy claim (Form RTB2) dated 29 April 2022 the Respondent denied that they have the right to buy because paragraph 11 of Schedule 5 to the 1985 Act applies, viz
 - a. that the property was first let before 1990

- b. that it is particularly suitable for occupation by elderly persons, and
 - c. that it was let for occupation by a person aged 60 or more.
4. No further details or evidence were provided in the notice beyond the standard wording.
5. The Applicant made an application dated 19 March 2022 to the Tribunal for a determination as to whether the Property is suitable for occupation by elderly persons.
6. On 4 May 2022 the Tribunal issued directions, enclosing the ODPM Circular 07/2004. The directions required the landlord and the tenant to provide any supporting documentation in support of their case.
7. In particular the landlord was required to provide a full statement of the reasons for opposing the appeal including a response to any grounds of appeal advanced by the tenant and also dealing with the issues that the tribunal would need to consider – namely:
 - Is the dwelling particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons?
 - Was the dwelling 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)?
 - In determining whether a dwelling is particularly suitable, is there any feature provided by the tenant or a predecessor in title of his, which should be disregarded?
8. The tenant provided supporting documentation including photographs but on 15 June 2022 the landlord wrote to the tribunal to say that they did not intend to oppose the appeal. They said that *‘following a review of the case, Ms Branagh’s appeal and the Circular provided, North Northamptonshire Council will not oppose the appeal.’*

The Law

9. The relevant provisions in respect of jurisdiction of the Tribunal are found in Paragraph 11 of Schedule 5 to the Housing Act 1985.

Housing Act 1985

“11 (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.

...

(6) This paragraph does not apply unless the dwelling-house concerned was first let before 1st January 1990.”

10. Circular 7/2004, Right to Buy: (Exclusion of Elderly Persons' Housing) issued by the Office of the Deputy Prime Minister, referred to above, gives guidance on the main criteria to be taken into account in determining whether a dwelling is particularly suitable for occupation by elderly persons. The criteria are not binding on the Tribunal but the Tribunal will be guided by them in general terms. Each case is to be decided on its own merits.

The Property

11. The property is a two bedroomed bungalow of brick construction with a tiled roof and has the following accommodation.

Lounge
Kitchen
2 bedrooms
Bathroom

Determination

16. The Tribunal takes the view that if a landlord wishes to deny the right to buy then it must demonstrate that at least one of the statutory criteria apply that provide exceptions to the right to buy, as set out in Schedule 5 to the 1985 Act.
17. The Respondent landlord was requested to provide evidence to support its case and has not done so. Instead, it gave notice to the Tribunal that it did not oppose the application by the tenant for a determination as to whether the exception from the right to buy applies to their home.
18. As the Respondent has failed to adduce any evidence to support their original assertion, the tribunal finds that in the absence of any evidence that the exception in paragraph 11 of the Schedule does not apply. The tenant's appeal is allowed.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.