



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

**Case Reference** : CHI/24UJ/RTB/2022/0002

**Property** : 39 Shrubbs Avenue  
Lymington, Hampshire SO41 9DJ

**Applicant** : Mrs Q J Dawson

**Representative** :

**Respondent** : New Forest District Council

**Representative** :

**Type of Application** : Refusal of Right to Buy  
Paragraph 11 of Schedule 5 of the Housing  
Act 1985 (as amended) (“the Act”).

**Tribunal Member** : Judge Tildesley OBE

**Venue and Date of  
Hearing** : Decision on the Papers

**Date of Decision** : 12 February 2023

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**DECISION**

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## **Summary of Decision**

**The Tribunal, therefore, refuses the Appeal and confirms the Council's decision that the exception to the right to buy as set out in paragraph 5 of schedule 11 of the Housing Act 1985 applies to this property.**

## **Background**

1. On 2 December 2022 the Tribunal received an appeal from the Applicant against the denial of the right to buy 39 Shrubbs Avenue Lymington Hampshire SO41 9DJ.
2. The denial, dated 2 November 2022, was issued by the New Forest District Council ("the Council"), on the ground that the property is particularly suitable for occupation by elderly people (under paragraph 11 of Schedule 5 to the Housing Act 1985).
3. On 3 January 2023 the Tribunal directed that the application would be heard on the papers without a hearing unless a party objected in writing within 28 days of the directions. No objection has been received.
4. The Directions also required the parties to exchange their statements of cases and for the Council to supply a hearing bundle which it did on the 7 February 2023.
5. The Tribunal indicated that it would not inspect the property but that if the condition of the property was salient to the issues the parties had permission to include photographs. None were received and there has been no request for the Tribunal to make an external inspection.
6. The Tribunal had before it a witness statement of Mr Dan Lacey dated 23 January 2023 and the Applicant's statement dated 15 January 2023. Mr Lacey is the Tenant Account Manager for the Council.

## **The Issue**

7. The Application is based on the Council's decision to deny the Applicant the right to buy the Property on the grounds in paragraph 11 of Schedule 5 to the Housing Act 1985. The Applicant requires the Tribunal to determine whether the exception from the right to buy for occupation by elderly persons applies to the Property.
8. Under paragraph 11 of schedule 5 to the Housing Act 1985 the Right to Buy does not arise if the property:
  - a) is particularly suitable for occupation by elderly persons, taking into account its location, size, design, heating system and other features, and

- b) was let for occupation by a person aged 60 or over, whether they were the tenant or not; and
  - c) was first let on a tenancy before 1 January 1990.
9. The Department for Communities and Local Government has issued Guidance on “*Your Right to Buy Your Home*” in July 2014 (“The Guidance”) which replaced the previous guidance of The Office of the Deputy Prime Minister (ODPM) 7/2004 (*Right to Buy: Exclusion of Elderly Persons Housing*). The Guidance sets out the main criteria to be taken onto account in determining the particular suitability of an individual dwelling house for occupation by elderly persons. The Tribunal is not bound by the Guidance but can have regard to it when considering such an application.
10. The Guidance at page 22 identifies the following factors that the decision-maker will normally expect to be satisfied when applying the exception to the Right to Buy:
- a) There should be easy access on foot to your home: access is unlikely to be regarded as easy if it is necessary to climb three or more steps (in addition to the threshold) and there is no handrail.
  - b) The accommodation should normally be on one level.
  - c) In the case of a flat above ground floor level there should be easy access by lift.
  - d) There should be no more than two bedrooms.
  - e) There should be heating arrangements which function reliably and provide heat to at least the living room and one bedroom.
  - f) Your home should be located reasonably conveniently for shops and public transport, having regard to the nature of the area.

## **The Facts**

11. The Tribunal finds the following facts from the witness statement of Mr Lacey, and exhibits which were not disputed by the Applicant.
- a) On 3rd September 2018, 39 Shrubbs Avenue, Lymington was let to the Applicant, Mrs Quonah Dawson (nee Foster), aged 46, through a Mutual Exchange. The property had been previously let to a tenant aged 66 at tenancy commencement.
  - b) The property had been let from at least 23 April 1987.
  - c) The property is a one-bedroom semi-detached bungalow constructed in 1936 and all on one level. Access is at the front of the property via a shrub free concrete path approximately three meters long with a slight decline for the first metre. There is one concrete step up to the front door which is 22cm deep. There are no handrails either along the path or by the front door. The heating at the property is gas fired central heating with radiators to all rooms.

- d) The property is located near to local shops. The nearest shopping area centres around Lymington High Street. The route to this area involves crossing the B3054 Avenue Road which can, at times, be busy. Visibility to the left is limited by a rise in the road but there is an island in the road to assist crossing. The pavements on the route vary from good to uneven with some small slopes. The local shopping area includes Tesco Express (open 7am to 10pm Monday to Saturday, 10am to 4pm Sunday) M&S Simply Food, Boots and Superdrug chemists, two banks and a Building Society, WHSmith newsagents, a Post Office and numerous clothes shops, cafes, pubs and bakeries. There is also a market on Saturdays. Tesco Express is located 804 metres /0.5 miles from the property. Lymington High Street, with the above facilities, is 483 metres /0.3 miles long.
- e) There are bus stops near to the property. The Sports Ground stop is on the A337, Southampton Road and there is also the Main Post Office stop on the High Street. Both stops, measured on Google Maps, are 804 metres / 0.5 miles from the property.
- f) There are a few bus routes available. Bluestar six runs hourly to and from Southampton Monday to Saturday and every two hours on Sunday. The route is via Totton Shopping Precinct and Train Station, Southampton Central Station, Southampton ASDA and ending at Westquay. More Bus 119 runs hourly to and from New Milton Monday to Saturday until early afternoon. There is no Sunday service. This route is via Pennington and Hordle. More Bus X1 & X2 runs every 30 minutes to and from Bournemouth Monday to Saturday with a reduced service on Sunday. The route is via New Milton, Highcliffe, Christchurch and Bournemouth Hospital.
- g) The nearest train station, Lymington Town, is 965 metres / 0.6 miles from the property. It provides eastbound service to Brockenhurst, Southampton, Basingstoke, London Waterloo, or Westbound service to Christchurch High Street, Bournemouth, Poole or Weymouth.

### **Consideration**

- 12. The question for the Tribunal is whether the exception to right to buy as set out in paragraph 5 of Schedule 11 of the Housing Act 1985 should apply to this property.
- 13. Paragraph 5 of Schedule 11 of the Housing Act 1985 enables the Council to refuse an application for right to buy in the case of a property that is particularly suitable for persons aged 60 or over provided the property was first let before 1 January 1990 and had been occupied by a tenant who was 60 and over.

14. The facts found demonstrate that the property was first let before 1 January 1990 and that the previous tenant had been aged 66 when a tenancy of the property was first let to him.
15. The question of whether a property is particularly suitable for persons over 60 is dependant on the facts. In this case the facts found were that it is a one bedroom bungalow on one level with gas central heating and easy access on foot, and conveniently located to shops and public transport. The Tribunal is satisfied that property meets the description of a property particularly suitable for persons over 60.
16. The Applicant acknowledged that the property is suitable for an elderly person, and did not dispute the facts found by the Tribunal. The Applicant's grievance was that when she agreed to a mutual exchange of the tenancy of this property for her former tenancy she was told that there were no restrictions on her right to buy. The Applicant pointed out that at the time of the mutual exchange she was a secure tenant with a protected discount if she exercised her right to buy. The Applicant asserted that if she had been aware of the possibility of such a refusal she would not have moved and if the refusal was not overturned she would have to move again.
17. The Tribunal's jurisdiction is limited to deciding whether the three requirements of paragraph 5 of schedule 11 of the Housing Act 1985 are met. In this case the Tribunal has found that the property fulfils the three requirements of a property particularly suitable for elderly persons, that it was first let before the 1 January 1990 and that a previous tenant was over 60 when it was first let to him. The fact that the Applicant may have been misled about her right to buy when she agreed to exchange the tenancy of her former property for the tenancy of this property is not a matter that the Tribunal can take account of when deciding whether the exception of properties particularly suitable for elderly persons should apply to this property.

## **Decision**

18. **The Tribunal, therefore, refuses the Appeal and confirms the Council's decision that the exception to the right to buy as set out in paragraph 5 of schedule 11 of the Housing Act 1985 applies to this property.**

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.