



**FIRST TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY**

Case reference : **CAM/22UK/RTB/2022/0002**

Property : **60 St Andrews Road, Hatfield
Peverel, Chelmsford Essex CM3
2EL**

Applicant : **Mrs B Reeve**

Represented by : **Allan Benfield**

Respondent : **Eastlight Community Homes Ltd**

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

Date of Decision : **15 March 2023**

Tribunal : **Mary Hardman FRICS IRRV(Hons)**

DECISION

The application is refused, and the Tribunal determines that the Applicant is not entitled to purchase the subject property under the provisions of Paragraph 11 of Schedule 5 to the Housing Act 1985.

REASONS FOR DECISION

The Application

1. Mrs B Reeve (‘the Applicant’) of 60 St Andrews Road, Hatfield Peverel, Chelmsford Essex CM3 2EL (‘the Property’) is the tenant of Eastlight Community Homes Ltd (‘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 and, on 14 September 2022, the Respondent replied with a counter notice denying the right to buy by virtue of the provisions of paragraph 11 of Schedule 5 to the Act.

3. The Applicant made an application to the Tribunal on 24 October 2022 for a determination as to whether the Property is suitable for occupation by elderly persons.
4. Neither of the parties requested a hearing.

The Law

5. 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.”

6. Circular 7/2004, Right to Buy: (Exclusion of Elderly Persons’ Housing) issued by the Office of the Deputy Prime Minister, 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.

7. *Particular suitability for occupation by elderly persons*

“12. The main points on which the Secretary of State will normally expect to be satisfied in considering applications under paragraph 11 – as well as other features to which his attention is drawn – are as follows:

- (a) there should be easy access on foot to the dwelling. In assessing ease of access, consideration should be given to:*

- the number and size (in particular, the height) and curvature of any steps up to the dwelling itself, and also of any steps in its immediate vicinity where these must be negotiated to gain access to it;

- the presence or absence of handrails, or other means of support, alongside any steps up to the dwelling and in its immediate vicinity that need to be negotiated to gain access to it;

- the gradient of ramps, paths, pavements or other means of access to the dwelling and in its immediate vicinity, where these must be negotiated to gain access to it.

In general, 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. The Secretary of State is unlikely to regard a dwelling with two or more floors as being particularly suitable for occupation by an elderly person. However, he may be prepared to make exceptions for dwellings with up to three internal steps, or with stairlifts or similar devices provided by the landlord;

(c)...

(d) there should be no more than two bedrooms, designated as such in the tenancy agreement;

(e) there should be heating arrangements which:

- *function reliably*
- *provide heat to at least the living room and one bedroom*
- *may safely be left on overnight;*

(f) the dwelling should be located reasonably conveniently for shops and public transport, having regard to the nature of the area (the Secretary of State may take into account reliable means of transport other than those provided by public bodies – for instance, transport provided by shops or voluntary organisations):

- in an urban area, the dwelling should be located no more than 800 metres (half a mile) from both the nearest shop selling basic food items and the nearest public transport stop. ‘Basic food items’ include bread and milk;

- in a rural area, the dwelling should be located no more than 800 metres (half a mile) from the nearest public transport stop, and such transport should be available from this point frequently enough to provide at least three opportunities for shopping each week.

8. Letting test

It is important to reiterate 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 the 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."*

The Property

9. The Tribunal inspected the Property, internally and externally, during the morning of 27 February 2023 accompanied by the Applicant's representative, Mr Benfield. The Applicant was also present at the property.
10. The Property is a traditionally constructed semi -detached bungalow built in 1953. The property has tiled pitched roof. It is situated on a flat and level site. It was originally owned by Braintree District Council but transferred to what is now Eastlight Community Homes Limited in a stock transfer in November 2007
11. The Property has the following accommodation
 - Hall
 - Lounge
 - Kitchen
 - 2 bedrooms
 - Bathroom comprising a shower, wash hand basin and WC.

The property has UPVC windows and gas central heating.

The tenant has fitted a patio door to the lounge and a rear door to the garden.
12. There is a small garden to the front and a garden to the rear. There is off and on-road parking.
13. Access to the house is via a level path from the public highway. There is a bus stop within 0.25 miles and a two local convenience stores also within 0.2 miles and 0.3 miles of the property.
14. There is a doctor's surgery within 100 yards of the property.

The Applicant's case

15. Mrs Reeve says that she moved to the property with her husband in 2000 and did extra work to the property which they paid for. Her husband had passed away 6 years ago.
16. She would like to buy the bungalow for herself and to pass on to her son and his wife. Her son has trouble with his legs which means that he cannot

walk far and may well be unable to climb stairs in the future. They were both over 60.

The Respondent's case

17. The Respondent stated that they intended to oppose the appeal. The property was considered to be suitable for the elderly, being a single storey two bedroomed bungalow
18. The property was first let before 1 January 1990 and the current tenancy was granted on 23 September 1999 to Mr F and Mrs B Reeve whose respective ages at the time were 79 and 64.
19. The nearest bus stop was 350 metres away with services to Witham town, Chelmsford and Colchester. There were two convenience stores in Hatfield Peverel . The Hatfield Convenience store was 300 metres away and the East of England Co-Op Food store was approximately 500 metres away. The nearest doctor's surgery was 80 metres from the property and Boots' pharmacy was located some 210 metres from the property.
20. The property was fully centrally heated. There was access to the property over level ground and easy access on foot to the front entrance. There was a second front entrance door with one small doorstep with handrails on either side to aid access to the property which were installed by the landlord.

Determination

21. The Tribunal considered the evidence relating to whether the Property is particularly suitable for occupation by elderly persons, having regard to its location, size, design, heating system and any other features to which the Tribunal's attention were drawn.
22. In this respect, 'elderly persons' does not mean persons who are frail or severely disabled; provision is made in other paragraphs of Schedule 5 to the Act to exclude dwelling houses for such persons from the right to buy legislation. Consequently, the Tribunal is required to examine suitability from the perspective of an elderly person who can live independently (Paragraph 11 of the Circular 7/2004 referred to above) and not from one where there is a degree of immobility or other impediment to that elderly person. The personal circumstances of the Applicant are not to be taken into account.
23. The Tribunal is persuaded by the evidence on behalf of the landlord and the outcome of its inspection of the Property and its location and surroundings that the Property is particularly suitable for occupation by elderly persons, having regard to the criteria detailed in paragraph 11(1)(a) of Schedule 5 to the Act

24. In short, there is easy access to the Property on foot and it is situated on a flat and level site, it is on one level with two bedrooms. It benefits from a gas fired central heating system which has been recently serviced and has double glazing.
25. Further, the Property is in a convenient location with local amenities reasonably near to hand.
26. In light of the above, the Tribunal finds that the Property is particularly suitable for occupation by elderly persons.
27. As to whether the Property was let 'to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more', the Tribunal had regard to the evidence presented by the landlord. In its Statement of Case the Council stated that the Property had been first let before 1 January 1990 and that, when the current tenancy was granted, it was to a person who was aged 60 or more.
28. The Applicant did not challenge the evidence submitted by the Council in this respect. In these circumstances, the Tribunal finds that the letting test is satisfied.
29. The tribunal has every sympathy with the tenant and her son, who would find the bungalow suitable for his needs. However, this is not a consideration that the tribunal is able to take into account.
30. Accordingly, the Tribunal determines that the Council is entitled to rely on the exception to the right to buy contained within paragraph 11 of Schedule 5 to the Act and, thereby, to deny the Applicant of the right to buy the Property.

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.