



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

Case Reference : **MAN/ooCM/RTB/2022/0011**

Property : **10 Saltburn Road, Sunderland, SR3 4DJ**

Applicant : **Mrs Elaine Rutherford & Mr Anthony Rutherford
In person**

Respondent : **Gentoo Group Ltd**
Representation : **Mr Haywood, Counsel**

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 : **18 April 2023**

DECISION

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 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 9 November 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 29 November 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 a single page written representation from the Respondent.
Mr Haywood, Counsel, appeared for the Respondent, together with Mr Ramage.
Mr & Mrs Rutherford appeared in person
6. The Applicant identified various improvements which they have undertaken at their own cost, namely adaptations to the WC and bath, which have been disregarded in arriving at our decision.
7. The Respondents representations reiterated that they considered that the property was first let before January 1990, as it was built in 1947, although they could provide no written proof of previous lettings, Mr Rutherford 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 Mr Rutherford at the commencement of their Tenancy; a description of the bungalow; bus stop 0.3 miles away and Springwell Medical Centre and Lidl Supermarket within 0.4 miles.
8. The Applicants requested a hearing which was held in the afternoon at North Shields Courts and Tribunal Centre of the day of inspection 18 April 2023.

The Property

9. The Tribunal wrote to both Parties on 7 February 2023 and again 4 April 2023 regarding any further comments, and setting out that a Hearing would be held on 18 April 2023.
10. From the Application before the Tribunal and from the inspection undertaken by the Tribunal the Property is a post World War II detached bungalow. Internal accommodation comprises Front Porch, Reception Room, Kitchen, two Bedrooms and Bathroom. The bungalow is heated by way of gas fired central heating to radiators. Access is provided by way of a front path with 3 steps, plus handrail, and a further single step into the porch. An alternative easy gradient access is possible over the car space in the front garden, down a side path without any steps, to the rear door into the Kitchen. 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 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 built in 1947, and it is reasonable to assume that it was let by Sunderland City Council prior to transfer to Gentoo. A letting prior to 1 January 1990 has not been challenged by the Applicants.
15. The Respondent state that the Applicants were first granted a Tenancy on 25 January 2021, on transfer, and Mr Rutherford was 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 Mr Rutherford was aged over 60 when the tenancy commenced. The property is one of a large number of bungalows on an estate which appear to be 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 Applicants raised one matter which the Tribunal have had put to them on previous occasions, in similar cases, namely that the Tenants of other bungalows nearby have been allowed to purchase. The Tribunal were not presented with any specific evidence, but even if correct there could be various reasons why other sales occurred, for example the conditions set out in paragraph 13 of this decision may not have been met. Whilst the Tribunal have every sympathy with the Applicants who believe housing policy may not have been applied consistently, the Tribunal are bound to apply the relevant law as it applies to this property, and this application.
22. 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.