



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

Case Reference : CHI/18UD/RTB/2023/0001

Property : 10 College Green, Uffculme, Devon, EX15
3EH

Applicant : Angela Coombs & Graham John Morgan

Representative :

Respondent : Mid Devon Housing

Representative :

Type of Application : Refusal of Right to Buy

Tribunal Member : D Banfield FRICS
Regional Surveyor

Date of Decision : 26 June 2023

DECISION

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.

Background

1. By an application dated 17 April 2023 the Tribunal received an appeal from the Applicants against the denial of the right to buy 10 College Green, Uffculme, Devon, EX15 3EH. The denial was issued on 5 April 2023 by Mid Devon District Council (“the council”) on the grounds in paragraph 11 of Schedule 5 of the Housing Act 1985 (as amended) (“the Act”).
2. The Tribunal issued Directions on 27 April 2022 [11] indicating that it considered that the application was likely to be suitable for determination on the papers alone without an oral hearing and would be so determined in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing within 28 days. No objection has been received and the application is therefore determined on the papers.
3. The Directions also required the Respondent to prepare a hearing bundle and it is on the contents of this bundle that the Tribunal’s determination is made. Reference to page numbers in the bundle are shown as [*]
4. 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 and some are included in the hearing bundle. There has been no request for the Tribunal to make an external inspection.

The Issue

5. The application is based on the Respondent’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.[3] The Applicant requires the Tribunal to determine whether the exception from the right to buy for occupation by elderly persons applies to the Property.
6. The Respondent has denied the Applicant the right to buy the Property on the grounds that it was first let before 1 January 1990, is particularly suitable for occupation by elderly persons and was let for occupation by a person aged 60 or more all in accordance with paragraph 11 of schedule 5 of the Housing Act 1985.

The Law

7. The material parts of paragraph 11 to Schedule 5 to the Act are as follows:
 - (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 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.

(3)

(4)

(5)

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

8. The Office of the Deputy Prime Minister (ODPM) has issued circular 7/2004 (Right to Buy: Exclusion of Elderly Persons Housing), which 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 circular, deciding each case on its merits, but it does have regard to the criteria contained in the circular as a guide.

The Submissions and Evidence

9. In their application to the Tribunal [5] the Applicants explained that the property is a 1960s 2-bedroom terraced bungalow with kitchen, bathroom and living room, lawns to front and rear and gas central heating. It is located on a steep incline in a cul-de-sac with 17 other bungalows. It is a 5-10 minute walk to a small village shop/PO & surgery. There is an hourly bus service to the nearest towns of Tiverton and Exeter.

10. The Applicants adds that that they have had mixer/shower taps fitted to the bath, the wall above the bath tiled and erected a wooden shed to the rear of the property.

11. Access to both front and rear is said to be via 3 steps plus the threshold. No adaptations have been made, there are no warden or common room services. At least one property has been let to residents in their 40s and 3 similar bungalows in the road behind have been sold by the landlord.

12. In the Respondent's Statement of Case [15] the chronology is set out together with the applicable law. The location is described as in the heart of a rural village with an approximate population of 3,000.

13. Two bus stops are outside College Green some 2 minutes' walk away from where Tiverton and Cullompton may be accessed. Both towns have Tescos and Aldis as well as other high street shops.

14. There is a Nisa store approx. 0.3 miles/6 minutes' walk away other amenities being a hairdresser, fish and chip shop and public house.

15. The property is approximately 50 square metres with small level open plan gardens to the front and rear and forms part of a development of 18 dwellings specifically built to provide sheltered housing for the elderly. Gas central heating is provided by a Vaillant gas boiler and radiators in all rooms.
16. Photographs are provided showing the 3 shallow steps to the front path and one to the rear. [47 & 48] Hand rails were erected by the front door.
17. There is no on site warden but the Respondent holds a master key to all of the front door in case of accidents.
18. Mr Morgan was over 60 when the tenancy commenced and first let prior to 1 January 1990. Two properties were let in College Green to the under 60s when no-one suitable was available in accordance with Council policy. No properties in either College Green or Culm Haven have been sold as evidenced by the Register of Title dated 10 May 2023.

Decision

19. The Tribunal's jurisdiction is to determine whether the conditions contained in paragraph 5 of Schedule 11 of the Housing Act 1985 are met.
20. In making its determination the Tribunal is guided by but not bound by the ODPM circular [53] referred to.
21. In summary the Council may refuse an application where the property was first let before 1 January 1990, the tenant is 60 or over and the property is particularly suitable for persons aged 60 or over.
22. The Applicants refer to nearby sales which the Respondent denies. The Tribunal is not required to determine the correct position as this is not one of the factors referred to above that the Tribunal will consider in making its determination.
23. The remaining test is whether the property is particularly suitable for elderly persons.
24. In considering the ODPM circular's section on whether a property is "particularly suitable" the term "elderly persons" does not mean persons who are frail or severely disabled; provision is made in other paragraphs of Schedule 5 of the Act to exclude dwelling houses for such persons from the right to buy legislation. The Tribunal is obliged to examine suitability from the perspective of an elderly person who can live independently.
25. In the Upper Tribunal decision, *Milton Keynes v Bailey* [2018] UKUT 207 (LC), P D McCrea commented: "The question in a case such as this

is whether the property is particularly suitable. Some features may tend in one direction, while others point the other way. Some features may be so significant in themselves that they make the property positively unsuitable (for example that it could only be reached by a very steep staircase). But what is required is an assessment of the whole”.

26. The parties agree the description of the property and its location namely a two bedroom centrally heated bungalow in a village location with basic amenities but convenient to public transport. The steps at front and rear are shallow and should not impede “elderly persons”. Likewise whilst the road slopes up from Commercial Road the incline is excessive for an elderly but not unfit person.
27. The Tribunal is satisfied that the property does not possess any of the matters referred to in paragraph 12 of the circular regarding access, heating and location and as such is particularly suitable for occupation by elderly persons.
28. **In view of the above the application must fail 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.**

D Banfield FRICS

26 June 2023

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 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.