



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

Case reference : **LON/00AT/RTB/2022/0008**

Property : **55, Southern Avenue, Feltham,
Middlesex, TW14 9ND**

Applicant : **Ms M Dibbassey**

Representative : **In Person**

Respondent : **London Borough of Hounslow**

Representative : **(Ref: RTB9022 - Miss J Simpson)**

Type of application : **Appeal against the denial of the
Right to Buy**

Tribunal member : **Ms H C Bowers**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **3 July 2023**

DECISION

The Tribunal determines that the property is not particularly suitable for occupation by elderly persons. The Tribunal accepts the appeal and the Respondent's decision denying the Right to Buy is therefore set aside.

BACKGROUND

1. The Tribunal has received an appeal from Ms Margueritta Dibbassey against the denial of the Right to Buy of 55, Southern Avenue, Feltham, Middlesex, TW14 9ND ("the property"). The denial was issued by the London Borough of Hounslow (Hounslow) on the ground in paragraph 11 of Schedule 5 to the Housing Act 1985 (as amended) ("the 1985 Act"). The relevant RTB2 form which denied the Right to Buy was dated 11 April 2022 but was sent with a

letter from Hounslow dated 26 September 2022. The application was received by the Tribunal on 17 November 2022.

2. Due to the confusion in the documentation provided in this case a Case Management Hearing (CMH) was held on 14 February 2023. There have been two applications made for the Right to Buy. In respect of a second claim, Ms Dibbassey was told in April 2022 that she had the Right to Buy and details were sent regarding the price. However, by a letter dated 26 September 2022 Hounslow wrote to Ms Dibbassey to state that she did not have the Right to Buy. That letter enclosed a RTB2 form, that denied the Right to Buy on the grounds that paragraph 11 of Schedule 5 to the Housing Act 1985 applied.
3. A copy of the relevant paragraph of the Act is annexed to these directions.
4. The parties are referred to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for guidance on how the application will be dealt with.

INSPECTION

5. The Tribunal inspected the subject property on 26 April 2023. 55, Southern Road is a one-bedroom flat in a purpose-built block of flats. The block is a three-storey block of ground, first floor and second floor accommodation. There is an entry phone system giving access to the communal entrance hall. The block is of brick and partially clad construction with a pitched roof. The windows are UPVc double glazed units. It is located in a residential development of several similar block. There is a central area providing parking, a play area and communal bin stores.
6. The flat is situated on the second floor and is accessed by two flights of stairs. There is no lift to the second floor. The accommodation comprises an entrance hall; a living room with a kitchen accessed from the living room; a double bedroom with storage cupboards and a bathroom with bath, WC and wash hand basin. There is a storage cupboard in the entrance hall. The flat has a central heating system with radiators sourced from a communal system.
7. Within ¼ mile from the subject property on a flat walk are several shops including a small convenience store providing basic food stuffs and a Texaco petrol station with a Budgens store. At a similar distance from the property is a bus stop with a regular service. Less than ½ mile from the property is Feltham railway station and a wide range of shops on the High Street.

HEARING AND SUBMISSIONS

8. Neither party requested a hearing and therefore this decision was made on the basis of the papers submitted by the parties and from the observations made at the inspection.

9. It was clear at the inspection that the Applicant had submissions that she wished to make but considered that she had missed her opportunity. Accordingly, the Tribunal made further Directions inviting submissions from both parties. The Applicant provide submissions amounting to two pages. The Respondent has not engaged with this process and has not provided any documents or made any submissions.
10. Ms Dibbassey describes the property and notes that the postcode was first registered in 1980, suggesting that the property dating from that time. In her description the Applicant notes that there are no railings that would benefit older people. It is stated that a request made by a neighbour, who was in her 70's, to install a stair lift was refused. It is explained that whilst the High Street is approximately 0.7 miles away it is accessed by a bridge and whilst there is step-free access, this is a considerably longer journey. The flat becomes very hot during the summer months and an elderly tenant would struggle. An older neighbour was hospitalised with heat stroke. The communal heating and hot water system is unreliable and sometimes the supply will stop working for days and weeks at a time and this is not a priority for the Local Authority to fix. The bathroom is traditional with no special adaptations or railings and does not include a shower. The Applicant had been told that the water cylinder would not have sufficient pressure for a shower.
11. Ms Dibbassey has carried out a number of improvements including new kitchen cabinets and counters.
12. The Applicant was placed in the property in 2011, when she was 19 years old, and she has lived there independently since.
13. It was explained that there was no indication when Ms Dibbassey took the tenancy that it was particularly suited for older persons. She had applied to for the Right to Buy in 2019 and was told it had been granted. However, she did not proceed at that time. The occupiers in the block are a mix of ages. A neighbour was permitted to buy his flat when he was in his 50's. Previously there was an elderly neighbour who lived on the second floor who struggled with the stairs and hardly left the property. Another elderly neighbour on the first floor also struggles with the stairs.

DISCUSSION AND DETERMINATION

14. The application is based on Hounslow's decision to deny the Applicant the right to buy pursuant to 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.
15. Under paragraph 11 of Schedule 5 to the 1985 Act, the Right to Buy does not apply if the dwelling-house—
 - is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons, and

- 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).
 - was first let before 1st January 1990.
16. The Department for Communities and Local Government has issued Guidance on “Your Right to Buy Your Home” in April 2023 (“the Guidance”) which replaced the previous guidance. The Guidance sets out the main criteria to be taken into 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.
17. The Guidance identifies the following factors that the decisionmaker will normally expect to satisfy when applying the exception to the Right to Buy:
- 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.
 - The accommodation should normally be on one level.
 - In the case of a flat above ground floor level there should be easy access by lift.
 - There should be no more than two bedrooms.
 - There should be heating arrangements which function reliably and provide heat to at least the living room and one bedroom.
 - Your home should be located reasonably conveniently for shops and public transport, having regard to the nature of the area.
18. The Tribunal finds that the property was first let to Ms Dibbassey when she was 19 years old in 2011. There is no evidence of the date that the property was first let. Therefore, it was not 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).
19. In addition, the property has many features that would suggest that it could be suitable for occupation by elderly persons and having particular regard to the Guidance that has been given. However, the flat is a second floor flat in a block without the benefit of a lift. This is a factor that is specifically identified in the Guidance. Given the flat’s position in the block without the benefit of a lift, the Tribunal finds that the flat is not particularly suitable for occupation by elderly persons.
20. For these reasons, the Tribunal accepts the appeal and the Respondent’s decision denying the Right to Buy is therefore set aside.

Name: Ms H C Bowers

Date: 3 July 2023

RIGHTS OF APPEAL

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made **by e-mail** to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

ANNEX

Housing Act 1985 (as amended)

SCHEDULE 5

Exceptions to the Right to Buy

Certain dwelling-houses for persons of pensionable age

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.
- (3) Notwithstanding anything in section 181 (jurisdiction of county court), any question arising under this paragraph shall be determined as follows.
- (4) If an application for the purpose is made by the tenant to the appropriate tribunal or authority before the end of the period of 56 days beginning with the service of the landlord's notice under section 124, the question shall be determined by the appropriate tribunal or authority.
- (5) If no such application is so made, the question shall be deemed to have been determined in favour of the landlord.
- (5A) In this paragraph "the appropriate tribunal or authority" means—
 - (a) in relation to England, a residential property tribunal; and
 - (b) in relation to Wales, the Secretary of State.
- (5B) Section 231(1), (2), (3) and (5) of the Housing Act 2004 (appeals to Upper Tribunal) does not apply to any decision of a residential property tribunal under this paragraph.
- (6) This paragraph does not apply unless the dwelling-house concerned was first let before 1st January 1990.