



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

Case Reference : **BIR/17UH/RTB/2023/0003**

Property : **10 Cromford Way, Gamesley, Glossop, SK13
OJG**

Applicant : **Mrs Joan Brown and Mr Francis Brown**

Respondent : **High Peak Borough Council**

**Type of
Application** : **Right To Buy A Dwelling, Housing Act 1985,
Schedule 5, Paragraph 11, As Amended By The
Housing Act 2004, Section 181.**

Tribunal Members : **Judge C. P. Tonge, LLB, BA.
Mr N. J. P. Wint, FRICS.**

Date of Decision : **26 October 2023**

DECISION

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Application and Background

1. Mrs Joan Brown and Mr Francis Brown (the Applicants) gave notice under section 122 of the Housing Act of 1985 (the Act) to the landlord, High Peak Borough Council (the Respondent), of their intention to exercise their right to buy their dwelling, 10 Cromford Way, Gamesley, Glossop, SK13 0JG (the property).
2. The Council then served a notice (form RTB 2) dated 8 June 2023 on the Applicants under Section 124 of the Act denying the tenants' right to buy on the grounds set out in paragraph 11 of Schedule 5 of the Act.
3. By an application received by the tribunal's administration on 27 June 2023, the tenants applied to the First-tier Property Tribunal under paragraph 11(4) of Schedule 5 of the Act for a determination as to whether the grounds set out in paragraph 11 are satisfied.
4. The tenants' application was copied to the Respondent by the Tribunal. In reply the landlord served a notice indicating an intention to oppose the tenants' appeal.
5. Neither of the parties requested an oral hearing and therefore the case was listed to proceed with an inspection and paper determination on 26 October 2023. The parties were informed accordingly.
6. The Tribunal has received written representations for the landlord and tenant and these have been copied to the other party. The tenants' representations are contained in their application to the Tribunal with additional evidence on a page of representations, dated 16 September 2023. The Respondent's representations are contained in a Statement of Fact, dated 20 July 2023, attached to which there are various exhibits including a plan of the nearby estate and various photographs of the property.
7. The Tribunal has noticed that in some pre-determination correspondence an incorrect case reference number has been used. The correct case reference number is BIR/17UH/RTB/2023/0003.

The Property

8. The Tribunal inspected the property and surrounding area, commencing at 11.30 am on 26 October 2023. The Applicants were present, no one attended to represent the Respondent.
9. The property is a one bedroomed bungalow, having a prefabricated concrete frame that has been rendered and a pitched and tiled roof, at the

end of a terrace of three such bungalows. The interior of the property is one level. The row of bungalows share a common grassed garden to the rear, this grass being cut by staff of the Respondent. There is a common gateway at one end of the garden and the Applicants have installed a further gateway at the opposite end of the rear garden. There is a small patch of flag stones in the rear area that has a slightly uneven surface, probably due to settlement, but this is not significant. The property has PVCu double glazing throughout.

10. At the front of the property there is a private yard that is covered with flat and even flag stones. This area has a fence and a gate and contains a plastic exterior store and one wheely dustbin. The front exterior door has one step with a small rise. This rise was not measured because Mrs Brown pointed out that she had caused this step to be put in place and at that time there was no front doorstep. The Tribunal was already aware that the tenants had moved into the property in 2004 and therefore presume that the step had been fitted at that point. The Tribunal disregards the step as a tenant's improvement. The rise from the front yard to the front hallway/utility room is approximately nine inches.
11. The hallway/utility room is the only room in the property that is not heated by the central heating system, it leads to a further door, designed also as an exterior door, leading into an inner hallway. There is a fully fitted kitchen with three wall cupboards that has been fitted to incorporate a sink top and a cooker that are the tenants and were already in place before the Respondent fitted the kitchen. Lower wall tiles in the kitchen have been fitted by the Respondent, higher wall tiles have been fitted by the Applicants. There is an extractor fan.
12. The bathroom has a bath with an electric shower over it, a hand wash basin and a toilet, is fully tiled but lacks an extractor fan. There is an airing cupboard containing a combi-boiler for hot water and the central heating system.
13. The living room has a sliding patio door with a step with a small rise leading out into a paved area of the garden. This room contains a fireplace with an electric fire. The room also contains a Carelink Emergency Alarm system installed by the Respondents through which the tenants may summon assistance if they need it. The tenants have also been supplied with an emergency help call button that can be carried about the property.
14. The Tribunal then inspected the nearby area. There is a parade of shops approximately 350 yards away from the property, containing a Londis general food store, post office, pharmacy, community hub, council offices, church and community centre. The nearest bus stop is 140 yards from the property, providing a frequent bus service into Glossop. The routes to both

the shopping parade and the bus stop are mostly flat and easily walked by a person of 60 years of age and over who is capable of living independently despite some limitations owing to age and who is not frail or severely disabled.

The Law

Paragraph 11 of Schedule 5 of The Act provides that:-

- 1) The right to buy does not arise if the dwelling-house
 - a) is particularly suitable, having regard to size, design, heating system, and other features, for occupation by elderly persons, and
 - b) was let to the Tenant or 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 the title of his...

6) This paragraph does not apply unless the dwelling house concerned was first let before the 1st day of January 1990.

The Circular from The Office of the Deputy Prime Minister (ODPM Circular 07/2004) sets out guidance as to the floor plan and design features of a property that can be considered to be particularly suitable for occupation by elderly persons of age 60 and over. It also provides guidance as to what the surrounding area should contain. Further it defines an elderly person as being a person of 60 years of age and over who is capable of living independently despite some limitations owing to age and who is not frail or severely disabled.

The Issues

15. The Applicants have raised the issue that they would like to buy the property because Mr Brown has been diagnosed as being blind and they wish to spend funds available to them to make the property more suitable for his needs, installing a walk in shower in addition to the bath and removing the trip hazards that are present in the rear paving slabs. The Tribunal, although having sympathy with Mr Brown, determines that blindness is a severe disability that is excluded from the definition of an elderly person for these purposes. The Tribunal will determine whether the property is particularly suitable for occupation by persons who are 60 years of age and over and are capable of living independently despite some limitations owing to age and who are not frail or severely disabled.

16. The Tribunal determines that the slightly uneven garden paving slabs do not present as a trip hazard to a person with sight. The Applicants can, if they wish to do so, report this issue to the landlord who may wish to take action because of the severe disability that Mr Brown suffers. The Tribunal takes into consideration the fact that the property does not have a walk in shower.
17. The Respondent states that the premises had first been let prior to 1 January 1990 and this has not been challenged by the Applicants. The Applicants' tenancy commenced in November 2004, when Mr Brown was 64 years of age and Mrs Brown was 62 years of age.
18. The only matter for the Tribunal to determine is whether under Paragraph 11(1) (a) of The Act the dwelling house is particularly suitable... for occupation by elderly persons.

Written Submissions

The Applicant

19. These have already been dealt with above. During the inspection Mrs Brown sought to raise further representations as to the fact that the Respondent has sold similar properties to persons who are not elderly. These should have been raised in writing before the inspection to permit them to be considered by the Respondent, but in any event this Tribunal is assessing whether this property is particularly suitable for occupation by elderly persons and has no idea as to why other properties may have been sold. The Tribunal will not consider these oral representations any further.

The Respondent

20. The Respondent submits that the property is particularly suitable for occupation by elderly persons and the Applicants' right to buy is being denied because of that.
21. The Respondent has provided a plan of the immediate area pointing out bus stops and the location of shops and photographs of the property that show the steps at the front and rear door. Submissions contain a description of the local arrangements for elderly persons, stating that this property is part of that scheme. There is a detailed description of the Carelink Emergency Alarm system.

The Deliberations

22. In the determination of whether or not the property itself is particularly suitable for occupation by elderly persons, the Tribunal disregards the tenant's improvements and in particular the step at the front door resulting in there being a 9 inch rise at the front door of the property. However, the Tribunal notes that the entrance patio door at the rear of the property has a step with a shallow rise. Further, the bungalow does not have a walk in shower, but otherwise the bathroom has a full suite, acceptable for normal purposes. The bungalow does have effective central heating, a Carelink Emergency Alarm system and double glazing. The Tribunal determines that the bungalow is particularly suitable for occupation by elderly persons.
23. The Tribunal decides that the paths to the nearby parade of shops and bus stop can be walked by a person of 60 years of age and over who is capable of living independently despite some limitations owing to age and who is not frail or severely disabled. The bus services stopping at the bus stop provide a frequent bus service.
24. The Tribunal determines that the property is particularly suitable for occupation by elderly persons.

The Decision

25. The requirements of Paragraph 11 (1) (b) of the Act as to date of the first letting and the age of the occupier are met.
26. The bungalow does provide a home that is particularly suitable for occupation by elderly persons.
27. The Tribunal therefore determines that the grounds set out under paragraph 11 of schedule 5 of the Act are satisfied and that High Peak Borough Council may rely on those grounds to deny the Applicants' their right to buy.
28. If either party to this case should wish to appeal against this Decision, appeal is to the Upper Tribunal. That party has 28 days to deliver to this First-tier Tribunal an application for permission to appeal, stating the grounds of appeal and the particulars of the grounds, also stating the result that the appellant seeks in raising the appeal.

Judge C. P. Tonge

This Decision was sent to the Parties on 1ST November 2023