



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

**Case Reference** : **MAN/00CH/RTB/2023/0005**

**Property** : **24 Lingey Gardens, Wardley,  
Gateshead NE10 8SR**

**Applicant** : **Mrs Veronica Jopling and Mr Brian Jopling**

**Respondent** : **Gateshead Metropolitan Borough Council**

**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** : **5 September 2023**

---

**DECISION**

---

© CROWN COPYRIGHT 2023

## **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 24 April 2023 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 13 May 2023 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 written representations from both Parties.
6. The Applicants submitted two written responses, including photographs. The information enclosed with the Application stated that they did not consider the bungalow to be unsuitable for the elderly, and that they had been secure tenants for over 40 years but were only now in a position to consider purchasing the bungalow, albeit with a mortgage. Apparently the property had been assessed by a Council employee to assess its value and what discounts might be applicable. It is stated that the property is in need of updating but they would be willing to do that were they to buy. It is stated that there are many two-bedroom bungalows that have been bought, especially on the estate where they used to live prior to moving to this property. They offer to disallow anyone under 60 to move into the property should they sell in the future.

In a subsequent letter the Applicants point out that Mrs Jopling was aged under 60 when she signed the joint tenancy. It is also pointed out that it is impossible to clean the back kitchen window without a stepladder given its height off the ground.

7. The Applicant identified various improvements which they have undertaken at their own cost, namely extra kitchen cupboards, timber flooring, bedroom

wardrobes, and various improvements to the garden both fencing, gate, patio decking, shed etc.

8. The Respondents representations reiterated that they considered that the property was first let before January 1990, Mr Jopling was aged over 60 at the time the joint Tenancy commenced, and that the property was particularly suitable for occupation by an elderly person.

The Respondents confirmed the ages of the Tenants at the commencement of their Tenancy; a description of the bungalow; easy access on foot to the property, and no discernible gradient nearby; 4 bus stops within 300 metres of the property and a Londis mini-supermarket within 125 metres, all shown on the plan enclosed with their response.

9. Neither Party requested a hearing. The Tribunal met to determine the matter on 5 September 2023.

### **The Property**

10. The Tribunal wrote to both Parties on 5 May 2023 acknowledging the application, and also to the Respondent requesting any representations. The letters set out that a Tribunal Chair had decided that the matter could be decided on the basis of written evidence without the need for an oral hearing but that either party could request an oral hearing prior to the date of the inspection. Subsequent letters confirmed that the Tribunal would inspect the property on 5 September 2023 and it was understood that a Council employee would also attend, although it was pointed out in writing that the Tenant could decide whether or not to admit.
11. The property is a semi-detached bungalow on an estate of similar properties stated by the Applicants to have been built in 1901 (not confirmed). The accommodation comprises single Reception Room, two Bedrooms, Kitchen, and Bathroom. All heated by way of gas fired radiator central heating. The Respondents state that the bungalows on this estate were converted from one bedroom to two bedroom around 2009 due to the high demand for older persons accommodation in the area. As part of the works level access was created and walk-in showers added.
12. Front access is by way of two steps from the pavement then a level footpath to the front door with one further step and grab rail.

The Tribunal observed there is a second access down a very gentle slope from the front footpath to a side door giving access to the kitchen, without any steps. The rear bedroom has French windows to a small patio with steps, with handrails, down into the rear garden, which can also be accessed from the side path, again by way of 3 or 4 steps.

## **The Law**

13. 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 1<sup>st</sup> January 1990*
14. 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**

15. 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.
16. The Respondent confirmed that the Property had been first let before 1 January 1990 and that has not been challenged.
17. The Parties state that the Applicants were first granted a Tenancy on 1 February 2016 and Mr Jopling was aged over 60 on that date (although Mrs Jopling was not). The legislation simply requires one Tenant to be over 60 for the Local Authority to be able to rely on an exemption.

18. 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.

19. The Tribunal found that Mr Jopling was aged over 60 when the joint tenancy commenced. The property is one of a group of bungalows which are particularly suitable for elderly persons in an area which is well served by local buses and has a mini-supermarket nearby although other shops namely Co-Op, Farm Foods and Newsagent are roughly one and a half miles distant. The interior of the bungalow is on one level, and it is physically attractive to elderly persons.
20. 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.
21. 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.
22. 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.
23. 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 have been allowed to purchase. The Tribunal were not presented with any specific evidence, but even if correct there could be various reasons why they 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 if the Local Authority's 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.
24. 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.

**Mr ID Jefferson**  
**5 September 2023**