



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

Case Reference : CHI/00HY/RTB/2023/0002

Property : 41 Oak Lane, Figcheldean, Salisbury,
Wiltshire, SP4 8JS

Applicant : Mrs Beryl Dowson

Representative : None

Respondent : Wiltshire Council

Representative : None

Type of Application : Refusal of Right to Buy

Tribunal Member : D Banfield FRICS, Regional Surveyor

Date of Decision : 30 January 2024

DECISION

Background

1. By way of a letter received by the Tribunal on 3 May 2023 and a subsequent application in the prescribed form received 30 August 2023, the Applicant seeks to appeal the denial of the right to buy of 41 Oak Lane, Figcheldean, Salisbury, Wiltshire, SP4 8JS. The denial was issued on 25 April 2023 by Wiltshire Council (“the council”) on the grounds in paragraph 11 of Schedule 5 of the Housing Act 1985 (as amended) (“the Act”). The Tribunal accept the application as having been made in time.
2. The Tribunal issued Directions on 23 October 2023 [27] 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 required the Respondent to respond to the Applicant’s case to which the Applicant could reply and subsequently prepare a hearing bundle. No reply from the Applicant was received and the Tribunal’s determination is made on the original Application and Respondent’s response all of which is contained in the hearing bundle. 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 were salient to the issues the parties had permission to include photographs and some are included in the hearing bundled. There has been no request for the Tribunal to make an 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. 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.[23]

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 [32] the Applicants explained that the property is a brick built bungalow with 4 rooms and heated by night storage heaters. Shops are in Dorrington, 9 miles away and the bus stop is one mile distant.
10. The Applicant adds that that they have had a new kitchen floor and laminated living room, passage way and bedrooms. They have painted and decorated throughout.
11. In the Respondent's Statement of Reasons for Refusal [39] it is stated that;
 - *The property was built and first let in 1975 (ODPM Circular 7/2004 7 4-4696.43)*
 - *The property is an end of terrace bungalow constructed in 1975, situated in a residential street in Figheldean, approximately 2.7 miles from Durrington. The nearest facilities to the bungalow are in Durrington, for which regular bus services operates. The bus stop is approximately 859 metres from the bungalow on a mostly flat route.*
 - *The property is a bungalow, on one level*

- *The rooms are of modest size, neither too small nor too large; moving round the property is easy.*
 - *The property is served by electric heated dimplex radiators and hot water is supplied by an immersion heater.*
 - *The property has a level rear garden with access around the side via a flat path. There is 1 shallow step from the garden into the rear entrance of the bungalow with a hand rail on the property side of the door.*
 - *There is a tarmac car park approximately 25 metres away that services this and neighbouring properties.*
 - *The property can be accessed from the 6% gradient footpath with handrail leading from the car park. The access to the property is via a covered front door set back slightly from the path with a grab rail either side.*
12. A report of an inspection conducted on 3 November 2023 [41] confirms the description above and includes photographs of the interior and exterior of the property and its surroundings. There is also a plan showing the route and distance to the nearest bus stop together with a timetable for route X5.

Decision

13. The Tribunal’s jurisdiction is to determine whether the conditions contained in paragraph 5 of Schedule 11 of the Housing Act 1985 are met.
14. In making its determination the Tribunal is guided by but not bound by the ODPM circular [57] referred to.
15. 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.
16. 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.
17. 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.”

18. The Respondent has provided a detailed report of the property which has not been challenged by the Applicant. The Tribunal is satisfied that the property meets the requirements set out in paragraph 12 of the ODPM circular with the exception of 12 (f) in respect of the distance to the nearest bus stop.
19. The ODPM circular refers to such a bus stop as being within 800 metres of the property whereas the evidence submitted is that in this case it is 859 metres away.
20. In all other respects the property fulfils the requirements of the ODPM circular and, given the guidance given by the Upper Tribunal in the Milton Keynes v Bailey case referred to above the Tribunal is satisfied that taking the features of the property as a whole it is particularly suitable for occupation by elderly persons.
21. **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

30 January 2024

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.