



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

**Case Reference** : **MAN/00BM/RTB/2023/0004**

**Property** : **34 Trencherbone, Radcliffe,  
Manchester, M26 3WT**

**Applicant** : **Ms Kirsty Louise Rice**

**Respondent** : **Six Town Housing**

**Type of Application** : **Housing Act 1985 - Schedule 5,  
Paragraph 11, Right to Buy**

**Tribunal Members** : **Judge C Wood  
Tribunal Member J Elliott**

**Date of Decision** : **7 February 2024**

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**DECISION**

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## **ORDER**

The Tribunal orders as follows:

1. that the Respondent has failed to comply with the requirements of section 124(2) of the Housing Act 1985 and that the Respondent's notice dated 10 March 2023 is invalid.
2. In any event, it is not satisfied that the requirements of Paragraph 11 of Schedule 5 of the Housing Act 1985 have been met such that the Property is to be regarded as particularly suitable for occupation by an elderly person.
3. In view of its determination in paragraph 2 above, the Respondent is not entitled to rely upon Paragraph 11, Schedule 5 of the Housing Act 1985 to deny the Applicant the right to buy the Property.

## **BACKGROUND**

4. Following the Applicant's notice dated 16 November 2022 to the Respondent of their wish to buy the Property pursuant to the Housing Act 1985, ("the Act"), the Respondent served a notice dated 10 March 2023 denying the Applicant the right to buy on the grounds that the Property is particularly suitable for occupation by elderly persons and that it was let for occupation by a person aged 60 or more, as provided in Paragraph 11, Schedule 5 of the Act.
5. By an application dated 27 March 2023, ("the Application"), the Applicant applied to the Tribunal under Paragraph 11(4) of Schedule 5 of the Act for a determination as to whether the grounds contained within Paragraph 11 were satisfied.
6. The Respondent confirmed their intention to oppose the appeal set out in the Application.
7. The Tribunal determined the Application on the papers on Tuesday 12 December 2023, following an inspection of the Property on the same date.

## **INSPECTION**

8. The Property is a brick-built, ground floor flat in a small development of similar properties. Access to the front entrance to the Property is through a level paved front yard from a communal pathway.
9. The accommodation comprises: entrance hall, living room, kitchen, 2 double bedrooms and bathroom. The Property has gas central heating radiators in all rooms.
10. Local shops and bus stops for buses into Radcliffe, Bury and Manchester are within 800 metres of the Property.

## **THE LAW**

11. Paragraph 11 of Schedule 5 of the Act provides 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 an elderly person; and,
  - (b) was let to the Applicant or a predecessor in title of his for occupation by a person who is aged 60 years or more (whether the Applicant or a predecessor or another person).
12. The Circular from the Office of the Deputy Prime Minister dated December 2004 (ODPM Circular 07/2004) (“the Circular”) sets out the criteria for establishing whether a dwelling house is particularly suitable for occupation by an elderly person as provided for within the Act.
13. In paragraph 12, the Circular states that the “main points” which should be considered are:
- There should be easy access on foot to the dwelling. In general, access is unlikely to be considered as easy if it is necessary to climb 3 or more steps and there is no handrail
  - The accommodation should be on one level
  - Where a flat is above ground level, there should be a lift
  - There should be no more than 2 bedrooms
  - There should be heating that is reliable and can be safely left on overnight
  - The dwelling house should be located conveniently for local shops and public transport. In an urban area, this should be no more than 800 metres from the nearest shops selling basic food items i.e. milk and bread. In a rural area, the dwelling house should be no more than 800 metres from the nearest public transport that provides at least 3 opportunities for shopping each week.
14. The Secretary of State will consider other features to those identified in paragraph 12 but has decided that the size of a garden, which is often cited by tenants as a reason why a property is not particularly suitable for occupation by elderly persons is not an issue that should be taken into account when determining an appeal, (paragraph 14 of the Circular).

## **REPRESENTATIONS**

### **Applicant’s representations**

15. The Applicant’s representations are summarised as follows:
- 15.1 the Property has only one exit which could make exiting the Property in an emergency difficult for an elderly person;
  - 15.2 the Property has 2 bedrooms where the Applicant considers that a one-bedroom property would be more suitable for an elderly person;
  - 15.3 the Applicant’s tenancy started on 7 August 2006 and her date of birth is 30 April 1985, meaning that she was 21 years old at the start of the tenancy;
  - 15.4 a number of ground floor flats on the Trencherbone estate have been sold to their tenants under the Right to Buy legislation and the

Respondent's denial of the Applicant's right to do so appears to be discriminatory;

- 15.5 the Applicant has never been told by the Respondent that they would not have the right to buy the Property;
- 15.6 the Respondent's notice of denial of the Applicant's right to buy is dated 10 March 2023, almost 4 months after the date of the Applicant's notice. The Applicant believes that the Respondent was required to send their notice within 4 weeks of receipt of their notice;
- 15.7 the Applicant confirms that there is a local bus route to Radcliffe, Bury and Manchester and a newsagents nearby to the Property.

#### Respondent's representations

16. The Respondent's representations are set out on the form confirming its opposition to the Application as follows:
  - 16.1 the Property was first let on 13 September 1976;
  - 16.2 they state that, "In our opinion the property is particularly suitable to let for the elderly as seen in previous tenancies at the property. It has accommodation for a carer if necessary".

#### **REASONS**

##### Landlord's Notice

17. The Tribunal notes that the Respondent has failed to comply with the requirement for service of its notice as set out section 124(2) of the Act and that the Respondent's notice appears to be invalid accordingly.
18. The Tribunal further notes that, although this issue is specifically raised by the Applicant in her submissions, the Respondent has not provided any explanation for its failure of compliance.

##### The Application

19. In the event that the failure of compliance does not invalidate the Respondent's notice and, for the sake of completeness, the Tribunal has determined the Application in any event.

##### The Letting Requirement

20. The Respondent has not provided any evidence to support its statement that the Property was previously let to elderly persons.
21. The Applicant's statement regarding the start date of the tenancy (7 August 2006) is not challenged by the Respondent and the Tribunal does not consider that there is any reason to doubt the Applicant's evidence regarding her date of birth. As at the start of the tenancy, the Applicant was 21 years old.
22. The Tribunal therefore determines that, in the absence of any supporting evidence that the Property was let to any predecessor in title of the Applicant for occupation by a person who was aged 60 or more, the requirement in paragraph 11 (1) (b) of Schedule 5 to the Act have not been satisfied.
23. The Tribunal accepts the Respondent's evidence that the Property was first let before 1 January 1990.

### Particular Suitability For Occupation By Elderly Persons

24. Having regard to its inspection and the parties' written representations, the Tribunal is satisfied that, having regard to the the size, design and location of the Property, it could be considered as a property "particularly suitable for occupation by elderly persons". In particular, the Tribunal notes the following:
  - 24.1 there is easy access on foot to the Property;
  - 24.2 the accommodation is on one level;
  - 24.3 there are no more than 2 bedrooms;
  - 24.4 there were central heating radiators in all rooms and there was no evidence to suggest that the gas central heating was not functioning reliably; and,
  - 24.5 the Property is located reasonably conveniently for shops and public transport.
25. The Tribunal further notes that the Applicant's statements regarding the sale of other ground floor flats in the development within which the Property is located is not a factor to be taken into account in its determination of the Application.

### Additional Guidance in the Circular

26. The Tribunal notes that there was no challenge to the Applicant's statement that they had never been told that the right to buy would not be available in respect of the Property.
27. The Tribunal refers to paragraph 17 of the Circular where it states that: "As a matter of good practice, it is recommended that landlords should also advise any tenant or prospective tenant of the exclusion if they consider that a particular property is likely to be exempt from the Right to Buy under paragraph 11."

**Judge C Wood**

**7 February 2024**