



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

Case Reference : **MAN/00CM/RTB/2024/0006**

Property : **45 Kidderminster Road, Sunderland SR5 5FD**

Applicant : **Mrs Susan White**

Respondent : **Gentoo Group Limited**

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 Jefferson TD BA BSc FRICS
Mrs K Usher**

Date of Decision : **22 August 2024**

DECISION

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DECISION

1. The Tribunal find that the property was built around 2021 and could not have therefore been first let before 1 January 1990 which is a mandatory pre condition under the Act under Schedule 5 paragraph 11. The Landlord may not therefore rely on paragraph 11 of Schedule 5 of the Housing Act 1985 as amended by the Housing Act 2004 Section 181. The Landlords decision denying the Right to Buy is therefore set aside.

Application and Background

2. 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.
3. The Landlord then served a Notice (form RTB 2) dated 23 May 2024 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.
4. By an application dated 18 June 2024 the Applicant applied to the Tribunal for a determination as to whether the dwelling house is suitable for occupation by elderly persons.
5. The Application was copied to the Landlord.

Representations and hearing

6. In addition to the papers referred to above the Tribunal did receive brief written representations from both Parties.

The Tenant's comments dated 4 July 2024 state that

"it is a new build it was built in 2021 and not let until 2022. ... this property was not let before 1st January 1990 ..."

The Landlord's representation dated 12 August 2024 stated that:

"we intend to oppose the appeal ...

We confirm the property was not first let before 1 January 1990.

The current Tenant did not acquire the tenancy by succession on the death of a previous tenant.

Brief details of why we consider the exclusion in para 11 of Schedule 5 to explain this case.

Was let to occupants over 60 year old.

It is particularly suitable for elderly persons i.e. bus stop outside, doctors nearby, shops less than half a mile away – all within walking distance"

7. Neither Party requested a hearing. The Tribunal met to determine the matter on 22 August 2024.

The Property

8. The Tribunal wrote to both Parties on 13 August 2024 referring to previous correspondence dated 19 June 2024 from the Tribunal, and setting out that the matter would be determined on 22 August 2024. Neither Party requested a Hearing. In view of facts set out later there was no requirement for the Tribunal to detail the accommodation of the property.
9. From the Tribunal's inspection the property would appear to have been built around 2021. Internal accommodation comprises Living Room, Kitchen, two Bedrooms, Bathroom with gas fired radiator central heating close to local amenities.

The Law

10. 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 1st January 1990*
11. 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

12. 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.
13. Both Parties confirm that the property was not first let before 1 January 1990. The facts therefore do not permit the Landlord to refuse Right to Buy under paragraph 11 of Schedule 5 of the Act as the requirement for the property to have been first let before 1 January 1990 has not been met. There is no requirement to consider the matter any further.
14. The legislative preconditions are therefore not satisfied for the Landlord to deny the right to buy. We do not intend to detail any of the tests set out in Circular 7/2004 of the Office for Deputy Prime Minister regarding location, size, design, heating and other features.
15. The Tribunal found that the property was not first let before 1 January 1990.
16. This pre-requirement of the Act has not been met.
17. The Landlord may not therefore rely on paragraph 11 and the Tenant's Application succeeds.

Chairman