



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

Case Reference : CHI/24UJ/RTB/2024/0001

Property : 24 Fairlie Park, Ringwood, Hampshire,
BH24 1TU

Applicant : Helen Fricker & Adrian Fricker

Representative : Lester Aldridge LLP

Respondent : New Forest District Council

Representative : None

Type of Application : Refusal of Right to Buy

Tribunal Member : Regional Surveyor Coupe

Date of Decision : 19 September 2024

DECISION

Background

1. By an application in the prescribed form dated 18 June 2024 and received by the Tribunal the same date, the Applicants seek to appeal the denial of the right to buy of 24 Fairlie Park, Ringwood, Hampshire, BH24 1TU (“the property”). The denial was issued on 24 April 2024 by New Forest District 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 25 June 2024 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. A bundle extending to 127 electronic pages was submitted which included the completed RTB1 Appeals Form, a copy of the landlord’s Form RTB2, Witness Statements on behalf of the Applicants and the Respondent, and associated documentation and photographs. 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 bundle. 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 Applicants 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. [14]

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 into 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. Within the completed application form to the Tribunal [7] and the Witness Statement of Helen Fricker dated 19 July 2024 [108] the Applicants state that the property is a semi-detached bungalow built in or around 1953. It has two bedrooms and one bathroom, and is served by gas fired central heating. The closest bus stop is believed to be around 0.2 miles from the property and a convenience store is located within half a mile. There is a GP practice around 0.5 miles distance, a supermarket in Ringwood over 1 mile away and The Mount park around 0.6 miles from the property.
10. The Applicant states that Mrs Fricker’s tenancy of the property commenced on 27 September 2006 and, at such time, the date of birth of the eldest person occupying the Property was 2 May 1923 (6).
11. Mrs Fricker says that at the commencement of her tenancy she was, and still is, less than 60 years of age. At such time a friend, who was over the age of 60, also occupied the Property for a period of approximately two years, an arrangement which ceased no later than 2008. The Applicant’s husband, who is under the age of 60, also occupies the property.
12. In disputing the suitability of the property for occupation by an elderly person the Applicants refer to the size of the garden, being some 51 feet

in length at the front and 101 feet at the rear, and with conifer hedging in excess of 8 feet in height. As such, they consider the garden unmanageable for an elderly person, thereby rendering the property as unsuitable for occupation by such person.

13. The Applicants also refer to the access at the rear of the property, via a step, as unsuitable for the elderly; a photograph of the step was provided (117).
14. The Applicants refer to the adjoining bungalow having been acquired by the tenants in 1999 when, at such time, those tenants were aged 49. The two bungalows, to the best of their knowledge are similar. The Applicants state that as the adjacent bungalow is now in private ownership the Respondent has refused to undertake roofing works to their property.
15. The Applicants state that the Council agreed to sell the property to them under a Right to Buy application filed in 2012. However, the Applicants decided not to proceed with the purchase at that time. Assuming they would be entitled to acquire the property at some future date, the Applicants undertook renovation and improvements to the property, costing in excess of £25,000. A series of undated photographs were provided.
16. The Applicants state that the Respondent has failed to provide any documentary evidence that the property was let before 1 January 1990 and has therefore failed to satisfy the exception in paragraph 11 of Schedule 5 of the Act.
17. The Respondent relies upon the statement of Ms Kirsty Farmer, Service Manager for Housing Resident Services [22], signed and dated 10 July 2024.
18. The statement records that an Officer of the Respondent visited the Property on 17 April 2024 to assess the suitability of the property for occupation by elderly persons. The notes of the visit were provided at exhibit KF2 [50].
19. The statement refers to the evidence the Respondent relies upon to support the reasons to deny the Right to Buy, namely that the dwelling-house:
 - Was first let before 1 January 1990; and
 - Is particularly suitable for elderly persons aged 60 or over; and
 - Was let for occupation by such person (whether or not that person was a tenant).
20. The Respondent states that:
 - The property was first let on 30 August 1976 [52].

- On 23 February 2004 the property was let to Mrs H Fricker (nee Shields) and Miss G Hannam as joint tenants. [23] & [84] At the commencement of this tenancy Miss G Hannam was 80 years old. On 1 October 2006 the joint tenancy was surrendered and, on 2 October 2006, Mrs H Fricker became the sole tenant. [23] & [88]
 - On 26 July 2012 the Respondent issued a Form RTB2 in reply to a Right to Buy application from the tenants, which admitted their right to buy the property. An Offer of Sale, S125, was issued by the Respondent on 19 October 2012. The tenants withdrew their application on 7 March 2013.
 - The Respondent was in error in admitting the 2012 claim due to an oversight of the initial joint tenancy and the age at the commencement of that tenancy of Miss G Hannam.
 - The property is a two-bedroom semi-detached bungalow constructed in 1955 with accommodation on one level. Access is via a concrete and grass path, with a very slight downward slope on the approach to the entrance. The path to the entrance is 16 metres with a turn at right angles for 5 metres. The path is 1 metre wide and in good condition. There is one step up to the front door which is 15cm high and 50cm deep. There are no handrails along the path or by the front door. Access to the property is therefore considered easy.
 - Gas fired central heating to radiators in all rooms.
 - Two convenience stores are located at 0.4 miles distance from the property. Both have adequate access. Two supermarkets are located within 1.6 miles. Both are accessible by bus.
 - Bus stops are located convenient to the Property.
 - The Respondent enclosed ODPM circular 07/2004.
21. The Respondent provides plans showing the route and distances to local shops and the nearest bus stop, together with a timetable for the Ringwood town circular bus route [95].

Decision

22. The Tribunal's jurisdiction is to determine whether the conditions contained in paragraph 5 of Schedule 11 of the Housing Act 1985 are met.
23. In making its determination the Tribunal is guided, but not bound, by the ODPM circular [98] referred to.

24. The Council is entitled to 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.
25. 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.
26. 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."
27. The Tribunal first turns to the question as to whether the property was first let before 1 January 1990, a requirement that the Applicants state the Respondent has failed to evidence.
28. The Respondent, in the Witness Statement of Ms Farmer states that the property was first let prior to the pertinent date [23]. At page [52] the Respondent submits an internal document titled "*New Forest District Council – Elderly Persons Accommodation – Details of Applications received for bungalows & ground floor flats*" where, at page 1, the form asks "If the current tenancy began after 1 January 1990 when was the property first let?". The response provided is 30/08/1976.
29. The Tribunal finds that it is common ground between the parties that the property was built in or around 1953-1955. There is no suggestion from the Applicants that the property has, at any time since, been utilised as anything other than social housing.
30. Having carefully considered the evidence adduced, the Tribunal is satisfied, on the balance of probabilities, that the property was let prior to the 1 January 1990. The Respondent stated such in a Witness Statement and has provided internal documentation referencing a date in 1976. The Applicants have provided no evidence to refute this.
31. Turning next to the requirement that the property 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). The Tribunal finds that one of the joint Applicants, Mrs H Fricker, first took a tenancy of the property on 23 February 2004, such tenancy being a joint tenancy with a Miss G Hannam and that, at such date, Miss Hannam was aged 60 years or more.

32. In regard to the property itself, the parties agree on the size, accommodation and heating provisions, and the bungalow's location as being within 0.5 mile of public transport and a convenience store.
33. The two points of significant difference are the suitability, or otherwise, of the garden and the rear access into the bungalow for an elderly occupier.
34. The Applicants do not challenge the Respondent's view that access to, and through, the front door is reasonable. However, they assert that the height of step into the rear of the property is not suitable for an elderly person. Likewise, they state that the extent of the gardens and the height of boundary hedging are not suited to an elderly occupier.
35. The photograph provided by the Applicants shows the rear step into the property as being two bricks in height with, what appears to be, a concrete slab laid in front of the step to lessen the height. [117]. A photograph of the hedge was provided at [116].
36. Paragraph 12(a) ODPM circular refers to "the number and size (in particular, the height) and curvature of any steps up to the dwelling itself ...". The Tribunal finds that the height of the rear step would not prevent an elderly person accessing the property. The step sits above, what appears to be, the damp proof course and is of standard height, lessened in this instance by a stepping slab. Furthermore, there is no challenge from the Applicants that the property is not easily accessible from the front entrance.
37. In regard to the garden, photographs of which were included in the bundle at [114-116], the Tribunal finds the space to be level, even and, although generous in size, not so onerous as to prohibit an elderly person occupying the property. The height of the boundary hedge is a matter between neighbours and not a factor to which significant weight will be placed in this determination.
38. The Tribunal is satisfied that 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, including the stepped rear access and the size of garden, the property is particularly suitable for occupation by elderly persons.
39. The Tribunal makes no findings of fact upon the Respondent's decision to admit the tenants Right to Buy application on a previous occasion nor on the Respondents decision to dispose of their interest in the adjoining bungalow, as neither point is relevant to the Tribunal's jurisdiction in this instance.
40. **In view of the above the application must fail and the Tribunal determines that the Applicants are not entitled to**

purchase the subject Property under the provisions of Paragraph 11 of Schedule 5 to the Housing Act 1985.

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.