



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

**Case Reference** : **BIR/00FN/RTB/2024/0002**

**Property** : **20 Dunlin Road Leicester LE5 3FP**

**Applicants** : **Ari Gonsaim, Praful Ari & Uttam Ari**

**Respondent** : **Leicester City Council (Ref: RTB/44381)**

**Type of Application** : **An application under paragraph 11 of Schedule 5 to the Housing Act 1985. (Denial by Landlord of the Right to Buy provisions of the Act because the property is particularly suitable for occupation by an elderly person).**

**Tribunal Members** : **V Ward BSc Hons FRICS – Regional Surveyor  
N Atherton MRICS Dip Rating**

**Date of Decision** : **11 December 2024**

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**DECISION**

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## **Introduction**

1. This is decision in respect of an application to the First – tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) to determine whether the exception to the right to buy in paragraph 11 of Schedule 5 to the Housing Act 1985 (“the Act”) – property particularly suitable for occupation by elderly persons and let to the tenant for occupation by a person aged 60 or more – applies to the property which is the subject of this application.

## **Background**

2. The Tenants, Ari Gonsaim, Praful Ari & Uttam Ari (“the Applicants”), by notice applied to Leicester City Council (“the Respondent”) to buy 20 Dunlin Road, Leicester LE5 3FP (“the Property”) under the Right to Buy provisions contained in the Act.
3. By way of an RTB2 Form – Notice in Reply to Tenant’s Right to Buy Claim, the Respondent served notice on the Applicants denying the right of the Applicants to buy the Property as in their opinion, paragraph 11 of Schedule 5 to the Housing Act 1985 applies. This form was dated 7 May 2024.
4. By an application received on 2 July 2024, the Applicants applied to the Tribunal pursuant to section 181 of the Housing Act 2004 for a determination as to whether the Property was excluded from the Right to Buy (RTB) provisions contained in the Act on the grounds that the dwelling:
  - was first let before 1 January 1990
  - is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons; and
  - was let to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more.
5. The Office of the Deputy Prime Minister Circular 07/2004 entitled Right to Buy: Exclusion of Elderly Persons’ Housing (“the Circular”) gives guidance on the criteria to be adopted in determining the suitability of a dwelling house for occupation by elderly persons. The Circular also provides details of the “*Lettings Test*”: it is reiterated that paragraph 11 of Schedule 5 of the Housing Act 1985 applies only if the dwelling in question was let ‘to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more’. The Secretary of State takes the

view that this condition is only met if, when the current tenancy or that of the current tenant's predecessor in title was granted, the landlord knew:

- that the tenant, or one or more of joint tenants, was aged 60 or more;

or

- that the dwelling was to be occupied by some other person known by the landlord to be aged 60 or more.

6. The Tribunal is not bound by the Circular and decides each case on its merits but has regard to the Circular for guidance.
7. The Applicants had indicated that they were content with a paper determination in this matter. The Respondent did not request an oral hearing; accordingly, the Tribunal determines this matter on the basis of its own inspection of the Property and the written submissions of the parties.

### **The Property**

8. The Tribunal inspected the Property on 3 December 2024 in the presence of two of the Applicants Ari Gonsaim and Uttam Ari who were assisted by Mrs K Patel, a neighbour. A representative of the Respondent did not attend.
9. The Property comprises a ground floor flat offering the following accommodation, which benefits from double glazing and gas fired central heating:  
  
Hall  
Lounge  
Kitchen  
Double Bedroom  
Bathroom with suite comprising panelled bath, wash hand basin, and low flush WC.  
Various store cupboards.
10. There is level access to the Property from the footpath.
11. The step into the front door is 12 cm (excluding the door frame).
12. The Property is one of a block of four flats formed in a rectangle of similar blocks arranged around a central communal garden area.

13. There is no dedicated car parking for the Property however there is a Residents car park adjacent to the development.
14. The development lies immediately to the south of the A47 Humberstone Road, one of the principle arterial routes into the city, approximately one mile to the east of the centre. A footpath allows easy access for the occupants of the Property onto Humberstone Road. Within 400m of the property there are numerous shops, a Medical centre, pharmacy and bus stops.

## **The Submissions of the parties**

### *The Applicants*

15. The only submissions made by the Applicants that are relevant to the Tribunal's consideration of this matter is:

“The Property is situated in a block of council flats which were rented or tenant to people of all age and it is not for elderly people.”

16. The Applicants provided evidence that in 2017 the Respondent had agreed to sell a 125-year lease in respect of the property. This is not something the Tribunal can take into account, the only matter it is concerned with is whether the Property is suitable for occupation by elderly persons.

### *The Respondent*

17. The Respondent's initially confirmed that the Property had been let since 1975 i.e. before 1 January 1990.
18. The Property was let to the first Applicant on 9 February 2004 when they were aged 60 years and 3 months.
19. The Respondent then dealt with the suitability of the Property for occupation by an elderly person and noted the following:
  - a) The front door of the property is accessed via a paved path, from the footpath through the front garden. The path has almost no gradient and there are no steps along its course.
  - b) The property itself is entered by negotiating one threshold step (there is no back door to this property);
  - c) The Property is arranged over one floor;

- d) The property is a ground floor flat consisting of 1 bedroom, a kitchen, bathroom and living room;
  - e) The property has gas central heating which provides heating in all rooms and is timer-controlled, enabling it to be safely left on overnight. Servicing and maintenance of the heating system is undertaken by the Respondent, as landlord;
  - f) The property is located less than 200 metres from a convenience/ food store, which sells a variety of food items;
  - g) The property has 3 bus stops located within 400 metres of it;
  - h) The Property is located less than 400 metres of a Medical Centre and Pharmacy
20. The Respondent concludes by stating that in their opinion, the Property meets all of the criteria set out in ODPM Circular 07/2004. Further, it was first let prior to 1 January 1990 and the 1st Applicant was over the age of 60 when his tenancy commenced.

### **The Law**

21. The relevant law is contained in paragraph 11 of Schedule 5 of the Act 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 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) *This paragraph does not apply unless the dwelling-house concerned was first let before 1<sup>st</sup> January 1990.*

### **The Tribunal's Findings (including those relevant to the Circular)**

22. The Property is a ground floor flat.

23. The Property benefits from a gas fired heating system which, from the information provided, appears to function correctly and provide overnight heating if required.
24. The immediate area around the subject Property is of a gradient reasonable from the viewpoint of an elderly person who can live independently and is not frail or disabled.
25. There is car parking available outside the Property.
26. The alleyway that runs adjacent to the Property allows a pedestrian route to Humberstone Road where there is a shop selling basic food items and a bus stop at the distances stated by the Respondent.
27. The Property was first let before 1990.
28. The *Lettings Test* was satisfied as the Tenant was aged over 60 on occupation.

### **Determination by the Tribunal**

29. The issue concerning whether or not other properties on the same development were first let to persons aged under 60 is not a factor for the Tribunal to take in account. The Tribunal's considerations relate solely to the subject Property and whether it is **particularly** suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons.
30. 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. The personal circumstances of the Applicants are not to be taken into account.
31. 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".*

32. The Tribunal considers that, when assessing it as a whole, the Property is particularly suitable for occupation by an elderly person who can live independently and noted the proximity of the shops and facilities as identified by the Respondent and the Tribunal's own research.
33. The Tribunal determines, therefore, after taking into account the parties' submissions and the findings of fact made by the Tribunal, that the Respondent is entitled to rely on the exception to the right to buy contained within paragraph 11 of Schedule 5 to the Act as the Property is particularly suitable for occupation by an elderly person. Accordingly, the Respondent's notice of denial is upheld. In practical terms this means that the Applicants does not have the right to purchase the Property.
34. In making their determination the Tribunal had regard to the submission by the parties, the relevant law and their knowledge and experience as an expert tribunal, but not any special or secret knowledge.

## **APPEAL**

35. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD BSc (Hons) FRICS Chairman