



**FIRST TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY**

Case reference : **CAM/42UB/RTB/2024/0600**

Property : **2 Vicary Estate, Sudbury, Suffolk,
Co10 5LL**

Applicant : **Mrs Claire Mitson**

Respondent : **Barbergh District Council**

Type of application : **Refusal of Right to Buy - Paragraph
11 of Schedule 5 of the Housing Act
1985 (as amended) (“the Act”).**

Date of Decision : **24 February 2025**

Tribunal : **Mary Hardman FRICS – Regional
Surveyor
Dr Jan Wilcox FRICS**

DECISION

The application is refused, 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.

REASONS FOR DECISION

The Application

1. Mrs Claire Mitson ('the Applicant') of 2 Vicary Estate, Sudbury, Suffolk, Co10 5LL ('the Property') is the tenant of Babergh District Council ('the Respondent').
2. The Applicant made an application to the Respondent under the Right to Buy legislation in the Housing Act 1985 ('the Act') to buy the Property and, on 10 October 2024, the Respondent replied with a counter notice denying the right to buy by virtue of the provisions of paragraph 11 of Schedule 5 to the Act.

3. The Applicant made an application to the Tribunal on 14 October 2024 for a determination as to whether the Property is suitable for occupation by elderly persons.
4. Neither of the parties requested a hearing.

The Law

5. The relevant provisions in respect of jurisdiction of the Tribunal are found in Paragraph 11 of Schedule 5 to the Housing Act 1985.

Housing Act 1985

“11 (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.

...

(6) This paragraph does not apply unless the dwelling-house concerned was first let before 1st January 1990.”

6. Circular 7/2004, Right to Buy: (Exclusion of Elderly Persons’ Housing) issued by the Office of the Deputy Prime Minister, gives guidance on the main criteria to be taken into account in determining whether a dwelling is particularly suitable for occupation by elderly persons. The criteria are not binding on the Tribunal, but the Tribunal will be guided by them in general terms. Each case is to be decided on its own merits.

7. *Particular suitability for occupation by elderly persons*

“12. The main points on which the Secretary of State will normally expect to be satisfied in considering applications under paragraph 11 – as well as other features to which his attention is drawn – are as follows:

- (a) there should be easy access on foot to the dwelling. In assessing ease of access, consideration should be given to:*

- the number and size (in particular, the height) and curvature of any steps up to the dwelling itself, and also of any steps in its immediate vicinity where these must be negotiated to gain access to it;

- the presence or absence of handrails, or other means of support, alongside any steps up to the dwelling and in its immediate vicinity that need to be negotiated to gain access to it;

- the gradient of ramps, paths, pavements or other means of access to the dwelling and in its immediate vicinity, where these must be negotiated to gain access to it.

In general, access is unlikely to be regarded as easy if it is necessary to climb three or more steps (in addition to the threshold) and there is no handrail;

(b) the accommodation should normally be on one level. The Secretary of State is unlikely to regard a dwelling with two or more floors as being particularly suitable for occupation by an elderly person. However, he may be prepared to make exceptions for dwellings with up to three internal steps, or with stairlifts or similar devices provided by the landlord;

(c)...

(d) there should be no more than two bedrooms, designated as such in the tenancy agreement;

(e) there should be heating arrangements which:

- function reliably*
- provide heat to at least the living room and one bedroom*
- may safely be left on overnight;*

(f) the dwelling should be located reasonably conveniently for shops and public transport, having regard to the nature of the area (the Secretary of State may take into account reliable means of transport other than those provided by public bodies – for instance, transport provided by shops or voluntary organisations):

- in an urban area, the dwelling should be located no more than 800 metres (half a mile) from both the nearest shop selling basic food items and the nearest public transport stop. 'Basic food items' include bread and milk;

- in a rural area, the dwelling should be located no more than 800 metres (half a mile) from the nearest public transport stop, and such transport should be available from this point frequently enough to provide at least three opportunities for shopping each week.

8. Letting test

It is important to reiterate 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."*

The Property

9. The Tribunal inspected the Property, internally and externally, during the morning of 18 February 2025 accompanied by the Applicant.
10. The Property is a traditionally constructed semi-detached bungalow built in the 1950's. The property has tiled pitched roof with solar panels to the front. It is situated on a flat and level site.
11. The Property has the following accommodation

Hall
Lounge
Kitchen
1 bedroom
Bathroom comprising a bath with shower over, wash hand basin and WC.

The property has UPVC windows, and a newly installed central heating system fuelled by an air sourced heat pump which is located at the rear of the property.

12. There is a garden to the front, side and rear of the property. There is off and on-road parking.
13. Access to the house is via a level path from the public highway. There are two shallow steps leading to the front door and similar to the rear door.
14. There is a bus stop within 100 metres with a service to Colchester and Sudbury which runs several times a day. There is a farm shop selling groceries around 500 metres from the property along the road through the village.

The Applicant's case

15. Mrs Mitson moved to the property in 2022 and has carried out a substantial amount of work to the property. She has installed a shower over the bath, a fire in the lounge and a new kitchen. She has redecorated and replaced the floor coverings. The garden has been returfed and flags laid, and she has installed a pergola, several sheds and a summer house.
16. She would like to buy the bungalow having done significant improvements to it and because it is suitable for her, given her knee replacement.

The Respondent's case

17. The Respondent stated that they intended to oppose the appeal. The property was considered to be suitable for the elderly, being a single storey two bedroomed bungalow (it is in fact one bedroomed).
18. The property was first let before 1 January 1990 and the current tenancy was granted on 16 May 2022 to Mrs Mitson whose age at the time was 61.
19. The property was 91 metres approximately from the main road. At the end of the road there was a bus stop (Assington -Shoulder of Mutton). This bus stop was serviced by two bus routes the 84 which will take passengers to either Sudbury or Colchester (dependent on direction) -the bus appears to stop five times a day in Assington. The second bus is the 764 which also runs from Sudbury to Colchester. This bus appears to stop in Assington once a day.
20. There appears to be only one shop where food can be purchased; the Assington farm shop approximately 482 metres (according to Google Maps) from the property. The shop provides a range of products as well as the essentials such as bread, milk and cheese. There does not appear to be a designated footpath that leads to the shop.
21. The property was fully centrally heated via an Air Source Heat Pump which heats the entire property. There was access to the property over level ground. Including the door threshold there were two steps leading to the property.

Determination

22. The Tribunal considered the evidence relating to whether the Property is particularly suitable for occupation by elderly persons, having regard to its location, size, design, heating system and any other features to which the Tribunal's attention were drawn.
23. In this respect, 'elderly persons' does not mean persons who are frail or severely disabled; provision is made in other paragraphs of Schedule 5 to the Act to exclude dwelling houses for such persons from the right to buy legislation. Consequently, the Tribunal is required to examine suitability from the perspective of an elderly person who can live independently (Paragraph 11 of the Circular 7/2004 referred to above) and not from one where there is a degree of immobility or other impediment to that elderly person. The personal circumstances of the Applicant are not to be taken into account.
24. The Tribunal is persuaded by the evidence on behalf of the landlord and the outcome of its inspection of the Property and its location and surroundings that the Property is particularly suitable for occupation by elderly persons, having regard to the criteria detailed in paragraph 11(1)(a) of Schedule 5 to the Act

25. In short, there is easy access to the Property on foot and it is situated on a flat and level site, it is on one level with one bedroom. It benefits from a newly installed central heating system and has double glazing.
26. Further, the Property is in a reasonably convenient rural location with local amenities within the distance set out in paragraph 7(f) above.
27. In light of the above, the Tribunal finds that the Property is particularly suitable for occupation by elderly persons.
28. As to whether 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', the Tribunal had regard to the evidence presented by the landlord. In its Statement of Case the Council stated that the Property had been first let before 1 January 1990 and that the current tenant took up occupation when she was over 60.
29. The Applicant did not challenge the evidence submitted by the Council in this respect. In these circumstances, the Tribunal finds that the letting test is satisfied.
30. The tribunal understands that the tenant is likely to be disappointed but determines that the Council is entitled to rely on the exception to the right to buy contained within paragraph 11 of Schedule 5 to the Act and, thereby, to deny the Applicant of the right to buy the Property.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.