



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

**Case Reference** : **MAN/00CM/RTB/2024/0602**

**Property** : **9 St Mark's Street, Sunderland SR4 7BH**

**Applicant** : **Mr Anthony Wandless**

**Respondent** : **Gentoo Sunderland 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** : **I Jefferson  
K Usher**

**Date of Decision** : **24 February 2025**

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**DECISION**

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The Tribunal is satisfied that the Property is particularly suitable for occupation by elderly persons and that the Respondent is able to rely upon Schedule 5 paragraph 11 of the Housing Act 1985. The Applicant is therefore denied the right to buy.

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## **Reasons**

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### **Application and Background**

1. The Applicant is the tenant 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.
2. The Landlord then served a Notice (form RTB 2) dated 28 November 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.
3. By an application dated 19 December 2024 the Applicant applied to the Tribunal for a determination as to whether the dwelling house is suitable for occupation by elderly persons.
4. The Application was copied to the Landlord.

### **Representations and hearing**

5. The Tribunal received written representations from both parties.
6. Neither party requested a hearing. The Tribunal inspected the property on 24 February 2025 as below and deliberated later in the day to make its determination.

### **The Property**

7. The Tribunal wrote to both Parties setting out that the matter would be determined on 24 February 2025, and that the Tribunal would like to inspect the Property at about 10am on that day and would consider the matter without the Parties being present thereafter. The Tribunal attended at the property at the appointed time on 24 February 2025 and Mr Edward Collins, brother-in-law to the Applicant, kindly attended to allow the Tribunal to inspect. The Landlord did not attend.
8. The Property is a single storey mid-terrace bungalow believed to have been built around 1900 under a pitched roof clad in slates, with a single storey rear bathroom extension under a flat felt roof. The bungalow has double-glazed windows and gas fired radiator central heating. Access is by way of easy steps to both the front, and rear doors. The front door is directly onto

the pavement, and the rear door gives access to the rear yard, and then onto the rear lane. There is permit on street parking.

The internal accommodation comprises reception room, two bedrooms, kitchen and bathroom.

The Tribunal found that there is a bus service nearby, and local shops all within reasonable walking distance.

The Tribunal noticed cracking to the property in various rooms, which should be investigated further, and repaired.

### **The Law**

9. 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 1<sup>st</sup> January 1990*
10. The Office of the Deputy Prime Minister (ODPM) 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**

11. 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.
12. The Respondent confirmed that the Property had been first let before 1 January 1990 and that has not been challenged.
13. The Parties agree that the Property was let to the parents of the Applicant, and at least one of whom was aged over 60 at the time of the commencement of the Tenancy.
14. The legislative preconditions are therefore satisfied for the Local Authority to deny the right to buy, but it remains for the Tribunal to determine whether the dwelling is particularly suitable in physical terms for occupation by elderly persons.

The tests are set out in Circular 7/2004 of the Office for Deputy Prime Minister although these are simply guidelines not mandatory. Nonetheless the Tribunal did have regard to all of those matters including location, size, design, heating, and other features.

15. The Tribunal found that a predecessor in title was aged over 60 when the tenancy commenced. The property is one of many bungalows in the area which is well served by local buses and has local shops nearby. This bungalow is on one level, and is close to local amenities. Many other bungalows have been extended into the attic, and the circular suggests that 2 storey bungalows are not usually regarded as particularly suitable for the elderly, and thus for those properties the Landlord would seldom be able to oppose the right to buy.
16. The requirement of paragraph 11 (1)(b) namely that the dwelling house was let to a Tenant who was aged 60 or more was met.
17. The Tribunal were satisfied that there was no dispute that the property had been first let before 1 January 1990 and that the requirement of paragraph 10 (6) was met.

18. The Applicants made written representation that other owners of bungalows nearby have been permitted to buy.
19. The Tribunal note that previous sales may have occurred. It may be that other properties were 2 storey, or the other requirements as to tenancy dates, or ages, may not have been met. In any event the Tribunal must adhere to the legislation as set out in the Housing Act.
24. The Tribunal is satisfied that the Property is suitable for occupation by elderly persons. Accordingly, the Tribunal determines that the Respondent may rely on Schedule 5 paragraph 11 to deny the Applicant the right to buy.

**Chairman**