



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

Case Reference : CHI/00HB/RTB/2024/0002

Property : 16 Twenty Acres Road, Southmead,
Bristol, BS10 6PL

Applicant : Violet Taylor

Representative : None

Respondent : Bristol City Council

Representative : None

Type of Application : Refusal of Right to Buy

Tribunal Member : Regional Surveyor J Coupe FRICS

Date of Decision : 8 November 2024

DECISION

Summary Decision

The application fails.

Background

1. By an application in the prescribed form dated 21 July 2024 and received by the Tribunal on the 23 July 2024 the Applicant seeks to appeal the denial of the right to buy 16 Twenty Acres Road, Southmead, Bristol, BS10 6PL (“the property”). The denial was issued on 18 June 2024 by Bristol City Council on the grounds that paragraph 11 of Schedule 5 of the Housing Act 1985 (as amended) (“the Act”) applies to the property. The Tribunal accepted the application as having been made in time.
2. On 8 August 2024 the Tribunal received a copy of Form RTB2 ‘Notice in Reply to Tenant’s Right to Buy Claim’ issued by the Respondent in response to the Applicant’s claim dated 21 May 2024.
3. The Tribunal issued Directions on 9 September 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.
4. Tribunal 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 149 electronic pages was submitted which included the completed RTB1 Appeals Form, a copy of the landlord’s Form RTB2, Witness Statement on behalf of the Respondent, and associated documentation. Reference to page numbers in the bundle are shown as [].
5. 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. There has been no request for the Tribunal to make an inspection.
6. These reasons address in summary form the key issues raised by the Applicant and the response of the Respondent. The reasons do not recite each point referred to in submissions but concentrate on those issues which, in the Tribunal’s view, are critical to this decision. In writing this decision the Chairman has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.

The Issue

7. 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.
8. 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. The Respondent also relies on a previous determination by the Tribunal in regard to the same property and party.

The Law

9. 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.
10. 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

11. Within the completed application form to the Tribunal Mrs Taylor states that she has occupied the property since the 25 June 2018 but

that she has been a council tenant since around 1978. Her date of birth is provided as 24 September 1929.

12. Mrs Taylor describes the property as a one bedroom bungalow with gas central heating, located 0.6 miles from the nearest bus stop and convenience store. Mrs Taylor explains that she has provided internal decoration, flooring and has landscaped the garden.
13. Mrs Taylor states that when she applied for the property in 2018 it was not advertised as being particularly suitable for the elderly and nor were any age restrictions imposed on those applying for the property. She says that the only adaptation is a wet room which now requires updating. Mrs Taylor refers to the sale, by the Respondent, of No. 20 Twenty Acres under the right to buy scheme in 2004 and a lack of local facilities for the elderly. She considers the Respondent's refusal of her application to be age discriminatory.
14. The Respondent submitted a witness statement by Julie McKay in her capacity as Home Ownership Services Manager within the Housing and Landlords Services Directorate. The statement was signed, dated and included a statement of truth.
15. Ms McKay describes the property as a one bedroom bungalow with electric storage heaters and double glazing. Ms McKay explains that the Applicant has occupied the property as a secure tenant since 25 June 2018 and that this is the Applicant's second application under the right to buy scheme.
16. Ms McKay explains that the Applicant first applied to buy the property on 21 November 2018 and, on refusal of that application, the matter was appealed to the First-tier Tribunal who subsequently decided the matter in the Respondent's favour in a decision set down on 21 January 2019 (reference CHI/00HB/RTB/2018/003). In that decision the Tribunal found that the requirements of paragraph 11 of Schedule 5 of the Act were met. Since such date the property has not been modified or altered in any way that would change the criteria of the Act. The Applicant neither sought permission to appeal that decision nor sought an extension of time to appeal. Instead, the Applicant seeks to reopen the matter by virtue of a fresh application some five years later.
17. Ms McKay states that the requirements of paragraph 11 of Schedule 5 of the Act are still met and appended copies of the Housing Act 1985 Schedule 5 paragraph 11; DoE Circular; *Milton Keynes Council v Bailey* [2018] UKUT 207 (LC), and 'Right to Buy – A Guide for Local Authorities'.

Finding of Facts and Determination

18. The Tribunal's jurisdiction is to determine whether the conditions contained in paragraph 5 of Schedule 11 of the Housing Act 1985 are met.

19. In making its determination the Tribunal is guided, but not bound, by the ODPM circular [98] referred to.
20. 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.
21. 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.
22. 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."
23. Prior to turning to the requirements of the Act the Tribunal first considers the circumstances of this application and, in doing so, I make the following finds of fact.
 - (i) The Applicant first applied to buy the property under the Right to Buy scheme in 2018. Upon refusal of that application and a subsequent appeal, the Tribunal found that the requirements of paragraph 11 of Schedule 5 of the Housing Act 1985 were met. The Tribunal's findings were based on an inspection of the property on 21 January 2019.
 - (ii) Permission to appeal the Tribunal's decision dated 21 January 2019 was not sought.
 - (iii) The Applicant does not now seek permission to extend the time within which to appeal that decision. This application stands as a fresh application to the Tribunal.
 - (iv) The Applicant has not sought to challenge any of the Tribunal's findings within their 2019 decision.
 - (v) The Applicant has adduced no evidence to suggest that any of the circumstances upon which the previous decision was made have changed.
24. On 21 January 2019 the Tribunal determined that the requirements of paragraph 11 of Schedule 5 of the Housing Act 1985 were met. This Tribunal finds no evidence upon which to reach an alternative conclusion. I find that the property was first let before 1 January 1990, it is particularly suitable for occupation by elderly persons and it 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.

25. In view of the above the application must fail 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.

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.