



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

Case Reference : BIR/00CS/RTB/2024/0004

Property : 77 Valley Road, Cradley Heath, B64 7LS

Applicant : Janice Etheridge

Respondent : Sandwell Metropolitan Borough Council

Type of Application : Application under paragraph 11 of Schedule 5 to the Housing Act 1985 (as amended) for a determination as to whether a dwelling house is suitable for occupation by elderly persons

Tribunal Members : Judge M K Gandham
Mr N Wint BSc (Hons) FRICS ACI Arb

Date of Decision : 02 April 2025

DECISION

DECISION

1. The Tribunal determines that Sandwell Metropolitan Borough Council **can deny** the Right to Buy by virtue of the provisions of paragraph 11 of Schedule 5 to the Housing Act 1985.

REASONS FOR DECISION

Background

2. Miss Janice Etheridge ('the Applicant') of 77 Valley Road, Cradley Heath, West Midlands, B64 7LS ('the Property') is the tenant of Sandwell Metropolitan Borough Council ('the Respondent').
3. 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. On 18 July 2024, the Respondent replied with a counter notice in Form RTB2 denying the right to buy by virtue of the provisions of paragraph 11 of Schedule 5 to the Act.
4. The Applicant made an application to the Tribunal on 27 July 2024 for a determination as to whether the Property is suitable for occupation by elderly persons.
5. Directions were issued by the Tribunal on 19 August 2024. The Tribunal received a statement of case and bundle from the Respondent on 20 September 2024 and a statement of case from the Applicant on 1 November 2024.
6. As, from the respective statement of cases, it appeared that there was no dispute regarding either the nature or location of the Property, or any features contained within the Property, the Tribunal determined that an inspection was not required.
7. Neither party requested an oral hearing, and the Tribunal made its determination based on written submissions received from both parties.

The Law

8. The relevant law and provisions in respect of the jurisdiction of the Tribunal are found in Paragraph 11 of Schedule 5 to the Act.

Housing Act 1985

Schedule 5, paragraph 11

"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.*
- ...
- (4) *If an application for the purpose is made by the tenant to the appropriate tribunal before the end of the period of 56 days beginning with the service of the landlord's notice under section 124, the question shall be determined by the appropriate tribunal.*
- ...
- (6) *This paragraph does not apply unless the dwelling-house concerned was first let before 1st January 1990."*

Submissions

The Applicant's submissions

9. In her statement of case, the Applicant confirmed that she did not disagree with what the Respondent had set out in its statement of case.
10. The Applicant stated that she had applied for the right to buy the Property twice previously, in November 2018, and August 2023, but had not been able to proceed with the purchase (due to her own personal circumstances) either time. The Applicant stated that on her recent application, which was rejected by the Respondent on 18 July 2024, she had included her daughter on the application form.
11. The Applicant confirmed that her daughter, Miss Kate Bushell, had moved into the Property in February 2023, initially to care for the Applicant. She stated that her daughter's health had since deteriorated, and that Miss Bushell now also benefitted from the ease of access around the Property.
12. Annexed to her statement of case was evidence of the Applicant's two previous applications in 2018 and 2023 (in which the right to buy had not been denied), a copy of the Form RTB2 denying the right to buy and a letter from Wychbury Medial Group, dated 12 April 2024, referencing Miss Bushell's medical conditions and her occupation of the Property with her mother.
13. In her application form, the Applicant had confirmed that the Property was a one-bedroomed bungalow, with gas central heating, located near shops, a bus stop and within 0.8 miles of a train station. The only feature at the Property she referred to as her having provided, was a new fire and surround.

14. In the application form, the Applicant also stated:

“This bungalow IS suitable for the elderly”

15. She referenced believing that she had been denied the right to buy due to her daughter’s age - her daughter being 32 years or age at the time of application.

The Respondent’s submissions

16. The Respondent’s bundle included the Respondent’s statement of case and a witness statement from Timothy Harris, a Home Ownership Officer.
17. Both the statement of case and Mr Harris’ witness statement (‘the Statements’) confirmed that the Respondent considered that the Property was “*particularly suitable for occupation by elderly persons*”, having regard to its location, size, design, heating system and other features. In assessing the same, the Respondent confirmed that it had taken into account the guidance given in the ODPM Circular 07/2004.
18. The Statements also confirmed that the Property had been let prior to 1 January 1990 and that the Applicant had been over the age of 60 when the Property was first let to her on 2 November 2015.
19. In his witness statement, Mr Harris confirmed that there were no steps to the Property, there was level access from the road and there were no ramps or any gradient on any roads or footpaths surrounding the Property. He confirmed that the Property was a one-bedroomed bungalow, with no internal stairs or adaptations.
20. In relation to heating, Mr Harris confirmed that there was a combination boiler which provided heating and hot water, with a gas fire, both of which had been serviced in April 2024. Mr Harris also provided information regarding timescales and procedures for repairs.
21. Mr Harris went on to confirm that the Property was located within an urban area, in a row of bungalows, opposite shops on Valley Road (which were within 800m of the Property) and with bus stops in close proximity on both sides of the road (again within 800m of the Property). He also provided evidence regarding information given to tenants regarding exclusions to the right to buy.
22. Exhibited to Mr Harris’ witness statement were several documents which included Google map screenshots, a Gas safety certificate and a copy of statutory information sent to tenants.

The Tribunal’s Deliberations

23. The Tribunal considered all of the evidence submitted by the parties and briefly summarised above. The Tribunal also considered the guidance contained in the Office of the Deputy Prime Minister’s (ODPM) Circular 07/2004 in light of the decision of the Upper Tribunal in *Milton Keynes Council v Bailey* [2018] UKUT

207 (LC), noting that the Tribunal must, when considering whether a particular property is suitable for occupation by the elderly, assess the characteristics of the property as a whole.

24. The Tribunal did not, as far as it was made aware, take into account any improvements made to the Property by the Applicant.
25. The Applicant had confirmed that she did not disagree with the information set out in the Respondent's case. As such, the Tribunal noted that both parties agreed that the Property was a one-bedroomed bungalow in an urban area, with no internal stairs, gas central heating, level access to the road, no gradient, and within 800 metres of local shops and public transport.
26. Having considered the evidence submitted, and the criteria detailed in paragraph 11(1)(a) of Schedule 5 to the Act, the Tribunal accepted that the Property, when considered as a whole, was particularly suitable for occupation for elderly persons.
27. The Tribunal, in the absence of any evidence to the contrary, also accepted that the Property was let to the Applicant when she was over 60 years of age, as required by paragraph 11(1)(b) of Schedule 5 to the Act, and that the Property was first let before 1 January 1990, as required by paragraph 11 (6) of Schedule 5 to the Act.
28. Accordingly, the Tribunal determined that the Respondent **was able to deny** the right to buy on the grounds set out in paragraph 11 of Schedule 5 to the Act.
29. The Tribunal noted that, rather than considering that any of the factors set out in Paragraph 11 of Schedule 5 to the Act did not exist, the Applicant's appeal appeared to relate to her mistaken belief that the right to buy had been denied due to her daughter's age and occupation of the Property
30. Although the Tribunal has some sympathy for the Applicant, and notes that her mistaken belief may have been due to her not having had the right to buy denied on the two previous occasions she had applied, her daughter's occupation was not the reason the right to buy had been denied this time.
31. The Tribunal is unable to comment on why the Applicant was not denied the right to buy previously, however, based on the evidence the Tribunal is satisfied that the Respondent was entitled to deny the right to buy under Paragraph 11 of Schedule 5 to the Act on this occasion for the reasons stated above.

Appeal

32. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision stating the grounds on which that party intends to rely in the appeal.

M K GANDHAM
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Judge Gandham