



FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

Case Reference : MAN/00DA/RTB/2023/0011

Property : 9 Greengate Oulton, Leeds LS26 8NR

Applicant : Mr Garry Kevin Wray

Respondent : Leeds City Council

Type of Application : Paragraph 11, Schedule 5 Housing Act 1985

Tribunal Members : (Judge) Mr P A Barber  
(Valuer) Mr A Hossain

Hearing Date : 01 February 2024

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DECISION AND REASONS

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## Decision

Whilst we understand why Mr Wray wishes to purchase the property and is upset at being denied such an opportunity, on any view, the Property is particularly suitable for occupation by elderly persons within the meaning of Schedule 5, paragraph 11 to the Housing Act 1985 and the exception from the right to buy applies.

### Reasons

#### The Application

1. By an application dated 21 August 2023 the Applicant seeks a determination by way of an appeal against the Respondent's decision to refuse his application for the right to buy.
2. In response to that appeal the Tribunal sent to the Appellant a copy of the ODPM Circular 07/2004 which provides guidance as to the consideration of such an application. Mr Wray asked for an oral hearing of his application, and we heard and took evidence from him today. The Respondent was unable to attend due to a train strike the previous day and we decided to proceed. We had written submissions from the Respondent and in any event, we decided it was not proportionate nor in the interests of justice to delay this matter for their attendance.
3. Prior to the hearing, the Tribunal had the opportunity to visit the property and inspect the interior and exterior in the presence of Mr Wray.

#### The Law

4. Schedule 5, paragraph 11, to the Housing Act 1985 provides:
  - (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 in title 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....  
.....
  - (6) This paragraph does not apply unless the dwelling-house concerned was first let before 1 January 1990.

5. ODPM Circular 7/2004 sets out, for guidance purposes, criteria for assessing the suitability of a dwelling-house for occupation by elderly persons. It defines an elderly person as one aged 60 or over who is not necessarily disabled but may have some physical disabilities. It covers the location, indicating that the property should be within a half mile of a shop selling basic food items; size, no more than two bedrooms; design, no more than one floor; heating system, which must function reliably, heat at least the living room and one bedroom and may safely be left on at night. It also addresses accessibility, with particular regard to the number, size and curvature of steps and the presence of handrails where there are more than three steps. Gradients of ramps, paths, pavements or other means of access are to be considered.

#### Reasons

6. The property in question is a semi-detached bungalow of brick construction beneath a tiled roof built for occupation by elderly persons. The property benefits from front and rear gardens and has uPVC doors and windows. There is a slight gradient to the front door and parking to the front of the property. It was built in 1966 and was let to Mr Wray at the time when he was 61 years of age. The property is accessed by one step and inside there is a hallway, living room, kitchen, WC/shower and two bedrooms. The living room and bedrooms have gas central heating radiators, but the kitchen has a water heater above the door. The radiators are effective and efficient, and the heating can be left on throughout the night, although Mr Wray told us he does not do this as it costs too much.
7. The property has a dated bathroom containing WC/WHB and walk-in shower adjoining the WC. There is no shower tray and the shower is enclosed by a shower curtain which is the only protection against shower water spillage onto the adjoining WC. There appears to be a diaphragm pump which is noisy when operated. Mr Wray also pointed out the low shower pressure.
8. The property is in a development of similar property in a cul-de-sac with a slight, manageable, incline from the top of the road. There is a local bus service located on North Lane which is approximately 5 minutes' walk from the property. There are also local shops within 500 metres of the property located on Aberford Road where a Lidl and Co-op can be found providing essentials such as bread and milk.
9. The property also has the benefit of the Retirement Life Service whereby a support worker will call the tenant each week to check on them.
10. On any view, this property is particularly suitable for occupation by elderly persons.

11. Mr Wray told us, that other similar properties in the neighbourhood had been let to persons who were not elderly at the time of occupation. This may well be the case, but it is not something we can consider in determining whether this particular property comes within the exception.
12. As mentioned above, we understand and sympathise with Mr Wray about purchasing a property which he told us he really loves. He told us that the Respondent will not allow his co-occupant who herself is elderly, to become a tenant of the property and that he wishes to protect her interests if anything happens to him. These motives are laudable but unfortunately not things we can consider in deciding whether this property is particularly suitable and as such we had to turn the appeal down.

Signed.....  .....Phillip Barber  
Tribunal Judge