



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

Case Reference : MAN/00CC/RTB/2024/0008

Property : 16 Haigh Lane, Hoylandswaine, Sheffield, S36 7JJ

Applicant : Mrs Angela Mary Condon and Mr David Condon

Respondent : Barnsley Metropolitan Borough Council

Type of Application : Right To Buy A Dwelling, Housing Act 1985, Schedule 5, Paragraph 11, As Amended By The Housing Act 2004, Section 181.

Tribunal Members : Judge C. P. Tonge, LLB, BA.  
Mrs S. A. Kendall, BSc FRICS.

Date of Decision : 18 September 2024

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DECISION

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## Application and Background

1. Mrs Angela Mary Condon and Mr David Condon (the Applicants) gave notice under section 122 of the Housing Act of 1985 (the Act) to the landlord, Barnsley Metropolitan Borough Council (the Respondent), of their intention to exercise their right to buy their dwelling, 16 Haigh Lane, Hoylandswaine, Sheffield, S36 7JJ (the property).
2. The Council then served a notice (form RTB 2) dated 9 May 2024 on the Applicants under Section 124 of the Act denying the tenants' right to buy on the grounds set out in paragraph 11 of Schedule 5 of the Act.
3. By an application dated 30 June 2024, the tenants applied to the First-tier Property Tribunal under paragraph 11(4) of Schedule 5 of the Act for a determination as to whether the grounds set out in paragraph 11 are satisfied.
4. The tenants' application was copied to the Respondent by the Tribunal. In reply the landlord served a notice indicating an intention to oppose the tenants' appeal.
5. Neither of the parties requested an oral hearing and therefore the case was listed to proceed with an inspection and paper determination on 18 September 2024. The parties were informed accordingly.
6. The tenants' representations are contained in their application to the Tribunal. The Respondent's representations are contained in the proforma document in which the Respondent stated that they intend to oppose the appeal, dated 07 August 2024.

## The Property

7. The Tribunal inspected the property and surrounding area, commencing at 11.30 am on 18 September 2024. The Applicants were present, no one attended to represent the Respondent.
8. The property is in the rural village of Hoylandswaine, a pretty village in the countryside. The village has a church, cricket ground, sports and social club, bowling green and a public house. The village does not have any shops in which groceries can be bought and does not have any medical facilities. There are bus stops approximately 190 yards away from the property, walking up a moderate rise onto Barnsley Road. A person over 60 years of age who is able to live independently despite some limitations due to age could walk to these bus stops. This bus stop provides a rural bus

service to Penistone and Barnsley. Penistone is approximately 2 miles away and contains supermarkets, shops and Doctors surgeries. The bus service has one bus per hour for some of the day up to 6pm, but there is a period in the day when the service does not run. There is no bus service on Sunday. Hospitals can be reached via the bus services that are provided but there would have to be changes of buses.

9. The property is a one bedroomed semi-detached bungalow with brick walls and a pitched tiled roof. There is only one access way to the bungalow from the pavement of Haigh Lane and that is down a flight of 8 concrete steps with handrails on both sides. Seven of these steps have a six inch rise and the eighth has a six and a half inch rise. These tenants have nowhere to keep their refuse bins near to the pavement of Haigh Lane and therefore have to man handle the wheelie bins round a corner that is restricted by one of the handrails provided to help them use the garden steps, and then up the steps. These steps are not such as to be easily useable by a person over 60 years of age who is able to live independently despite some limitations due to age.
10. The rear garden of the property has paving slabs that have a slight wobble with a two inch gap between two of the slabs. Mr Condon has suffered a fall in the past on these slabs. This was reported to the Respondents. After the fall, Mr Condon made some improvements to the garden area near to the wobbly slabs, installing some garden railings which, in the opinion of this Tribunal, would not be capable of stopping an adult falling to the ground.
11. The interior of the property is not on one level as there are steps that lead from the front porch and rear lobby into the remainder of the property. The front porch has a step with a 5 inch rise into the remainder of the bungalow. The rear lobby has a similar step from the lobby into the rest of the bungalow, with two further steps from the lobby to the garden path.
12. All of the exterior windows except for a very small window in the pantry are uPVC double glazed. The windows between the front porch and the living room are single glazed, as is the pantry window. The property has gas fired central heating from a wall mounted combi-boiler.
13. The sitting room has a small window to the rear, a double radiator and an oak fire surround with an electric fire. The double bedroom has a radiator. The bedroom has suffered from damp to an exterior wall in the past and the Respondent has replastered that wall. The wet room has a Trident electric shower with a grab rail close to it and a rail with a shower curtain. The room contains a sink, toilet and has a radiator. The kitchen/ dining room has limited kitchen space but does have wall and floor units with white goods being provided by the tenants. The room has a radiator. The pantry has had a problem with damp and mould. Various methods have

been tried by the Respondent to resolve this problem. The last method chosen was to wash the walls and paint them whilst installing two air vents in the pantry door. The pantry window does not open.

## The Law

Paragraph 11 of Schedule 5 of The Act provides that:-

- 1) The right to buy does not arise if the dwelling-house
  - a) is particularly suitable, having regard to size, design, heating system, and other features, for occupation by elderly persons, and
  - b) was let to the Tenant or 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 the title of his...
- 6) This paragraph does not apply unless the dwelling house concerned was first let before the 1<sup>st</sup> day of January 1990.

The Circular from The Office of the Deputy Prime Minister (ODPM Circular 07/2004) sets out guidance as to the floor plan and design features of a property that can be considered to be particularly suitable for occupation by elderly persons of age 60 and over. It also provides guidance as to what the surrounding area should contain. Further it defines an elderly person as being a person of 60 years of age and over who is capable of living independently despite some limitations owing to age and who is not frail or severely disabled. It also provides detail as to what type of public transport is to be considered to be acceptable in a rural area.

## The Issues

14. The Applicants have raised the issue that the eight steps up to the street are not suitable for use by elderly persons and that man handling the wheelie bins onto the street is a difficult task. Further, the paving slabs at the rear of the house present a trip and fall hazard, already having caused Mr Condon to fall. Further, that the rural location does not have sufficient public transport and could lead to loneliness due to an inability to access friends and family easily.
15. The Respondent states that the premises had first been let prior to 1 January 1990 and this has not been challenged by the Applicants. The

Applicants' tenancy commenced on 20 June 2022, when Mr Condon was 69 years of age.

16. The only matter for the Tribunal to determine is whether under Paragraph 11(1) (a) of The Act the dwelling house is particularly suitable... for occupation by elderly persons.

#### Written Submissions

17. These have already been dealt with above.

#### The Deliberations

18. In the determination of whether or not the property itself is particularly suitable for occupation by elderly persons, the Tribunal disregards the tenant's improvements to the garden. The Tribunal determines that the main problem with the property is the fact that there are eight steps from the bungalow to the pavement of Haigh Lane. Despite the handrails the Tribunal determines that these steps are such that they are not suitable for use by a person over 60 years of age who is able to live independently despite some limitations due to age.
19. The wobbly paving slabs in the garden are such that they could easily be made safe. The Respondent is taking action to resolve the issues with damp and mould and these problems may have already been remedied. The bus stops can be walked to by a person over 60 years of age who is able to live independently despite some limitations due to age.
20. Because this is a rural area the bus service provided is such as to be acceptable as a service that is sufficiently frequent to provide access to the necessities of life in Penistone.
21. The Tribunal determines that the property is not particularly suitable for occupation by elderly persons because of the eight steps that give access to Haigh Lane.

#### The Decision

22. The requirements of Paragraph 11 (1) (b) of the Act as to date of the first letting and the age of the occupier are met.
23. The bungalow does not provide a home that is particularly suitable for occupation by elderly persons.
24. The Tribunal therefore determines that the grounds set out under paragraph 11 of schedule 5 of the Act are not satisfied and that Barnsley

Metropolitan Borough Council may not rely on those grounds to deny the Applicants' their right to buy.

25. If either party to this case should wish to appeal against this Decision, appeal is to the Upper Tribunal. That party has 28 days to deliver to this First-tier Tribunal an application for permission to appeal, stating the grounds of appeal and the particulars of the grounds, also stating the result that the appellant seeks in raising the appeal.

Judge C. P. Tonge

20 September 2024