



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

Case Reference : BIR/00FN/RTB/2024/0006

Property : 241 Gooding Avenue, Leicester, LE3 1JT

Applicant : Mrs Halina Taterka

Respondent : Leicester City 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 D Satchwell FRICS

Date of Decision : 6 June 2025

DECISION

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1. The Tribunal determines that Leicester City 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. Mrs Halina Taterka ('the Applicant') of 241 Gooding Avenue, Leicester, LE3 1JT ('the Property') is the tenant of Leicester City 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 16 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 9 August 2024 for a determination as to whether the Property is suitable for occupation by elderly persons.
5. A Directions Order was issued by the Tribunal on 2 October 2024 and the time to provide submissions was extended by a further Directions Order dated 21 October 2024.
6. The Tribunal received a written statement of case from the Applicant and a bundle from the Respondent.
7. An inspection took place on 28 March 2025 and, as neither party requested an oral hearing, the Tribunal made its determination based on the written submissions received from both parties thereafter.

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."*

The Inspection

9. The Tribunal inspected the Property on the morning of 28 March 2025. The Applicant was present, but the Respondent did not attend.
10. The Property is a one-bedroom bungalow, in a cul-de-sac of similar properties, on Gooding Avenue. It benefits from a small front and rear garden.
11. The bungalow was accessed from the pavement, which is reasonably level, via a block-paved pathway. There were two small steps at the entrance (one no more than 10 centimetres in height and the other half this height), with a small threshold to the front door. The rear garden was accessed via the kitchen with a step (20 centimetres in height) down to the rear garden. There were no handrails.
12. The internal accommodation comprised a hallway leading to a bathroom, bedroom, lounge and kitchen. The kitchen was small and there was no cooker, but there was a microwave and refrigerator. Although a gas fire in the lounge had been switched off, the accommodation had the benefit of full central heating and the windows were double glazed.
13. Although at the inspection the Applicant referred to there currently being an issue with the shower (which was over the bath) and no hot water to the sink tap in the bathroom, there was hot water available to the bath and kitchen sink. As such, the faults appeared to be temporary maintenance issues.
14. The Property was in a fair state of structural repair internally, although there was some structural damage above the exit to the rear garden which needed attention.
15. The nearest store selling food and drink was located on Aylmer Road, within 0.2 miles of the Property, and the nearest bus stops were situated on Winstanley Drive, within 0.3 miles of the Property. The paths to both the bus stops and the shop were fairly level and within a few minutes' walking distance from the

Property, with further bus stops (giving access directly to Leicester town centre) within 0.5 miles of the Property.

Submissions

The Applicant's submissions

16. The Applicant stated that, when she initially applied for housing, she was offered three different properties by the Respondent, one of which was a flat located on the third floor. As such, she stated that she was not offered the Property based on her age or any age-related restrictions but, instead, chose the Property because of its proximity to her family.
17. The Applicant stated that her tenancy agreement also failed to mention that the Property was ineligible for the Right to Buy scheme and that she was, instead, informed that by signing the tenancy agreement she would have a right to purchase the Property at some point in the future. She stated that, had it been explained to her that this may not be possible, she could have made an informed choice as to whether to proceed with the letting and referred to having invested time and resources into looking after, and decorating, the Property to turn it into a home.
18. The Applicant submitted that the Respondent was inconsistent, unfair and discriminatory in their decision to refuse her application, as similar houses had been sold under the Right to Buy scheme in the locality, such as 257 Gooding Avenue which had been sold on 1 May 2006. She stated that the Property was not located within an area designated as retirement housing for individuals over 55, such as Stoneygate in Leicester.
19. In relation to the Respondent's bundle, the Applicant contended that the Respondent's evidence did not set out the full history of the Property and was incomplete, as it made no reference to her first Right to Buy application in August 2021.
20. The Applicant also submitted that there was a discrepancy in the history of letting referred to in the bundle in relation to tenancies granted to "*Mr J*". She stated that the information appeared to indicate that Mr J's tenancy had commenced on 19 June 1989, ceasing on 3 April 2000, but a further entry referred to a tenancy for Mr J commencing on 16 August 1999, ceasing on 27 February 2006. As such, the Applicant submitted that this information contained within the Respondent's bundle was unreliable.
21. Finally, the Applicant referred to photographs of the front and rear entrances to the Property contained within the Respondent's bundle. The Applicant stated that these were taken under false pretences by a housing officer who visited her home to carry out a welfare check. She stated that she was informed that the photographs were being taken for the maintenance team and that their inclusion undermined the validity of the Respondent's evidence.

22. The Applicant provided, with their statement, an online print-out from Zoopla relating to the sale of 257 Gooding Avenue and correspondence with the Respondent, including their initial Right to Buy application and refusal.

The Respondent's submissions

23. The Respondent's bundle included a statement of case, together with a witness statement from Ms Gurjit Kaur Minhas (the Respondent's Head of Service for Housing) to which several documents were exhibited.
24. The statement of case confirmed that the Property was constructed circa. 1932 and had been part of the Respondent's housing stock since that time.
25. The Respondent confirmed that the Applicant had been a secure tenant of the Property since May 2006, at which time the Applicant was 60 years of age, and that the Property was first let prior to 1 January 1990.
26. In relation to the factors set out in paragraph 12 of the Office of the Deputy Prime Minister's (ODPM) Circular 07/2004 ('the ODPM Circular'), the Respondent made the following observations:
- (i) The front door of the property is accessed via a paved path, from the footpath through the front garden. The path has almost no gradient and there are no steps along its course.
 - (ii) The property itself is entered by negotiating one step to a platform and thereafter one threshold step;
 - (iii) The rear garden to the property is accessed by one step through the back door;
 - (iv) The property is arranged over one floor;
 - (v) The property is a bungalow consisting of 1 bedroom, a kitchen, bathroom and living room;
 - (vi) The property has gas central heating which provides heating in all rooms and is timer-controlled, enabling it to be safely left on overnight. Servicing and maintenance of the heating system is undertaken by the Respondent, as landlord;
 - (vii) The property is located less than 200 metres from a local convenience/food store, which sells a variety of food items; and
 - (viii) The property has 2 bus stops located within 500 meters of it.
27. As the Property met all the criteria set out in the ODPM Circular, was first let prior to 1 January 1990 and the Applicant was over the age of 60 when her tenancy commenced, the Respondent submitted that the criteria for the denial of the Right to Buy had been met.
28. Ms Minhas' witness statement confirmed that that the application for a Right to Buy was received on or about 19 June 2024, with the application denied by the Respondent on 16 July 2024.
29. She stated that the Property was a one-bedroom bungalow, with level access and, as indicated by Leicester City's Council's Housing Allocations Policy, was age

designated accommodation and reserved in the first instance to people over 60 years old.

30. Ms Minhas produced a copy of the Respondent's computer records which she submitted detailed the tenants of the Property since 1989, including details of the Applicant's tenancy which commenced on 1 May 2006. As the Applicant was born on 26 May 1945, Ms Minhas confirmed that she was 60 years old when the tenancy commenced.
31. Ms Minhas confirmed that she had not personally visited the Property but referred to images exhibited to her statement taken from Google Street View, detailing its location, and discussions with a housing officer who had confirmed to her that it comprised a kitchen, bathroom, living room and one bedroom. She also referred to the photographs GKM6, as showing the front and rear entrances to the Property.
32. Ms Minhas stated that the Respondent's records indicated that the Property was served by gas central heating, which could be safely left on overnight, and that there was a fire located in the living room.
33. Finally, she referred to an exhibit, GKM8, which included a map of the location indicating that the Property was located approximately 200 meters from local convenience stores with bus stops located less than 500 metres away from the Property.

The Tribunal's Deliberations

34. The Tribunal considered all of the evidence submitted by the parties and briefly summarised above. The Tribunal also considered the guidance contained in the ODPM Circular 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.
35. In determining whether the Property was particularly suitable for the elderly, the Tribunal noted that the Applicant had not denied the information provided by the Respondent in its bundle regarding the features of the Property, as set out in paragraph 26 above. These features corresponded with the Tribunal's own inspection of the Property and the Applicant had not suggested that any of these features had been provided by her.
36. As the Property benefited from gas central heating, with a radiator in the lounge, the Tribunal did not consider the gas fire being switched off as affecting the adequacy of the heating. In addition, the Tribunal found that the items of disrepair referred to by the Applicant at the inspection as being matters that ought to be dealt with by the Respondent's maintenance team but did not affect the Property's overall characteristics.
37. Having considered the written evidence submitted, its inspection 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.

38. In the absence of any evidence to the contrary, the Tribunal 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.
39. With regard to whether the Property was first let before 1 January 1990, as required by paragraph 11(6) of Schedule 5 to the Act, although the Applicant referred to a potential discrepancy in the dates for the previous tenant, she failed to provide any evidence that the Property was not let before 1 January 1990. The discrepancy may have related to a new tenancy being granted prior to a fixed end date referred to in a previous tenancy and, in any event, the computer entries identified that the Property was let on 19 June 1989.
40. 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.
41. Although the Tribunal noted that the Applicant had submitted that she had not been offered the Property due to her age, that she had not been informed that the Right to Buy could be denied when she entered into her tenancy agreement and that she had invested time and money into the Property to turn it into a home – none of these were factors that the Tribunal could take into account when making a determination.
42. In addition, under paragraph 11, the Tribunal must look at the suitability of the actual property and not whether the property is in an area designated for a particular type of housing or if the Respondent has sold other properties in the location under the Right to Buy scheme. In any event, the Tribunal noted that the particulars provided by the Applicant for 257 Gooding Avenue indicated that it was a three bedroom-house, so was not comparable.
43. In relation to the other matters referred to by the Applicant, the Tribunal found that the failure of the Respondent to make reference to the Applicant's original application was not pertinent to the case and the Tribunal had carried out its own inspection so did not need to rely on photographs supplied by the Respondent, the exclusion of which would not have affected the validity of the other documents contained within the Respondent's bundle.

Appeal

44. 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