



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

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| Case Reference | : HAV/29UB/RTB/2025/0002 |
| Property | : 110 Beecholme Drive, Kennington, Ashford, Kent, TN24 9BZ |
| Applicant | : Ms Eunice Njeri Ikigu |
| Representative | : Mr T Mbugua |
| Respondent | : Ashford Borough Council |
| Representative | : None |
| Type of Application | : Refusal of Right to Buy |
| Tribunal Member | : Regional Surveyor J Coupe FRICS |
| Date of Decision | : 15 May 2025 |

DECISION

Summary Decision

The Tribunal determines that the Applicant is not entitled to purchase the Property under the provisions of Paragraph 11 of Schedule 5 to the Housing Act 1985. Accordingly, the application fails.

Background

1. On 22 January 2025, the Applicant submitted an application in the prescribed form to the Tribunal, seeking to appeal the denial of their right to buy 110 Beecholme Drive, Kennington, Ashford, Kent, TN24 9BZ (“the property”). The denial was issued on 29 November 2024 by Ashford Borough Council on the grounds that paragraph 11 of Schedule 5 to the Housing Act 1985 (as amended) (“the Act”) applies to the property. The Tribunal accepted the application as having been made in time.
2. The Tribunal issued Directions on the 21 February 2025 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.
3. The Tribunal Directions required the Respondent to respond to the Applicant’s case, allowing the Applicant to reply. Subsequently, the Respondent was to prepare a hearing bundle. The Directions did not grant the Respondent the right to respond to the Applicant’s reply. Nevertheless, the Respondent submitted a reply, which has not been considered when making this determination. Reference to page numbers in the bundle are shown as [].
4. A bundle extending to 74 electronic pages was submitted by the Respondent and included:
 - i. Form RTB1, appealing the Local Authority’s decision to refuse the right to buy;
 - ii. Form RTB2, titled ‘Notice in Reply to Tenant’s Right to Buy Claim’, dated 29 November 2024, issued by the Respondent in response to the Applicant’s claim;
 - iii. Completed appeal form;
 - iv. Witness Statement on behalf of the Respondent;
 - v. Associated documentation and correspondence.
5. Upon receipt, the bundle was checked for completeness. Having done so, I was satisfied that the application is suitable for determination on the papers.
6. Neither party’s written submissions indicated that an inspection of the property was necessary, nor did I consider it proportionate to do so.

7. These reasons address in summary form the key issues raised by the parties. The reasons do not recite each point referred to in submissions but concentrate on those issues which, in the Tribunal's view, are both relevant and 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

8. 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.
9. The Respondent has denied the Applicant 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 Property

10. The Applicant provides a brief description of the property at paragraph 3.5 of form RTB1 describing the property as a *"Bungalow with a heating system. This is a two bedroom house. The estimated age of the building is 50 years. It is within a mile of shops and public transport."* [15]. No details of the type of heating system were provided.
11. A marketing appraisal prepared by Haart Estate Agents, dated 15 August 2019 and addressed to the Applicant, describes the property as a two-bedroom, end-terraced, bungalow built around 1974. Additionally, the report mentions the kitchen, bathroom and the general condition of the property.
12. The report states *"The front and rear gardens appear to slope down and up respectively to the damp proof course and it would be advisable to get the opinion of a qualified builder/surveyor as to whether this is causing any long term damage to the property breaching the DPC"*. [27]

The Law

13. 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.

14. The Office of the Deputy Prime Minister (ODPM) 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

The Applicant

15. The Applicant's date of birth is 30 March 1959. The Applicant's tenancy of the property commenced on 12 June 2006, when the Applicant was 47 years old.
16. The Applicant's reasons for challenging the Respondent's decision to refuse her the right to buy the property are set out within the application form and expanded upon within her reply to the Respondent's statement of case [48]. The grounds are summarised as follows:
- i. The Applicant was under the age of 60 when the tenancy commenced, specifically 47 years old;
 - ii. In August 2019, the Respondent accepted a previous application by the Applicant to purchase the property under the right to buy scheme;
 - iii. The property is part of a row of similar properties, most of which have been sold by the Respondent under the right to buy scheme. The Respondent's refusal to admit the claim lacks evidence and appears discriminatory;
 - iv. The Council has provided inconsistent communication regarding eligibility for the right to buy scheme;
 - v. The property suffers from significant structural issues and disrepair, has a sloping front and rear garden – as supported by an independent party – and is unsuitable for occupation by the elderly;

- vi. The local shop, located at 0.2 miles away, is a small convenience store with a limited selection of groceries. Larger shops are approximately 1 mile away.

The Respondent

17. The Respondent relies on a witness statement of Nesrene Boumnigel, the Leasehold Services and Right to Buy Manager at Ashford Borough Council. The statement, signed and dated 12 March 2025, includes a statement of truth.
18. Ms Boumnigel acknowledges that the Respondent previously accepted an application from the Applicant under the right to buy scheme. However, she states that the claim was admitted in error due to the Respondent's failure to consider the age of previous tenants when assessing the application.
19. Ms Boumnigel states that the property meets the requirements of paragraph 11 of Schedule 5 to the Housing Act 1985. Specifically, the property 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 (whether the tenant or a predecessor). Taking each point in turn.
20. Firstly, Ms Boumnigel states that the property was first let on 30 November 1981. Exhibit NB/2 is a copy of the Respondent's internal records confirming this. [44]
21. Secondly, Ms Boumnigel considers the property is particularly suitable for occupation by elderly persons, in so much as it:
 - Is a bungalow with accommodation all on one level
 - Only has two bedrooms
 - Has no steps leading to the property and has a fitted handrail leading from the footpath to the front door
 - Has a wet room, including a shower seat
 - Has an electric cooker
 - Has a functional central heating system
 - Has a lifeline fitted for the Applicant
 - Is a four-minute walk or 0.2 miles to the closest bus stop
 - Is a four-minute walk or 0.2 miles to the closest convenience store.
22. Thirdly, Ms Boumnigel says that although the Applicant was under 60 years old when her tenancy was granted, a previous tenant, born on 15 April 1931, was granted a tenancy on 5 August 2002, at the age of 71. Exhibit NB/3 is a copy of the Respondent's internal records confirming this. [46]

23. Finally, Ms Boumnigel asserts that the sale of other properties of similar design in the vicinity through the Right to Buy scheme is irrelevant to this application, as the reasons for those sales may differ from the circumstances in this case.
24. Having considered the grounds of the Applicant's appeal, Ms Boumnigel remains of the opinion that the Respondent has satisfied the tests set out in Paragraph 11(1)(a) and (b) of Schedule 5 of the Act, and the criteria set down by the ODPM Circular.

Finding of Facts and Determination

25. The Tribunal's jurisdiction is to determine whether the conditions contained in paragraph 5 of Schedule 11 of the Housing Act 1985 are met.
26. In making its determination the Tribunal is guided, but not bound, by the ODPM circular referred to.
27. The Respondent's admission of a previous application by the tenant to purchase the property under the Right to Buy Scheme is not relevant to this subsequent application.
28. Similarly, the sale of comparable property in the vicinity under the Scheme is not relevant to this appeal. Each application is determined having regard to the individual circumstances of the case.
29. 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.
30. 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.
31. 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."*
32. In reaching my determination, I considered the evidence regarding whether the property was first let before 1 January 1990. In this regard, the Respondent relies upon exhibit NB2 [44], a screenshot from their

internal management system. The Applicant has not challenged this point and has provided no evidence to refute the Respondent's position. Based on the evidence presented, I am satisfied that the property was first let before 1 January 1990.

33. Turning to the requirement that the property was let to the tenant, or a predecessor in title, for occupation by a person who was aged 60 or more, and the evidence supporting this. The Respondent relies on exhibit NB3 [46], a screenshot from their internal management system, showing that a tenancy was granted to a previous tenant at the age of 71. The Applicant has not challenged this point and nor has she provided any evidence to refute the Respondent's position. Based on the evidence presented, I am satisfied that this requirement is met.
34. Finally, I considered whether the property is particularly suitable for occupation by elderly persons having regard to its location, size, design, heating system and other features. In doing so, I reminded myself that the term 'elderly persons' does not mean persons who are frail or severely disabled.
35. It is agreed by both parties that the property is a two-bedroom bungalow, with accommodation on one level and a functioning heating system. The Applicant has not suggested that the heating system is unreliable, fails to provide heat to at least the living room and one bedroom, or cannot be safely left on overnight. Additionally, there is no indication that access to the property is difficult.
36. It is also agreed that the property is convenient for public transport and the nearest shop. However, the Applicant argues that the closest shop is a small convenience store with a limited selection, and that larger shops with more extensive offerings are over a mile away. In considering this point, I referred to the guidance in ODPM Circular 07/2004, which advises the nearest shop must sell basic food items, including bread and milk. There is no indication from the Applicant that the local convenience shop does not sell these items. Accordingly, I find that the property is located reasonably convenient for shops and public transport having regard to the nature of the area.
37. The Applicant asserts that the property has structural problems and sloping front and rear gardens, making it unsuitable for elderly occupants. The evidence provided is a marketing appraisal prepared by the Senior Branch Manager at Haart Estate Agents, dated 15 August 2019, some five years previous to this application [27]. However, the Applicant has not submitted a Chartered Surveyor's report on the alleged structural issues, any evidence of communication with the Council or any supporting photographic evidence. Therefore, I am unable to give significant weight to this issue.
38. I am satisfied, when assessing the characteristics of the property in the aggregate and not individually, that the property fulfils the requirements of the ODPM circular. I am further satisfied, given the

guidance handed down by the Upper Tribunal in *Milton Keynes v Bailey*, that taking the features of the property as a whole, the property is particularly suitable for occupation by elderly persons.

39. 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.
40. **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.