



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

Case Reference	: HAV/24UJ/RTB/2025/0003
Property	: 4 Newlands Close, Blackfield, Southampton, Hampshire, SO45 1WH
Applicant	: Ms J Phillips
Representative	: Mr T Gibb
Respondent	: New Forest District Council
Representative	: Ms K Farmer
Type of Application	: Refusal of Right to Buy
Tribunal Members	: Regional Surveyor J Coupe FRICS Mr M.J.F. Donaldson FRICS
Date of Decision	: 4 July 2025

DECISION

Summary of 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 14 May 2025 the Applicant submitted an application in the prescribed form to the Tribunal, seeking to appeal the denial of her right to buy 4 Newlands Close, Blackfield, Southampton, Hampshire, SO45 1WH (“the property”). The denial was issued on 19 March 2025 by New Forest District 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 28 May 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 Directions indicated that the Tribunal would inspect the property on 2 July 2025.
4. The Directions required the Respondent to respond to the Applicant’s case, allowing the Applicant to reply. In the event, the Applicant did not reply to the Respondent’s statement. The Respondent was directed to prepare a hearing bundle. Reference to page numbers in the bundle are shown as [].
5. A bundle extending to 148 electronic pages was submitted by the Respondent and included:
 - i. Form RTB2, titled ‘Notice in Reply to Tenant’s Right to Buy Claim’, dated 19 March 2025, issued by the Respondent in response to the Applicant’s claim;
 - ii. Form RTB1, appealing the Local Authority’s decision to refuse the right to buy;
 - iii. Witness Statement of Ms K Farmer, on behalf of the Respondent;
 - iv. Associated documentation and correspondence.
6. Upon receipt, the bundle was reviewed for completeness. Following the review, the Tribunal was satisfied that, subject to an inspection of the property, the application remained suitable for determination on the papers.

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 arises from the Respondent's decision to refuse the Applicant the right to buy the property, relying on the exemption set out 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 basis that it meets the criteria set out in paragraph 11 of Schedule 5 to the Housing Act 1985. Specifically, the Respondent asserts that 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 over.

The Inspection

10. The Tribunal inspected the property at 2:00pm on Wednesday 2 July 2025. The Applicant, Ms Phillips, was present during the inspection. The Respondent was not present. Weather conditions at the time of the inspection were dry and bright.

The Property

11. The property is a semi-detached bungalow, believed to have been constructed circa 1938. It is of traditional brick construction beneath a pitched, tiled roof. Access to the front elevation is via a narrow path leading to the main entrance, which is accessed by two steps and a threshold step. The bungalow is bordered on three sides by gardens, which are overgrown and encroaching upon the front access path. To the side of the dwelling, there is off-road parking for two vehicles parked in tandem; the surface is level and affords unimpeded access. The side entrance has a single threshold step and is accessible from the driveway, which has a dropped kerb. To the rear of the property, there is a small rendered concrete outbuilding, which benefits from an electrical supply.
12. The accommodation comprises a reception room, kitchen, bedroom, inner hallway and bathroom. The property benefits from full uPVC double glazing and a gas-fired central heating system, with radiators installed in each principal room and a wall-mounted Worcester combination boiler located in the kitchen. The kitchen is fitted with a range of base and wall-mounted units providing storage and

workspace. The bathroom is equipped with an electric shower incorporating a mobility seat and handrail – installed by the Respondent - together with a toilet and a wash hand basin.

13. Two convenience stores - Tesco Express and Sainsburys Local - are situated within approximately 500 metres of the property. In addition, a cluster of further retail outlets and local amenities is located within a similar distance. Access to these facilities is via a public footpath on a level gradient.
14. The property is located within close proximity of Bus Stops providing public transport, seven days a week, to Southampton and Calshot.

The Law

15. 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.

16. 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 suggested to be taken into account by the local authority, and, on any subsequent appeal by the Tribunal, 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

17. The Applicant's date of birth is 18 June 1954. The Applicant's tenancy of the property commenced on 29 March 2019, when the Applicant was 64 years old.
18. The Applicant describes the property in the application form as a '*semi detached one bedroom bungalow with very large corner plot. Probably built in 1940's & convenience (sic) for local shops*'. [16].
19. 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 [16]. The grounds are summarised as follows:
 - i. The garden is too large for an elderly person;
 - ii. The path requires widening and upgrading;
 - iii. The front doorstep is unsafe;
 - iv. There is no security lighting;
 - v. The property requires complete refurbishment and replacement of the electrical installation;
 - vi. The roof has deteriorated; three internal damp patches are evident, and the property is very cold.

The Respondent

20. The Respondent relies on a witness statement of Ms Kirsty Farmer, a Service Manager for Housing Resident Services at the New Forest District Council. The statement is signed and dated 10 June 2025, and includes a statement of truth.
21. Ms Farmer 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.
22. In relation to the question of whether the property was let prior to 1 January 1990, the Respondent's records indicate that a tenancy commenced in January 1988. The original tenancy agreement for that letting is no longer held by the Respondent. Instead, reliance is placed on Exhibit KF6 [99], which consists of a digital screenshot of the Council's property records, which identifies the earliest digitally recorded tenancy as having commenced on 18 January 1988.
23. Secondly, Ms Farmer considers the property to be particularly suitable for occupation by elderly persons. She states that the property is a bungalow, providing one-bedroom accommodation arranged on a single level. The property is readily accessible, including the front entrance which is approached via two steps measuring 24cm x 11cm, and 23cm x 13cm respectively, in addition to a threshold step. An alternative means of access is available via the rear entrance. The property benefits from reliable gas-fired central heating, with radiators

in each room. Additionally, the property is located within 482 metres of two convenience stores which operate extended opening hours and offer a broad range of everyday goods. Furthermore, the property is within 320 metres of a regular public transport service.

24. In relation to the third requirement - that the property was let for occupation by a person aged 60 or more - the Respondent relies on the Applicant's tenancy agreement, produced as Exhibit KF7 [103]. This document confirms a tenancy commencement date of 29 March 2019, at which time the Applicant was 64 years of age.
25. Having considered the grounds of the Applicant's appeal, Ms Farmer 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

26. The Tribunal's jurisdiction is to determine whether the conditions contained in paragraph 5 of Schedule 11 of the Housing Act 1985 are met.
27. 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.
28. 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.
29. In the Upper Tribunal decision, *Milton Keynes v Bailey* [2018] UKUT 207 (LC), Member 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.*"
30. In reaching its determination, the Tribunal considered the evidence relating to whether the property was first let before 1 January 1990. In this regard, the Respondent relies on Exhibit KF6, a screenshot from the Council's internal management system, which records that the property was let in 1988. The Applicant has not disputed this evidence and has not submitted any material to the contrary. On the basis of the unchallenged evidence presented, the Tribunal finds that the property was first let before 1 January 1990.

31. Turning to the requirement that the property was let to the tenant, or a predecessor in title, for occupation by a person aged 60 or over, the Tribunal considered the evidence submitted. The Respondent relies on Exhibit KF7, a copy of the Applicant's tenancy agreement, which commenced on 29 March 2019. At that time, the Applicant was 64 years of age. The Applicant has not disputed this evidence, nor has she submitted any documentation to the contrary. On the basis of the evidence, the Tribunal finds that the requirement is met.
32. Finally, the Tribunal 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, the Tribunal reminded itself that the term 'elderly persons' does not mean persons who are frail or severely disabled.
33. It is accepted that the property is a one-bedroom, semi-detached bungalow with single-level accommodation, double glazing and a gas-fired central heating with radiators in all rooms.
34. The Applicant stated that the property is "*very cold*". However, during the inspection, the Tribunal identified a radiator in each room and a gas-fired boiler in the kitchen. In her submissions, the Applicant had not alleged that the radiators or boiler were not in good working order, nor that they were not functioning properly. Furthermore, the Applicant did not assert that the heating system is unreliable, incapable of heating the living room and the bedroom, or unsafe for overnight use. On the basis of the evidence provided and the Tribunal's observations during the inspection, the Tribunal finds that the property is equipped with an adequately functioning heating system.
35. The Tribunal has carefully considered the means of access to the property in assessing its suitability for occupation by an elderly person. The Tribunal finds that while the front pathway is of limited width, it is relatively level and does not present any significant impediment to access. The only current obstruction arises from overgrown vegetation encroaching onto the path, the maintenance of which is the responsibility of the tenant.
36. In accordance with the guidance set out in the ODPM Circular, the Tribunal has also given careful consideration to the number, size and height of the steps providing access to the property. The Tribunal finds that access via the front entrance involves negotiating three steps of average dimensions, including the threshold step. However, access via the side entrance is afforded by a level tarmacadam driveway, which provides unobstructed entry, requiring only the use of a single threshold step. The Tribunal therefore finds that the means of access to the dwelling is suitable for an elderly person.
37. The Tribunal finds that the property is located reasonably conveniently for shops and public transport, with two convenience stores which sell everyday goods and are open seven days a week within 800 metres.

Additionally, the property is located within 800 metres of bus stops which provide regular public transport to nearby towns and Southampton.

38. The Tribunal is therefore satisfied, when assessing the characteristics of the property in the aggregate and not individually, that the property fulfils the guidance contained within the ODPM circular. The Tribunal is further satisfied, applying 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. The Tribunal finds 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.

Determination

40. In view of the above, the Tribunal determines that the application fails. 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.