



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

Case Reference : **MAN/ooEU/RTB/2024/0003**

Property : **11 Glazebrook Street, Warrington, WA1 3AT**

Applicant : **David Fowler**

Respondent : **Torus 62 Ltd**

Type of Application : **Determination of Right to Buy Housing Act 1985, Schedule 5, Paragraph 11, as amended by Housing Act 2004, Section 181**

Tribunal Members : **Mr S Wanderer**
Mrs H Clayton

Date of Decision : **21 January 2025**

DECISION

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The Tribunal was not presented with any evidence that the Property was let to the Applicant Tenant or a predecessor in title for occupation by a person aged 60 or more. Thus, the Respondent Landlord may not rely on Schedule 5 Para 11 of the Housing Act 1985 and the Tenant's appeal against the denial of the Right to Buy succeeds.

Reasons

Application and Background

1. The Applicant is the Tenant and occupier of the Property and gave notice to the Landlord of intention to exercise the Right to Buy.
2. The Landlord then served a Notice dated 20 February 2024 upon the Applicant under Section 124 of the Act denying the Right to Buy on the grounds set out in paragraph 11 to Schedule 5 of the Act.
3. By an application dated 29 February 2024 the Applicant applied to the Tribunal for an appeal against the Landlord's denial of the Right to Buy.

Inspection and determination

4. The Tribunal carried out an internal inspection of the Property on 21 January 2025. Present at the inspection were the Applicant and Ms A Young on behalf of the Respondent.
5. Both parties having been afforded the opportunity to make written submissions, and neither party requesting a hearing, the Tribunal determined the matter on the papers following the inspection of the property.

The Property

6. The Tribunal inspected the Property as above, taking note of the layout, accommodation and method of heating. We also identified the location of nearby shops and bus routes in the surrounding locality.
7. The Property is a single storey attached bungalow under a low pitched roof. The accommodation comprises living room, two bedrooms, kitchen, and bathroom. Externally there is a small front garden, and enclosed rear garden. There is on-street parking outside the property and the access to the property is level, with a single step into the front door.

8. For reasons which will become apparent later in this determination the Tribunal does not intend to deliberate further as to of the nature of the Property or the surrounding facilities.

The Law

9. Paragraph 11 of Schedule 5 of the Housing Act 1985 provides that:-

- (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 of 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*
- (6) *This paragraph does not apply unless the dwelling house concerned was first let before 1st January 1990*

10. The Office of the Deputy Prime Minister (ODPM) (now the Ministry of Housing, Communities and Local Government) issued Circular 7/2004 (Right to Buy: Exclusion of Elderly Persons' Housing), which sets out the main issues relating to the particular suitability of an individual dwelling house for occupation by elderly persons (paragraph 12). The Tribunal is not bound by this circular, deciding each case on its merits, but does have regard to the criteria contained in the circular as a guide.

Tribunal's Determination

11. The Applicant in his application confirmed that the tenancy began on 30 October 2006, at which time he was the eldest person living at the Property and was well below the age of 60.

12. On the part of the Respondent, no challenge was presented to the information provided by the Applicant as to his age at the start of the tenancy. Very brief submissions were offered by the Respondent to the effect that the Applicant had transferred to the Property from another Torus property, although the Tribunal failed to see the relevance of this point and considered that a new tenancy would of necessity have been granted upon moving into the Property.

13. There is, therefore, no evidence before the Tribunal to suggest that the condition set out in paragraph 11(1)(b) of Schedule 5 is satisfied. Indeed, the evidence indicates the Property was not let to or for occupation by a person aged 60 or more. To that extent, the Respondent is prevented from relying on Paragraph 11 of Schedule 5 of the Act.

14. This renders any consideration of whether or not the property is particularly suitable for occupation by the elderly unnecessary.

The Tenant's appeal is successful.

S Wanderer
21 January 2025