



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

**Case Reference** : **BIR/00FN/RTB/2025/0020**

**Property** : **8 Aldgate Avenue Leicester LE5 6DA**

**Applicant** : **Asil Mohamed Hasan**

**Representative** : **Sayem Khondoker of MK Solicitors**

**Respondent** : **Leicester City Council (Ref: RTB/46532)**

**Representative** : **Jon Ward Counsel (Tanfield Chambers)**

**Type of Application** : **An application under paragraph 11 of Schedule 5 to the Housing Act 1985. (Denial by Landlord of the Right to Buy provisions of the Act because the property is particularly suitable for occupation by an elderly person).**

**Tribunal Members** : **V Ward BSc Hons FRICS – Regional Surveyor  
C Birds JP FRICS**

**Date of Decision** : **30 March 2026**

---

**DECISION**

---

## **Introduction**

1. This is decision in respect of an application to the First – tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) to determine whether the exception to the right to buy in paragraph 11 of Schedule 5 to the Housing Act 1985 (“the Act”) – property particularly suitable for occupation by elderly persons and let to the tenant for occupation by a person aged 60 or more – applies to the property which is the subject of this application.

## **Background**

2. The Tenant, Asil Mohamed Hasan (“the Applicant”), by notice applied to Leicester City Council (“the Respondent”) to buy 8 Aldgate Avenue, Leicester LE5 6DA (“the Property”) under the Right to Buy provisions contained in the Act.
3. By way of an RTB2 Form – Notice in Reply to Tenant’s Right to Buy Claim, the Respondent served notice on the Applicant denying the right of the Applicant to buy the Property as in their opinion, paragraph 11 of Schedule 5 to the Housing Act 1985 applies. This form was dated 7 July 2025.
4. By an application received on 31 August 2025, the Applicant applied to the Tribunal pursuant to section 181 of the Housing Act 2004 for a determination as to whether the Property was excluded from the Right to Buy (RTB) provisions contained in the Act on the grounds that the dwelling:
  - was first let before 1 January 1990
  - is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons; and
  - was let to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more.
5. The Office of the Deputy Prime Minister Circular 07/2004 entitled Right to Buy: Exclusion of Elderly Persons’ Housing (“the Circular”) gives guidance on the criteria to be adopted in determining the suitability of a dwelling house for occupation by elderly persons. The Circular also provides details of the “*Lettings Test*”: It is reiterated that paragraph 11 of Schedule 5 of the Housing Act 1985 applies only if the dwelling in question was let ‘to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more’. The Secretary of State takes the

..

view that this condition is only met if, when the current tenancy or that of the current tenant's predecessor in title was granted, the landlord knew:

- that the tenant, or one or more of joint tenants, was aged 60 or more;

or

- that the dwelling was to be occupied by some other person known by the landlord to be aged 60 or more.

6. The Tribunal is not bound by the Circular and decides each case on its merits but has regard to the Circular for guidance.
7. The Applicant requested an oral hearing in respect of this matter. Accordingly, the Tribunal determines this matter on the basis of its own inspection of the Property, the oral hearing and the written submissions of the parties.

### **The Property**

8. The Tribunal inspected the Property on 5 March 2026 in the presence of the Applicant, Asil Mohamed Hasan, and her daughters Roda and Sophia Artan. Ms Sabira Husein, Housing Officer, attended on behalf of the Respondent, Leicester City Council.
9. The Property comprises a mid-terraced house offering the following accommodation, which benefits from double glazing and gas fired central heating:

#### Ground Floor

Hall

Lounge

Kitchen

Double bedroom with direct access to:

Wet room with shower, wash hand basin and low flush WC. This room has wheelchair access.

#### First Floor

Three bedrooms.

Bathroom with full suite.

..

Gardens laid to lawn.

NB. The ground floor double bedroom and the wet room were purpose built for the Applicant by the Respondent in 2008.

10. There is a wheelchair ramp to the front door with handrails. The Tribunal understands that this was constructed at the same time as the ground floor double bedroom and the wet room.
11. There is level access to the wheelchair ramp from the public footpath. The immediate area around the subject Property is of a gradient reasonable from the viewpoint of an elderly person who can live independently and is not frail or disabled.
12. There is car parking available outside the Property.
13. The Property benefits from a gas fired heating system which, from the information provided, appears to function correctly and provide overnight heating if required.
14. The Property lies just over three miles to the east of Leicester City Council within the area known as Evington amongst properties of a similar age, type and class.
15. From its inspection, the Tribunal noted that both bus shops and shops selling basic food stuffs are within 800m as stated in the guidance and both are accessible in terms of an elderly person as defined by the Circular.

### **The Oral Hearing**

16. An oral hearing was held at the Tribunal Hearing Centre, New Walk, Leicester later the same day. Present at the hearing were the Applicant, Asil Mohamed Hasan and her daughters Roda and Sophia Artan, who was represented by Mr Sayem Khondoker of MK Solicitors. The Respondent, Leicester City Council was represented by Jon Ward, Counsel of Tanfield Chambers who joined by video link.

### **Preliminary Issue**

17. One of the Applicant's grounds of appeal was that the Respondent had misapplied or inconsistently applied the paragraph 11 exemption.
18. The Tribunal advised the Applicant that this was not a factor it had jurisdiction to consider.

..

Substantive Issues

19. The Tribunal considered that it had three essential questions to determine if the Respondent could rely on paragraph 11 to deny the Applicant the right to buy:
- a) Was the Property let for occupation by a person aged 60 or more?
  - b) Was the Property first let before 1 January 1990?
  - c) Is the Property particularly suitable for occupation by elderly persons?

The Tribunal considers it reasonable to set out the parties' submissions in respect of each question.

a) Was the Property let for occupation by a person aged 60 or more?

*The Respondent*

20. The Respondent confirmed that the Applicant has been a joint tenant of the Property since it was first let on 11 August 2008, with her mother, Hawa Herci Shewac. The Applicant's mother was 75 years of age at the time of commencement of the tenancy, and the Applicant was 54 years of age at that time.

*The Applicant*

21. The Applicant was of the view that although the Applicant's mother was over 60, the tenancy was granted to both the Applicant and her mother as joint tenants. Therefore, the tenancy was not expressly granted "for occupation by a person aged 60 or more." Accordingly, on this basis, the Respondent has not satisfied the statutory requirements of Paragraph 11(1)(b).

b) Was the Property first let before 1 January 1990?

*The Respondent*

22. The Respondent exhibited a witness statement made by Gurjit Kaur Minhas who is employed by the Respondent as Head of Service for Housing. This stated as follows:

*The property was constructed in or around 1950 as part of the Council's housing stock. I refer to an extract from the Council's computerised system known as "Northgate", which is now produced and shown to me marked "GKM2". It can be*

seen from this record that the construction date of the property is stated as being 1951.

*I believe that the property has been let to tenants of the Council since 1951, however, the Council's archived computer records only go back as far as 1992. I refer to a copy of those records, which are now produced and shown to me marked "GKM3". These records show the tenants of the property since 1992, including details of the Applicant's tenancy, which commenced on 11/8/2008.*

The records referred to above were included as part of the witness statement

#### *The Applicant*

23. The Applicant stated that the burden of proof rested with the Respondent to prove that the Property was first let before 1990 and they had produced no evidence to confirm the same.

#### *c) Is the Property particularly suitable for occupation by elderly persons?*

#### *The Respondent*

24. On behalf of the Respondent, Mr Ward set out how he considered the Tribunal should consider this matter which should be assessed in the round and all matters weighed up. The editors of Woodfall on Landlord and Tenant, broadly quoting from *Milton Keynes Council v Bailey [2018] UKUT 207 (LC), [2018] HLR 35*

*"The characteristics of the property must be assessed in the aggregate, and not looked at individually. The question is whether the property is particularly suitable for such occupation. Some features may tend in one direction, while other points the other way; and 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."*

From this Mr Ward concluded that:-

- (i) All factors should be taken into account. They should be weighed in the aggregate.
- (ii) A holistic view must be taken of factors weighing one way or the other.

- (iii) A single factor will not make a property unsuitable unless by itself it positively renders a property unsuitable, rather than simply not rendering it particularly suitable.
- (iv) By formation, a single factor is capable of rendering a property particularly suitable, if the factor is so important or fundamental in nature.

Therefore, sufficient factors speaking to particular suitability are not eroded unless there is a specific factor which positively outweighs. An assessment of the whole simply requires sufficient factors which militate towards particular suitability to render it legitimate to describe a property as particularly suitable.

It is specifically contended that whilst the test might be one of particular suitability for independent living, that does not mean that a property should be designed for occupation by a single person.

Just as in *Milton Keynes* and *Oxon* (as discussed in *Milton Keynes*), no one factor was determinative; a property is capable of occupation by a family does not by itself render otiose the exception.

In this case: -

- (i) The Property has a ramp with railings either side leading to the front door.
- (ii) The rear of the Property does not have any steps apart from the threshold.
- (iii) The ground floor has been specifically adapted by the social services division of the Respondent to provide a bedroom and a wet room specifically to accommodate the Applicant's late co-tenant, who was elderly. The Property is therefore particularly suitable.
- (iv) The property has gas central heating which is manageable in all rooms and from the ground floor, managed by the landlord and capable of safely and consistently running 24 hours a day if required.
- (v) The property is less than 700 meters and relatively level from a local food and grocery shop.
- (vi) The property is less than 160 meters from a bus stop.

25. Continuing, Mr Ward reasoned that the only countervailing arguments are that (1) the Property is over two floors and (2) it has more than two bedrooms. He submitted that neither of these whether by themselves or in concert, render the Property anything other than particularly suitable.
26. As to the first, a stair lift could readily be installed but it need not be because the entirety of the accommodation is available on the ground floor, ie wet room, bedroom, living room, kitchen. As to the second, this simply makes it possible for and provides a rare opportunity for precisely the sort of family unit that occupied it historically – an elderly person who benefits from the accessibility together with family members who do not need the accessibility.
27. It would be contrary to wider public policy to regard the excess of bedrooms as a single factor capable of weighing positively, or substantially, against the particular suitability of the Property.
28. The Property has been specifically adapted by the Respondent’s social services department to accommodate an elderly person. The location, topography and amenities and wider accessibility exceed the minimum guidance from the Circular. It is, with respect, difficult to imagine a property more particularly suitable for the elderly. Not only does it meet the requirements, it has been specifically adapted to do so.
29. In the opinion of Mr Ward, the Property is particularly suitable and has been specifically and adapted for use by elderly persons. It is not unreasonable that elderly people live with younger people as per the original letting; that is not the test.

#### *The Applicant*

30. For the Applicant, Mr Khondoker noted that the Circular at paragraph 12 b) stated

*“the accommodation should normally be on one level. The Secretary of State is unlikely to regard a dwelling with two or more floors as being particularly suitable for occupation by an elderly person. However, he may be prepared to make exceptions for dwellings with up to three internal steps, or with stairlifts or similar devices provided by the landlord”*

This was contrary to the Property which was a house over two floors with twelve internal steps (the staircase leading from the first to the second floor).

31. Continuing, Mr Khondoker drew the Tribunal’s attention to 12 d):

there should be no more than two bedrooms, designated as such in the tenancy agreement;

The subject Property has four bedrooms.

32. In terms of the adaptations, specifically the ramp, ground floor bedroom and wet room, Mr Khondoker considered that they had not been provided by the Respondent but instead by Social Services specifically for the Applicant's mother accordingly from paragraph 10 of the Circular, which states "*...Any feature provided by the tenant or by a predecessor in title will not be taken into consideration*", these should be excluded.
33. Further, the Property does not contain features expected of accommodation for older persons such as:
  - a) Grab rails
  - b) Level-access shower
  - c) Accessible toilet fittings
  - d) Stairlift or platform lift
34. Concluding on this point, Mr Khondoker stated the inherent features, size, design, and layout of the Property clearly demonstrate it is a standard family dwelling, not elderly accommodation.

## **The Law**

35. The relevant law is contained in paragraph 11 of Schedule 5 of the Act 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 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) *This paragraph does not apply unless the dwelling-house concerned was first let before 1<sup>st</sup> January 1990.*

## **Determination**

36. The Tribunal's determination in respect of the three questions set out above are as follows.

*a) Was the Property let for occupation by a person aged 60 or more?*

37. The Tribunal's notes that the Circular states as follows:

*A significant number of appeals have been received involving properties that have been let for occupation by persons who are under the age of 60. In such cases, the Secretary of State has upheld the appeal. It is important to reiterate that paragraph 11 of Schedule 5 of the Housing Act 1985 applies only if the dwelling in question was let 'to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more'. The Secretary of State takes to view that this condition is only met if, when the current tenancy or that of the current tenant's predecessor in title was granted, the landlord knew:*

- that the tenant, or one or more of joint tenants, was aged 60 or more;*

*or*

- that the dwelling was to be occupied by some other person known by the landlord to be aged 60 or more*

38. It is accepted that the Applicant mother was over the age of 60 at the time of the letting in 2008. The Circular is clear that "one or more" of the joint tenants must be over 60. Accordingly, as the Applicant's mother was 74 at the time of the letting, the Tribunal considers that the *Lettings Test* is satisfied

*b) Was the Property first let before 1 January 1990?*

39. The Tribunal's inspection confirms that Property was probably constructed in the 1950s. Due to the lack of records, the Tribunal must consider whether on the balance of probabilities, the Property was first let before 1990 and on this basis considers that it must have been. It is inconceivable that the Property was introduced into the

Respondent's stock in the 1950s and then allowed to stand vacant. In the opinion of the Tribunal therefore, the Property was first let before 1990.

c) Is the Property particularly suitable for occupation by elderly persons?

40. 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. In the view of the Tribunal of this, the points raised by the Applicant in 33. above are not relevant, firstly there are handrails to the front door, there is level access to the ground floor wet room and there is no necessity for a stairlift due to the presence of the dormitory accommodation on the ground floor.
41. The Property is at odds with some elements of the Circular specifically the number of floors and bedrooms however, the Tribunal is not bound by the same and is encouraged by the Upper Tribunal in *Milton Keynes v Bailey* to think of the Property in the round and weigh the features, for and against.
42. In the opinion of the Tribunal, other than the number of floors and bedrooms, the Property meets all other requirements for consideration as suitable for occupation by elderly persons.
43. To aid their decision making, the Tribunal considered the Property in a hypothetical scenario – if it were to be offered in the open market for sale or to let, would a likely purchaser or tenant of the Property have a requirement for accommodation for elderly persons? The Tribunal considers that the answer would be yes. Reinforcement of this is provided by the changing cultural demographic of the country, significantly more accommodation is now occupied by three or more generations and in this regard, this Property would be ideal. In the reverse, the Tribunal also considers it unlikely that a party would acquire the Property unless they had some requirement for accommodation suitable for occupation by elderly persons.
44. In summary therefore, the Tribunal considers that the Property is particularly suitable for occupation by an elderly person.

**Summary**

45. The Tribunal considers that, when assessing it as a whole, the Property is particularly suitable for occupation by an elderly person who can live independently

..

and noted the proximity of the shops and facilities as identified by the Respondent and the Tribunal's own research.

46. The Tribunal determines, therefore, after taking into account the parties' submissions and the findings of fact made by the Tribunal, that the Respondent is entitled to rely on the exception to the right to buy contained within paragraph 11 of Schedule 5 to the Act as the Property is particularly suitable for occupation by an elderly person. Accordingly, the Respondent's notice of denial is upheld. In practical terms this means that the Applicant does not have the right to purchase the Property.
47. In making their determination the Tribunal had regard to the submissions by the parties, the relevant law and their knowledge and experience as an expert tribunal, but not any special or secret knowledge.

#### **APPEAL**

48. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD BSc (Hons) FRICS Chairman