



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

**Case Reference** : **BIR/00CN/RTB/2025/0027**

**Property** : **16 Gordon Street, Bordesley Green,  
Birmingham, B9 4BY**

**Applicants** : **Mrs Saadiya Ali Hirse**

**Respondent** : **Birmingham City Council (Ref: 530871/1)**

**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** : **Tribunal Judge Anthony Verduyn  
Mr Neil Atherton MRICS**

**Date of Decision** : **16<sup>th</sup> March 2026**

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**DECISION**

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## **Introduction**

1. This is 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, Mrs Saadiya Ali Hirse (“the Applicant”), by notice applied to Birmingham City Council (“the Respondent”) to buy 16 Gordon Street, Bordesley Green, Birmingham B9 4BY (“the Property”) under the Right to Buy provisions contained in the Act.
3. By way of a 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 its opinion, paragraph 11 of Schedule 5 to the Housing Act 1985 applies. The relevant form was dated 28<sup>th</sup> October 2025.
4. By an application received on 6<sup>th</sup> November 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 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.

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 had indicated that she was content with a paper determination in this matter. The Respondent did not request an oral hearing; accordingly, the Tribunal determines this matter on the basis of its own inspection of the Property and the written submissions of the parties.

### **The Property**

8. The Tribunal inspected the Property on 12<sup>th</sup> March 2026 in the presence of Mr Kamal Mohamed Ismail Ali, who has a power of attorney in respect of the Applicant, Mrs Saadiya Ali Hirse, who did not attend. Mr Kamal Mohamed Ismail Ali's family was present, but he showed the Tribunal members around. A representative of the Respondent did not attend.
9. The Property comprises a ground floor flat offering the following accommodation, which benefits from double glazing and gas fired central heating:  
  
Hall  
Lounge  
Kitchen  
Double Bedroom  
Bathroom with suite comprising paneled bath, wash hand basin, and low flush WC. There was a shower over the bath which, the Tribunal was informed, was installed by the Applicant  
Various store cupboards
10. There is level access to the Property from the footpath and the front door is sheltered by a projecting roof. There is a small garden to rear, accessed from the lounge.

11. The Property is one of a two-storey block of flats, accessed by a footpath from Garrison Lane and with no dedicated car parking.
12. The Property lies short walking distance from the Birmingham inner ring road at Lawley Middleway and Garrison Lane has a regular bus service to the City Centre. Within a few hundred metres there is “Bordesley Village”; a modest centre comprising GP Surgery, Dental Practice, chemist and convenience store. A similar distance is Garrison Lane Park.

### **The Submissions of the parties on the Facts**

#### *The Applicant*

13. The submissions made by the Applicant are a direct challenge to the Respondent’s assessment that the Property is particularly suitable for occupation by elderly persons: there are none of the features normally associated with housing for the elderly (specifically, a level access shower, grab rails, widened doorways or an emergency alarm system). Nor have any such features been installed during the currency of the tenancy. Further, it is not sheltered housing, nor does it form part of a “designated elderly scheme” (specifically, there is no age restriction, warden service, on-site support, or specific reserved allocation for housing the elderly). Other residents in the development are identified as of mixed ages.
14. The Applicant contends that no report from the Respondent has identified features that make the Property particularly suitable for occupation by the elderly: the Property has been treated as standard housing.
15. The submissions continue that the housing needs of the Applicant, as identified by the Respondent, did not lead to an assessment that she needed “elderly-only” housing designation or restriction, but could bid more broadly for housing. It would appear that the mobility was only identified as an issue, following assessment by an Occupational Therapist, and communicated by letter from the Respondent dated 17<sup>th</sup> January 2025.

#### *The Respondent*

16. The Respondent confirmed that the Property had been let since 17<sup>th</sup> July 1978 i.e. before 1<sup>st</sup> January 1990.
17. The Property was let to the Applicant on 24<sup>th</sup> October 2022 when the Applicant was 65 years old (her date of birth is 1<sup>st</sup> January 1957).

18. The Respondent does not particularise its case on suitability, save to refer to the Property being a ground-floor, one-bedroom flat in close proximity to local shops, amenities and main bus routes.

### **The Law**

19. 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.*

### **Submissions on the Law**

20. The Respondent submits upon the law that: “when read properly together, the statutory test requires the Respondent to show that the dwelling is ‘particularly suitable’ for occupation by elderly persons by reason of its actual features, design, adaptations, designation, or allocation restrictions. General convenience factors alone do not satisfy the statutory threshold.”
21. The Applicant then classifies the Property being a one-bedroom, ground-floor flat close to amenities and bus routes as “common characteristics of general housing” and “general characteristics of ordinary residential housing [that] do not amount to specialist features, adaptations, or designation making the dwelling ‘particularly suitable for occupation by elderly persons’ for the purposes of Schedule 5 paragraph 11.’ ”

### **The Tribunal’s Findings (including those relevant to the Circular)**

22. The Property is a ground-floor flat.
23. The Property benefits from a gas fired heating system which, from the information provided, appears to function correctly and provide overnight heating if required.
24. 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.
25. The Property is within easy reach for pedestrian access to a local shop selling basic food items, a chemist and providers of medical services, with a bus stop within a convenient distance for accessing the city centre.
26. The Property was first let before 1990.
27. The *Lettings Test* was satisfied as the Tenant was aged over 60 on occupation.

### **Determination by the Tribunal**

28. The issue concerning whether or not other properties on the same development were first let to persons aged under 60 is not a factor for the Tribunal to take in account. The Tribunal's considerations relate solely to the subject Property and whether it is *particularly* suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons. General characteristics are relevant to the assessment.
29. 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 rejects the submissions that the law requires "particularity" to reflect adaptations or services directed specifically at the elderly (like warden service and on-site support).
30. The Tribunal is obliged to examine suitability from the perspective of an elderly person who can live independently. Specific designation by the Respondent as housing authority (or lack of such designation) is immaterial: the question is not one of labelling in allocation, but utility of the premises for the elderly and taken as a whole. Likewise, the personal circumstances of the Applicant is also not to be taken into account.

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. 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 notes the ease of access, and the proximity of the shops and medical facilities as identified in the vicinity by the Tribunal’s own observation.
33. 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.
34. In making their determination the Tribunal had regard to the submission by the parties, the relevant law and their knowledge and experience as an expert tribunal, but not any special or secret knowledge.

## **APPEAL**

35. 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).

Tribunal Judge Anthony Verduyn

16<sup>th</sup> March 2026