



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

Case Reference : HAV/29UB/RTB/2026/0002

Property : 14 St Mildreds Close, Church Road,
Tenterden, Kent, TN30 6AZ

Applicant : Mr Douglas Smith

Representative : -

Respondent : Ashford Borough Council

Representative : -

Type of Application : Refusal of Right to Buy

Tribunal Member : Regional Surveyor J Coupe FRICS

Date of Decision : 22 May 2026

DECISION

DECISION SUMMARY

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 is dismissed.

Background

1. On 25 February 2026, the Applicant submitted an application in the prescribed form to the Tribunal, seeking to appeal the denial of their right to buy 14 St Mildreds Close, Church Road, Tenterden, Kent, TN30 6AZ (“the Property”). The denial was issued on 12 January 2026 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 4 March 2026 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 was 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.
4. A bundle extending to 61 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 12 January 2026 issued by the Respondent in response to the Applicant’s claim;
 - iii. Witness Statement on behalf of the Respondent.
5. Upon receipt, the bundle was checked for completeness. Having done so, I was satisfied that the application was suitable for determination on the papers.
6. Neither party 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 provided a brief description of the Property at paragraph 3.5 of form RTB1, describing the property as a one-bedroom ground floor flat.

The Law

11. 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.
12. 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.

Submissions and Evidence

The Applicant

13. No further submissions were received from the Applicant. The Tribunal takes into account the information provided by the Applicant within the RTB1 Appeal Form.

The Respondent

14. The Respondent relies on the witness statement of Nesrene Boumnigel, Leasehold Services and Right to Buy Manager at Ashford Borough Council. The statement, signed and dated 11 March 2026, includes a statement of truth.
15. 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.
16. The property was first let on 7 February 1983, evidenced by exhibit NB/2.
17. The Property is considered particularly suitable for occupation by elderly persons, in so much as it:
 - Is a ground floor flat, being a property all on one level without an internal staircase
 - Has only one bedroom
 - Has a gently sloped path leading down to the first side gate of the property. Upon opening the side gate there is a handrail and three wide steps down to the area in front of the Property
 - Has additional access to the Property without using any stairs by entering via a grey communal gate slightly further down the path
 - Has a functional central heating system
 - Is a three-minute walk or 0.1 miles to the closest bus stop
 - Is a two-minute walk or 0.1 miles to the closest convenience store.
18. A series of photographs showing the access routes and steps were exhibited at NB/3, NB4 and NB/5.
19. Finally, Ms Boumnigel confirms that the Property was let for occupation by a person aged 60 or more, whether the tenant or a

predecessor. The Applicant was 66 when the tenancy was granted to him. In addition, a previous tenant was granted a tenancy of the Property at age 81. The previous tenant's date of birth was 12th February 1921, and their tenancy was granted on 14th October 2002.

20. Exhibit NB/6 confirms the previous tenant's date of birth, and the commencement date of their tenancy.
21. Exhibit NB/7 confirms the Applicant's date of birth, and their tenancy start date.
22. A site visit and inspection were carried out by the Respondent on 7th January 2026. The inspection confirmed that the Property is particularly suitable for occupation by an elderly person.
23. Having considered the grounds of the Applicant's appeal, Ms Boumnigel remained of the opinion that the Respondent had 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, and that the tenant is not entitled to buy the Property.

Finding of Facts and Determination

24. The Tribunal's jurisdiction is to determine whether the conditions contained in paragraph 5 of Schedule 11 of the Housing Act 1985 are met.
25. In making its determination the Tribunal is guided, but not bound, by the ODPM circular referred to.
26. 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.
27. 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.
28. 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."*

29. In reaching my determination, I have considered the evidence submitted and the statement of Ms Boumnijel, supported by a signed and dated statement of truth. I make the following findings.
30. The Property was first let before 1 January 1990. Accordingly, the first requirement of refusal is met.
31. I next 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.
32. The Property is a one-bedroom flat situated on the ground floor, with accommodation arranged over a single level. There is no evidence to suggest that it lacks a functional central heating system capable of providing heat to at least the living room and bedroom, or that such a system cannot be safely operated overnight.
33. I have taken into account the means of access to the Property, which include a threshold step and three steps within the garden. I consider the garden steps to be of sufficient width and note in particular the availability of an alternative access route via a level walkway.
34. The Property is convenient for public transport and the nearest convenience store.
35. 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. Accordingly, the second requirement for refusal is met.
36. Finally, I considered whether the Property was let for occupation by persons aged 60 or over. At the date the tenancy agreement was entered into with the Applicant, he was over 60 years of age. Prior to his occupation, the Property had been let to a tenant who was 81 at the grant of that tenancy. The third requirement for refusal is therefore satisfied.
37. In summary, I find that the property was first let before 1 January 1990, the Property is particularly suitable for occupation by elderly persons, and the Property 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.
38. 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.