



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

Case Reference : **MAN/00BL/RTB/2019/0016**

Property : **24 Barsham Drive, Bolton, BL3 6JL**

Applicant : **Madina Adam Walli**

Respondent : **Bolton at Home**

Type of Application : **Housing Act 1985, Schedule 5,
Paragraph 11**

Tribunal Members : **Judge Colin Green
John Faulkner FRICS**

Date and venue : **Determination following an
Inspection on 10 January 2020**

Date of Decision : **10 January 2020**

DECISION

DECISION

- (1) **The Property is particularly suitable for occupation by elderly persons.**
- (2) **The requirements of Paragraph 11, Schedule 5 of the Housing Act 1985 (“the Act”) as to the date of the first letting and the age of the original tenant are met as are the characteristics of the Property regarding accommodation and location.**
- (3) **The Respondent is entitled to rely upon Paragraph 11, Schedule 5 of the Act to deny the Applicant her right to buy the Property.**

REASONS

Application

1. Madina Adam Walli (“the Applicant”) is the tenant of 24 Barsham Drive (“the Property”) and gave notice to her landlord, Bolton at Home (“the Respondent”) of her wish to exercise the right to buy under the Act. That document is not before the Tribunal, but it is assumed that the application was received.
2. The Respondent then served a notice dated 23 September 2019 on 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 4 November 2019, falling within 56 days of the date of the Respondent's notice of its decision to refuse the right to buy, the Applicant applied to the Tribunal under paragraph 11(4) of the Act for a determination as to whether the grounds contained within paragraph 11 were satisfied.
4. The application was copied to the Respondent and by a Reply dated 16 December 2019 it opposed the appeal. Neither party requested a hearing.

The Property

5. The Tribunal inspected the Property on 10 January 2019 in the presence of Faruk Patel, the Applicant's grandson, and was told by him that the Applicant had been admitted to hospital the previous day but was expected to return soon. The Property is part of a purpose built two-storey block consisting of a two-bedroom ground floor flat with a kitchen and bathroom/wc and living room. There is double glazing and central heating throughout. There is no garden. The buildings in the development are connected by paths on a gentle gradient which lead to Barsham Drive, a short distance from the Property.

Law

6. 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”*

7. The Office of the Deputy Prime Minister (ODPM) (now the Department of Communities and Local Government) issued Circular 7/2004 (Right to Buy: Exclusion of Elderly Persons' Housing) (“the Circular”), 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 the Circular, deciding each case on its merits, but does have regard to the criteria contained in the circular as a guide. The Circular defines an elderly person as one aged 60 or over who is not necessarily disabled but may have some physical disabilities. It covers the location, indicating that the property should be within a half mile of a shop selling basic food items; size, no more than two bedrooms; design, no more than one floor; heating system, which must function reliably, heat at least the living room and one bedroom and may safely be left on at night. It also addresses accessibility, with particular regard to the number, size and curvature of steps and the presence of handrails where there are more than three steps. Gradients of ramps, paths, pavements or other means of access are to be considered.

Determination

8. The Tribunal has jurisdiction to determine the application by the Applicant as the denial of the right to buy was under paragraph 11 of Schedule 5 of the Act. In doing so it has to consider:
- 8.1 whether the dwelling-house was first let before 1 January 1990; and

- 8.2 whether the dwelling-house is particularly suitable for elderly persons aged 60 or over; and
- 8.3 was let to the tenant or a predecessor for occupation by a person who was aged 60 or more.
9. According to the Respondent's Reply to the application, the Property was originally let on 24 August 1981 to Adam Walli (born 31.12.16) and his first wife, Bibi Walli (born 12.4.18). After Bibi Walli died Mr. Bibi married the Applicant and after his death she succeeded to his tenancy on 16 June 2006. The Application Form and a letter from the Applicant dated 4 November 2019 confirm these dates, apart from the date of the grant of the tenancy and succession which the Applicant stated would be known by the Respondent. Accordingly, the Tribunal finds that the Property was first let before 1 January 1990 and was let to the current tenant's predecessor for occupation by a person who at that time was aged 60 or more: Mr. Walli was 64 on 24 August 1981.
10. It remains for the Tribunal to determine whether the Property is particularly suitable in physical terms for occupation by elderly persons. The tests are set out in the Circular although these are simply guidelines not mandatory. Nonetheless, the Tribunal did have regard to all of those matters including location, size, design, heating, and other features. The following findings are relevant.
- 10.1 The Property is on one level, has no more than two bedrooms and has a central heating system that operates satisfactorily and can be left on safely at night, if required.
- 10.2 Externally, access to the door to the Property has no steps and is along a concrete path.
- 10.3 There is a supermarket which is approximately 100 metres from the Property at the bottom of Barsham Drive with a medical centre nearby. There is an incline on Barsham Drive to reach such facilities, but it is not excessive over that distance. There are bus stops with frequent services to Bolton Town Centre on Derby Street (A579) which is a short distance away.
15. Applying its above findings, the Tribunal determines that the Property is particularly suitable for occupation by elderly persons within the meaning of Schedule 5, paragraph 11 to the Housing Act 1985 and therefor the exception from the right to buy applies.

Colin Green

10 January 2019