



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

Case Reference : **MAN/OOCC/RTB/2021/0002**

Property : **26 Eastfields, Worsbrough,
Barnsley S70 5DX**

Applicant : **Mrs Marion Clara Rimmington**

Representative : **Ms Melanie Riches**

Respondent : **Barnsley Metropolitan Borough
Council**

Representative : **Ms G Fearn**

Type of Application : **Housing Act 1985, Schedule 5,
Paragraph 11-Right to Buy**

Tribunal Members : **Judge J. E. Oliver
Tribunal Member S.A. Kendall
(Valuer)**

Date of Determination : **25th August 2021**

Date of Decision : **6th September 2021**

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 tenant are met as are the characteristics of the Property regarding the accommodation and location.
3. The Council is entitled to rely upon Paragraph 11, Schedule 5 of the Act to deny the Mrs Rimmington her Right to Buy the Property.

Application

4. Mrs Marion Clara Rimmington (“Mrs Rimmington”) gave notice to Barnsley Metropolitan Borough Council (“the Council”) of her wish to buy 26 Eastfields, Wosbrough, Barnsley (“the Property”) pursuant to the Act.
5. Mrs Rimmington’s tenancy commenced on 25th July 2005 when she was 72 years of age.
6. The Council subsequently served a notice, dated 21st December 2020, under section 124 of the Act, denying the Mrs Rimmington her Right to Buy stating that the Property was particularly suitable for occupation by an elderly person as provided for in Paragraph 11, Schedule 5 of the Act.
7. By an application received on 18th January 2021 Mrs Rimmington 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.
8. The Council confirmed its intention to oppose the appeal.
9. Due to the restrictions imposed by COVID-19, the Tribunal advised the parties that an external inspection of the Property would be undertaken and it was agreed by the parties the application would be dealt with by way of a paper determination.
10. Following the inspection further information was requested from both parties to clarify an issue relating to access to the Property.

The Property

11. On 16th June 2021, the Tribunal undertook an external inspection of the Property. Neither party was present.
12. The Property is a brick built, semi-detached bungalow, having gardens to both the front and rear. It is within an area of mixed local authority housing.
13. The Property has 2 bedrooms, kitchen, bathroom and living room and has the benefit of double-glazing and gas central heating. No representations were made to suggest the central heating system did not function reliably.
14. Access to the Property is from a path running from the pavement to both the front and rear of the Property. The front path is on a gentle gradient for approximately half its length when the gradient increases. At this point there are handrails on both sides of the path leading to the front door. There are no

steps to then enter the Property. The path leading around the bungalow is flat. Access to the back door is by 3 steps with handrails.

15. The Property is approximately 0.3 miles from the local convenience store, selling basic food items, including bread and milk. The Council provided a map stating the nearest is a bus stop approximately 110 yards from the Property. This was challenged by Ms Riches who advised this bus stop is no longer in use and no service now operates on the estate. The nearest bus stop is on the A61, approximately 0.3 miles from the Property.

The Law

16. Paragraph 11 of Schedule 5 of the Act provides 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 an elderly person, and
- (b) was let to the Tenant or a predecessor in title of his for occupation by a person who is aged 60 years or more (whether the Tenant or a predecessor or another person).

17. The Circular from the Office of the Deputy Prime Minister dated December 2004 (ODPM Circular 07/2004) (“the Circular”) gives the criteria for establishing whether a dwelling house is particularly suitable for occupation by an elderly person as provided for within the Act.

18. The Circular states that when considering this, “elderly persons will be taken to mean individuals who are able to live independently despite some limitations owing to age. It will not mean individuals who are frail or severely disabled”.

19. The Circular states the “main points” that should be considered are:

- There should be easy access on foot to the dwelling. In general, access is unlikely to be considered as easy if it is necessary to climb 3 or more steps and there is no handrail.
- The accommodation should be on one level
- Where a flat is above ground level, there should be a lift.
- There should be no more than two bedrooms.
- There should be heating that is reliable and can be safely left on overnight
- The property should be located conveniently for local shops and public transport. This, in an urban area, should be no more than 800 metres (half a mile) from the nearest shop selling basic food items, i.e. milk and bread. In a rural area, the property should be no more than 800 metres from the nearest public transport shop that provides at least three opportunities for shopping each week.

Submissions

20. Ms Riches, on behalf of Mrs Rimmington, stated she had installed disabled access to the Property; there had been 3 steps to the front door. At the inspection it was evident wheelchair access had been created at the front entrance. Upon the basis the Tribunal must disregard any features provided by a tenant it asked the parties to provide further details of the access to the Property at the commencement of the tenancy and when the wheelchair access had been created. The Council confirmed that when the Property was let to Mrs Rimmington it had wheelchair access. Ms Riches agreed wheelchair access did exist at the start of the tenancy as were the steps and handrails at the rear of the Property.
21. The Council produced maps showing the location of the nearest shops selling basic food items and the nearest bus stops. The former, on Thomas Street, was said to be 0.3 miles from the Property or a 7 minute walk. The latter were said to be on Broomroyd, approximately 110 yards from the Property. Ms Riches advised that this bus stop was no longer operational and the nearest bus stops are now on the A61, approximately 0.3 miles from the Property. Ms Riches submitted the route to both the shop and bus stops is not flat, but on a hill and, whilst the shop is only a 7 minute walk, this is only for someone who is fit and well.
22. Ms Riches raised with the Tribunal the fact that other bungalows on Eastfields have been purchased from the Council and questioned how had they been allowed to do so and Mrs Rimmington had been refused the right to buy.

Determination

23. The Tribunal considered the requirements of the Act and found the Property fulfils the criteria in that it was first let before 1st January 1990. It was let to Mrs Rimmington when she was over the age of 60 years. Consequently, the requirement that the Property is let to someone over the age of 60 years is met.
24. The Property is on one level, has no more than two bedrooms, as specified by the Act and has a central heating system that operates satisfactorily and can be safely left on at night.
25. Access to the Property is not difficult for a person over the age of 60 years in reasonable health. It is apparent the wheelchair access was in place at the outset of the tenancy and is therefore not a feature which Mrs Rimmington installed. Its existence must therefore be taken into account. The Circular specifies that there must be easy access to a property and this would not be the case if it had more than 3 steps and there were no handrails. Here, there are no steps at the front of the Property and whilst there are 3 at the rear, there are also handrails. Consequently, access can be defined as easy.

26. The Property is within half a mile of a shop selling the basic food items, as set out in the Circular and within walking distance of bus stops travelling to Barnsley and other local areas.
27. The Tribunal does not consider the route to either the convenience store or the bus stops to be unsuitable for a person over the age of 60 in reasonable health. Whilst Ms Riches describes the route to both as on a hill and only suitable for a person who is fit and well, the Tribunal does not have to consider the route from the perspective of a person who is disabled or infirm, but only one who is over the age of 60 and in reasonable health.
28. The Tribunal also considered the issue of age discrimination. It accepted the evidence given by Ms Riches that she is aware of nearby bungalows being sold to persons under the age of 60. There was no response to this issue by the Council and the Tribunal therefore has no evidence to confirm the bungalows were sold by it. However, the Act does not exclude tenants under the age of 60 from buying their property even if that property may be suitable for occupation by an elderly person. At the commencement of Mrs Rimmington's tenancy the Property was let on the basis it was suitable for a person over the age of 60. The Property is still designated as such by the Council. Consequently, the Property is still governed by the requirements of Paragraph 11, Schedule 5 of the Act.
29. The Tribunal considered The Equality Act 2010 and noted that under Schedule 22 of the Act there is specific provision relating to age discrimination that prevents its application if there is statutory provision for it. In this case the Act makes the provision for the refusal of a Right to Buy because of age.
30. In addition, the Tribunal also considered section 13 of the Equality Act 2010 that provides a more general right not to be discriminated against a person because of age. Section 13(2) provides that there is no discrimination if it can be shown by the Council that their refusal is a proportionate means of achieving a legitimate aim.
31. The Tribunal determined the Council's refusal of the Right to Buy is proportionate in allowing them to maintain an adequate housing stock for elderly persons within its area.
32. The Tribunal considered the requirements of the Act and found that the criteria established by Schedule 5 Paragraph 11 are met such that the Property is particularly suitable for occupation by an elderly person and consequently Mrs Rimmington does not have the Right to Buy.

Tribunal Judge J. E. Oliver
06 September 2021