



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

Case Reference : **MAN/OODB/RTB/2020/0003**

Property : **1 Ramsay View, Middlestown,
Wakefield, WF4 4SA**

Applicant : **Mrs Marlene June Oakland**

Representative : **Mr Paul Glover**

Respondent : **Wakefield District Housing**

Representative : **Mrs Kathryn Stretton**

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

Tribunal Members : **Judge J. E. Oliver
Tribunal Member S. A. Kendall MRICS**

**Date of
Determination** : **6th July 2021**

Date of Decision : **7th July 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 Respondent is entitled to rely upon Paragraph 11, Schedule 5 of the Act to deny the Applicant her Right to Buy the Property.

Application

4. Mrs Marlene June Oakland (“the Applicant”) gave notice to Wakefield District Housing (“the Respondent”) of her wish to buy 1 Ramsay View, Middlestown, Wakefield (“the Property”), pursuant to the Act. The Applicant was assisted in her application by Mr Paul Glover.
5. The Respondent subsequently served a notice dated 8th June 2020, under section 124 of the Act, denying the Applicant 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.
6. By an application dated 14th July 2020 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.
7. The Respondent confirmed their intention to oppose the appeal. In this matter it was represented by Mrs Kathryn Stretton.
8. A Telephone Case Management Conference was held on 12th April 2021 that gave directions for the future conduct of the application.
9. An inspection and hearing were held on 6th July 2021 to determine the issue. Mr Glover attended the hearing by telephone on behalf of the Applicant but the Respondent was not represented.

The Property

10. The Tribunal undertook an external inspection of the Property on 6th July 2021 in the absence of the parties. Due to the restrictions imposed by the COVID-19 it was not possible for the Tribunal to carry out an internal inspection. This was agreed by the parties.
11. The Property is a one bedroomed brick-built bungalow, the first in a block of three similar bungalows. It is in a large plot having gardens to the front, side and rear. The Property has a kitchen, lounge and bathroom and benefits from gas central heating. At the hearing Mr Glover confirmed the Applicant had recently had a new gas boiler installed and the heating was reliable and could be safely left on at night. It is within an area of mixed style properties.

12. Access to the front of the Property is from a level path from the pavement. The path goes around the bungalow to the back door and to the back and side garden. The side garden is on a slope that is steeper than the gradient of the road to the front of the Property. There are two steps to both the front and back doors. The first step is a low step; the second into the Property having a greater depth. There are no handrails at either entrance.
13. The Respondent provided a map showing the distance to the local store, Cross Roads Stores is 0.21 miles. This store sells basic food items. The same map showed the distance to the bus stop is 0.26 miles. The Applicant confirmed the main shopping area is otherwise 2 miles from the Property.
14. The route to the local shop and bus stop, after leaving Ramsay View is on a slight gradient. The route to the local shop was walked by the Tribunal members.

The Law

15. 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).
16. 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.
17. 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”.
18. 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.

The Hearing/Representations

19. The Applicant made detailed written representations. In those representations the Applicant confirmed the tenancy was originally in the joint names of her and her late husband. They acquired the tenancy in October 2000 when her late husband was 67 years of age. The Applicant is now aged 81 years.
20. The Applicant confirmed there is a local shop less than half a mile from the Property, but the closest supermarket is more than two miles away in Horbury. The local Post Office has now closed. There is a bus stop that is also less than half a mile from the Property. However, Ramsay View is on a steep gradient that is in excess of 14%. An expert report from Fortis was submitted to the Tribunal in confirmation of this.
21. The Applicant provided information from Kirklees Council providing indicators of what would be considered a suitable gradient for pedestrians, together with other information on the same subject. In particular it was said:

“Although gradients up to 5% (1 in 20) are generally considered acceptable for pedestrians, including wheelchair users, gradients over 2.5% (1 in 40) might be impassable for some wheelchair users. On Gradients of 8% (1 in 12.5) or above, the physical effort of getting up the slope would be too much for many wheelchair users.”
22. The Applicant advised three nearby properties had been sold, these being 3 and 35 Ramsay View and 30 Ramsay Road.
23. The Respondent provided details of the Property and distances to the shop and bus stop and confirmed the Property meets all the requirements set out in Schedule 5 of the Act. It also said that, of the three properties referred to by the Applicant, one was a house and the other had not been in the Respondent’s ownership. No comment was made in respect of the third property.
24. At the hearing Mr Glover confirmed the information provided in the written submissions. He further stated the third property referred to is the neighbouring property at 3 Ramsay View that had been sold to the tenant. He confirmed this tenant was 48 years of age when he bought the property. The Tribunal advised Mr Glover that the property at 3 Ramsay View was therefore outside the jurisdiction of paragraph 11 Schedule 5 of the Act and the tenant would have had the Right to Buy. Mr Glover stated there had been issues regarding this purchase and the matter had been determined before a Tribunal.

25. Mr Glover submitted the Respondent, whilst refusing the Applicant's Right to Buy, is letting nearby properties to people who are under the age of 60. In particular, he referred to the letting of a nearby bungalow to a person aged 47 years who is in full time work.

Determination

26. 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 the Applicant and her late husband in October 2000 when he was 67 years of age. The Respondent states it was first let to a person over the age of 60 years. Consequently, the requirement that the Property is let to someone over the age of 60 years is met.
27. 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.
28. Access to the Property is not difficult for a person over the age of 60 years in reasonable health. Access to both the front and rear of the Property is via a level path from the pavement and then by two steps without a handrail to both the front and rear doors.
29. The Circular gives guidance regarding the criteria to be considered when determining whether a property is particularly suitable for occupation by an elderly person. It suggests that access to a property is not easy if it has more than 3 steps and has no handrail. The Property does not fulfil this criterion.
30. The Tribunal considered the issue of the gradient of the road outside the Property and accepted the expert evidence this is 14%. This was not commented upon, nor challenged, by the Respondent. The Tribunal also took note of the criteria referred to from Kirklees Council regarding the suitability of a gradient for wheelchair users. Despite this, the Tribunal does not find the gradient is such to prevent the Property from being suitable for occupation by a person over the age of 60. When considering the suitability of a Property for the elderly, the Tribunal does not have to consider the particular needs of the tenant. For example, it is not necessary for the Property to be suitable for a wheelchair user or one who uses a walking frame for it to be designated as suitable for the elderly. The criteria is that it is suitable for occupation by a person over the age of 60 years in reasonable health.
31. The Property is within half a mile of a shop selling basic food items, as set out in the Circular and also within walking distance of a bus stop. The Tribunal notes the main shopping area is 2 miles distant from the Property., However, the Circular indicates that a Property remains suitable for occupation by an elderly person provided there is a shop within half a mile that sells basic food items. This is satisfied here.
32. The Tribunal does not consider the route to either the shop or the bus stop to be unsuitable for a person over the age of 60 for the reasons given above.

33. The Tribunal is unable to consider the circumstances relating to other properties that have been sold in the vicinity of the Property. It has no knowledge of the reasons why those tenants were able to buy their properties. The Tribunal made its own enquiries regarding a tribunal application for 3 Ramsay View as referred to by the Applicant. There are no records within this Tribunal, being the one dealing with applications to determine disputes on Right to Buy applications, relating to this property. Similarly, the Tribunal cannot consider the Respondent's lettings policy in respect of nearby bungalows.
34. The Tribunal has considered the requirements of the Act and finds that the criteria established by Schedule 5 Paragraph 11 have been met such that the Property is particularly suitable for occupation by an elderly person and consequently the Applicant does not have the Right to Buy.

Tribunal Judge J Oliver
6 July 2021