



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

Case Reference : **BIR/41UB/RTB/2014/0014**

Property : **1 Wessex Drive, Cannock,
Staffordshire, WS11 6XF**

Applicant : **Mr Sydney James Parkes**

**Applicant's
Representative** : **Mr Ian Oakes**

Respondent : **Cannock Chase District Council**

Type of Application : **An Application under Paragraph 11 of
Schedule 5 to the Housing Act 1985 in
respect of a determination as to
whether a dwelling house is suitable
for occupation by elderly persons.**

Tribunal Members : **Mr G S Freckelton FRICS (Chairman)
Mr P J Hawksworth LLB**

**Date and venue of
Hearing** : **19th August 2014 in Cannock**

Date of Decision : **21 AUG 2014**

DECISION

DECISION

1. The Tribunal finds that Cannock Chase Council can deny the Right To Buy relying on Paragraph 11 of Schedule 5 to the Housing Act 1985.

BACKGROUND

2. This an Application to the First-tier Tribunal (Property Chamber) to determine whether the exception to the Right To Buy in Paragraph 11 of Schedule 5 of the Housing Act 1985 (Property Particularly Suitable for Occupation by Elderly Persons) applies to this property.
3. The Tenant, Mr S J Parkes, applied to the landlord, Cannock Chase Council, to buy the freehold interest in the subject property under 'Right To Buy' legislation.
4. The Landlord replied with a counter-notice Form RTB2, dated 24th April 2014 in which the Council denied the Right To Buy as in their opinion the property was particularly suitable for occupation by elderly persons. They advised that the qualifying conditions for denial had been met as the property had been first let before 1st January 1990 and had been let to a person aged 60 or more.
5. Mr Parkes applied to the First-tier Tribunal by application dated 8th June 2014 for a determination as to whether the grounds in Paragraph 11 had been satisfied.
6. The Tribunal copied the Tenant's Application to the Landlord and issued directions for case management on 25th June 2014.

THE LAW

7. The material parts of Paragraph 11 of Schedule 5 of the 1985 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 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.
 - (6) This paragraph does not apply unless the dwelling-house concerned was first let before 1st January 1990.

8. ODPM Circular 7/2004 (Right To Buy: Exclusion of Elderly Persons' Housing) sets out the main criteria to be taken into account in determining the suitability of a dwelling-house for occupation by elderly persons. The Tribunal is not bound by the circular and decides each case on its merits but has regard to the content as a guide.

THE PROPERTY

9. The Tribunal inspected the property at 10am on 19th August 2014 with Mr S J Parkes and Mr I Oakes. No one from Cannock Chase Council attended.
10. The property comprises an end-terraced bungalow near other properties offering similar accommodation. It has facing brickwork to all elevations and a pitched tiled roof.
11. There is a local Co-Operative shop on Ednesford Road selling basic food and drink which it is agreed by the parties is approximately half a mile from the property and therefore within the 800m radius referred to in ODPM guidelines. There are two bus stops nearby. Cannock Chase Council refer to a bus stop being approximately 300 feet from the property. The Applicant submits that one bus stop is approximately 250 yards from the property with the second bus stop being approximately 300 – 400 yards away, although this is on an incline.
12. The property is accessed from the pavement via a path, which is fairly level and there is only one shallow step into the property by the front door. The back door leads via a single step directly into the garden.
13. The internal accommodation comprises an entrance hall with two store cupboards off, one of which houses the combination gas-fired boiler, lounge, kitchen, bedroom and bathroom. The bathroom has been converted into a wet room.
14. The bungalow is heated by a radiator central heating system installed by the landlord. Mr Parkes confirms that the system works efficiently and can safely be left on at all times. The majority of windows and the front door are of UPVC construction, although they are only single glazed.

SUBMISSIONS

For the Applicant

15. Mr I Oakes, Mr Parkes' son-in-law, has provided a written submission on behalf of Mr Parkes explaining that the Right To Buy request had been made as Mr Parkes had lived at the property for over 5 years during which time he had looked after it well.
16. Mr Parkes had requested that the original bathroom be replaced by a wet room facility, although this had been at no cost to himself. Mr Parkes had also improved the garden layout.

17. Mr Parkes was aware that other nearby properties, in particular 62 Barnard Way, Cannock and 9 Exonbury Walk, Cannock have been sold to tenants under the 'Right To Buy' Scheme.

For the Respondent

18. The Local Authority submission claimed that the grounds in Paragraph 11 of Schedule 5 to ODPM Circular 7/2004 applied in this case and accordingly the Right To Buy should be denied.
19. The Local Authority confirmed that Mr Parkes became an introductory tenant on 2nd March 2009 and a secure tenant on 2nd March 2010. They also confirmed that the property was upgraded by the Local Authority in July 2003 and that there was a hardwired alarm at the property, which is linked to a central control centre, which offers 24 hour support to elderly residents.
20. The Local Authority further submitted that in 2012, they installed the level access shower at the property for Mr Parkes medical requirements. The property was in fact suitable for occupation by elderly persons and as such, Cannock Chase Council had denied the Right To Buy Application.

THE TRIBUNAL'S DECISION

21. Having inspected the property and read the evidence, the Tribunal finds that the property satisfies all the criteria in the Act and ODPM guidance.
22. The Tribunal accepts that the criteria in Schedule 5.11(1)(a) relating to the suitability of the property for elderly persons' occupation have been met.
23. Furthermore, the Tenant was aged over 60 when the property was let to him, which satisfied the requirements in Schedule 5.11(1)(a) – (the dwelling-house was let to the tenant who was aged 60 or more).
24. Accordingly, the Tribunal determines that Cannock Chase Council can rely on Paragraph 11 of Schedule 5 to the Housing Act 1985 to deny the Right To Buy.

APPEAL

25. If either party is dissatisfied then they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this Decision (Rule 52(2)) of the Tribunal Procedure (First-tier Property Chamber) (Rule 2013).

Graham Freckelton FRICS
Chairman
First-tier Tribunal Property Chamber (Residential Property)