

10681



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

**Case Reference** : BIR/OOCW/RTB/2014/OO21

**Property** : 41 Marnel Drive, Bradmore, Wolverhampton, WV3 7JQ

**Applicants** : Mr. Phillip & Mrs. Ellen Rhodes

**Representative** : Reece Page Solicitors

**Respondent** : Wolverhampton City Council

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

**Tribunal Members** : Mrs P Dhadli –Barrister-at- Law- Tribunal Judge  
Mr S Berg FRICS

**Date of Hearing** : None. Decision on written submissions.

**Date of Decision** : **4<sup>th</sup> March 2015**

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**DECISION**

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## **DECISION**

- 1) After consideration of all the relevant factors The Tribunal determines that Wolverhampton City Council can deny the Tenant the Right to Buy in reliance on Paragraph 11 Schedule 5 to the Housing Act 1985 (as amended).

## **BACKGROUND AND APPLICATION**

- 2) The Tenants Mr. Phillip & Mrs. Ellen Rhodes ('the Applicants') applied to Wolverhampton City Council, (the 'Respondent') to buy the freehold interest in 41 Marnel Drive Bradmore, Wolverhampton, WV3 7JQ (the 'subject property') under the 'Right to Buy' legislation.
- 3) The subject property was first let shortly after construction in 1984 and was let to the Applicants on the 12<sup>th</sup> May 2014 [although the tenancy agreement was signed on the 9<sup>th</sup> May 2014] Mr. Phillip Rhodes was 63 years of age at that time. The Applicants are 63 and 55 respectively. Mr. Phillip Rhodes was born on the 16<sup>th</sup> April 1951 and Mrs. Ellen Rhodes who was born on the 26<sup>th</sup> June 1959; they did not acquire the tenancy by way of succession on the death of the previous tenant.
- 4) On the 15<sup>th</sup> October 2014 the Respondent acknowledged the Right to Buy application and replied with Notice RTB2 which denied the Applicants the Right to Buy, as in their opinion the property was particularly suitable for occupation by elderly persons. The reasons for the denial were set out at Section C of the said form. Reference was made to paragraph 11 of Schedule 5 Housing Act 1985. Details were provided to the Applicants as to the appeal process.
- 5) By an application dated the 3<sup>rd</sup> December 2014 to the First Tier Residential Property Chamber (FTT) the Applicant Tenants seek a determination as to whether the grounds in paragraph 11 of Schedule 5 Housing Act 1985 have been satisfied.
- 6) Directions in this case were provided to the parties by the FTT and are dated 7<sup>th</sup> January 2015. The directions make it clear to the parties as to how they are to set out their principal case and responses and the time for compliance. All communications were to be copied to the other party. The directions also acknowledge that the parties have indicated that they seek a determination without an oral hearing. Provision was made for the parties to change their mind as to the oral hearing provided that the Tribunal was notified prior to the date set for the determination.
- 7) The following documents have been received in compliance with the directions:
  - a. Statement of case on behalf of the Applicants received 22<sup>nd</sup> January 2015;
  - b. Reply by the Respondent dated 12<sup>th</sup> February 2015;
  - c. Statement of case on behalf of the Respondents received on the 22<sup>nd</sup> January 2015;
  - d. Reply on behalf of the Applicants dated the 11<sup>th</sup> February 2015, received on the 13<sup>th</sup> February 2015.
- 8) The Tribunal therefore now deals with the matter in the absence of a hearing.

## **THE SUBJECT PROPERTY**

- 9) The subject property is a two-bedroom semi-detached bungalow constructed in 1984, set in a quiet residential area, with similar bungalows in the immediate area. The property benefits from gas central heating throughout and UPVC double-glazing. The property has a block paved frontage suitable for off street parking.
- 10) The bungalow has an enclosed small porch to the front, which leads to a small hallway, which has two storage cupboards. The living room has a fitted electric fire. There are two bedrooms and a bathroom which has a walk in shower with WC and washbasin. The kitchen to the front of the property houses the combi- boiler.
- 11) Access to the rear of the property can be gained via the porch or the rear side entrance. There is an enclosed small garden made up substantially of a paved area and some grass. In the garden there are two wooden sheds.
- 12) At the end of Marnel Drive where it joins Trysull Road there is a convenience store known as 'Jas News'. This store provides all essential items; it is also an off license. There is a bus stop adjacent to the shop. Buses run frequently to the local shops and services in Bradmore, Merry Hill and the City Centre.
- 13) The local shops at Bradmore are approximately 700 metres away and include a post office/newsagent, a chemist and a Tesco Local together with a general amenities store, public house and takeaway restaurants. Merry Hill shopping area is approximately 800 metres from the subject property.

## **INSPECTION**

- 14) The Tribunal inspected the subject property on the morning of the 25<sup>th</sup> February 2015. The inspection took place in the presence of the Applicants and Darren Reeds a representative from the managing agents of the Landlord.
- 15) On inspection it was noted that:
  - a. The Tenants had carried out works to the garden front and rear;
  - b. There was one pull emergency cord located in the bathroom, although this facility is no longer available;
  - c. The surrounding area was level without obstruction or gradients.
- 16) Before the inspection of the subject property the Tribunal walked to the local amenities. They noted the following:
  - a. A footpath close to the subject property, this leads on to a community centre the 'Swanmore' Centre. This is located to the rear of the subject property and holds events such as book clubs, bingo and tea and coffee mornings;
  - b. A convenience shop stocking a comprehensive selection of goods was located less than 5 minutes from the subject property, and is open 7 days a week from 6am to 9pm. Bill payments can also made at this store;
  - c. There are 2 bus stops in close proximity and buses that run frequently according to the timetable fixed to the bus shelters;

- d. From alighting on the bus from outside 'Jas News' there is then only one bus stop to the Bradmore shopping centre, which also has a selection of eating facilities, shops and a bank.
- e. The footpaths and pedestrian pavements were generally level without obstruction or gradient.

## **SUBMISSIONS**

### **APPLICANTS**

17) The Applicants make the following representations in summary form :

- a. This property is suitable for families and hence there is no special suitability for occupation by the elderly;
- b. There are no local specific amenities for the elderly;
- c. They were informed by employees of the Respondent that they could exercise the right to buy failing which they should appeal;
- d. They have spent over £10,000.00 in landscaping the subject property. They have removed one step at the front in order to block pave the frontage;
- e. There are health issues for Mr. Rhodes;
- f. Only Mr. Rhodes is over 60 years;
- g. They have been council tenants for 30 years. Prior to occupation of the subject property they were in tied properties due to their specific employment commitments and they should now be afforded the opportunity to purchase this property.

### **RESPONDENT**

18) The Respondent makes the following representations in summary form:

- a. They rely on Paragraph 11 of Schedule 5 of the Housing Act 1985 as an exemption to the Right to Buy and refer to the OPDM Guidance. They assert that the subject property and the existing tenants fit the criteria that is set out in both the relevant schedule to the Housing Act and in the guidance;
- b. They provide details of the locality and the amenities, which are suitable and close by for elderly persons;
- c. The money spent by the Applicants on the subject property was on a voluntary basis and is not necessary in order to live in the property.

### **THE LAW**

19) The material parts of Paragraph 11 of Schedule 5 of the Housing Act 1985 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 let before 1<sup>st</sup> January 1990.

20) In addition the Tribunal has regard to the guidance provided in the ODPM Circular 7/2004 (Right To Buy: Exclusion of Elderly Persons' Housing). This 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 this guidance as each case is decided on its merits.

### **THE TRIBUNAL'S DECISION**

21) The Tribunal having inspected the subject property and read all the evidence submitted to it by the parties and after taking account of the Statutory Criteria and the ODPM Guidance finds that the subject property satisfies the necessary criteria and hence the Respondent Council can rely on Paragraph 11 of Schedule 5 of the Housing Act 1985 to deny the Right to Buy the subject property.

22) The Tribunal noted the Applicant's improvements as set out in the Applicant's statement of case. Schedule 5, paragraph 11 (2) precludes the Tribunal from having regard to such improvements in the determination that they have to make. The Tribunal notes that the nature of the improvements will have benefited and will continue to benefit the Applicants in their occupation of the subject property.

23) The personal circumstances of the Applicants are not factors that the Tribunal is able to take into account when making this determination. For the avoidance of doubt the Tribunal are satisfied that only one tenant needs to be over the age of 60 to satisfy the grounds as set out above.

### **APPEAL**

24) Any Appeal, which can only be made on a point of law, against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (Rule 52(2)) of the Tribunal Procedure (First-tier Property Chamber) (Rule 2013) stating the grounds on which that party intends to rely in the appeal.

MRS P DHADLI  
TRIBUNAL JUDGE  
FIRST- TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)