



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

Case Reference : **BIR/00CN/RTB/2019/0008**

Property : **9 Comber Croft, Moseley, Birmingham,
B13 9QG**

Applicant : **Ms J Sinclair-Busby**

Respondent : **Birmingham City Council**

Type of Application : **Application under paragraph 11 of
Schedule 5 to the Housing Act 1985 (as
amended) for a determination as to
whether a dwelling house is suitable for
occupation by elderly persons**

Tribunal Members : **Judge M K Gandham
Mr D Satchwell FRICS**

**Date and venue of
Hearing** : **8th October 2019
Centre City Tower, 5 - 7 Hill Street,
Birmingham, B5 4UU**

Date of Decision : **20 November 2019**

DECISION

1. The Tribunal determines that Birmingham City Council can deny the Right to Buy by virtue of the provisions of paragraph 11 of Schedule 5 to the Housing Act 1985.

REASONS FOR DECISION

Background

2. Ms Jennie Sinclair-Busby ('the Applicant') of 9 Comber Croft, Moseley, Birmingham, B13 9QG ('the Property') is the tenant of Birmingham City Council ('the Respondent').
3. The Applicant made an application to the Respondent under the Right to Buy legislation in the Housing Act 1985 ('the Act') to buy the Property and, on 27th June 2019, the Respondent replied with a counter notice in Form RTB2 denying the right to buy by virtue of the provisions of paragraph 11 of Schedule 5 to the Act.
4. The Applicant made an application to the Tribunal (received by the Tribunal on 14th August 2019) for a determination as to whether the Property is suitable for occupation by elderly persons.
5. Directions were issued by the Tribunal on 15th August 2019 and representations were received by the Tribunal, from the Applicant on 9th September 2019 and from the Respondent on 23rd September 2019. The matter was listed for an inspection, followed by an oral hearing, to take place on 8th October 2019.

The Law

6. The relevant provisions in respect of jurisdiction of the Tribunal are found in Paragraph 11 of Schedule 5 to the Housing Act 1985.

Housing Act 1985

Schedule 5, paragraph 11

"11 (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 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.”

The Inspection

7. The Tribunal inspected the Property on the morning of 8th October 2019. The Applicant was present but the Respondent did not attend.
8. The Property is a one-bedroom bungalow, in a row of similar properties, on Comber Croft. The Property is accessed from the pavement, which is reasonably level, via a block-paved path. There is a 6-inch step to the entrance and the front door has a small threshold.
9. The internal accommodation comprises a hallway leading to a lounge, kitchen and bathroom. The bedroom is accessed via the lounge. Externally, there is a small front garden and a fair sized rear garden.
10. The accommodation had the benefit of full central heating and the windows were double glazed.
11. The Property was in a very good state of repair. The Applicant had carried out extensive improvements to the Property which included: plastering and redecorating the walls and ceilings, installing new flooring, installing a gas fire in the lounge, refitting the kitchen and bathroom (including installing an over-bath shower), creating a small rear porch outside the kitchen and landscaping and adding paving to the front and rear gardens.
12. The nearest store (selling food and drink) and bus stops were situated on Wake Green Road, within 0.2 miles of the Property. The buses were fairly frequent.

The Hearing

13. Following the Inspection, the Applicant attended a public hearing which was held at the Tribunal's hearing rooms at Centre City Tower, Birmingham. The Respondent had confirmed that they would not be in attendance.

Submissions

The Applicant's submissions

14. The Applicant submitted that the Respondent had been grossly inconsistent with its stated letting policy. She stated that when she applied to let the Property, in order to qualify to bid for it, she had to be over 50 years old. She stated that she had spoken to her neighbours and that they had all, with one exception, confirmed that there was a similar stipulation in place when they took up occupation. The Applicant stated that the remaining neighbour was 46 years of age when she took occupation, so she believed that there had clearly been a change in the Respondent's letting policy.

15. In addition, the Applicant confirmed that this neighbour had been allowed to purchase her property in 2018, even though it was structurally the same as her own. Thus, she stated that the legislation was discriminatory against her age, as if she had been under the age of 60 when the Property had first been let to her, she would have been able to purchase it, irrespective of whether it was suitable for the elderly.
16. At the hearing, the Applicant confirmed that there was nothing in the Property which would make it unsuitable for an elderly person, although she was unsure as to whether a wheelchair would be able to fit through the front door. She confirmed that she had not carried out any structural alterations to the Property and that the central heating had been installed prior to her occupation, that it was in working order and that it could be left switched on overnight.
17. The Applicant stated that she had been a good tenant and had spent a great deal of money on the Property. As such, she was disappointed that the Respondent had not spoken to her regarding the reasons for the refusal, which had left her no choice but to make an application to the Tribunal.

The Respondent's written submissions

18. The Tribunal noted the Respondent's written submissions as follows:
 - The Applicant was aged 62 when the Property was let to her on 9th May 2016;
 - The Property was a one-bedroom bungalow that was particularly suitable for elderly occupation;
 - The Property was first let on 23rd March 1987; and
 - The Property was within 0.2 miles of the local shops, amenities and access to the main bus routes into the city centre.

The Tribunal's Deliberations

19. Having considered all of the evidence, both written and oral, together with its inspection of the Property, the Tribunal determines that the Property is particularly suitable for occupation for elderly persons having regard to the criteria detailed in paragraph 11(1)(a) of Schedule 5 to the Act.
20. In making this determination, the Tribunal has not taken into account the improvements made to the Property by the Applicant and notes that the Property had the benefit of full central heating and double glazing prior to the Applicant's occupation.
21. The Tribunal accepts that the Property was let to the Applicant when she was over 60 years of age, as required by paragraph 11(1)(b) of Schedule 5 to the Act.
22. The Tribunal also accepts that the Property was first let before 1st January 1990, as required by paragraph 11 (6) of Schedule 5 to the Act.
23. Although the Tribunal has some sympathy for the Applicant and notes that she has expended a great deal of time and money improving the Property, her submissions related to her view that both the legislation and the Respondent's policy in relation

to age restrictions for letting properties on the road, was unfair, leading to some tenants being able to purchase their properties and others being refused. Unfortunately, these issues are not matters which the Tribunal can take into account when making a determination under the legislation.

Appeal

- 24. Any appeal 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 stating the grounds on which that party intends to rely in the appeal.

M. K. GANDHAM

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Judge M K Gandham