



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

Case Reference : **MAN/OOCC/RTB/2019/0013**

Property : **7, Burton Crescent, Monk Bretton,
Barnsley S71 2QD**

Applicant : **Mr George Henry Keen**

Representative : **In person**

Respondent : **Barnsley MBC**

Representative : **Gillian 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 MRICS
(Valuer)**

**Date of
Determination** : **5th December 2019**

Date of Decision : **10th December 2019**

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 his Right to Buy the Property.

Application

4. Mr George Henry Keen (“the Applicant”) gave notice to Barnsley Metropolitan District Council (“the Respondent”) of his wish to buy 7 Burton Crescent Monk Bretton, Barnsley (“the Property”), pursuant to the Act.
5. The Respondent subsequently served a notice dated 22nd July 2019, under section 124 of the Act, denying the Applicant his 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 3rd September 2019 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 its intention to oppose the appeal.

The Property

8. The Tribunal inspected the Property on 5th December 2019 in the presence of the Applicant and his partner. The Respondent was not represented.
9. The Property is a brick built, semi-detached bungalow, having a large garden to the rear and a driveway to the front. There is a separate brick built store in the back garden. It is within an estate of houses and similar bungalows.
10. The Property has one double bedroom and one single bedroom, kitchen, wet room, hallway and living room and has the benefit of double-glazing. The Applicant has undertaken some refurbishment to the Property, including fully tiling the bathroom, providing a replacement toilet and sink, widening and surfacing the drive and laying stone chippings to the front garden area and erecting a brick wall to the front of the Property.
11. The Property has gas central heating. The Applicant confirmed it operates reliably and can be safely left on at night, should this be required.

12. Access to the Property is across the stone chippings or down the concrete driveway from the pavement to both the front and side of the Property. This is on a gentle gradient although there are no handrails. The entrance to the front door is level from the driveway. Access to the rear of the property is via a level path down the side of the property. There is one step into the rear entrance measuring approximately 6 inches in depth. There are no handrails at either entrance.
13. The Property is approximately 0.1 mile from a recently opened sandwich shop selling bread and milk and approximately 0.2 miles from two convenience stores, a One Stop shop and a Sainsbury's Local, both selling a wide range of food items. The Applicant confirmed there are nearby bus stops enabling travel to Barnsley. The Tribunal noted one was 0.1 miles from the Property. The buses travel on a regular basis.
14. The route to the local shops is on a gentle gradient.

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.

Representations

19. The Applicant made written representations in his original application and by a subsequent letter. The Applicant confirmed the Property has level access, is a 10 minute walk to the shops and amenities, but that his immediate neighbour, living in an identical bungalow, has been allowed to purchase her property.
20. The Respondent made no submissions, other than to confirm the Applicant acquired his tenancy on 11th April 2011 and was aged 68 when the tenancy was granted.

Determination

21. 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 when he 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.
22. 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, if required.
23. Access to the Property is not difficult for a person over the age of 60 years in reasonable health. Access to the front of the Property is by a path on a gentle gradient and then level access into the front entrance to the Property. The path leading to the rear of the Property is level and the rear door has one step.
24. The Circular in December 2004 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 the criteria.
25. The Property is within half a mile of a shop selling the basic food items, as set out in the Circular and also within walking distance of bus stops travelling to Barnsley.
26. The Tribunal did not consider the route to either of the bus stops to be unsuitable for a person over the age of 60. The routes to both are on a gentle gradient.

27. The Tribunal is unable to take into account the fact a near neighbour has been allowed to purchase her property; it has no knowledge of the circumstances relating to that particular tenant. The Tribunal accepts this can be a cause of concern, given the properties here are said to be identical.
28. The Tribunal is aware there may be circumstances where tenancies are granted to persons under the age of 60.
29. The Tribunal considered the issue of age discrimination. 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.
30. 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 it's 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.
31. In addition, the Tribunal also considered section 13 of the Equality Act 2010 that provides a more general right not to be discriminated against because of age. Section 13(2) provides that there is no discrimination if it can be shown by the Respondent that their refusal is a proportionate means of achieving a legitimate aim.
32. The Tribunal determined the Respondent's refusal of the Applicants' Right to Buy was proportionate in allowing them to maintain an adequate housing stock for elderly persons within its area.
33. The Tribunal considered the requirements of the Act and found that the criteria established by Schedule 5 Paragraph 11 were 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.

Judge J Oliver

5 December 2019