



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

Case Reference : **MAN/00BQ/RTB/2021/0009**

Property : **55 Aldwych
Rochdale
OL11 2JA**

Applicant : **Mrs G Ibbotson**

Respondent : **Rochdale Boroughwide Housing**

Type of Application : **Determination of Right to Buy
Housing Act 1985, Schedule 5,
Paragraph 11, as amended by Housing
Act 2004, Section 181**

Tribunal Members : **Mr S Wanderer B.Sc. (Hons) MRICS
Mrs H Clayton B.A. (Hons) JP**

**Date and venue of
Hearing** : **Determined on the basis of written
representations without a hearing**

Date of Decision : **14 December 2021**

DECISION

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1. The Property is particularly suitable for occupation by elderly persons.
2. The requirements of Paragraph 11 of 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 of Schedule 5 of the Act to deny the Applicant her right to buy the Property.

BACKGROUND

4. Following the Applicant’s notice to the Respondent of her wish to buy the Property pursuant to the Act, the Respondent served a notice dated 25 July 2021 denying the Applicant’s right to buy on the grounds that the Property is particularly suitable for occupation by elderly persons as provided for in Paragraph 11, Schedule 5 of the Act.
5. By an application dated 27 July 2021, (“the Application”), the Applicant applied to the Tribunal under Paragraph 11(4) of Schedule 5 of the Act for a determination as to whether the grounds contained within Paragraph 11 were satisfied.
6. The Respondent confirmed its intention to oppose the appeal.
7. The Tribunal determined the Application on the papers on Wednesday 8 December 2021.

INSPECTION

8. The Tribunal Members conducted an external inspection of the Property on Wednesday 8 December 2021.
9. The Property is a brick-built, end of terrace bungalow in a small development of similar properties. Access to the front entrance to the Property is by way of a short level path through the front garden, and then up a single step; a pair of grab hand rails have been fitted to the front entrance.
10. A district centre is located less than 0.3 miles from the property and provides a reasonable range of local facilities including a medical centre, pharmacy, post office and convenience supermarket.
11. Within 0.3 miles of the Property, there are bus stops on Daventry Road that provide regular timetabled services.

STATUTORY PROVISIONS AND MINISTERIAL CIRCULAR

12. 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 Applicant or a predecessor in title of his for occupation by a person who is aged 60 years or more (whether the Applicant or a predecessor or another person).
13. A Circular from the Office of the Deputy Prime Minister dated December 2004 (ODPM Circular 07/2004) (“the Circular”) sets out the criteria for establishing whether a dwelling house is particularly suitable for occupation by an elderly person as provided for within the Act. 17.
14. 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”.
15. In paragraph 12, the Circular states that the “main points” which 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 2 bedrooms.
 - There should be heating that is reliable and can be safely left on overnight.
 - The dwelling house should be located conveniently for local shops and public transport. In an urban area, this should be no more than 800 metres from the nearest shops selling basic food items i.e. milk and bread. In a rural area, the dwelling house should be no more than 800 metres from the nearest public transport that provides at least 3 opportunities for shopping each week.

REPRESENTATIONS

16. The Applicant made a number of representations in respect of the Property and surrounding area, which are summarised and paraphrased as follows:
 - a. the Property has a step up to the front and back doors;

- b. the bathroom provides only a 'step up' shower and is too small to accommodate a bath or be converted into a wet room;
 - c. passage to the bathroom from the adjacent is narrow;
 - d. the Property is not wheelchair accessible;
 - e. the Property does not benefit from off-street parking;
 - f. the surrounding area is not suitable for the elderly on account of 'steep inclines', 'steps' and the poor condition of local footpaths; and
 - g. the Applicant has, or is prepared to, let similar neighbouring properties on Aldwych to tenants from the age of 55.
17. The Applicant also raised the question of whether the denial of her right to buy was a form of discrimination on the basis of age.
18. The Respondent for its part made only the briefest of representations, reproduced verbatim below:
- *This property is a bungalow, part of a group of bungalows which are particularly suitable for occupation by persons of pensionable age.*
 - *The disposal of this property would diminish this type of stock reducing our capacity to assist people within this group.*

REASONS

19. Paragraph 11 of Schedule 5 of the Act sets out two tests. I refer to these respectively as the suitability test (sub-paragraph (a)) and the age test (sub-paragraph (b)). When both tests are met, the right to buy does not arise.
20. The age test presented the Tribunal with no difficulty in this case. Neither party has addressed the issue in their representations and a review of the Application shows the Applicant was aged over 60 when tenancy commenced. On this basis, the age test is met.
21. Turning to the suitability test, having regard to its inspection and the parties' written representations, the Tribunal was satisfied that the size, design and location of the Property are such as to make the Property particularly suitable for occupation by elderly persons.
22. In particular, the Tribunal was of the view that the development of small bungalows of which the Property forms a part were quite clearly built with the elderly in mind.
23. The Tribunal considered a number of the Applicant's representations to the effect that the Property may not be suitable for a disabled occupant. The Tribunal noted with reference to the Circular, however, that the statutory test is simply about suitability for occupation by elderly as distinct from those who are 'frail or severely disabled'.
24. The Tribunal noted that there is a reasonable range of local amenities and public transport in sufficient proximity to the Property.

25. Overall, the Tribunal found the Property met all of the criteria set out in the Circular.
26. The Tribunal did not find the absence of off-street parking relevant to the suitability question although it noted there was no shortage of street parking if required.
27. The Tribunal was not persuaded the nature, topography or condition of local footpaths was out of the ordinary such that it would have any material impact on the suitability of the property for elderly occupiers.
28. The Tribunal noted the Applicant's assertion, not contradicted by the Respondent, that the Respondent lets comparable properties to tenants from age 55 upwards. The Tribunal, however, confined its deliberations to the Property which forms the subject of the Application.
29. The Tribunal considered the question of age discrimination and noted that under Schedule 22 of the Equality Act 2010 there is specific provision relating to age discrimination that prevents its application if there is statutory provision for it. In this case the Act makes the provision for the denial of a right to buy because of age.
30. In addition, the Tribunal also considered section 13 of the Equality Act 2010 that provides a more general right not to be discriminated against a person because of age. Section 13(2) provides that there is no discrimination if the treatment of, in this case, the Applicant by the Respondent is a proportionate means of achieving a legitimate aim.
31. The Tribunal determined the Respondent's denial of the right to buy is proportionate in allowing them to maintain an adequate housing stock for elderly persons within its area.
32. The Tribunal considered the requirements of the Act and found that the two tests established by Paragraph 11 of Schedule 5 are met such that the Property is particularly suitable for occupation by elderly persons and consequently the Applicant does not have the right to buy.

S Wanderer
Tribunal Chairman
14 December 2021