



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

Case Reference : **MAN/00BW/RTB/2021/0004**

Property : **102 Lowton Road, Golborne,
Warrington WA3 3HU**

Applicants : **Mr T Simpkin & Mrs C Simpkin
and Mr C Simpkin**

Respondent : **Wigan Borough Council**

Type of Application : **Housing Act 1985 - Schedule 5,
Paragraph 11, Right to Buy**

Tribunal Members : **Judge C Wood
Mr J Faulkner**

Date of Decision : **8 November 2021**

DECISION

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ORDER

1. The Property is particularly suitable for occupation by an elderly person.
2. The requirements of Paragraph 11, Schedule 5 of the Housing Act 1985, (“the Act”), as to the date of 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 Applicants their right to buy the Property.

BACKGROUND

4. Following the Applicants’ notice to the Respondent of their wish to buy the Property pursuant to the Act, the Respondent served a notice dated 14 April 2021 denying the Applicants their 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 18 April 2021, (“the Application”), the Applicants 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 their intention to oppose the appeal.
7. The Tribunal determined the Application on the papers on Monday 8 November 2021.

INSPECTION

8. Mr J Faulkner, on behalf of the Tribunal, conducted an external inspection of the Property on Monday 8 November 2021.
9. The Property is a brick-built, semi-detached bungalow in a small development of similar properties. Access to the front entrance to the Property is initially along a short level driveway, and then up a low gradient ramp; there is a handrail along the length of the ramp.
10. The Tribunal was unable to inspect the rear access to the Property.
11. There are two newsagents/convenience stores within 0.3 mile of the Property. The route to the shops from the Property is along a generally level and busy main road.
12. There are two bus stops within 0.3 mile of the Property.

THE LAW

13. 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).
16. The 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. 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.
18. The Secretary of State will consider other features to those identified in paragraph 12 but has decided that the size of a garden, which is often cited by tenants as a reason why a property is not particularly suitable for occupation by elderly persons is not an issue that should be taken into account when determining an appeal, (paragraph 14 of the Circular).

REPRESENTATIONS

19. The Respondent’s response dated 28 April 2021 made the following representations:
- (1) the Property is a 2-bedroomed bungalow within a development of similar properties;
 - (2) 2-bedroomed bungalows are in high demand in the Borough;
 - (3) it has gas central heating and a shower room;

- (4) there is ramped access to the Property;
- (5) the lawns are maintained by the Respondent;
- (6) there are two bus stops close to the Property with services to Leigh, Golborne, Ashton-in-Makerfield and Wigan, where there is access to health care, major shops and other public facilities;
- (7) there are a couple of local shops nearby selling essential foods;
- (8) a summary of a recently-undertaken Housing Needs Assessment, (“HNA”), relating to the demand/provision of housing within the Borough for people aged 60 or older;
- (9) both Mr & Mrs Simpkin were aged 60+ at the start of the tenancy; and,
- (10) the suitability, size and design, location and features, such as the shower room, heating system and ease of ramped access, together with the Respondent’s practice of letting such properties to persons aged 60 or over, make correct the Respondent’s decision to deny the Applicants’ right to buy request.

20. The Applicants’ representations are as follows:

- (1) they rejected the Respondent’s suggestion that properties like the Property were in “high demand”, citing examples of other similar properties in the area which had remained vacant for a considerable period of time;
- (2) their son has lived with them in the Property for the last 7 years, as a result of certain medical conditions suffered by him. Securing his future security to remain in the Property underpins their request to buy;
- (3) there have been problems with the gas central heating and with the drain in the shower room;
- (4) the rear access to the Property is by 2 steps, and the handrail to the front is “rusty and flaking”;
- (5) they acknowledge that the lawns are maintained by the Respondent although they voice some concern about the quality/frequency of this service;
- (6) the walk to the local shops takes longer than the 6 minutes suggested by the Respondent and involves crossing a very busy main road;
- (7) it is accepted that there are bus stops near to the Property; and,
- (8) flats at a local development which is “warden-controlled” have been sold, which appears inconsistent with the Respondent’s stated policy for rejecting their right to buy request.

REASONS

21. The Tribunal considered the requirements of the Act and found the Property fulfils the criteria in that it was first let before 1 January 1990.
22. Further, the Tribunal noted that, as at the start of the tenancy on 23 June 2014, both of the Applicants were aged over 60. The requirement that the Property is let to someone over the age of 60 is therefore also met.
23. Having regard to its inspection and the parties' written representations, the Tribunal was satisfied that the size, design and location of the Property were such as to make the Property particularly suitable for occupation by elderly persons.
24. In particular, the Tribunal was satisfied that the ease of access to the front of the Property was significant in this respect, notwithstanding the Applicants' statements regarding the rear access, which the Tribunal was unable to confirm following its inspection. There was no evidence of any significant defects in the condition of the handrail at the front of the Property.
25. The Tribunal noted the differences in the parties' representations regarding the distance and/or walking time to the local shops, and also the Applicants' representations regarding the need to cross a busy road. They concluded that, on balance, there were local shops within sufficient proximity of the Property.
26. The Tribunal noted that both parties accepted that the Property was near to bus stops and accepted the Respondent's evidence regarding the available bus routes.
27. The Tribunal noted that both parties acknowledged that the garden at the Property was maintained by the Respondent, notwithstanding the Applicants' comments regarding the quality/frequency of that service.
28. The Tribunal accepted the Respondent's representations regarding the HNA, and, in particular but without limitation, the anticipated future demand for housing suitable for elderly people, the current available stock, and the "key" conclusion of a need for a broader housing offer for older people across the Borough.
29. The Tribunal noted the Applicants' representations relating to similar properties within their area remaining vacant for extended periods, and to the sale of units within a nearby warden-controlled development, but, in the absence of any further evidence regarding the particular

circumstances eg the reasons for the properties remaining vacant and/or for the sale of units, the Tribunal did not consider that it was appropriate to take this information into account in reaching its determination.

30. The Tribunal determined that the Respondent's refusal of the Applicants' request was therefore proportionate in all the circumstances in allowing them to maintain an adequate housing stock for elderly persons within the Borough.
31. Further, the Tribunal considered that the criteria established by Schedule 5, paragraph 11 of the Act were met such that the Property is properly regarded as particularly suitable for occupation by an elderly person and that the Applicants do not have a right to buy.

Judge C Wood
8 November 2021