



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

Case Reference : **MAN/00CM/RTB/2021/0006**

Property : **65 Treecone Close, Sunderland, SR3 2XG**

Applicants : **Elizabeth Swallow, Anthony Joseph Doherty,
Ronald Swallow**

Respondent : **Gentoo Group Limited**

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 I D Jefferson TD BA BSc FRICS
Mrs A Usher**

Date of Decision : **2 December 2021**

DECISION

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Decision: The Tribunal is satisfied that the Property is particularly suitable for occupation by elderly persons and that the Respondent is able to rely upon Schedule 5 paragraph 11 of the Housing Act 1985. The Applicant is therefore denied the right to buy.

Application and Background

1. The Applicant is the tenant and occupier of the Property and gave notice to the Landlord of intention to exercise the right to buy. The papers are not before the Tribunal but the Tribunal assume that the Application was received.
2. The Landlord then served a Notice (form RTB 2) dated 16 June 2021 on the Applicant under Section 124 of the Act denying the right to buy on the grounds set out in paragraph 11 to Schedule 5 of the Act.
3. By an application dated 21 June 2021 the Applicant applied to the Tribunal for a determination as to whether the dwelling house is suitable for occupation by elderly persons.
4. The Application was copied to the Landlord.

Representations and hearing

5. The Tribunal received written representations from both parties.
6. Neither party requested a hearing. The Tribunal inspected the property externally only due to COVID restrictions on 30 November 2021 as below and deliberated subsequently to make its determination.

The Property

7. The Tribunal wrote to both Parties on 17 November 2021 referring to previous correspondence and setting out that the matter would be determined on 30 November 2021. Neither Party requested a Hearing. The Tribunal attended at the property on 30 November 2021, and undertook an external inspection, and were able to observe the access routes to both the front and rear entrances to the bungalow. The internal arrangement and accommodation within the Property is known from the detailed written representation from the Applicant.
8. The Property is a single storey bungalow believed to have been built in the 1970s under a pitched concrete tile roof. The bungalow has double-glazed windows and gas fired radiator central heating. Access is by way of a level path and single step to the rear door. The front path has 2 steps, set apart, from the pavement to the front door which has a further 2 steps. Externally there is open lawn gardens to front, and enclosed rear garden.

The internal accommodation is understood to comprise reception room, 2 bedrooms, kitchen and bathroom.

The Tribunal found that there is a bus service serving the estate very close to the Property, and local shops within reasonable walking distance.

The Applicants confirmed in their application the suitability of the bungalow for occupation by the elderly.

The Law

9. Paragraph 11 of Schedule 5 of the Housing Act 1985 provides that:-
 - (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 a predecessor of 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*
.....
 - (6) *This paragraph does not apply unless the dwelling house concerned was first let before 1st January 1990*
10. The Office of the Deputy Prime Minister (ODPM) (now the Department for Levelling Up, Housing and Communities) issued Circular 7/2004 (Right to Buy: Exclusion of Elderly Persons' Housing), which sets out the main issues relating to the particular suitability of an individual dwelling house for occupation by elderly persons (paragraph 12). The Tribunal is not bound by this circular, deciding each case on its merits, but does have regard to the criteria contained in the circular as a guide.

Tribunal's Determination

11. The Tribunal has jurisdiction to make a determination on the application by the Applicants as the denial of the right to buy was under paragraph 11 of Schedule 5 of the Act. In doing so it has to consider:
 - (i) whether the dwelling-house was first let before 1 January 1990: and
 - (ii) whether the dwelling-house is particularly suitable for elderly persons aged 60 or over; and
 - (iii) was let to the tenant or a predecessor for occupation by a person who was aged 60 or more.
12. The Respondent confirmed that the Property had been first let before 1 January 1990 and that has not been challenged.

13. The Parties agree that the Tenancy was granted 26 August 2002 to Mr Anthony Joseph Doherty (one of the Applicants and still residing in the property) and his late wife. Both were aged over 60 at the time of the commencement of the Joint Tenancy.
14. The legislative preconditions are therefore satisfied for the Local Authority to deny the right to buy, but it remains for the Tribunal to determine whether the dwelling is particularly suitable in physical terms for occupation by elderly persons.

The tests are set out in Circular 7/2004 of the Office for Deputy Prime Minister although these are simply guidelines not mandatory. Nonetheless the Tribunal did have regard to all of those matters including location, size, design, heating, and other features.

15. The Tribunal found that both Tenants in 2002, and one of the joint Applicants were aged over 60 when the joint tenancy commenced. The property is one of a group of bungalows which are particularly suitable for elderly persons in an area which is well served by local buses and has local shops nearby. The bungalow is on one level, it is physically attractive to elderly persons, as confirmed by the Applicant, and is close to local amenities.
16. The requirement of paragraph 11 (1)(b) namely that the dwelling house was let to a Tenant who was aged 60 or more was met.
17. The Tribunal were satisfied that there was no dispute that the property had been first let before 1 January 1990 and that the requirement of paragraph 10 (6) was met.
18. The Applicants made written representation that other owners of bungalows on the estate have been permitted to buy.
19. The Tribunal note that previous sales may have occurred. It may be in other cases that despite satisfying paragraph 11 (1)(a) the second condition in paragraph 11 (1)(b) was not satisfied. Alternatively, there could be other reasons, all of which are unknown to the Tribunal. In any event this Tribunal must adhere to the legislation as set out in the Housing Act.
20. The Tribunal are satisfied that the Property is suitable for occupation by elderly persons. Accordingly the Tribunal determines that the Respondent may rely on Schedule 5 paragraph 11 to deny the Applicant the right to buy.

ID Jefferson
Tribunal Judge
7 December 2021