



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

Case Reference : **MAN/OOCZ/RTB/2020/0009**

Property : **47 Church Lane, Huddersfield,
HD8 9LY**

Applicant : **Ms Megan Judd**

Representative : **In person**

Respondent : **Kirklees Council**

Representative : **Mrs Alex Gosling**

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**

**Date of
Determination** : **16th June 2021**

Date of Decision : **7th July 2021**

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 her Right to Buy the Property.

Application

4. Ms Megan Judd (“the Applicant”) gave notice to Kirklees Council (“the Respondent”) of her wish to buy 47 Church Lane, Huddersfield (“the Property”), pursuant to the Act.
5. The Respondent subsequently served a notice dated 22nd October 2020, under section 124 of the Act, denying the Applicant her 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 received on 13th November 2020 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 their intention to oppose the appeal.
8. A Telephone Case Management Conference was held on 12th April 2021 that gave directions for the future conduct of the application.

The Property

9. The Tribunal undertook an external inspection of the Property on 16th June 2021 with neither party present. Due to the restrictions imposed by the COVID-19 it was not possible for the Tribunal to carry out an internal inspection. This was agreed by the parties.
10. The Property is a two bedroomed brick built, semi-detached bungalow, having gardens to both the front and rear. It is within an area of mixed style properties.
11. The Applicant has said she has undertaken significant work at the Property to include new external and internal doors, upgraded the kitchen, installed a new gas fire and fireplace, fitted new light fittings, enclosed the rear garden and decorated throughout. This has all been done with the approval of the local housing office. The Applicant maintains the only adaptation for an elderly person is a grab handle in the bathroom. This is not disputed by the Respondent.
12. The Property has gas central heating which the Respondent says can be safely left on overnight.

13. Access to the front of the Property is from a path running from the pavement. The Applicant says there are five uneven steps from the pavement to the short path that leads to the front door. These are shared with the adjoining bungalow. The Respondent states there are six steps to the path, each 125mm high and one step into the Property, having a height of 100mm. There is a handrail to the left of the steps. The Respondent advises the gradient of the steps is 30%.
14. The Property is approximately 370 metres from the local shop, Clayton Village Stores that sells basic food items. The main shopping area is otherwise 2 miles from the Property. The nearest bus stop is 120 metres from the Property from where buses travel to Skelmanthorpe/Denby Dale and Huddersfield.
15. The route to the local shop and bus stop is on a slight gradient

The Law

16. 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).
17. 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.
18. 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”.
19. 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

20. The Applicant made detailed written representations outlining the work undertaken to the Property and that it is unsuitable for an elderly person due to the doors in the Property not being wide enough for a wheelchair or walking frame. Access to the rear of the Property is via a long sloping steps from the front of the house; the garden is uneven with four flags for steps. There is no designated parking space for the Property. The neighbouring property, identical to the Property had been sold under the Right to Buy Scheme. There are other properties, in the immediate neighbourhood that have also been sold. The Applicant advised she and her late husband had previously successfully applied to buy the Property in 2005 but had been unable to proceed with their purchase.
21. The Applicant advised the bus journey to the nearest town takes approximately one hour and the service can sometimes stop in bad weather.
22. The Respondent provided details of the Property and distances to the shop and bus stop and confirmed the Property meets all the requirements set out in Schedule 5 of the Act.

Determination

23. 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's late husband on 30th June 2003 and she succeeded to the tenancy on 18th February 2019. The Respondent states it was first let to a person over the age of 60 years. Consequently, the requirement that the Property is let to someone over the age of 60 years is met.
24. 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.
25. 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 via six steps with a handrail and then on a level path to the front door. Access to front door is by one shallow step. The path leading to the rear of the Property is on a slight gradient Whilst the Applicant refers to four flagged steps to the rear garden, this is access to the garden and not to the Property itself.
26. The Circular gave guidance regarding the criteria to be considered when determining whether a property is particularly suitable for occupation by an elderly person. It 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 this criteria. Whilst there are six shallow steps, there is a handrail.

27. 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 stop travelling to Huddersfield. The Tribunal noted the main shopping area is 2 miles distant from the Property., However, the Circular indicates that a Property remains suitable for occupation by an elderly person provided there is a shop within half a mile that sells basic food items. This criteria is satisfied here.
28. The Tribunal did not consider the route to either the shop or the bus stop to be unsuitable for a person over the age of 60. The route to both is on a slight gradient.
29. When considering the suitability of a Property for the elderly, the Tribunal does not have to consider the particular needs of the tenant. For example, it is not necessary for the Property to be suitable for a wheelchair user or one who uses a walking frame for it to be designated as suitable for the elderly. The criteria is that it is suitable for occupation by a person over the age of 60 years.
30. Here, the Applicant has referred the Tribunal to the fact the Respondent previously accepted their application to buy the Property. The Tribunal can only consider the circumstances as they are now and not what may have been the position in 2005.
31. The Tribunal is also unable to consider the circumstances relating to other properties that have been sold in the vicinity of the Property. It has no knowledge of the reasons why those tenants were able to buy their properties.
32. The Tribunal has considered the requirements of the Act and finds that the criteria established by Schedule 5 Paragraph 11 have been 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.

Tribunal Judge J Oliver
16 June 2021