

10333



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

Case Reference : BIR/00CW/RTB/2014/0012

Property : 18 Maple Road
Bradmore,
Wolverhampton
Wv3 7JD

Applicant : Mrs J Richards

Representative : Mr A Clamp

Respondent : Wolverhampton City Council

Representative : Ms A Watts, Solicitor

Type of Application : Determination under paragraph 11 of
Schedule 5 to the Housing Act 1985 -
whether a dwelling house is suitable
for occupation by elderly persons.

Tribunal Members : Judge T N Jackson BA (Law) (Hons)
Mrs S Tyrer FRICS

**Date and venue of
Hearing** : 30th September 2014
Wolverhampton Magistrates Court
North Street
Wolverhampton
WV1 1RE

Date of Decision : 14 OCT 2014

DECISION

© Crown Copyright 2014

Decision

1. The Tribunal determines that the Respondent Council can rely on paragraph 11 of Schedule 5 to the Housing Act 1985 (as amended) to deny Mrs Richards the right to buy the property.

Reasons for Decision

Introduction

2. On 16th April 2014, Mrs Richards, who is the tenant of the property, applied to purchase it from Wolverhampton City Council. The Respondent Council, in reply to her application, served upon her a Notice in Reply (RTB3), dated 30th April 2014. This advised that the Council had refused her right to buy the property on the grounds set out in paragraph 11 of Schedule 5 (property suitable for occupation by elderly persons) to the Housing Act 1985 ("the Act").
3. On 3rd May 2014, Mrs Richards applied to the Tribunal, under paragraph 11(4) of Schedule 5 to the Act, for a determination as to whether the exception to the right to buy set out in paragraph 11(1) of Schedule 5 was applicable to the property

The Inspection.

4. The Tribunal inspected the property on the morning of 30th September 2014. The inspection took place in the presence of Mrs Richards, her representative Mr. Clamp, (her son), and Ms Bellingham, Head of Homes, Sales and Leases at Wolverhampton Homes.
5. The property is located in the suburb of Bradmore on Maple Road, a residential area made up of bungalows and houses. Some of the adjoining properties have already been subject to the right to buy and are in private ownership. The property is a semi-detached bungalow of traditional brick and tile construction built in 1984. It is located on a sloping plot with an open garden to the front and a fenced and self-contained rear garden. There is no private driveway and access from the property is obtained by passing over a small paved area directly onto the public footpath.
6. Internally the bungalow has an entrance hall from which the remaining accommodation is accessed. This comprises a living room, kitchen, two bedrooms and a bathroom that has been converted into a wet room with a walk in shower, washbasin and toilet. The property has been constructed with the same even floor levels throughout.
7. The Tribunal was informed that all mains services are connected to the property which has a gas central heating boiler with radiators in each room. The windows are fitted with upvc double glazed units throughout and these have an operating mechanism which prevents the windows

being capable of opening more than approximately 6 inches unless a concealed button within the frame is released for the windows to be fully opened.

8. There is level access to the front of the property from Havelock Close with a handrail running parallel to the road. Vehicular access to the door is directly from the road which also provides on street parking for the property.
9. Mrs Richards had carried out the following improvements – erection of the boundary concrete posts, fencing, car port and a fused electrical point in the shed.
10. Local amenities include a mini supermarket and a number of other shops including a pharmacy, post office and a bank with a cashpoint all of which are within easy walking distance of the property.
11. The nearest bus stop is located approximately 250 yards from the property. This provides a regular return bus service to Wolverhampton City Centre which is approximately 1.5 miles away. The Tribunal is informed that the timetable provides for a bus every 10 minutes at peak time and every 20-30 minutes in non- peak time travel times.

The Law

12. The material parts of paragraph 11 of Schedule 5 to the Act are as follows:
 - (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 of title of his for occupation by a person who was aged 60 or more (whether the tenant or a predecessor or another person).*
 - (2) *In determining whether a dwelling house is particularly suitable no regard shall be had to the presence of any feature provided by the tenant or a predecessor in title of his.*
 - (3)
 - (4)
 - (5)
 - (6) *This paragraph does not apply unless the dwelling house was let before the 1st January 1990.*
13. The Office of the Deputy Prime Minister (ODPM) has issued Circular 7/2004 (Right to Buy: Exclusion of Elderly Person Housing), which sets out the main criteria to be taken into account in determining the particular suitability of an individual dwelling house for occupation by elderly persons. The Tribunal is not bound by the Circular, deciding each case on its merits, but it does have regard to the criteria contained in the Circular as a guide.

The Hearing

14. Mr Clamp was present to represent Mrs Richards who was not able to attend. The Respondent Council was represented by Ms Watts, Solicitor and Mr D Read, Principal Homes, Sales and Leases Officer of Wolverhampton Homes was also in attendance.

Representations on behalf of Mrs Richards

15. In the application, subsequent correspondence, and at the hearing, Mr Clamp raised the following:
- a. Shops and a bus service are within 1000 yards of the property, although at the hearing Mr Clamp confirmed that the nearest shop for basic items was approximately 200 yards and the nearest bus stop was approximately 250 yards from the property.
 - b. Mrs Richards and her husband had moved from the previous house which they had rented since 1981 as it became unsuitable due to subsidence.
 - c. Bungalows at 3, 6, 7, and 10 Maple Road were built at the same time to very similar specifications as 18 Maple Road and had been sold to tenants in the past 10 years. Number 1 was purchased prior to 2004. The Council had not reserved the bungalows for the elderly and it appeared discriminatory for people who wish to exercise their right to buy.
 - d. Mrs Richard's son lives only 60 feet away and is on hand to help out.
 - e. Number 18 does not have self-contained enclosed rear garden access unlike the other bungalows, as the front door leads directly onto the main street and is the only access to the garden and the property, thus creating a security issue.
 - f. If a fire were to start in the kitchen, as the kitchen is situated to the left of the front door, this could deny exit of the building, a problem for the elderly.
 - g. The properties have substantial front and rear gardens to maintain and care for, something which is difficult for elderly tenants to maintain.
 - h. The dwelling has only two bedrooms one of which is a box room measuring 8' x 6'
 - i. Mr and Mrs Richards installed boundary fencing and a fused electrical point in the shed and permanent fixtures inside the property.
 - j. At the hearing Mr Clamp accepted that the property was suitable for the elderly but stated that all tenants should have the 'Right to Buy' regardless of age or ability.
 - k. Mr Clamp (approaching 55) and his wife wished to be considered applicable to live at the subject property as their residence. Two of the current bungalow tenants are younger than he.

- l. The mechanism to open windows fully was difficult for elderly persons.

The Respondent's representations

16. In the written submissions and at the hearing the Respondent Council raised the following:

- a. The property was first let before 1990 and Mrs Richards moved into the property in August 2001, aged 64, as a joint tenant.
- b. The property is wholly suitable for use by residents of pensionable age. Properties of this nature are required to help the Council meet the needs of the elderly in the future.
- c. Whilst the bungalow is wholly suitable for a person of pensionable age, the gardens are larger than would be expected for a bungalow for a person of pensionable age.
- d. There is level access to the front of the property from Havelock Close with a sturdy handrail running parallel to the road and vehicular access to the door.
- e. There is a mini supermarket, other shops including a pharmacy, post office and a bank with a cashpoint in easy walking distance from the property.
- f. The property is close to a main bus route, on Trysull Road, with the nearest bus stop being a short walk away.
- g. It is accepted that some other bungalows in the locality have been sold under the right to buy, but this is irrelevant when considering if this property is of particular suitability for occupation by elderly persons.
- h. The property is suitable for occupation by elderly persons not just in its structure but also its location.
- i. To meet the needs of an ever increasing elderly population and the needs of residents that require ground floor accommodation, it is essential that the Council retains as many suitable properties as possible.
- j. The window opening mechanism complied with Building Regulations when the windows were fitted and had been fitted in this type of properties and ground floor flats.
- k. Having only one means of access by the front door increases the security of the property.

Findings of fact by the Tribunal

17. The Tribunal is satisfied that the property had been first let before 1st January 1990 and that Mrs Richards was 64 when the property was let to her in 2001.
18. The Tribunal determines that there is easy access on foot to the property as there is level access to the front of the property from Havelock Close, with a sturdy metal handrail running parallel to the road and vehicular access to the door.

19. The internal accommodation is on one level. Whilst the property is built on a plot with a very slight incline from the front garden to the rear garden, the incline is not so significant as to be material.
20. The property has two bedrooms, a double and a single.
21. The Tribunal finds that the gas fired central heating system is maintained adequately and functions reliably. It heats all rooms and can safely be left on overnight.
22. The property has only a single means of access, this being the front door. Mr Clamp, on behalf of Mrs Richards, submits that this creates a fire risk especially for the elderly. The Respondent Council submits that it enhances the security of the property. The Tribunal determines that such fire risk that exists affects all tenants, as does the enhanced security. The Tribunal does not consider the fact that the property only has one door is sufficiently material to outweigh the other considerations.
23. The Tribunal notes the window opening mechanism and Mr Clamp's submission that it is difficult for the elderly to operate. However, the windows complied with Building Regulations when fitted and were used in properties of this type and ground floor flats. The Tribunal does not consider the mechanism to be sufficiently material to outweigh the other considerations.
24. The Tribunal observed that the nearest shop selling basic food items is approximately 200 yards away and the closest bus stop for journeys to the City Centre is approximately 250 yards from the property. The route on foot to these amenities did not involve any steep gradients. The public transport system is frequent and considered reliable. In addition to the closest shop, there is also a mini supermarket, a pharmacy, post office and a bank with a cashpoint within walking distance of the property. At the hearing, the Tribunal was informed that the nearest GP's surgery was approximately half to three quarters of a mile, (approximately 800m to 1200m), from the property. Whilst this was a consideration, it was outweighed by the proximity of the other amenities. The Tribunal determines that the property is located reasonably conveniently for shops and public transport, having regard to the nature of the area.
25. The Tribunal notes the guidance in paragraph 14 of the ODPM Circular that the size of the garden is not a relevant matter for consideration. The Tribunal finds that the garden is of slightly larger size than appropriate to the dwelling but determines that the garden is not a factor to make the dwelling unsuitable for occupation by elderly persons.
26. The Tribunal notes that Mrs Richards made improvements to the property but paragraph 11(2) of Schedule 5 states that the Tribunal

cannot consider any improvements in determining suitability of the house.

Determination by the Tribunal

27. The Tribunal considered all the relevant written and oral evidence presented to it. The issue for determination by the Tribunal is whether the subject property is particularly suitable having regard to its location, size, design, heating system and other features for occupation by elderly persons.
28. The term "elderly persons" does not mean persons who are frail or severely disabled; provision is made in other paragraphs of Schedule 5 to the Act to exclude dwelling houses for such persons from the right to buy legislation. The Tribunal is obliged to examine suitability from the perspective of an elderly person who can live independently.
29. Mrs Richard's personal circumstances, and indeed those of her son, are not taken into account and therefore the Tribunal did not consider the representations at paragraph 15 b, d, j and k.
30. The Tribunal notes that other bungalows in the immediate locality have been bought under the right to buy regime. However, the Tribunal cannot take this into account as it does not know the circumstances of such purchases or details of the properties. The Tribunal must have regard to the factors set out in paragraph 11 of Schedule 5 of the Act in relation to this specific property.
31. The Tribunal determines, after taking into account the representations and the findings of fact made by it, that the Respondent Council is entitled to rely on the exception to the right to buy contained within Schedule 5 paragraph 11 to deny Mrs Richard's right to buy.
32. In practice, this means Mrs Richards does not have the right to buy the property.

Appeal provisions

33. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision stating the grounds on which that party intends to rely in the appeal.

T N Jackson
Tribunal Judge