



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

Case Reference : **BIR/00CT/RTB/2019/0005**

Property : **29 Whitnash Close, Balsall Common,
Coventry, West Midlands CV7 7PR**

Applicant : **Miss Paula Marie Burden**

Respondent : **Solihull Metropolitan Borough
Council**

Type of Application : **An Application under paragraph 11 of
Schedule 5 to the Housing Act 1985
following denial of the Right to Buy
under that Act because the property is
particularly suitable for occupation
by elderly persons**

Tribunal Judge : **Dr Anthony Verduyn**

Tribunal Valuer : **Mr V. Chadha**

**Date of Site Inspection :
And Hearing** : **11th October 2019**

Date of Decision : **16th October 2019**

DECISION

Background

1. This is an application to the First-tier Tribunal (Property Chamber) ('the Tribunal') to determine whether the exception to the right to buy in paragraph 11 of Schedule 5 to the Housing Act 1985 ('the 1985 Act') being property particularly suitable for occupation by elderly persons, applies to 29 Whitnash Close, Balsall Common ('the Property').
2. The tenant, Miss Paula Burton, applied to the landlord, Solihull Metropolitan Borough Council ("the Council") to buy the freehold interest in the Property under 'right to buy' legislation.
3. Miss Burden had been granted the original tenancy on 1st June 2018. Her date of birth is 22nd April 1964, hence she was then 54 years of age.
4. The landlord replied by counter notice, Form RTB2 dated 13th May 2019, denying the right to buy because it considered the Property particularly suitable for occupation by elderly persons. The Notice advised that the qualifying conditions for denial had been met as the Property had been first let before 1 January 1990, is particularly suitable for occupation by elderly persons, and was let for occupation by a person aged 60 or more.
5. Miss Burden made an application to the Tribunal dated 21st June 2019, which was received by the Tribunal on 26th June 2019, ('the Application'), for a determination by the Tribunal as to whether the grounds in paragraph 11 had been satisfied.
6. The Tribunal sent a copy of the Application to the Council, and directions were issued by the Regional Valuer on 5th July 2019 which were concerned, principally, with the processes associated with the preparation and submission of statements of case and related documents.
7. Statements of case were submitted by the Applicant and the Council in due course. A Hearing was not requested by any of the parties, but the Tribunal inspected the Property.

Relevant Law

8. The material parts of paragraph 11 of Schedule 5 of the 1985 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 in title of his for occupation by a person who was aged 60 or more (whether the tenant or predecessor or 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 in title of his...
 - (6) This paragraph does not apply unless the dwelling-house concerned was first let before 1st January 1990.
9. ODPM Circular 7/2004 (Right to Buy: Exclusion of Elderly Persons' Housing) ('the Circular'), which was issued by the Office of the Deputy Prime Minister, gives guidance on the main criteria to be taken into account in determining the suitability of a dwelling-house for occupation by elderly persons. Such determinations were to be made by the Secretary of State. However, on 1 April 2005, such jurisdiction was transferred to 'the appropriate tribunal or authority' under section 181 of the Housing Act 2004, which, presently, is this Tribunal. In anticipation of this transfer, the Circular states that 'the criteria set out in this circular will not be binding on the [appropriate tribunal or authority] but they will be guided by them in general terms'. Importantly, the Circular adds that each case will be decided on its own merits.
10. The following paragraphs of the Circular are particularly apposite to the determination by the Tribunal of this Application:

Particular suitability for occupation by elderly persons

"12. The main points on which the Secretary of State will normally expect to be satisfied in considering applications under paragraph 11 – as well as other features to which his attention is drawn – are as follows:

(a) there should be easy access on foot to the dwelling. In assessing ease of access, consideration should be given to:

- the number and size (in particular, the height) and curvature of any steps up to the dwelling itself, and also of any steps in its immediate vicinity where these must be negotiated to gain access to it;
- the presence or absence of handrails, or other means of support, alongside any steps up to the dwelling and in its immediate vicinity that need to be negotiated to gain access to it;
- the gradient of ramps, paths, pavements or other means of access to the dwelling and in its immediate vicinity, where these must be negotiated to gain access to it.

In general, access is unlikely to be regarded as easy if it is necessary to climb three or more steps (in addition to the threshold) and there is no handrail;

(b) the accommodation should normally be on one level. The Secretary of State is unlikely to regard a dwelling with two or more floors as being

particularly suitable for occupation by an elderly person. However, he may be prepared to make exceptions for dwellings with up to three internal steps, or with stairlifts or similar devices provided by the landlord;

(c) ...

(d) there should be no more than two bedrooms, designated as such in the tenancy agreement;

(e) there should be heating arrangements which:

- function reliably
- provide heat to at least the living room and one bedroom
- may safely be left on overnight;

(f) the dwelling should be located reasonably conveniently for shops and public transport, having regard to the nature of the area (the Secretary of State may take into account reliable means of transport other than those provided by public bodies – for instance, transport provided by shops or voluntary organisations):

- in an urban area, the dwelling should be located no more than 800 metres (half a mile) from both the nearest shop selling basic food items and the nearest public transport stop. 'Basic food items' include bread and milk;
- in a rural area, the dwelling should be located no more than 800 metres (half a mile) from the nearest public transport stop, and such transport should be available from this point frequently enough to provide at least three opportunities for shopping each week.

Letting test

18. A significant number of appeals have been received involving properties that have been let for occupation by persons who are under the age of 60. In such cases, the Secretary of State has upheld the appeal. It is important to reiterate that paragraph 11 of Schedule 5 of the Housing Act 1985 applies only if the dwelling in question was let 'to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more'. The Secretary of State takes the view that this condition is only met if, when the current tenancy or that of the current tenant's predecessor in title was granted, the landlord knew:

- that the tenant, or one or more of joint tenants, was aged 60 or more;

or

- that the dwelling was to be occupied by some other person known by the landlord to be aged 60 or more.”

The Property

11. The Tribunal inspected the Property, internally and externally, during the morning of 11th September 2019 in the presence of Miss Burden’s daughter. The council was not represented.
12. The Property is a traditionally constructed semi-detached bungalow located in Balsall Common among a number of other, similar properties. Several of them were grouped together. It is situate on a generally level site, but had a shallow ramp to the front door. The front garden was modest and laid to grass with a path across it.
13. The Property offers the following accommodation and benefits from uPVC double glazing and gas fired central heating:
 - Hall with cupboard
 - Lounge
 - Kitchen
 - One double bedroom
 - Small box roomThere is also a bin store to the side of a covered front entry.
14. The bathroom had a walk-in shower (a replacement by Miss Burden for the former one, the Tribunal was told, confirming visual appearance that it was recently installed), wash hand basin and low flush WC.
15. The Property has a small rear garden which is enclosed by fences and partially laid with slabs and artificial grass. There was a modest step down from the kitchen to the level of the garden. There was also a side gate opening to the frontage of the Property, which afforded a level access. This garden would be easy to maintain.
16. Car parking was available on street within a short walk along the path between the neighbouring bungalows. There are convenient dropped kerbs.
17. Local shopping facilities including Tesco express, Co-operative Food and a Pharmacy, along with a number of other shops, are on the Kenilworth Road, 0.7 miles away. The nearest bus stop was on Station Road, accessible using a path connecting Whitnash Close to Coplew Close and in the order of 250 yards away. Buses using this stop run to the Kenilworth Road amenities and beyond.

Submissions

The Applicant

18. Miss Burden disagreed with the proposition that the Property was particularly suitable for occupation by elderly persons. The layout was acknowledged to be such that “this Property could be deemed as ideal for an elderly person” in her original letter accompanying her application but she later pointed out the step

from kitchen to garden was a difficulty and there were no handrails to external accesses. Her main focus of objection was in respect of matters relating to general location: The nearest doctors' surgery is 1.1 miles away, the local shops 0.7 miles, the nearest bus stop 0.5 miles, the nearest shopping centre is 5.91 miles away and the nearest shopping centre available by bus is 7 miles away at Solihull. There are no buses on Sunday or Bank Holidays. The road is typically untreated in snow and ice.

19. Miss Burden also pointed to personal circumstances, in particular her record as a tenant for more than 10 years, the home improvements she has carried out (to kitchen and bathroom, with extensive redecoration and installing the artificial grass), and her intention to live at the Property into old age.

The Respondent

20. The Respondent acknowledges the jurisdiction of the Tribunal and the timeliness of the application, but asserts the statutory exception to the right to buy.
21. The Respondent identifies the Property as built in 1970 and provides historic letting records back into the 1970s. Of the 6 previous tenants disclosed 3 were over 60 when the Property was let to them, 2 had unrecorded ages and one was 55. The Applicant was 54, and she was eligible because the legislation set out that a bungalow may now be let to a tenant age 50 or over (there is an acknowledged mismatch with the right to buy exception reference to 60 or over). Even so, the Council contends, Miss Burden is ineligible because her predecessors in title were over 60, and the reference to predecessors in title should be read in this context (the Property had not, after all, changed hands in respect of its freehold).
22. The Property is asserted to be particularly suitable for elderly persons because of features like the access ramp and the walk-in shower. This would assist elderly persons with limited mobility. Indeed, Miss Burden appears to have been allocated the Property on the basis of need for special adaptation.
23. Elderly persons at the Property would also be able to access the Supported Housing Service, if needs required it.
24. The Council also downplays the significance of the distances asserted by Miss Burden from amenities, and asserts that this issue does not outweigh the suitability of the Property itself.
25. The Council also drew attention to Milton Keynes v Bailey [2018] UKUT 207 (LC) in which Mr P. D. McCrea FRICS in considering the exception to the right to buy under paragraph 11 of Schedule 5 to the 1985 Act observed:

“[25] I accept the Council’s submission that the characteristics of the property must be assessed in the aggregate, and not looked at individually. The question in a case such as this is whether the property is particularly suitable. Some features may tend in one direction, whilst others point the other way. Some features may be so significant in

themselves that they make the property positively unsuitable (for example that it could only be reached by a very steep staircase). But what is required is an assessment of the whole.”

Determination

26. The Property itself is particularly suitable for elderly persons: the ramp to the front door may not have a handrail, but the ramp is shallow. There is a modest single step from kitchen to rear garden, but flat access around the side of the bungalow. In all other features in respect of layout, including size and design, it is ideal for occupation by elderly persons capable of independent living. There was no suggestion that the heating system was in any way inadequate, and it appeared comprehensive and appropriate to the Tribunal.
27. The immediate environment of the bungalow is also appropriate, with suitable level paths leading to a road with appropriate dropped kerbs. Whilst the road is residential and, therefore, unlikely to be a high priority for snow clearance and other treatment, this would apply to the vast majority of suburban roads and in a region where snow is only occasional, there is reason for this to disqualify the Property for use by elderly persons.
28. Indeed, the Tribunal notes that the Applicant herself intends to be resident into old age, and sought the Property on the basis of its adaptations. Even were these not to be the case, the personal circumstances of Miss Burden as tenant are irrelevant to the statutory considerations.
29. In respect of local amenities, the Applicant overstates the difficulties in accessing these. The Kenilworth Road has a significant local shopping centre and other amenities like a library and (somewhat to the far side of it) a railway station. Whilst these shops are about 0.7 miles away, a bus runs from only 250 yards from the Property.
30. Were this application to be determined on the basis of suitability for elderly persons alone, then on “an assessment of the whole”, paragraph 11(1)(a) is amply made out.
31. Paragraph 11(1)(a), however, is not the entire test and regard must be had to paragraph 11(1)(b): “was [the Property] let to the tenant or a predecessor in title of [her] for occupation by a person who was aged 60 or more (whether the tenant or predecessor or another person)”?
32. The answer to this question must be “no” and the Council’s objection to the application must fail.
33. The tenancy was granted to Miss Burden as tenant when she was 54, hence below the age of 60. It was granted for her occupation of the Property and not for “another person”.
34. The Council asserts that it was let to a “predecessor in title” for occupation by a person who was aged 60 or over. This is to misconstrue the position. Whilst some previous tenants were aged 60 or over at the time of the beginning of their

tenancies of the Property, that cannot be said of all of them: one was 55 and two were of unknown age (although, even below the age of 60, the letting could have been for occupation by a person who was aged 60 or more, the position is simply unknown). The key point, however, is that none of these people were “predecessors in title” of Miss Burden. A “predecessor in title” must be someone who had the same interest (i.e. “title”) as the current tenant, but Miss Burden was granted a new tenancy, not assigned a former one (as can often happen in long leases) or received a former one by inheritance (a possibility for secure tenancies) or survivorship (where tenancies are originally joint). Indeed, the possibilities of inheriting a secure tenancy or survivorship sufficiently explains the terms of this provision in the 1985 Act.

35. The Council appears to have fallen into the error identified in the “Letting Test” as described in paragraph 18 of the Circular set out in full above. The mismatch between a policy allowing letting to those aged 50 and over, but only preventing right to buy for tenancies to those aged 60 and over, cannot be a basis for departing from the clear words of the 1985 Act. The exception cannot be applied, because the Council granted a tenancy to Miss Burden, for her own occupation, when she was below the age of 60.
36. This Tribunal therefore allows the application of Miss Burden and determines it in her favour, pursuant to Section 181(6) of the Housing Act 2004 (as amended). The right to buy is accordingly established for the purposes of Section 125(1) of the Housing Act 1985 and the Council as landlord shall now comply with its duties with respect to purchase price and other matters.

Tribunal Judge Dr Anthony Verduyn

Dated 16th October 2019