



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

Case Reference : **CAM/33UH/RTB/2019/0002**

Property : 6 Ethel Gooch Road, Wymondham, Norfolk NR18 0LJ

Applicant : Ms Judith Barclay (Tenant)

Respondent : Saffron Housing Trust Ltd (Landlord)

Type of Application : Appeal against the landlord's denial of the tenants' right to buy [Housing Act 1985, Sch 5, para 11 (as amended)]

Tribunal Members : G K Sinclair & G F Smith MRICS FAAV REV

Date of inspection and determination : Tuesday 11th June 2019

Date of Decision : 12th June 2019

DECISION

1. **For the reasons which follow the tenant’s appeal against the denial of her right to buy the property is allowed and, pursuant to rule 13(2), the respondent housing association is ordered to reimburse the £100 application fee paid by the applicant.**

Procedural

2. Since 18th August 2015, having transferred from another property, the appellant has been the respondent Housing Association’s tenant of the subject premises under what the tribunal presumes to be an assured tenancy.
3. By Notice in Reply to the tenant’s right to buy claim (Form RTB2) dated 1st March 2019 the respondent denied that they have the right to buy because paragraph 11 of Schedule 5 to the 1985 Act applies, viz
 - a. that the property was first let before 1990
 - b. that it is particularly suitable for occupation by elderly persons, and
 - c. was let for occupation by a person aged 60 or more.
4. This appeal, dated 20th March 2019, was lodged on 6th March 2019, within the 8 week statutory period allowed for such appeals.
5. In reply to a request by the tribunal office for details of why it considered that the exclusion in paragraph 11 of Schedule 5 to the Act was applicable in this case (Form RBO3) the respondent stated, on 23rd April 2019, merely that “Property is suitable for elderly occupation”, notwithstanding the detailed factual points made by the appellant in her application and in a letter to Saffron dated 19th March 2019, urging it to reconsider its position; in particular that while the property could be suitable for the elderly it had in fact been let to her on her 50th birthday.
6. In an undated letter to the applicant, referring to her letter dated 19th March, the respondent’s Right to Buy Officer, Emma Tooke, commented that Saffron
...are required to deny Right to Buy applications for bungalows that are considered suitable for elderly occupation **if they meet any of** the following criteria.
 - The property is particularly suitable for elderly occupation
 - **Was let to you for occupation by a person aged 60** or over, whether they were the tenant or
 - Was first let (to you or someone else) before 1 January 1990.

As your property is considered suitable for elderly, was first let on 17/10/1988 and the property was let to you for occupation by a tenant that was aged over 60 years Saffron Housing Trust are required to deny your application. *[emphasis added]*

7. Neither party requested an oral hearing, so the matter was dealt with on paper following the tribunal’s inspection.

The law

8. The principal statute which sets out the qualifying conditions for a tenant’s exercise of the the right to buy is the Housing Act 1985. Schedule 5 lists a series of exceptions to the right to buy. The respondent relies upon paragraph 11. Since

4th July 2005 the avenue of appeal has been altered from the Secretary of State to the tribunal,¹ and the paragraph now reads 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.
- (3) Notwithstanding anything in section 181 (jurisdiction of county court), any question arising under this paragraph shall be determined as follows.
- (4) If an application for the purpose is made by the tenant to the appropriate tribunal or authority before the end of the period of 56 days beginning with the service of the landlord’s notice under section 124, the question shall be determined by the appropriate tribunal or authority.
- (5) If no such application is so made, the question shall be deemed to have been determined in favour of the landlord.
- (5A) In this paragraph “the appropriate tribunal or authority” means –
 - (a) in relation to England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
 - (b) in relation to Wales, the Secretary of State.
- (5B) For appeals, see section 11 of the Tribunals, Courts and Enforcement Act 2007 (for decisions of the First-tier Tribunal) and section 65A of the Rent Act 1977 (for decisions of a rent assessment committee).
- (6) This paragraph does not apply unless the dwelling-house concerned was first let before 1st January 1990.

9. Although not binding upon the tribunal, what was formerly the ODPM² produced revised guidance on the exclusion of elderly persons’ housing from the right to buy.³ Paragraph 12 of the circular lists the main points which the Secretary of State would normally expect to be satisfied in considering applications under paragraph 11 of the Schedule.

Inspection

10. The tribunal inspected the property in the presence of Ms Barclay and her sister, Ms Norman, at 10:00 on the morning of 11th June 2019. No representative of the landlord attended. The property comprises an end-terrace brick-built bungalow under an interlocking pantiled roof, being one of five curving around the corner of Ethel Gooch Road (a narrow residential estate road) and Hewitt’s Lane, to the north of Wymondham town centre. Access is via a pedestrian path.
11. As set out in the application, the property comprises one bedroom, a kitchen, bathroom with WC, and a living room. It has gas central heating, with radiators

¹ See Housing Act 2004, s.181, and the Housing Act 2004 (Commencement No 4 and Transitional Provisions) (England) Order 2005 [SI 2005/1729]

² Now known as the Ministry of Housing, Communities and Local Government

³ See ODPM Circular 07/2004 (December 2004)

in each room. There is a modest, open-plan rear garden; the boundary with the adjoining one being uncertain but believed to run through the middle of a flower bed next to a narrow concrete path. The two end bungalows appear smaller than the three double-fronted ones in the centre of the group, but of course the tribunal had no opportunity to inspect them for purposes of comparison.

Findings of fact

12. The tribunal takes the view that if a landlord wishes to deny the right to buy then it must demonstrate that at least one of the statutory criteria apply that provide exceptions to the right to buy, as set out in Schedule 5 to the 1985 Act.
13. All that the landlord has done, as it has previously, is automatically to say NO, to misinterpret the criteria, and to fail to engage with arguments advanced by the applicant. The applicant was granted a new tenancy. She did not succeed to one originally granted to an elderly person, whether a deceased parent or partner. She says that the date of commencement of her tenancy was her 50th birthday; an event she is likely to remember. This was put to Saffron but was ignored.
14. The applicant does not dispute, and the tribunal finds, that as a one bedroom bungalow it would be particularly suitable for occupation by an elderly person or couple, but as the respondent has failed to adduce any evidence the tribunal finds that one essential element of the exception in paragraph 11 of the Schedule does not apply, and the tenant's appeal is allowed.
15. Yet again the tribunal wishes to record, and to draw to the attention of senior management, its disapproval of Saffron's approach to cases such as this. The appeal should have been completely unnecessary. Although the landlord denied that the appellant had the right to buy on the grounds set out in paragraph 11 of Schedule 5, it has completely failed to address the points made in the application form which refute the assertion that the property was let for occupation by a person aged 60 or over. In the circumstances it was inevitable that the uncontradicted evidence of the appellant would be preferred.
16. An application fee of £100 being payable for right to buy appeals, the tribunal has no hesitation in ordering the respondent landlord to reimburse the fee paid by the applicant under rule 13(2). Further, if (which is not the case) the applicant had incurred any legal costs in seeking advice or representation then the respondent would have been asked to show cause why it should not be penalised for its unreasonable behaviour under rule 13(1)(b).
17. A copy of this decision shall be served on the Chief Executive, Saffron Housing Trust, Saffron Barn, Swan Lane, Long Stratton, Norfolk NR15 2XP.

Dated 12th June 2019

Graham Sinclair

Graham K Sinclair
Tribunal Judge