



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

**Case Reference** : **MAN/OOCC/RTB/2019/0008**

**Property** : **28c Monsal Crescent, Athersley,  
Barnsley, S71 3PX**

**Applicant** : **Ms Susan Asquith**

**Representative** : **In person**

**Respondent** : **Barnsley Metropolitan Borough Council**

**Representative** : **Ms G Fearn, Right to Buy Manager**

**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  
(Valuer)**

**Date of  
Determination** : **29<sup>th</sup> May 2019**

**Date of Decision** : **4<sup>th</sup> June 2019**

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**DECISION**

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## **Decision**

1. The Property is particularly suitable for occupation by an elderly person.
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 Susan Asquith (“the Applicant”) gave notice to Barnsley Metropolitan Borough Council (“the Respondent”) of her wish to buy 28c Monsal Crescent, Athersley, Barnsley (“the Property”), pursuant to the Act.
5. The Respondent subsequently served a notice dated 11<sup>th</sup> March 2019, 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 9<sup>th</sup> April 2019 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.

## **The Property**

8. The Tribunal inspected the Property on 29<sup>th</sup> May 2019 in the presence of the Applicant. The Respondent was not represented.
9. The Property is a detached brick built bungalow, having an enclosed rear garden. There are grass lawns to both the front and side of the Property but they are common areas maintained by the Respondent.
10. The Property has one double bedroom, kitchen, bathroom, hallway and living room and has the benefit of double-glazing. There is a rear porch that has two storage areas converted from an old pantry and coal house, one containing the central heating boiler.
11. The Property has gas central heating. The Applicant confirmed the heating is reliable and can be safely left on at night when required.
12. The Applicant advised she had undertaken some alterations to the Property, including enclosing an alcove in the bedroom to form a wardrobe. Outside the Property a garage and large shed had been erected, together with a small area of decking outside the rear door. The Applicant had also erected fencing to three sides of the Property

13. A pathway leads from the pavement to both the front and rear doors and is level. There is one step to enter the front door of the Property that is approximately 8 inches in depth. The rear door is accessed by a step. This is shallow due to the decking having been built up to it and consequently less than 3 inches in depth. The height of the decking is 5 inches. There are no handrails at either entrance.
14. The Property is approximately 0.2 miles to the nearest bus stop on Laithes Lane where the buses travel to Barnsley. The buses travel every half an hour on a regular basis.
15. The Applicant confirmed the nearest shop for basic supplies of bread and milk is a small Co-op supermarket, that is 0.6 miles from the Property. The Tribunal travelled by car to the supermarket to confirm the distance, but also found a nearer shop selling basic food items, Fulton Foods that is 0.5 miles from the Property. When measuring in metres, this was a distance of 775 metres.
16. The routes to both the bus stops and local shop are on a gentle gradient.

### **The Law**

17. 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).
18. 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.
19. 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”.
20. 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**

21. The Applicant made representations in her original application to the Tribunal prior to its determination. She submitted that the refusal by the Respondent was unreasonable given the majority of the age group now living on Monsal Crescent was between 40 to 60 years. The change to bus timetables and the closure of smaller food shops made the properties in the area less suitable for older people. At the inspection the Applicant showed a recent letting advert for a one bedroomed property on Monsal Crescent placed by the Respondent. This did not specify the tenant had to be elderly. This was therefore at odds with the Respondent's position with regard to the Property.
22. The Respondent submitted the Property for suitable for the elderly and confirmed it had been let to the Applicant on 1<sup>st</sup> May 2017, when she was 60 years of age.

### **Determination**

23. The Tribunal considered the requirements of the Act and found the Property fulfils the criteria in that it was first let before 1<sup>st</sup> January 1990. It was let to the Applicant when she was 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 by a level path and then one step. The path leading to the rear of the Property is also on a level gradient and access the back door of the Property is by a shallow step, that, without the decking would be approximately 6 inches in depth.

26. The Guidance issued by the ODPM in December 2004 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.
27. The Property is within half a mile of a shop selling the basic food items and also within walking distance of bus stops travelling to Barnsley. The Tribunal acknowledged that the distance to the shop was on the cusp of what is defined as a suitable distance within the Guidance issued by the ODPM. However, the distance is under the 800 metres specified. The Tribunal did not consider the route to either the bus stops or to the shop to be unsuitable for a person over the age of 60. The routes are either level or on a moderate incline.
28. The Tribunal considered the issue of age discrimination. It accepted the Applicant's submissions that she was aware of other properties on Monsal Crescent either sold or let to tenants under the age of 60. The Tribunal also took note of the recent advert that appeared to show a one-bedroomed property would be let to a tenant under the age of 60. The Act does not exclude tenants under the age of 60 from buying their property even if that property may be suitable for occupation by an elderly person. At the commencement of the Applicants' tenancy the Property was let on the basis it was suitable for a person over the age of 60. The Property is still designated as such by the Respondent. Consequently, the Property is still governed by the requirements of Paragraph 11, Schedule 5 of the Act.
29. The Tribunal considered The Equality Act 2010 and noted that under Schedule 22 of the Act there is specific provision relating to age discrimination that prevents its application if there is statutory provision for it. In this case the Act makes the provision for the refusal of a Right to Buy because of age.
30. In addition, the Tribunal also considered section 13 of the Equality Act 2010 that provides a more general right not to be discriminated against because of age. Section 13(2) provides that there is no discrimination if it can be shown by the Respondent that their refusal is a proportionate means of achieving a legitimate aim.
31. The Tribunal determined the Respondent's refusal of the Applicant's Right to Buy was proportionate in allowing them to maintain an adequate housing stock for elderly persons within its area.
32. The Tribunal considered the requirements of the Act and found that the criteria established by Schedule 5 Paragraph 11 were 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 Oliver  
29 May 2019