



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

**Case Reference** : **BIR/31UC/RTB/2021/0003**

**Property** : **64 Gloucester Avenue Syston Leicester  
LE7 2EL**

**Applicant** : **Betty Smith**

**Respondent** : **Charnwood Borough Council**

**Type of Application** : **An application under paragraph 11 of Schedule 5  
to the Housing Act 1985. (Denial by Landlord of  
the Right to Buy provisions of the Act because the  
property is particularly suitable for occupation  
by an elderly person).**

**Tribunal Members** : **V Ward BSc Hons FRICS – Regional Surveyor  
T. Wyn Jones BSc Dip Surv FRICS MCI Arb  
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**Date of Decision** : **22 June 2021**

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**DECISION**

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## **Introduction**

1. This is an application to the First – tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) to determine whether the exception to the right to buy in paragraph 11 of Schedule 5 to the Housing Act 1985 (“the Act”) – property particularly suitable for occupation by elderly persons and let to the tenant for occupation by a person aged 60 or more – applies to the property which is the subject of this application.

## **Background**

2. The Tenant, Betty Smith (“the Applicant”), by notice applied to Charnwood Borough Council (“the Respondent”) to buy 64 Gloucester Avenue, Syston, Leicester LE7 2EL (“the Property”) under the Right to Buy provisions contained in the Act.
3. By way of an RTB2 Form – Notice in Reply to Tenant’s Right to Buy Claim, the Respondent served notice on the Applicant denying the right of the Applicant to buy the Property as in their opinion, paragraph 11 of Schedule 5 to the Housing Act 1985 applies. This form was dated 23 February 2021.
4. By an application received on 23 March 2021, the Applicant applied to the Tribunal pursuant to section 181 of the Housing Act 2004 for a determination as to whether the Property was excluded from the Right to Buy (RTB) provisions contained in the Act on the grounds that the dwelling:
  - was first let before 1 January 1990
  - is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons; and
  - was let to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more.
5. The Office of the Deputy Prime Minister Circular 07/2004 entitled Right to Buy: Exclusion of Elderly Persons’ Housing (“the Circular”) gives guidance on the criteria to be adopted in determining the suitability of a dwelling house for occupation by elderly persons. The Circular also provides details of the “*Lettings Test*”: it is reiterated 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 to

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.

6. The Tribunal is not bound by the Circular and decides each case on its merits but has regard to the Circular for guidance.
7. Following receipt of all necessary documentation, the Tribunal issued Directions on 13 April 2021. The parties were advised that due to the Covid-19 Public Health Emergency, the Tribunal would not inspect the Property but would instead rely on the submissions of the parties and online resources.
8. The Applicant had indicated that they were content with a paper determination in this matter and the Respondent advised the Tribunal that they did not require an oral hearing. Accordingly, the Tribunal determines this matter on the written submissions of the parties.

### **The Submissions of the parties**

#### The Applicant

9. The Applicant stated that she would like the following points to be taken into consideration by the Tribunal.
10. Location. The nearest shop is over half a mile away, unless, using the alleyway which is next to the Property. The shops sell only bread and milk and such things; they are off licences and not adequate to buy a weeks' worth of groceries. The alleyway is not safe, it is uneven and there are young men smoking and drinking, and it is a source of rubbish - a photo was provided to evidence this. Accordingly, the Applicant drives to the shops whilst most of her neighbours have either a relative or a care assistant to do their shopping for them. The nearest bus stop is more than half a mile away from the property.
11. Property Features. There are no handrails to assist entry to the front door which has a step making access difficult for an elderly person, especially with a frame or

walking stick. Similar comments can be applied to the back door. Internally, the Property does not have sufficient handrails within the hall and bathroom. The bath is difficult to get in and out of for an elderly person without assistance. The only handrail available in the bathroom was put in by the Applicant at her own cost. The Applicant made a comment within additional submissions that the wooden ramp and grab rail shown in a photo provided by the Respondent, was rotten and was in any event, damaged. The Applicant alleges that the Respondent prior to the onset of the tenancy, had not repaired or checked anything in the Property, only taken the ceiling tiles down and put central heating in.

12. Other factors. The Applicant understand that some properties (the Tribunal interprets this to mean as other properties on the same development) were first let to persons aged 55 and over, and not over 60. The neighbouring property – number 62 – is occupied by a tenant who was aged 55 when they took possession.
13. Condition of the Property. The Applicant states that when she took possession of the Property in July 2009, it was in poor condition and not habitable, pictures were provided in evidence. The Applicant carried out works of renovation costing in excess of £25,000.
14. Inferences from the Local Authority. The Applicant alleges that she was told by an officer of the Respondent that she would be able to purchase the Property after 12 months occupation. She applied to acquire the same in 2012 but was told to reapply in 2014. Her application in 2014 was denied. The Applicant considers that if the Respondent was going to deny the right to buy on the basis of the Property being suitable for occupation by an elderly person, she should have been told at the time and she would certainly not have spent amounts of any significance on its renovation.

#### The Respondent

15. The Respondent's initially confirmed that the Property was first let on 8 May 1978 (i.e. before 1 January 1990) and the Tenant was aged 71 at the commencement of the tenancy.
16. The Respondent then dealt with the suitability of the Property for occupation by an elderly person and noted the following:
  - The Property has one shallow step to the front and rear to access and exit the same.
  - The surrounding area is level without obstruction or gradients.

- The road in the immediate vicinity is flat.
  - The Property is a bungalow (photograph provided).
  - The Property has one bedroom.
  - There is gas central heating throughout the property which is annually tested and maintained.
17. The Respondent then dealt with the proximity of local amenities:
- The Property is close to local amenities, via an adjoining pathway.
  - The nearest doctors/ health centre is 0.2 miles from the Property.
  - The closest shop is 0.2 miles from the Property.
  - A bus stop for services from Syston to Leicester is 0.3 miles from the Property.
18. The Respondent noted that the Applicant does not wish to walk along the adjacent alleyway, however, an alternative walking route is available which does not include the use of the alleyway.
19. In addition to the above the Tribunal were requested to note that the Property is situated in a quiet residential cul-de-sac with several similar properties in the immediate area.
20. The Respondent acknowledged that the Tribunal is not bound by the guidance set out in the Circular however it is the Respondent's view that the presence of the features referred to therein supports the conclusion that the Property is particularly suitable for occupation by elderly persons.
21. The Respondent provided additional information to the effect that the Applicant tried to acquire the Property in 2012 but was denied due to not meeting the qualifying period and also in 2014, due to the Property being considered particularly suitable for occupation by elderly persons, by this Tribunal (composed of different members).
22. The Respondent accepts that the Tenant has made improvements to the Property for which consent was provided by them as Landlord. The Tenant will have the benefit of those improvements for as long as her tenancy at the Property is maintained. They have no evidence that the Tenant expressed or gave any indication that the improvements were made on the basis of her proposed acquisition of Property.

23. In summary, the Respondent asks the Tribunal to find that in all the circumstances, the refusal of the right to buy application was appropriate.

### **The Law**

24. The relevant law is contained in paragraph 11 of Schedule 5 of the Act 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) *This paragraph does not apply unless the dwelling-house concerned was first let before 1<sup>st</sup> January 1990.*

### **The Tribunal's Findings (including those relevant to the Circular)**

25. The Property is a semi-detached bungalow.
26. The Property benefits from a gas fired heating system which, from the information provided, appears to function correctly and provide overnight heating if required.
27. The immediate area around the subject Property is of a gradient reasonable from the viewpoint of an elderly person who can live independently and is not frail or disabled.
28. There is limited car parking outside the Property.
29. The alleyway that runs adjacent to the Property allows a pedestrian route to Melton Road where there is a shop selling basic food items and a bus stop at the distances stated by the Respondent.
30. The Property was first let before 1990.

31. The *Lettings Test* was satisfied as the Tenant was aged 71 on occupation.

### **Determination by the Tribunal**

32. The issue concerning whether or not other properties on the same development were first let to persons aged 55 and over, and not over 60, is not a factor for the Tribunal to take in account. The Tribunal's considerations relate solely to the subject property.

33. Whilst the Tribunal has much sympathy for the Applicant in view of the amount of time, money and effort invested in the Property, the matter to be decided is whether the Property is **particularly** suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons.

34. The term "elderly persons" does not mean persons who are frail or severely disabled; provision is made in other paragraphs of Schedule 5 of 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. The personal circumstances of the Applicant are not to be taken into account.

35. In the Upper Tribunal decision, *Milton Keynes v Bailey* [2018] UKUT 207 (LC), P D McCrea commented:

*"The question in a case such as this is whether the property is particularly suitable. Some features may tend in one direction, while 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".*

36. The Tribunal considers that, when assessing it as a whole, the Property is particularly suitable for occupation by an elderly person who can live independently and noted the proximity of the shops and facilities as identified by the parties and the Tribunal's own research.

37. The Tribunal determines, therefore, after taking into account the parties' submissions and the findings of fact made by the Tribunal, that the Respondent is entitled to rely on the exception to the right to buy contained within paragraph 11 of Schedule 5 to the Act as the Property is particularly suitable for occupation by an elderly person. Accordingly, the Respondent's notice of denial is upheld. In practical

terms this means that the Applicant does not have the right to purchase the Property.

38. In making their determination the Tribunal had regard to the submission by the parties, the relevant law and their knowledge and experience as an expert tribunal, but not any special or secret knowledge.

## **APPEAL**

39. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD BSc (Hons) FRICS Chairman