



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

**Case Reference** : **CHI/29UE/RTB/2021/0003**

**Property** : **9 Chilton Square, Ash, Canterbury, Kent,  
CT3 2HE**

**Applicant** : **Mrs P Poole**

**Respondent** : **Dover District Council**

**Date of Application** : **21st April 2021**

**Date of Landlord's  
Notice denying right to buy:** **9th March 2021**

**Type of Application** : **Paragraph 11(4) of Schedule 5 to the  
Housing Act 1985 (the Act).**

**Tribunal** : **Mr R. T. Brown FRICS Chairman  
Ms C Barton MRICS  
Mr C Davies FRICS**

**Date of Decision** : **22nd June 2021**

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**DECISION**

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## DECISION

1. The Tribunal determines that the Applicant is not entitled to purchase the subject property under the provisions of Paragraph 11 of Schedule 5 to the Housing Act 1985.

## REASONS FOR DECISION

### **The Application and Introduction**

2. This application is made by Mrs P Poole tenant of 9 Chilton Square, Ash, Canterbury, Kent, CT3 2HE (the Property) 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 (property particularly suitable for occupation by elderly persons) applies to the subject property.
3. The Respondent is Dover District Council.
4. The Applicant gave notice to the Respondent under section 122 of the Act to exercise their right to buy the subject property.
5. The Respondent served on the Applicants a notice in reply (RTB2) dated 9th March 2021, denying the Applicants' right to buy on the grounds set out in paragraph 11 of Schedule 5 to the Act.

### **Factual Background**

6. Following the Directions dated 27th April 2021 and the explanation contained therein, the Tribunal did not inspect the premises. A hearing was not requested in the current proceedings.
7. Extracting such information as it could from the papers supplied to the Tribunal by the parties, by reference to information publicly available on the internet and with the benefit of its knowledge and experience, the Tribunal reached **the following conclusions and found as follows:**
8. The Property is located on a level site close to the village centre.
9. The Property comprises a 1960's brick built bungalow comprising: Living Room, 1 single and 1 double bedroom, Kitchen and Bathroom. Gas central heating. Outside: Gardens to front and rear.
10. The Applicant had carried out the following improvements to the Property (which are not included in the Tribunal's assessment of suitability):
  - a) Landscaped large garden.
  - b) Fitted new toilet and cistern.
  - c) Wooden floors.
  - d) Decoration.
  - e) Patios and Summer House.
  - f) Dog toilet pen required for the Applicant's guide dog.

11. Village has 2 shops and is on bus route

**The Law**

12. The material parts of paragraph 11 to 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 in 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 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 Persons 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 Parties' Submissions (summarised)**

14. **The Applicant says:**

15. Mrs Poole says she was given the Right to Buy on 30th September 2020. On 9th March 2021 this was rescinded as the property was for the elderly. There are three bungalows (out of 10) occupied by people under 65.

16. In her submission the Applicant listed the improvements that she had made to the Property (detailed above). She considers that the Property is not suitable for the elderly because the garden is large. The Applicant may need a carer in the future which is why 2 bedrooms are needed. There are two steps up to the front door being 4 1/2 inches and one to the rear door of 7 inches.

17. **The Respondent says:**

18. Access: 1 small step to front door. The bungalow is on a level location, the access road and path are level. There are no handrails, ramps or gradients. The property is on a 370 square metre plot laid level.

19. The accommodation is on one level.

20. There are no more than 2 bedrooms.
21. Full gas central heating, wet system serving all room with controls to allow it to be left on overnight.
22. The property is located in the centre of the village 198m from the Co-Op and Boots chemist. GP surgery 168m. Bus stop 226m with 4 services to various destinations.
23. The Reasons For Refusal date 9th March 2021 states:
  - (a) The Property was first let before 1<sup>st</sup> January 1990.
  - (b) It is particularly suitable for occupation by elderly persons and
  - (c) Was let for occupation by a person aged 60 or more.

### **The Tribunal's Deliberations**

24. The Tribunal considered all the relevant written evidence presented and summarised above in its deliberations.
25. The jurisdiction of the Tribunal is limited to applying the statutory provisions set out in paragraph 12 (above) which are designed to enable a local authority to retain its limited stock of properties particularly suited to the elderly.
26. Applying the statutory provisions, on the evidence of the Notice in Reply the Tribunal finds that the Property was let before the 1st January 1990.
27. The Tribunal finds that Mrs Poole was over 60 when the property was let to her on 16th November 2014. Thus the 'lettings test' as set out in the statutory provisions has been met and the Tribunal now goes on to consider whether the Property is particularly suitable for occupation by elderly persons.
28. The Tribunal finds that the Property satisfies all the relevant criteria set out in paragraph 12 of ODPM Circular 7/2004 because:
  - (a) There is easy access on foot to the property;
  - (b) The accommodation is on the level;
  - (c) There are no more than 2 bedrooms;
  - (d) The heating system installed by the Respondent provides heat to all rooms and may safely be left on overnight and
  - (e) The Property is conveniently located for shops and public transport. The nearest shop selling basic food items and the nearest public transport is within the maximum distance of 800 metres.
29. There being no other factors to consider the Tribunal finds that the Property is particularly suitable for occupation by elderly persons within the meaning of paragraph 11(1)(a) of Schedule 5 to the Act.

### **Rights of Appeal**

1. A person wishing to appeal this decision (on a point of law only) to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Where possible you should send your application for permission to appeal by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking