



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

Case Reference : **MAN/OODB/RTB/2020/0008**

Property : **8 Keenan Avenue, South Elmsall,
Pontefract WF9 2LG**

Applicant : **Mr George Maurice Longden**

Representative : **In person**

Respondent : **Wakefield District Housing**

Representative : **Kathryn Stretton,**

Type of Application : **Housing Act 1985, Schedule 5,
Paragraph 11-Right to Buy**

Tribunal Members : **Judge J. E. Oliver
Mrs S. A. Kendall MRICS (Valuer)**

**Date of
Determination** : **8th June 2021**

Date of Decision : **7th July 2021**

DECISION

Decision

1. The Property is particularly suitable for occupation by elderly persons.
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 tenants 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 his Right to Buy the Property.

Application

4. Mr George Maurice Longden (“the Applicant”) gave notice to Wakefield District Housing (“the Respondent”) of his wish to buy 8 Keenan Avenue, South Elmsall, Pontefract (“the Property”), pursuant to the Act.
5. The Respondent subsequently served a notice dated 24th August 2020, under section 124 of the Act, denying the Applicant his 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. The Applicant confirmed that after he received this notice, he received an identical notice, but dated 28th July 2020. The Tribunal has accepted the notice dated 24th August 2020 as the relevant notice for the purposes of this appeal.
6. By an application received on 2nd October 2020 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 its intention to oppose the appeal.

The Property

8. The Tribunal carried out an external inspection of the Property on 8th June 2021 without the parties, but with their agreement. The Tribunal was unable to undertake an internal inspection in the presence of the parties due to the restrictions imposed by the COVID-9 pandemic.
9. The Property is a brick built, two bedroomed semi-detached bungalow, with gardens to both the front and rear. It is within an area of similar properties.
10. The Property has gas central heating. The Respondent confirmed it could heat at least one bedroom throughout the day and night. The Applicant did not raise any concerns with the heating system.
11. Access to the Property is from a path running from the pavement to both the front and side of the Property. There is one step from the pavement to the path which is on a gentle gradient to the front and rear of the Property. The entrance to the front door is by one step into the porch and another step into the front door. Access to the rear door is by no more than two steps. There is no handrail along the path nor at the front entrance.

12. The Property is approximately 0.49 miles to the local convenience store that sells basic food items including bread and milk. There is a bus stop approximately 0.06 miles. The Applicant confirmed there is a regular bus service, although no buses operate at the weekend or Bank holidays.
13. The route to the local shop is down a slight gradient onto Westfield Lane but is then level to both the shop and bus stop.

The Law

14. 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).
15. 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.
16. 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”.
17. 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

18. The Applicant made written representations to the Tribunal. He confirmed he acquired the tenancy on 15th December 2003 when he was 66 years of age. He advised a person under 60 years of age had recently purchased a nearby bungalow. In addition, many of the tenants of the bungalows were younger people, many older people preferring flats nearer to better amenities. There had previously been a warden in the area, but that service had been discontinued by the Respondent.
19. The Respondent confirmed the Property meets all the requirements set out in Schedule 5 of the Act and the Respondent needs to retain ownership of such properties in order to meet the demand for the type of property.

Determination

20. The Tribunal considered the requirements of the Act and found the Property fulfils the criteria in that it was first let before 1st January 1990. It was let to the Applicants when he 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.
21. 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.
22. 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 path, on a gentle gradient and then two steps. The path leading to the rear of the Property is longer than to the front entrance but is, again, on a gentle gradient. The rear door has no more than two steps.
23. The Circular 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.
24. The Property is within half a mile of a shop selling the basic food items, as set out in the Circular and also within walking distance of bus stops for a bus service that provides at least three opportunities for shopping each week.
25. The Tribunal did not consider the route to either of the bus stops to be unsuitable for a person over the age of 60. The routes to both are level once on Westfield Lane.
26. The Tribunal considered the issue of age discrimination. It accepted the Applicants' submissions that he was aware of an similar properties sold or let to tenants 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 Applicant's 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.

27. 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.
28. 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.
29. 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.
30. 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 J Oliver
8 June 2021