

SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL
RESIDENTIAL PROPERTY TRIBUNAL

Case No. CHI/46UD/RTB/2006/0003

Re: 30 Holders Road, Amesbury, Wiltshire, SP4 7PQ

Between Mrs. Gabrielle Edwina Smith
("the Applicant/Tenant")

and

Salisbury District Council
("the Respondent/Landlord")

Member of the Tribunal: Mr. J. S. McAllister, FRICS (Chartered
Valuation Surveyor)

Inspection and Decision: 9th June 2006

DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL

*In the matter of an Application Paragraph 11 of Schedule 5
of the Housing Act 1985 (as amended)
(Appeal against the Refusal to be allowed the Right to Buy)*

Decision

**The Tribunal REFUSES THIS APPEAL and the Applicant/Tenant is
NOT to be allowed the Right to Buy**

Jurisdiction

1. Section 181 of the Housing Act 2004 provides that determinations to be made under Schedule 5 of the Housing Act 1985 shall in future be made by a Residential Property Tribunal instead of the Secretary of State. By the Housing Act 2004 (Commencement No. 4 and Transitional Provisions) (England) Order 2005 the provisions of Section 181 of the Housing Act 2004 came into force on 4th July 2005.

2. Paragraph 11 of Schedule 5 of the Housing Act 1985 provides that:

"(1) The right to buy does not arise if the dwellinghouse

(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 or another person).

"(3) If an application for the purpose is made by the tenant before the end of the period of 56 days beginning with the service of the landlords notice under Section 124 of the Housing Act 1985, the question shall be determined by the Residential Property Tribunal."

3. In this case the Applicant/Tenant had served a Notice under Section 122 of the Housing Act 1985 ("the 1985 Act") claiming to exercise the right to buy which appears to have been received by the Respondent/Landlord on 13th February 2006. The Respondent/Landlord had served a Notice under Section 124 of the 1985 Act (Form RTB2) denying the right to buy on 16th February 2006. In Part C of the Form the Respondent/Landlord denied the right to buy for the following three reasons:-

(a) The property is particularly suitable for occupation by elderly persons

(b) The property was first let before 1st January 1990, and

(c) The property was let for occupation by a person aged 60 or more.

The Applicant/Tenant made an Application to the Residential Property Tribunal ("the Tribunal") for a determination under Paragraph 11 of Schedule 5 of the 1985 Act (as amended) on 17th February 2006, which was within 56 days of the date of the Landlords Notice under Section 124 of the 1985 Act.

4. On the 23rd February 2006, the Tribunal directed that the matter should be decided by written submissions only, i.e. without a Hearing following an inspection of the property.

Inspection

5. The Tribunal carried out an inspection of the property and the surrounding area on 6th June 2006.

1. Property

The property is a modern mid terraced bungalow in a rank of four, traditionally constructed of brick walls under a concrete tiled roof. The windows and the rear external door to the bungalow are all Upvc double glazed with the front door of timber and the applicant informed the Tribunal that the windows were renewed approximately ten years ago. Access to the front door is over a fairly level tarmac path with one step leading to a vestibule porch leading to the front external door. This porch has an electric meter box and electric light.

The internal accommodation of the bungalow is briefly, hall, with night storage heater, smoke alarm box, telephone point, two built in cupboards and a built in airing cupboard, sitting room with night storage heater, kitchen with rear external door, sink unit, fitted cupboards, extractor fan, rear double bedroom with night storage heater, built in wardrobe, front double bedroom (small) with night storage heater, built in wardrobe, bathroom with low level W.C., hand basin and fully tiled floor with drainage outlet for shower (electrically operated) with curtain. The walls are partly tiled and there is also a Dimplex wall heater. Services connected are mains water, electricity and drainage with hot water by electric immersion heater. Outside there is an open plan front garden laid to lawn with a small border between the lawn and the front wall of the bungalow. At the rear there is also a reasonably small area of level garden with pedestrian gate to a car parking space in an adjoining gravelled/hardcored communal parking area. There is also a store situated in the rear garden. The bungalow itself is situated on level ground with one step to the front, as indicated above, and a step down from the rear external door to the rear garden from the kitchen.

2. The Surrounding Area

The bungalow is situated on the eastern edge of Amesbury, within a mixed development of bungalows and some two storey dwellings. It fronts Holders Road within a 20 m.p.h. speed zone and is about three quarters of a mile from the town centre. It is also situated about half a mile from a local Spar shop in Boscombe Road. The walk to this shop from the subject property is slightly steep and there is not a pavement for the full distance of the walk. There is also a local bus service along Holders Road to and from the centre of Amesbury, and the nearest bus stop is approximately 200 yards from the bungalow on a mainly level walk.

The Applicant/Tenants Evidence

6. Mrs. Smith's written evidence was contained in a letter dated the 22nd April 2006 to the Tribunal office in which she stated that in her opinion the bungalow was "..... unsuitable for elderly people because it is three quarters of a mile from nearest shops, doctors and other facilities." She also

stated that the walk to a shop was up hill and that "..... there is only one bus that goes by twice a day". She also stated in her application to the Tribunal that "..... part of this terrace has already been sold as elderly bungalows and others in the vicinity." Furthermore in conclusion Mrs. Smith stated that she felt it unfair that she had been denied the right to buy as she had been an exemplary tenant with the Respondent/Landlords for the last forty four years.

The Respondent/Landlords Evidence

7. This evidence was contained in a covering letter to the Tribunal office dated the 28th March 2006 in which Mr. A. Reynolds, the Head of Strategic Housing Services stated that "..... the Council determined that Mrs. Gabrielle Smith does not have the right to buy 30 Holders Road as she was over the age of sixty years at the time she became the tenant. In such circumstances and in accordance with Paragraph 11 of Schedule 5 of the Housing Act 1985, the Council can deny the claim" In support of this covering letter the Council sent to the Tribunal office the following documents:-

- (a) A copy of Mr. W. R. Smith's housing transfer application form dated 29th January 1985.
- (b) A copy of Mr. Smith's tenancy agreement for 30 Holders Road.
- (c) A copy of the transfer of tenancy notification from Mr. W. R. Smith to Mrs. G. E. Smith dated 23rd January 2006.
- (d) A copy of the Notice claiming Right to Buy under the Housing Act 1985.
- (e) A copy of the Council's determination dated 16th February 2006.

Consideration and Decision

8. After the inspection the Tribunal then considered the application. In arriving at their decision they particularly considered the circular from the office of the Deputy Prime Minister (ODPM Circular 02004) dated December 2004 and entitled "Right to Buy: Exclusion of Elderly Persons' Housing (an update of Part II of DOE Circular 13/93)". This circular gives guidance to Tribunals charged with making decisions on such appeals. This guidance is not binding on the Tribunal but is sometimes helpful in assisting it in making its decisions. Whilst that guidance note is of assistance in setting out matters of detail, e.g. the number and size of steps to the property etc., it fails to give any reasoned or authoritative interpretation of the words "particularly suitable". The Residential Property Tribunal membership includes Lawyers and Chartered Valuation Surveyors who are experienced professionals who have been appointed because of their expertise in dealing with residential property. The Tribunal is an Independent Tribunal which is charged with making decisions on a wide variety of applications under a large number of Housing and Landlord and Tenant items of legislation. It performs

its task as a judicial function and in doing this it frequently has to interpret legislation. In this case the Tribunal's duty is to interpret the words "particularly suitable for occupation by the elderly" etc.

9. The Tribunal indicates above when the right to buy does NOT arise under Paragraph 2. The guidance goes on to state that the main points a Tribunal shall consider in these applications are as follows:-

- (a) There should be easy access on foot to the dwelling.
- (b) The accommodation should normally be on one level.
- (c) There should be no more than two bedrooms.
- (d) The heating arrangements should function reliably, provide heat to at least the living room and one bedroom and be safely left on over night.
- (e) The dwelling should be located reasonably convenient for shops and public transport.

The guidance goes on to state 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/her for occupation by a person who was aged 60 or more." In this case the property was let to the late Mr. W. R. Smith on the 16th March 1987 when he was aged about 74 and Mrs. Smith was aged about 55. From the evidence the tenancy was transferred to Mrs. Smith following the death of her late husband on the 23rd January 2006 when Mrs. Smith was aged about 83.

Accordingly the application fails under Paragraph 11 of Schedule 5 of the Housing Act 1985 under Sub Paragraph (1)(b) referred to above.

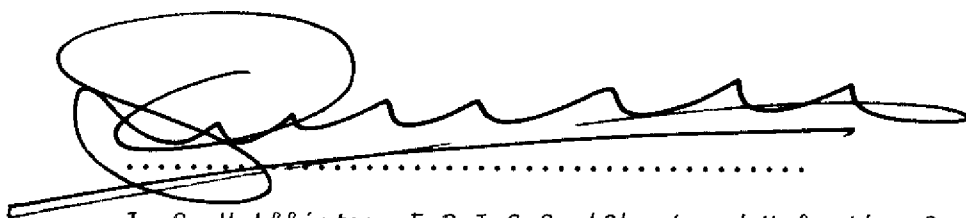
Furthermore the Tribunal also consider that the dwelling is particularly suitable for occupation by elderly persons having regard to its location, size, design, heating system, etc.

In making decisions in these kinds of applications, the Tribunal decides each individual case on its own merits. This is done after carrying out a full inspection of the inside and outside of the subject property and the surrounding area as it had done in this case. Using their local and expert knowledge and experience, the Tribunal decided that in this case the location and character of the property was such that it was particularly suitable for occupation by elderly persons. Indeed the property appeared to be one of several similar bungalows in the immediate area built for elderly persons alongside other former and existing council houses which were two storey dwellings more particularly suitable for families, etc.

Decision

10. For the reasons given above the Tribunal HEREBY REFUSES THE APPEAL against the Respondent/Landlords decision to refuse the right to buy and the Applicant/Tenant is to be refused to be allowed the right to buy in this case.

Dated this 9th day of June 2006.

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a series of connected loops and a long horizontal stroke ending in a small flourish.

J. S. McAllister, F.R.I.C.S. (Chartered Valuation Surveyor/Chairman)