

# **RESIDENTIAL PROPERTY TRIBUNAL REASONS FOR DECISION**

**BIR/17UH/RTB/2006/0017**

56 OLLERSETT AVENUE, NEW MILLS, HIGH PEAK SK22 4LE

HOUSING ACT 1985, SCHEDULE 5, PARAGRAPH 11, AS AMENDED BY HOUSING ACT 2004, SECTION 181.

Applicant Tenants: Mrs. Nora Dodd and Mr. James Dodd

Landlord: High Peak Borough Council

Tribunal Members: Mr. S. Duffy  
Mr. R. Cooper FRICS  
Mr. M Ryder

## **1. Application and Background**

- 1.1 Mr. and Mrs. Dodd, joint tenants of 56 Ollersett Avenue, New Mills, High Peak SK22 4LE ("the property") gave notice under Section 122 of the Housing Act 1985 (the Act) to the landlord, High Peak Borough Council, of their intention to exercise the right to buy the property.
- 1.2 The Council then served a notice (form RTB 2) dated 9 September 2006 on the tenants under Section 124 of the Act denying the tenants' the right to buy on the grounds set out in paragraph 11 to Schedule 5 of the Act.
- 1.3 By an application dated 10 October 2006 Mr. and Mrs. Dodd applied to the Residential property Tribunal ("the Tribunal") under paragraph 11(4) of Schedule 5 for a determination as to whether the grounds set out in paragraph 11 were satisfied.
- 1.4 The Tribunal copied the tenants' application form, dated 10 October 2006 to the landlord. In reply the landlord gave notice dated 19 October 2006 to the Tribunal stating that it intended to oppose the tenants' appeal.

## **2. Hearing/Written Representations**

- 2.1 The Tribunal received written representations in the form of the application and reply from the landlord and tenants respectively and these were copied to the parties. Neither party requested a hearing.

## **3. The Property**

- 3.1 The Tribunal inspected the property at about 12.00 am on 20 November 2006 in the company of the tenants.
- 3.2 The property is part of an estate of properties and comprises a single storey, semi detached bungalow of brick construction with a pitched roof and single glazed

windows. The living accommodation comprises entrance hall, lounge, kitchen, bathroom and 2 bedrooms. The property benefits from a mains gas supply, the property is central heated and there are radiators in each room. There is a gas fire in the lounge which is controlled via a knob at the bottom of the fire.

- 3.3 Access to the front of the property is by means of a path from the highway (Ollersett Avenue) through the front garden. There are 5 steps down from the highway to the front garden path which leads to the front door where there are two steps up. There are handrails along the length of the path and next to the steps which lead to the highway. To the rear of the property there is a small flagged area which can be accessed either from the back door, where there are 2 small steps down to the garden, or from the front of the property by following a flagged path which skirts the side of the property.
- 3.4 The property, and the surrounding estate, is situated on fairly level ground. There is a bus stop immediately outside the property from which it is possible to take a bus to New Mills. The tenants claim that the bus is as infrequent as one bus per two hours while the landlord claims that the buses from this stop are as frequent as one per twenty minutes. The Tribunal was at the property approximately 40 minutes and saw one bus pull up at the bus stop. The property is approximately 3/10 mile from the nearest shop which is a newsagent which sells milk but does not sell bread or many other groceries, indeed the nearest grocery shop, the Londis supermarket, selling bread and milk is about 6/10 mile from the property.

#### **4. The Law**

- 4.1 Paragraph 11 of Schedule 5 of the Housing Act 1985 provides that:-

(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 of his .....

(6) This paragraph does not apply unless the dwelling house concerned was first let before 1 January 1990.

- 4.2 The ODPM has issued Circular 7/2004 (Right to Buy: Exclusion of Elderly Persons' Housing), which sets out the main issues relating to the particular suitability of an individual dwelling house for occupation by elderly persons. The Tribunal is not bound by this Circular, deciding each case on its merits, but does have regard to the criteria contained in the circular as a guide.

## **5. The Issues**

- 5.1 In the tenants' application form to the Tribunal they state that the property was not let before 1990 to themselves or a previous tenant. However in their reply to the tenants' application form to the Tribunal dated 19 October 2006 the Respondent states that it was in fact let before that date.
- 5.2 It is not in issue that when the tenancy commenced on 6 February 2002 both joint tenants were aged 60 or more.
- 5.3 Accordingly, other than the date when the property was first let, the only other issue for the Tribunal to determine is whether, under paragraph 11(1)(a) the dwelling house is particularly suitable ..... for occupation by elderly persons.

## **6. The Submissions and Hearing**

- 6.1 The tenants' written submissions were made by Mr. and Mrs. Dodd who say that -
- (i) That the property is about 1 mile from the nearest supermarket and shops and that the buses to New Mills from the bus stop outside the property run about 5 or 6 times per day.
  - (ii) There is no wheel chair access to the property that there are 5 steps down and 2 up to the front door. At the rear there are two steps down up to the backdoor, which is narrow and not wide enough for a wheel chair.
  - (iii) That the fireplace is very low, making it difficult to operate the controls to the gas fire and that the fire is difficult to light.
  - (iv) That the bathroom has a standard toilet, sink and bath with shower over and there are no aids for those with a disability.
- 6.2 The landlord, in its written submission, says: -
- (i) That, the criteria set out in paragraph 11 are satisfied. The property benefits from easy access on foot and although there are 5 steps down to the property there is a hand rail fitted.
  - (ii) That, the property is bungalow and has 2 bedrooms.
  - (iii) That, the property is heated by properly functioning gas central heating to at least the living room and one bedroom and the heating
  - (iv) That, the dwelling is located conveniently for shops and public transport being approximately 200 yards from a newsagents/general store and having a bus stop outside which is serviced every 30 minutes.

- (v) That, the area surrounding the property is reasonably flat
- (vi) That, the tenant was 67 years old on the commencement of the tenancy
- (vii) That, the property was let on medical grounds; the tenant was unable to access the bath at the previous property (the property has a walk-in shower installed)
- (viii) That, on being offered the property the tenant was informed that it would not be available to purchase under the Right to Buy Scheme

## **7. The Tribunal's Determination**

- 7.1 In the absence of any other evidence, the Tribunal accepts that the property was first let before 1 January 1990. The Tribunal expects that the landlord, a borough council, will no doubt have records to that effect. Accordingly, the requirements of Paragraph 11(1)(b) (the dwelling house was let to the tenant ..... who was aged 60 or more) and 11(6) (the dwelling house concerned was first let before 1 January 1990) are met.
- 7.2 With regard to the tenants' submissions, and having regard to Circular 7/2004 the Tribunal comments, using the same sub-paragraph numbers as in Paragraph 6.1:-
- (i) Local buses were reasonably convenient although there is some dispute over the frequency of services. However local shops were not reasonably convenient. The property is approximately 3/10 mile from the nearest shop which is a newsagent which sells milk but does not sell bread or many other groceries, indeed the nearest grocery shop selling bread and milk is about 6/10 mile from the property.
  - (ii) The number of steps were not such as to prevent easy access with or without the presence of a handrail. The lack of wheel chair access does not mean that elderly persons would have been prevented from getting in and out of the property. 'Elderly persons' is taken to mean individuals who are able to live independently despite some limitations owing to age. It does not mean individuals who are disabled by illness or otherwise and require the use of a wheel chair.
  - (iii) While it is accepted that it may be difficult for the tenants to turn the fire on and off, the Tribunal does not accept that the heating arrangements are inadequate.
  - (iv) While a walk in shower may be more suitable for these particular tenants, the current arrangement of a bath with shower over does not make the property particularly unsuitable for elderly persons.
- 7.3 The Tribunal takes no issue with the landlord's submissions other than on two points. Firstly, when the Tribunal inspected the property there was no walk in shower in the bathroom and, secondly, and critically, the property is not convenient to local shops selling basic food items.

7.4 Paragraph 11(1)(f) of the Circular states that:

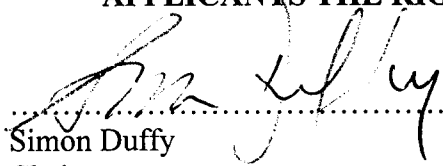
*“The dwelling should be located reasonably conveniently for shops and public transport having regard to the nature of the area...”*

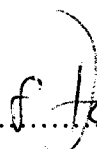
and that

*“in an urban area the dwelling should be located no more than 800 metres (half a mile) from the nearest shops selling basic food items and the nearest public transport. ‘Basic food items’ include bread and milk.”*

The Tribunal recognizes that the Departmental Circular is for guidance only and should not be interpreted too strictly. The Tribunal must take into account the circumstances of each individual case and weigh them against the guidelines. The nearest shop selling bread and milk is the Londis Supermarket and this is not convenient for an elderly person given its distance from the property, indeed it is more than 800 metres from the property.

**7.5 THE TRIBUNAL ACCORINGLY DETERMINES THAT HIGH PEAK BOROUGH COUNCIL IS NOT ENTITLED TO RELY ON PARAGRAPH 11 OF SCHEDULE 5 TO THE HOUSING ACT 1985 TO DENY THE APPLICANTS THE RIGHT TO BUY**

  
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Simon Duffy  
Chairman  
Midland Rent Assessment Panel

Date  6 June 2006