

Midland Residential Property Tribunal

BIR/41UK/RTB/2005/0012

Housing Act 1985, Schedule 5 paragraph 11

Decision

Address of Property

52 Florendine Street,
Amington,
Tamworth,
Staffordshire B77 3DD

Members of the Tribunal:-

Mr J.H.L. de Waal
Mr. S. Berg
Mrs. C. Smith

Landlord

Tamworth Borough Council
Marmion House,
Lichfield Street,
Tamworth,
Staffordshire
B79 7BZ

Tenant

Miss Joan Starkey

Date of decision

19th January 2006

Decision

1. By a notice dated 1st September 2005 Tamworth Borough Council (“the Landlord”) denied Miss Joan Starkey (“the Tenant”) the right to buy 52 Florendine Street, Amington, Tamworth, Staffordshire (“the Property”) on the grounds set out in paragraph 11 of Schedule 5 to the Housing Act 1985 (“the Act”).

2. The relevant parts of paragraph 11 of Schedule 5 to the Act state:

“(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.

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

3. By a notice dated 9th September 2005 the Tenant applied to the Midlands Residential Property Tribunal to determine the question of whether paragraph 11 of Schedule 5 to the Act applies to her tenancy of the Property.
4. In her application the Tenant stated that the Property was unsuitable for the elderly because the kitchen was too small to accommodate all necessary appliances and because the hallway was too narrow for a wheelchair should one ever be required. The Tenant stated that the Property was ½ mile from the nearest shop where she could buy groceries and ½ mile from the bus stop to Tamworth.
5. In their response to the Tenant’s application the Landlord stated that the Property was purpose built for the elderly and has a built in Homelink system which is specifically for use by elderly persons. They stated that it has full gas central heating with no solid fuel requirement. They stated that the property lay 0.3 miles from the nearest shop selling basic food items, a Co-Op Supermarket.

Inspection

6. We inspected the Property on 19th January 2006. The Property is an end of terrace bungalow with one bedroom and one living room, a kitchen and a bathroom. The Property is approached via a ramp with a handrail; there is a small step over the threshold. All the accommodation is on one level. There is a gas fired central heating system serving radiators throughout, double-glazing, high – level power points. There is a handrail and an additional vertical ‘grab-rail’ in the bathroom. The Property benefits from a ‘Homelink’ telephone system which enables the occupier to contact the Landlord in case of emergency. There are gardens front and rear.
7. The Property lies approximately 0.3miles from the main Tamworth Road where there are shops including a Co-Op supermarket. There is also a bus stop with an hourly bus service into Tamworth. The bus stop and the Co-Op supermarket are within half a mile of the Property.
8. We also made an external inspection of 56 Florendine Road which is a neighbouring property that the Landlord referred to in its submissions.

Hearing

9. The Tenant’s application was listed for hearing on 19th January 2006. However at the inspection the Tenant told us that she no longer wished to have an oral hearing of her application and was content for us to determine the application on the basis of our inspection and the parties’ written submissions. The Landlord consented to the application being dealt with in this way.

Conclusions

10. In coming to our decision we were assisted by consideration of the ODPM Circular 7/2004: *Right to Buy: Exclusion of Elderly Persons’ Housing* (“the Circular”), a copy of which had been supplied to the parties before the hearing. The Tribunal is not bound by the Circular, deciding each case on its own merits but it does have regard to the criteria contained in the Circular as a guide.

11. We turn next to the relevant parts of Schedule 5, paragraph 11 as set out above.
12. *Sub-paragraph (1)(a) – the dwelling-house is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons.*
13. In the light of guidance given by the Circular, we understand that the term “elderly persons” is to be taken to mean individuals who are able to live independently despite some limitations owing to age and will not mean individuals who are frail or severely disabled.
14. We considered that the following features of the Property made it particularly suitable for elderly persons:
 - (a) There is easy access on foot to the Property.
 - (b) The Property is a bungalow.
 - (c) It is a one-bedroom Property.
 - (d) The Property has a gas central-heating system serving the living room and bedroom and capable of being left on overnight.
 - (e) The Property benefits from high-level power points.
 - (f) The bathroom is fitted with a grab rail and a handrail.
 - (g) The Property is fitted with a Homelink system which is fitted specifically for use by elderly persons.
 - (h) The Property is located less than half a mile from the nearest shop selling food items and the nearest bus stop
15. We noted the Tenant’s concern that the hallway was too narrow for a wheelchair should she require one but did not consider that this in itself meant that the Property was unsuitable for elderly persons.
16. We also noted that the Tenant had expressed concern (letter 31st October 2005) about a promised new kitchen and the Landlord’s delay in carrying

out repairs. Because no hearing took place we did not have the benefit of hearing the Landlord's response to these points. In any event, these matters would not be relevant to anything that the Tribunal had to decide and therefore we did not take them into account when deciding whether the Property was suitable for elderly persons within the meaning of paragraph 11.

17. Although the gradient along the pedestrian route from the Property to the main road was at its steepest 1 in 17.5 and the footpath was on occasion rather uneven we did not consider that the Property was difficult to access for elderly persons.
18. *Sub-paragraph (1) (b) -- that the dwelling-house was let to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more.* It was common ground between the parties and we are satisfied that this condition is satisfied so far as the Property is concerned.
19. *Sub-paragraph (2).* Neither party suggested that there were features of the Property which were to be disregarded and therefore this sub-paragraph did not apply.
20. *Sub-paragraph (6) – the dwelling-house concerned was first let before 1st January 1990.* The evidence put forward by the Landlord, which we accepted, was that the Property was first let to a Mrs Adams, who was over 60 years of age at the time, on 14th March 1983. Accordingly this condition is satisfied.
21. The Landlord referred to us to the fact that a similar application by the tenant of the adjacent property 56 Florendine Street had been refused by the ODPM on 15th August 2002 for the reasons the Landlord now relied upon in opposing the Tenant's application in relation to the subject Property. However, since we considered it our task to decide each case on its own merits we did not take the ODPM's decision regarding 56

Florendine Street into account when making our decision on this application.

22. Although the Tribunal understands the reasons stated by the Tenant for wishing to exercise the right to buy, the Tribunal considers that the relevant conditions set out in paragraph 11 of Schedule 5 to the Act are made out.
23. We therefore determine that the Property is particularly suitable for elderly persons within the provisions of paragraph 11, Schedule 5 to the Act and refuse the Tenant's application.

John de Waal
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John de Waal
Chairman

23/1/06
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Date