

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**RESIDENTIAL PROPERTY TRIBUNAL**

**Case number : CAM/33UG/RTB/2006/0013**

**Property** : **96 Buckingham Road, Norwich, Norfolk NR4 7DG**

**Application** : **Appeal against the landlord's denial of the tenant's right to buy [Housing Act 1985, Sch 5, para 11 (as amended)]**

**Appellants** : **Mrs P Burrows**

**Respondent** : **Norwich City Council**

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**DECISION**

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Handed down 22<sup>nd</sup> January 2007

**Inspection date** : **Wednesday 17<sup>th</sup> January 2007**

**Tribunal** : **G K Sinclair (Chairman), G J Dinwiddy FRICS, C Gowman MCIEH**

1. **For the reasons which follow the tenant's appeal against the denial of her right to buy the property is allowed.**

**Procedural**

2. The Appellant is the tenant of the Respondent Housing Authority under a secure tenancy which she has held for the qualifying period, within the meaning of the Housing Act 1985.
3. By Notice in Reply to the tenant's right to buy claim (Form RTB2) dated 8<sup>th</sup> August 2006 the Respondent denied that she has the right to buy because paragraph 11 of Schedule 5 to the 1985 Act applies, viz
  - a. that the property was first let before 1990
  - b. that it is particularly suitable for occupation by elderly persons, and
  - c. was let for occupation by a person aged 60 or more.
4. This appeal was lodged on 30<sup>th</sup> August 2006, within the 8 week statutory period allowed

for such appeals.

5. In reply to a request for details of why it considered that the exclusion in paragraph 11 of Schedule 5 to the Act was applicable in this case the Respondent stated only that “96 Buckingham Road is considered particularly suitable for occupation by the elderly and therefore the right to buy was denied” – in effect parroting the statutory formula rather than setting out the factual basis for that assertion. The Respondent also declined the invitation to appear at a hearing or to submit any written submissions.
6. The Appellant explained that :
  - a. The property had not been adapted for the elderly in any way, for example by provision of handrails by the bath or toilet, or placing electric sockets higher up the walls
  - b. That two years previously she had applied under the right to buy and no objection had been raised by the council
  - c. Other tenants in neighbouring flats have been able to exercise the right to buy their properties and therefore the rules must be the same for all secure tenants.The council had the opportunity to respond but chose not to comment.
7. Neither party requested an oral hearing, so the matter was dealt with on paper following the tribunal's inspection.

### **The law**

8. The principal statute which sets out the qualifying conditions for a tenant's exercise of the right to buy is the Housing Act 1985. Schedule 5 lists a series of exceptions to the right to buy. The Respondent relies upon paragraph 11. Since 4<sup>th</sup> July 2005 the avenue of appeal has been altered from the Secretary of State to the tribunal,<sup>1</sup> and the paragraph now reads 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

<sup>1</sup> See Housing Act 2004, s.181, and the Housing Act 2004 (Commencement No 4 and Transitional Provisions) (England) Order 2005 [IS 2005/1729]

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.
- (3) Notwithstanding anything in section 181 (jurisdiction of county court), any question arising under this paragraph shall be determined as follows.
- (4) If an application for the purpose is made by the tenant to the appropriate tribunal or authority before the end of the period of 56 days beginning with the service of the landlord's notice under section 124, the question shall be determined by the appropriate tribunal or authority.
- (5) If no such application is so made, the question shall be deemed to have been determined in favour of the landlord.
- (5A) In this paragraph "the appropriate tribunal or authority" means –
  - (a) in relation to England, a residential property tribunal; and
  - (b) in relation to Wales, the Secretary of State.
- (5B) Section 231 of the Housing Act 2004 (appeals to Lands Tribunal) does not apply to any decision of a residential property tribunal under this paragraph.
- (6) This paragraph does not apply unless the dwelling-house concerned was first let before 1st January 1990.

9. Please note, by comparison, the terms of paragraph 10 of the Schedule, which caters for the infirm elderly :

- (1) The right to buy does not arise if the dwelling-house is one of a group of dwelling-houses –
  - (a) which are particularly suitable, having regard to their location, size, design, heating systems and other features, for occupation by elderly persons, and
  - (b) which it is the practice of the landlord to let for occupation by persons aged 60 or more, or for occupation by such persons and physically disabled persons,and special facilities such as are mentioned in sub-paragraph (2) are provided wholly or mainly for the purposes of assisting those persons.
- (2) The facilities referred to above are facilities which consist of or include –
  - (a) the services of a resident warden, or
  - (b) the services of a non-resident warden, a system for calling him and the use of a common room in close proximity to the group of dwelling-houses.

10. Although not binding upon the tribunal, the ODPM<sup>2</sup> has produced revised guidance on the exclusion of elderly persons' housing from the right to buy.<sup>3</sup> Paragraph 12 of the circular lists the main points which the Secretary of State would normally expect to be

<sup>2</sup> Now known as the Department for Communities and Local Government

<sup>3</sup> See ODPM Circular 07/2004 (December 2004)

satisfied in considering applications under paragraph 11 of the Schedule.

### **Inspection**

11. The tribunal inspected the property in the presence of the tenant, Mrs Burrows. It is a two bedroom ground floor flat in what to outward appearances is a pair of large semi-detached brick-built houses under a pantiled roof, constructed post-war and first let in 1950, with four flats per building accessed by two doors at each end. PVCu double glazing has been installed by the landlord throughout. Between each block is a brick block comprising four lockable sheds – each with a small window – for the adjoining tenants. The rear gardens face roughly north and are split so that each tenant has his or her own long strip extending to the rear boundary fence. The property is one of a large number of such units in the area, located just to the south of South Park Avenue, outside and to the west of the city's outer ring road but quite close to the university. As might be apparent from the name of the nearby road, the property is very close to the open space and recreation facilities at Eaton Park. The tenant has off-street car parking at the front, although at the time of the inspection there was plenty of on-street parking available.
12. Internally, rooms lie to either side of a central corridor extending from the door on the end, except at the far end where the doorways to the two bedrooms form a shallow V-shape. Starting from the entrance, on the right is the main reception room. This is a large, pleasant room with two windows, three double power points, radiators for the gas central heating system, and a coal-effect gas fire in the hearth. The floor is of wood laminate, installed by the tenant over a concrete base and replacing the thermoplastic tiling still visible in the corridor. To the left one comes first to a narrow bathroom plus WC with radiator, extractor unit and small window on the back wall. Next is the kitchen, a small, squarish room which evidently had been improved by the landlord prior to the current letting. All units had been provided by the landlord and white goods by the tenant. This room is unheated but has an extractor fan and a main side-opening window with top-hung light. Located behind the sink, the fastener for the top-light is inaccessible to the tenant. The kitchen has no door separating it from the corridor. At the end of the corridor are the two bedrooms. These also have radiators and new laminate flooring.

Interestingly - and very relevant to this decision – is the fact that the landlord has clearly recognised that, by placing the bedrooms furthest from the entrance and with an open kitchen between them and the escape route in case of fire, alternative means of escape is necessary. The larger side-opening light in the window to the rear bedroom displays a sticker indicating that it is a fire exit. Had such a sticker appeared on a french or other full-length window then this would be acceptable for use by the elderly, but in order to use the intended exit one needs to climb on to a chair to reach the window, from which there is a drop in excess of one metre on the outside.

13. Around the corner, and within 800 metres of the flat, is a small local shop, a Budgens Local, on the corner of Sotherton and Parmenter Roads. The nearest supermarkets are at Bowthorpe (Sainsburys), Cringleford (Waitrose) and in the city centre. There is a convenient bus stop nearby on South Park Avenue.

#### **Findings of fact**

14. Having considered the parties' written submissions and the evidence obtained by the tribunal from its inspection of the property and surrounding area, the tribunal finds the following facts :
  - a. The property was first let when built in about 1950
  - b. The Appellant first became tenant of the property in December 2003, at which date she was aged 62
  - c. The property comprises no more than two bedrooms, but the dangers inherent in the layout have been met by the landlord by affixing a "fire exit" sticker to a rear window, which would be extremely awkward for an elderly person to use
  - d. The gas central heating system would appear to function reliably, provides heat to all living rooms except the kitchen, and may safely be left on overnight. It is noted, however, that (as let) the property has a concrete floor overlaid with thermoplastic tiles, and is therefore quite cold
  - e. The property is within 800 metres of a basic food shop. There are convenient bus services if required
  - f. As changes in council policy to sales of flats, or the inconsistent application of a fixed policy, are matters outwith the jurisdiction of the tribunal it has ignored

entirely the Appellant's argument that she should be permitted to buy because previous applications by herself and by other tenants have not been opposed. The tribunal's task is solely to make findings of fact as to the physical and geographical suitability of the property for use by elderly persons aged 60 or over.

15. By reason of the above findings concerning the letting history of the property, its facilities and means of emergency escape (which the landlord has evidently recognised), and the surrounding area, the tribunal is not satisfied that it meets the statutory criteria of being particularly suitable for occupation by elderly persons. For the above reasons the tenants' appeal is therefore allowed.

Dated 22<sup>nd</sup> January 2007

Graham Sinclair — Chairman  
for the Residential Property Tribunal

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