

EASTERN RENT ASSESSMENT PANEL

RESIDENTIAL PROPERTY TRIBUNAL

Housing Act 1985 (as amended) Schedule 5, paragraph 11

Property : 27 Cheriton, Furzton, Milton Keynes MK4 1BU

Applicant(s) : David Smith and Mary Smith

Respondent : Milton Keynes Council

Case No. : CAM/00MG/RTB/2006/0016

Type of Application : Application for determination as to whether a dwellinghouse is particularly suitable for occupation by elderly persons

Date of Decision : 21st December 2006.

**The Tribunal : David S Brown FRICS MCI Arb (Chair)
Joanne Oxley
Peter A Tunley**

DECISION

1. **The Tribunal determines that , having regard to the factors set out in paragraph 11(1) of Schedule 5 of the Housing Act 1985, the Property is particularly suitable for occupation by elderly persons and that the right to buy does not therefore arise.**

The Application

2. The Applicants applied to Milton Keynes Council for the right to buy. This was denied on 2nd October 2006 on the grounds that paragraph 11 of Schedule 5 to the Housing Act 1985 ("the Act") applies. The Applicants applied to the Tribunal on 16th October to determine whether the Property is particularly suitable for occupation by elderly persons.

The Law

3. Paragraph 11 of Schedule 5 of the Act 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 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

"The appropriate tribunal or authority" means, in relation to England, a residential property tribunal.

The Applicant's case

- 4. The Applicants stated in their application that they believe that the property is suitable for the elderly. However, they feel that it is unfair to deny them the right to buy as they were given the right three years ago. They enclosed with their application a copy of a Notice in Reply to Tenant's Right To Buy Claim (RTB2) from Milton Keynes Council, dated 30th October 2003, admitting their right to buy the Property. They say that they were not in a strong enough financial position to take up the right at that time.
- 5. The Applicants say that the Property needs money spending on it, which the council do not seem prepared (or able) to do. The drive is split in two and the guttering needs replacing. Also the windows are the original windows and need to be replaced with double glazing.
- 6. It is not disputed by the Applicants that the Property was let to them for occupation by a person who was aged 60 or more.

The Respondent's case

- 7. The Respondent set out its statement of case in a letter dated 30th October 2006.
- 8. It states that the Property is a 2-bedroomed bungalow on one level with gas central heating, there is easy access with no steps but a gentle slope from the public highway to the front door. It says that there is an alarm system so that help can be raised if necessary and there is a driveway. The property was built in 1984.

9. The Property was let to Mr. Smith on 13th May 1996, when he was six days away from being 61.
10. The Respondent says that the Property is approximately ¼ mile away from the main road, which has a bus stop with buses running every 15 minutes into the city centre. There is a hail-and-ride bus service from Blackmore Gate, 0.3 miles away, with four services each way every hour. There are local shops at Blackmore Gate with a Londis store, Chinese take-away and Caribbean food shop. The Londis store sells fresh fruit and vegetables, bread, dairy products and frozen food. There is a post box outside the store.
11. There is a Local centre on Dulverton Drive, approximately 1.2 miles away from the Property, with doctors' surgery, dentist, pharmacy, Tesco Express (with post office), fish and chip shop, Chinese take-away and hairdressers.

The Property

12. The Tribunal inspected the Property on 21st December in the presence of the Applicants.
13. The Property is a brick and tiled bungalow, semi-detached to a house. It has timber framed single glazed windows.
14. The Property is situated in an established residential area. Cheriton is a cul-de-sac and so is not subject to significant levels of passing traffic.
15. The accommodation comprises.

Entrance Porch with dustbin store.

Entrance Hall with built in cupboards, radiator, airing cupboard, smoke alarms.

Kitchen with gas boiler, radiator. (The Applicants have provided modern kitchen fittings in place of an original sink and base unit which they say were in poor condition).

Lounge with radiator.

Single Bedroom with radiator.

Double Bedroom with radiator.

There is a small front garden with parking space for two cars and an enclosed rear garden.

The Property has gas fired central heating and all mains services are connected

Contrary to the statement by the respondent, the Property does not have an alarm system.

Particular Suitability for Occupation by the Elderly


16. Circular 7/2004, issued by the Office of the Deputy Prime Minister, sets out the criteria to be taken into account when considering whether a dwelling is particularly suitable for occupation by elderly persons. In this context, "elderly persons" means individuals who are able to live independently despite some limitations owing to age; it does not mean individuals who are frail or severely disabled. The criteria are not binding on Residential Property Tribunals but Tribunals will be guided by them in general terms. Each case is to be decided on its own merits.
17. The Tribunal has considered each of the criteria which are relevant in this case, summarised as follows:-
18. *Ease of access on foot, taking into account the number, size and curvature of any steps, the presence or absence of handrails alongside steps and the gradient of ramps, paths, pavements or other means of access.* There are no steps, ramps or steep gradients in the approach to the bungalow. The parking area has a slight incline and is uneven, probably due to the action of tree roots.
19. *The accommodation should normally be on one level.* The Property is a bungalow; the accommodation is all on one level with no steps.
20. *There should be no more than two bedrooms.* The Property only has two bedrooms.
21. *There should be heating arrangements which function reliably, provide heat to at least one living room and one bedroom and may be safely left on at night.* There is a gas central heating system with a modern boiler which was functioning at the time of inspection. It provides heating to all rooms and could safely be left on at night.
22. *The dwelling should be located reasonably conveniently for shops and public transport – in an urban area, no more than 800 metres (half a mile) from both the nearest shop selling basic food items and the nearest public transport stop.* There is a Londis general store approximately 1/3 mile from the Property. The route to it is uphill but the gradient is not overly steep. The store sells bread, milk and a variety of basic food items and other goods. There is a bus stop near to the store and the Applicants do not dispute the frequency of services referred to by the Respondents.

The Tribunal's decision

23. The Tribunal sympathises with the Applicants and can understand their disappointment at being denied the right to buy on this occasion when the same right was admitted in 2003; this is no

doubt exacerbated by the Respondent's lack of explanation for this change. However, that previous admission is not relevant to this decision. The Tribunal's task is to determine whether or not the Property is currently particularly suitable for occupation by elderly persons.

24. The Tribunal has had regard to the factors outlined above, to the general design and location of the Property and all relevant factors and concludes that it is particularly suitable for such occupation.

Signed:  (Chair) Date: 28/12/06
D S Brown FRICS MCI Arb

