

**RESIDENTIAL PROPERTY TRIBUNAL**  
**OF THE**  
**MIDLAND RENT ASSESSMENT PANEL**

BIR/31UM/RTB/2005/0006

*DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL  
ON AN APPLICATION UNDER PARAGRAPH 11(4) OF SCHEDULE 5  
TO THE HOUSING ACT 1985*

<u>Tenant:</u>	Mr J E Pilkington
<u>Landlord:</u>	North West Leicestershire District Council
<u>Subject property:</u>	14 Jacques Street Ibstock Leicestershire LE67 6NJ
<u>Date of landlord's notice denying the right to buy:</u>	13 June 2005
<u>Date of application to ODPM/ Residential Property Tribunal:</u>	1 August 2005/17 August 2005
<u>Hearing date:</u>	21 October 2005
<u>Appearances:</u>	
<i>For the tenant:</i>	Not represented
<i>For the landlord:</i>	Ms A Harper (Head of Housing Management, NWLDC) Mrs S Chayra (Howes Percival (Solicitors))
<u>Members of the Tribunal:</u>	Professor N P Gravells MA Mr N R Thompson FRICS Mrs S Seth
<u>Date of determination:</u>	
11 NOV 2005	

## **Introduction**

- 1 This is a decision on an application made to the Residential Property Tribunal by Mr J E Pilkington, tenant of the property at 14 Jacques Street, Ibstock, Leicestershire LE67 6NJ ("the subject property"). The application, submitted initially to the Office of the Deputy Prime Minister (1 August 2005) and subsequently to the Residential Property Tribunal (17 August 2005), is under paragraph 11(4) of Schedule 5 to the Housing Act 1985 ("the 1985 Act") for a determination as to whether the exception to the right to buy set out in paragraph 11 of Schedule 5 (property particularly suitable for occupation by elderly persons) applies to the subject property.
- 2 The landlord is North West Leicestershire District Council.
- 3 The tenant gave notice to the landlord under section 122 of the 1985 Act, claiming to exercise his right to buy the subject property. The landlord served on the tenant a notice in reply (form RTB2), dated 13 June 2005, under section 124, denying the tenant's right to buy on the ground set out in paragraph 11 of Schedule 5. The tenant subsequently made the present application.

## **Subject property**

- 4 The Tribunal inspected the subject property on 21 October 2005 in the presence of the tenant and his partner, Mrs P Brooks, Ms A Harper, Head of Housing Management for North West Leicestershire District Council, and Mrs S Chayra, of Howes Percival (Solicitors), representing North West Leicestershire District Council.
- 5 The subject property is a semi-detached bungalow of traditional brick and tile construction. The accommodation comprises a front porch, hallway, reception room, bedroom, kitchen, combined bathroom and wc and rear lobby. There is a small step up from the front porch to the hallway, a small step down from the kitchen to the rear lobby and a larger step down from the rear lobby to the rear garden. The property has the benefit of double glazing, gas-fired central heating with radiators in all rooms and a gas fire in the reception room. There are gardens to the front and rear of the property.
- 6 The tenant has refitted the kitchen and bathroom, installed access to the loft and artexed most of the ceilings in the property; and he has erected garden fencing.
- 7 The property is located on Jacques Street, within walking distance of the centre of Ibstock. Access to the front door is by means of a path from the road through the front garden. There are no steps or significant gradients on the paths and pavements in the immediate vicinity of, and providing access to, the subject property.
- 8 The nearest shop selling basic food items is approximately 300 metres from the subject property.
- 9 The nearest bus stop is approximately 300 metres away, from which there are frequent bus services to Coalville, Ashby-de-la-Zouch and Leicester.

## **The applicable law**

- 10 The material parts of paragraph 11 of Schedule 5 to the 1985 Act provide 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 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.
- 11 The Office of the Deputy Prime Minister (ODPM) has issued Circular 7/2004 (Right to Buy: Exclusion of Elderly Persons' Housing), which sets out the main criteria to be taken into account in determining the particular suitability of an individual dwelling-house for occupation by elderly persons. The Tribunal is not bound by the circular, deciding each case on its merits, but it does have regard to the criteria contained in the circular as a guide.

## **Hearing**

- 12 A hearing was held on 21 October 2005 at the offices of the Employment Tribunal in Leicester. The landlord was represented by Ms Harper and Mrs Chayra.
- 13 Although the tenant had initially requested a hearing, during the inspection he indicated that he would not be attending and that his arguments were fully spelled out in the written representations that he had submitted to the Tribunal.

## **Submissions of the parties**

- 14 The Tribunal had received written representations from the tenant and the landlord; and these were copied to the other party.
- 15 The tenant put forward a number of arguments in support of his claim to exercise the right to buy:
- (a) The subject property is not particularly suitable for occupation by elderly persons because it has a large rear garden.
  - (b) The subject property is not in a warden-controlled area.
  - (c) The subject property and similar properties in the neighbourhood were never intended for occupation by elderly persons only.

- (d) The landlord has acted in a manner that is inconsistent with the stated reason for denying the tenant the right to buy:
- The landlord has sold similar properties on neighboring estates to younger tenants.
  - The landlord has been willing to sell part of its housing stock to housing associations at significantly reduced prices.
  - Generally, the landlord has not adopted a consistent approach to the right to buy.
- (e) The tenant's relatives live in southern England and, partly in order to provide overnight accommodation for them when they visit, he wishes to erect a conservatory at the rear of the subject property; but he is unwilling to incur the necessary costs unless he owns the property.
- 16 The landlord reiterated its view that the conditions set out in paragraph 11 of Schedule 5 to the 1985 Act, as elaborated in ODPM Circular 7/2004, were satisfied; and that the right to buy had therefore been properly denied on the ground that the property was particularly suitable for occupation by elderly persons. In response to the arguments of the tenant, the landlord submitted:
- That paragraph 14 of ODPM Circular 7/2004 expressly states that the size of a garden is not an issue that should be taken into account when determining the particular suitability of a property for occupation by elderly persons.
  - That it is implicit in paragraph 11 of ODPM Circular 7/2004 that a property does not have to be within a warden-controlled or other sheltered scheme in order for paragraph 11 of Schedule 5 to apply.
  - That a claim to exercise the right to buy has to be considered in relation to the subject property on its own merits at the time of the claim; and that policy and/or sales decisions in relation to other properties are not relevant to the determination of the claim in relation to the subject property.
  - That, if the tenant finds that the subject property is insufficient for his needs, he can apply for transfer to another property or he can seek the landlord's consent to extend the subject property and apply for compensation where the value of the property has increased as a result; but that in the context of the right to buy the tenant's stated need for additional accommodation is a personal circumstance which cannot be taken into account.

### **Determination of the Tribunal**

- 17 On the evidence of the landlord's letting register, the Tribunal finds that the subject property was first let before 1 January 1990 and therefore that the condition in paragraph 11(6) of Schedule 5 is satisfied.
- 18 It was not disputed that the tenant was aged 77 when the tenancy was granted. Although the wording of paragraph 11(1)(b) of Schedule 5 seems to require no more than that objective fact, paragraph 18 of ODPM Circular 7/2004 states that, in the view of the Secretary of State, the condition is not met unless the landlord knew that the tenant (or some other person occupying the property with the tenant) was aged 60 or more when the tenancy was granted. However, it is not necessary for the Tribunal in the present case to decide whether such knowledge is required on the part of the landlord. Since the tenant in the present case indicated his date of birth on his housing application, the Tribunal finds that the

landlord did know that the tenant was aged 60 or more when the tenancy was granted.

- 19 The principal matter for the Tribunal to determine is whether the condition in paragraph 11(1)(a) of Schedule 5 is satisfied, namely that the subject property is particularly suitable for occupation by elderly persons.
- 20 In making that determination, the Tribunal accepts the argument of the landlord that a claim to exercise the right to buy has to be considered in relation to the subject property on its own merits at the time of the claim; and that policy and/or sales decisions in relation to other properties are not relevant to the determination of the claim in relation to the subject property.
- 21 In the view of the Tribunal, paragraph 11 of ODPM Circular 7/2004 makes it clear that a property does not have to be within a warden-controlled or other sheltered scheme in order for paragraph 11 of Schedule 5 to apply. "Elderly persons" is taken to mean individuals who are able to live independently despite some limitations owing to age. Moreover, warden-controlled accommodation is specifically covered in paragraph 10 of Schedule 5.
- 22 The Tribunal finds that the subject property (as provided by the landlord and disregarding any features provided by the tenant) satisfies all the relevant criteria set out in paragraph 12 of ODPM Circular 7/2004:
  - There is easy access on foot to the subject property.
  - The accommodation is on one level save for the three separate steps referred to in the description of the subject property (paragraph 5 above).
  - There are no more than two bedrooms.
  - The heating arrangements function reliably, provide heat to at least the living room and one bedroom and may safely be left on overnight.
  - The subject property is located reasonably conveniently for shops and public transport, with both the nearest shop selling basic food items and the nearest public transport stop well within the stated maximum distance of 800 metres.
- 23 Paragraph 14 of ODPM Circular 7/2004 expressly states that the size of a garden is not an issue that should be taken into account when determining the particular suitability of a property for occupation by elderly persons.
- 24 The Tribunal therefore finds that the subject property is particularly suitable for occupation by elderly persons within the meaning of paragraph 11(1)(a) of Schedule 5.
- 25 Paragraphs 15 and 17 of ODPM Circular 7/2004 state that, as a matter of good practice, it is recommended that landlords should advise any tenant if they consider that a particular property is likely to be exempt from the right to buy under paragraph 11 of Schedule 5. Less than a month after the commencement of the tenancy there was correspondence between the parties in which the landlord clearly stated that under its current policy it would deny the right to buy the subject property pursuant to paragraph 11 of Schedule 5.
- 26 Although the Tribunal understands the reasons stated by the tenant for wishing to exercise the right to buy, the Tribunal finds that such reasons constitute personal circumstances of the tenant, which the Tribunal is precluded from taking into account.

- 27 The Tribunal therefore determines that the landlord is entitled to rely on paragraph 11 of Schedule 5 to the 1985 Act to deny the tenant the right to buy the subject property.

Signed ..... Nigel Gravells .....

Professor Nigel P Gravells  
Chairman

Date ..... 1.12.22 .....