

**RESIDENTIAL PROPERTY TRIBUNAL
REASONS FOR DECISION
Ref BIR/17UJ/RTB/2002/0002**

24 The Bungalows, Killamarsh, Sheffield SE21 1EF

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

Applicant Tenant: Mrs. A Whitehouse
Landlord: North East Derbyshire District Council

Tribunal Members: Mr. S. Duffy
Mr. M. Davey
Mr. K. Bloor

1. Application and Background

- 1.1 Mr and Mrs. Whitehouse, joint tenants of 24 The Bungalows, Killamarsh, Sheffield SE21 1EF gave notice under Section 122 of the Housing Act 1985 (the Act) to the landlord, North East Derbyshire District Council, of their intention to exercise the right to buy the dwelling.
- 1.2 The Council then served a notice (form RTB 2) dated 3 June 2005 on the tenants under Section 124 of the Act denying the tenant's right to buy on the grounds set out in paragraph 11 to Schedule 5 of the Act.
- 1.3 By an application dated 20 June 2005 Mr and Mrs. Whitehouse applied to the Office of the Deputy Prime Minister ("the ODPM") under paragraph 11(4) of Schedule 5 for a determination as to whether the grounds set out in paragraph 11 were satisfied. The ODPM duly passed the application to the Midland Rent Assessment Panel the body now responsible for such determinations. Mr and Mrs. Whitehouse then applied to the Residential Property Tribunal, by way of an application form dated 20th July 2005, for a determination as to whether the grounds set out in paragraph 11 were satisfied.
- 1.4 The ODPM and the Tribunal respectively copied the tenants' application forms, dated 20 June 2005 and 20 July 2005, to the landlord. In reply the landlord gave notice dated 4 August 2005 to the Tribunal stating that it intended to oppose the tenants' appeal.

2. Hearing/Written Representations

- 2.1 The Tribunal received written representations from the landlord and tenant and these were copied to the parties.
- 2.2 A hearing was held at the Killamarsh Sports Centre, Sheffield Road, Killamarsh at which the applicant tenant did not appear, and the landlord, North East Derbyshire

District Council, was represented by Ms N Smith, solicitor, who called as a witness Mr. Oliver the Head of Housing Services for North East Derbyshire District Council .

3. The Property

- 3.1 The Tribunal inspected the property at about 10.00 am on 20th October 2005 in the company of the tenant and the landlord's representatives.
- 3.2 The property is part of an estate of properties "The Bungalows" built in the early post war period and comprises a single storey, prefabricated bungalow of sectional concrete construction with a pitched roof and single glazed windows. The living accommodation comprises entrance hall, lounge, kitchen, bathroom, separate W.C. and 2 bedrooms. The property does not benefit from a mains gas supply but has a solid fuel central heating system, thermostatically controlled radiators in each room and "Parkray" fire in the lounge with a back boiler. The property also has an electric immersion heater, smoke alarms and a "pull cord" system that allows access to a warden service that provides a 24 hour care call service.
- 3.3 Access to the front of the property is via a footpath through the communal garden, to a flagged pathway leading to a single small step, a small ramp and the front door. There is a single handrail at the front door. To the rear of the property there is a small garden which can be accessed either from the back door, where there are two small steps down to the garden, or from the front of the property by following a flagged path with skirts the side of the property. There is no footpath through the garden which is mainly laid to lawn.
- 3.4 The property, and the surrounding estate, is situated on fairly level ground being at most 200 yards from the main part of the village of Killamarsh where there is a variety of shops and a supermarket. There are bus stops in the village and services are about half hourly and travel to Sheffield. There is also a post office close by on Bridge Street, which can be accessed by a pathway leading from the rear of the estate. At the entrance to the estate, off Sheffield Road, there is a doctor's surgery.

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 ODPM the tenant stated that the property was first let before 1990 to themselves or a previous tenant. However in the application form to the Residential Property Tribunal the applicants stated that it was not first let before that date.
- 5.2 It was not in issue that when the Applicant's tenancy commenced on 18 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 para 11(1)(a) the dwelling house is particularly suitable for occupation by elderly persons.

6. The Submissions and Hearing

- 6.1 The tenant's written submissions were made by Mrs Whitehous who said that -
- (i) That the property is about 10 miles from the nearest train station, about 2.5 miles from the nearest tram stop and that buses run every half hour to Sheffield (approximately 10 miles away) and that she has to walk about 200 yards to the nearest shops and bus stops.
 - (ii) That the landlord had only provided a ramp to the front of the house when she had advised them of her husband's illness and that, at the same time as fitting the ramp, they had also provided a handrail.
 - (iii) That the fireplace is very low, making it difficult to stoke the fire and to empty the ashes.
 - (iv) That the bathroom has no aids or rails or a walk in shower.
 - (v) That there were no special adaptations making the property specifically suitable for elderly people; indeed the only internal handrail present is in the toilet.
 - (vi) That 6 other residents in the estate under the age of 60 had purchased their houses.

- (vii) That when she and her husband entered into their tenancy agreement they were unaware that they could be denied the Right to Buy.

6.2 The landlord, in its written submission, said: -

- (i) That, the criteria set out in paragraph 11 were satisfied. The property which it says benefits from a ramp, handrails, and is in one of the flattest locations available locally with shops and transport links nearby.
- (ii) That the tenants had told the landlord they would accept any fuel type when accepting the tenancy
- (iii) That, in letters dated 22 October and 19 November 2001 to the landlord, the tenant had requested a move to the property on medical grounds as it was on the level and close to the doctors' surgery.
- (iv) That, according to the landlord, it had agreed to provide a walk in shower to the tenants' previous property or move the tenants to another property with a walk in shower. However, the tenants had agreed to accept the tenancy of the subject property without the installation of a walk in shower and had said that they could manage with the bath and shower over.
- (v) The landlord in its written submissions stated that it had sold 5 bungalows on the estate and not 6 as stated by the tenant.

6.3 At the hearing the landlord submitted a schedule of tenancies showing that the property was let at least as long ago as 18 May 1964.

6.4 The landlord also submitted that the property is on the level, close to shops, a Doctor's surgery, bus stops and the post office at Bridge Street referred to above and also that the property is a small two bedroom bungalow of a design suitable for the elderly.

6.5 The landlord called Mr Oliver to give evidence on its behalf. Mr Oliver said that he believed the property had adequate heating arrangements and that no complaints about the heating had been received from the tenant. According to Mr. Oliver, the "Parkray" fire was cleared by the landlord as an "all night burner" to provide heat throughout the night and there were thermostatically controlled radiators, installed in March 1988, throughout the property.

6.6 Mr. Oliver said that while there was a small step to threshold and two steps from the backdoor and no path through the rear garden, this fell within acceptable criteria and that it is access and egress to the property that are the important factors.

6.7 Mr. Oliver also said that there was a warden service available and that the property was connected to a 24 hour care call system.

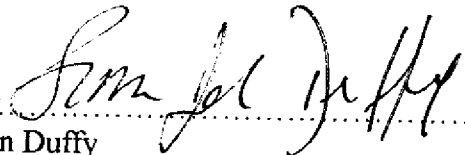
- 6.8 Mr. Oliver added that while there was no walk in shower in the property, this was not fatal and that if the tenant had specific issues about the lack of a shower this could be considered by way of aids and adaptations to the current arrangement.
- 6.9 That there had been sales of 5 properties on the estate to tenants (in chronological order, numbers 1,16,35, 31 and 29) but that, in any event, it failed to see the relevance of such sales to the Tribunal's determination as it is the suitability of the property occupied by the Applicant which is in issue.

7. The Tribunal's Determination

- 7.1 In the absence of any other evidence, the Tribunal accepted the landlord's submission that the property was let as long ago as May 1964. 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 shops and buses were reasonably convenient.
 - (ii) The number of steps were not such as to prevent easy access with or without the presence of a handrail. The lack of a ramp when the property was first let to the tenant 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 tenant to stoke the fire and empty the ashes, the Tribunal does not accept that the heating arrangements are inadequate.
 - (iv) While a walk in shower may be more suitable for this particular tenant, the current arrangement of a bath with shower over does not make the property particularly unsuitable for elderly persons.
 - (v) The sale of other dwellings nearby is not relevant to the determination of this appeal, and each case must be dealt with on its own merits. It is for the Council to decide whether the right to buy arises in each case and they cannot deny the right, for example, if at the time the tenancy commenced, the tenant was aged under 60.
 - (vi) Paragraph 17 of the Circular says 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. Clearly, such advice, in respect of this particular property was not forthcoming in this case, although the landlord did provide the tenant with a brochure with their tenancy of the property which included general

information on the circumstances when the Right to Buy may be denied and that information included denials under Paragraph 11. However, the Tribunal does not believe that this failure to provide advice in relation to this particular property nullifies the application of Paragraph 11.

- 7.3 The Tribunal finds that the bungalow satisfies all of the relevant features in Paragraph 12 of the ODPM guidelines, The Tribunal is satisfied that the dwelling house is particularly suitable for occupation by elderly persons.
- 7.4 The Tribunal therefore determines that the grounds set out under Paragraph 11 of Schedule 5 of the Housing Act 1985 are satisfied and that the North East Derbyshire District Council may rely on those grounds to deny the applicants the Right to Buy.


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Simon Duffy

Chairman

Midland Rent Assessment Panel

Date **21 NOV 2005**