

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

BIR/OOCR/RTB/2006/0012

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 George Scott
<u>Landlord:</u>	Dudley Metropolitan Borough Council
<u>Subject Property:</u>	22 Tack Farm Road Stourbridge West Midlands DY8 5DP
<u>Date of landlord's Notice denying the right to buy:</u>	4 <sup>th</sup> August 2006
<u>Date of application to Residential Property Tribunal:</u>	11 <sup>th</sup> September 2006
<u>Members of the Tribunal:</u>	Mr N R Thompson FRICS Mr J H Dove Mr D Underhill
<u>Date of determination:</u>	26 <sup>th</sup> January 2007

## Introduction

1. This is a decision on an application made to the Residential Property Tribunal by Mr George Scott, tenant of the property at 22 Tack Farm Road, Stourbridge, West Midlands, DY8 5DP ("the subject property"). The application, submitted to the Residential Property Tribunal on 11<sup>th</sup> September 2006, 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, 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.
4. Neither party requested a hearing.

## Subject property

5. The Tribunal inspected the subject property on 14<sup>th</sup> December 2006 in the presence of the tenant and his wife.
6. The subject property comprises a bungalow of traditional brick and tile construction. The accommodation comprises an entrance hall, single living room, one bedroom, kitchen, combined bathroom and wc, and rear conservatory, together with a side verandah. The property has the benefit of gas-fired central heating with radiators in all rooms and a gas fire in the living room. There are gardens to the front and rear of the property.
7. The tenant has carried out a number of improvements since the start of the tenancy on 5<sup>th</sup> April 2004: the installation of a fireplace and gas fire in the living room; the refitting and remodelling of the kitchen; the installation of fitted wardrobes and bedhead in the bedroom; the refitting of the bathroom; the boarding of the loft floor; and the construction of the rear conservatory.
8. The property is located in a quiet cul de sac of similar residential properties. Access to the front door is by means of a path from the roadway and pavement via the front garden. There is a single step up (plus the threshold) at the front entrance to the property and two steps (plus the threshold) at the rear entrance. There is no handrail at either entrance.
9. There are no significant gradients on the paths and pavements in the immediate vicinity of, and providing access to, the subject property.
10. The nearest shop selling basic food items is approximately 300 metres from the subject property.
11. The nearest bus stop is approximately 150 metres away, from which there are bus services into Stourbridge and Dudley etc.

## **The applicable law**

12. The material parts of paragraph 11 of Schedule 5 to the 1985 Act provide as follows:
  - (1) The right to buy does not arise in 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.
13. 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.

## **Written representations**

14. The Tribunal received written representations from the landlord and these were copied to the tenant.
15. The tenant did not seek in his application to question the particular suitability of the subject property for occupation by elderly persons, rather he submitted that he felt he was being discriminated against bearing in mind (i) his next door (pensioner) neighbour had been allowed by the landlords to buy her property, and (ii) another similar bungalow in the cul de sac had been let to a tenant who was under 40 years of age. By implication therefore, he considered he should be allowed to buy the subject property.

At the inspection, the tenant indicated that he wished to buy the property so as to secure for the longer term, the considerable investment he had made in the property by way of improvements and modernisation.
16. In its written representations, the landlord denied that there was any attempt to discriminate against the tenant. It was suggested that the tenant in other cases might not have been over 60 at the time of the application to exercise the Right to Buy and therefore their application could not be resisted by the Council. Equally, such properties might legitimately be let to those under 60 if there were no other suitable applicants at the relevant time who qualified under the appropriate criteria.

Consequently, the Council strongly opposed the application in this instance.

## **Determination of the Tribunal**

17. On the evidence of the landlord, 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 67 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. On the written evidence of the Council it is clear 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. The Tribunal finds that the 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, notwithstanding the single step up from the front garden path to the front door and the two steps up to the rear entrance.
  - The accommodation is on one level.
  - 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.

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.

21. 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. There was no evidence on this issue before the Tribunal; but in any event the Tribunal holds that failure to follow such good practice does not mean that the conditions in paragraph 11 of Schedule 5 are not satisfied.
22. Although the Tribunal fully understands the reasons stated by the tenant for considering the landlords' actions to be inconsistent in relation to the sale and letting of other similar properties, any 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 the policy and/or sales decisions of the landlords in relation to other properties are not relevant to the determination of the subject claim.
23. 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.



N R Thompson  
Chairman

Date 26<sup>th</sup> January 2007