

Housing Act 1985

Housing Act 2004

DETERMINATION OF THE RESIDENTIAL PROPERTY TRIBUNAL

Whether 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.

<u>Applicant Tenant:</u>	Mrs Barbara Westwood & Mr Rowland Westwood
<u>Respondent Landlord:</u>	Dudley Metropolitan Borough Council
<u>Property:</u>	78, Wells Road, Brierley Hill, West Midlands DY5 3TD
<u>Date of Landlord's notice denying the right to buy:</u>	26 th June 2006
<u>Date application received:</u>	By Residential Property Tribunal – 13 th July 2006
<u>Hearing:</u>	No hearing

Members of the Residential Property Tribunal:

Mr S Rowlands (Chairman)
Mr N Thompson
Mr D Underhill

Date of Tribunal's decision: 4th September 2006

Determination: 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 Property

Introduction:

- 1 **Mr & Mrs Westwood** (the '**Tenants**') of 78, Wells Road, Brierley Hill, West Midlands DY5 3TD (the '**Property**') gave notice to **Dudley Metropolitan Borough Council** (the '**Landlord**'), under section 122 Housing Act 1985 ('the **1985 Act**'), claiming to exercise their right to buy the Property. The Landlord has, by notice in reply dated the 26th June 2006, under section 124, denied the Tenants the right to buy the Property because of paragraph 11 of schedule 5 Housing Act 1985 – meaning that the Property:
 - (a) was first let before the 1st January 1990
 - (b) is particularly suitable for occupation by elderly persons,and
 - (c) was let for occupation by a person age 60 or more
- 2 Mr & Mrs Westwood now apply (the '**Application**') to this Tribunal ('**RPT**') for a determination that the Property is not excluded from the right to buy.
- 3 Our jurisdiction to decide the Application arises from sub-paragraph 5A of paragraph 11 of the Act (inserted by s.181 Housing Act 2004).
- 4 The Application was received by this Tribunal on 13th July 2006.

Inspection and no hearing:

- 5 We inspected the Property on 4th September 2006 in the presence of the Tenants and we take account of what we saw at our inspection. The RPT had given notice of its intention to proceed without an oral hearing and neither party had requested an oral hearing. Written representations and information were received from the Tenants in their Application and in letters received on 21st July 2006 and 14th August 2006. Written representations were received from the Landlord in, and endorsed upon, the acknowledgement of the receipt of the appeal from the Tenants dated 4th August 2006.

The Property, its features and location:

- 6 The Property is a bungalow of traditional brick and interlocking tile construction with similar properties close by. The accommodation comprises: hall, living room, kitchen, bedroom, bathroom with wc. Gas central heating is now provided throughout including the living room and bedroom. Double glazed windows have been installed throughout most of the Property.
- 7 There are five shallow steps up to the front door. Double handrails are fitted. There is a small step at the front door threshold and at the rear door.
- 8 At the inspection, the RPT noted a number of features provided by the Tenant. These included the provision of central heating through a gas fired hot water radiator system; structural work in the kitchen including the provision of additional cupboards and flooring; tiling work in the bathroom and the provision of a shower; external structural work in the rear and front gardens. These features were not taken into account by the RPT in determining the suitability of the bungalow for occupation by elderly persons.
- 9 The nearest shop selling basic food items is about 300 metres from the Property.
- 10 The nearest bus stop is about 300 metres away, from which there are frequent services.

The applicable law:

11 The material parts of paragraph 11 of Schedule 5 to the 1985 Act provides as follows:

- '11.- (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 of his
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- (6) This paragraph does not apply unless the dwelling house concerned was first let before 1 January 1990.'

12 The Office of the Deputy Prime Minister (ODPM) has issued *Right to Buy: Exclusion of Elderly Persons' Housing Circular* 07/2004, ("**the Exclusion Circular**") 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. We are not bound by the Circular, deciding the case before us on its merits, but we do have regard to the criteria contained in the Circular as a guide.

Representation from the parties:

13 The documentation set out in paragraph 5 was considered. We, as an expert tribunal, took account of what we saw at our inspection.

Determination of the Tribunal:

- 14 We have evidence, and it is not contested, that the Property was first let before 1st January 1990 and that the current Tenants were aged 64 and 62 years respectively when the tenancy was granted to them in 2004. Accordingly, the conditions in paragraphs 11(6) and 11(1)(b), respectively, of Schedule 5 are satisfied.
- 15 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.
- 16 The Tribunal finds that the Property satisfies all the relevant criteria set out in paragraph 12 of the Exclusion Circular (delete ODPM *Exclusion Circular*) namely:
- (a) There is easy access on foot to the Property. Although there are five shallow steps approaching the front door, the assistance of a double handrail is provided;
 - (b) The accommodation is on one level save for two small threshold steps at the front and rear doors;
 - (c) There are no more than two bedrooms;
 - (d) At the time of the inspection, the Tenants had provided gas fired central heating. The RPT was satisfied, however, that the night storage heating system this replaced provided functioning reliable (if not ideal) heating arrangements which did provide heat to at least the living room and bedroom and which may have been safely left on overnight.

- (e) The 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.
- 17 The Tribunal finds that there are no other relevant factors that would support the conclusion that the subject property is not particularly suitable for occupation by elderly persons.
- 18 The Tribunal, therefore, finds that the Property is particularly suitable for occupation by elderly persons within the meaning of paragraph 11(1)(a) of Schedule 5.

Conclusion:

- 19 The Tribunal, therefore, determines that the Landlord is entitled to rely on paragraph 11 of Schedule 5 to the 1985 Act to deny the Tenants the right to buy the Property.


Simon Rowlands
Chairman

Date: 4th September 2006
Tribunal Members: Mr Rowlands, Mr Thompson, Mr Underhill