

**RESIDENTIAL PROPERTY TRIBUNAL  
REASONS FOR DECISION  
REF: CHI/18UH/RTB/2007/0001**

31 Haldon View Chudleigh Newton Abbot Devon TQ3 0LN

Housing Act 1985, Schedule 5, Paragraph 11, as amended by Housing Act 2004,  
section 181

**Applicant Tenant** Ms Marie Bunclark  
**Landlord** Teign Housing Templar Way Templars Wharf Colleth Way  
Brunel Industrial Estate Newton Abbot TQ12 4PH

**Tribunal Members**  
R Batho MA BSc LLB FRICS (Chairman)  
W H Gater FRICS IRRV

**Background**

1. Following a notice given under Section 122 of the Housing Act 1985 (The Act) by Ms Marie Bunclark, the tenant of 31 Haldon View Chudleigh Newton Abbot TQ3 0LN to the landlord, Teign Housing, of her wish to exercise the right to buy her dwelling, on 1<sup>st</sup> December 2006 the landlord responded under section 124 of the Act denying her right to buy on the grounds set out in paragraph 11 to schedule 5 of the Act.
2. By an application dated 12<sup>th</sup> January 2007, Ms Bunclark applied to the Residential Property Tribunal under paragraph 11(4) of schedule 5 for a determination as to whether the grounds set out in paragraph 11 were satisfied. The tenant's application form was copied to the landlord by the Tribunal, and by a reply dated 31<sup>st</sup> January 2007 the landlord gave notice that it intended to oppose the tenant's appeal.

**Procedural Matters**

3. The Tribunal received written representations from both the landlord and the tenant and these were copied to the parties. Neither party requested a formal hearing at which oral representations could be made. The Tribunal inspected the property on Thursday 22<sup>nd</sup> February 2007 in the presence of the tenant applicant, Ms Bunclark.

### **The Property**

4. The property comprises a first floor flat in a block built partly to one storey and partly to two storeys, so that it comprises four ground floor dwellings and two at first floor level.
5. Number 31 is approached by an external door at ground floor level (to which there are two external steps) at the rear of the building and then by an internal flight of fourteen concrete steps leading to a first floor landing, off which are a living room, a kitchen, two bedrooms and a bathroom/wc. There is a door from the living room onto a small balcony at the front of the building. All mains services appear to be connected and the property has a gas fired radiator central heating system which heats the whole flat. There is a communal drying area to the rear of the building (via which the flat is approached). There is no on site car parking facility but car parking is currently permitted on the street frontage.
6. Ms Bunclark's tenancy of this property started on 2<sup>nd</sup> June 2003 with her two children. Her evidence is that she was 38 years of age at that date.

### **The Legislative Provisions**

7. The Housing Act 1985 schedule 5 paragraph 11 says that 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 60 years of age or more, whether that person was the tenant or a predecessor in title to the tenant or another person.

### **Government Guidance**

8. ODPM Circular 07/2004 lays down guidelines for the consideration of cases under this legislative provision. It repeats that a landlord may deny the right to buy in respect of a dwelling house which was first let before 1<sup>st</sup> January 1990; and is particularly suitable for elderly persons aged sixty or over; and was let for occupation by such a person.
9. The circular indicates that consideration of whether a dwelling is particularly suitable for occupation by elderly persons should have regard to the dwelling's location, size, design, heating system and other features, where "elderly persons" will be taken to mean individuals who are able to live independently despite some limitations owing to age.

### **The Landlord's Case**

10. Teign Council's opposition to Ms Bunclark's appeal is based on the fact that 31 Haldon View was adapted for people with support needs. Ms E J Williams, for the landlord, says that the landlord's have details of adaptations made to the property which someone let before 1<sup>st</sup> January 1990, that person being aged 60 or more. The details of the adaptations are not disclosed.

### **Determination**

11. The relevant provisions of the Housing Act 1985 are that the right to buy does not arise if the property was let to the tenant or a predecessor in title of his for occupation by a person who was 60 years or more, not that there shall have been a tenant who was 60 years or more at some time since the property was first let. Ms Bunclark was 38 years of age when the tenancy was granted, and the evidence is that her tenancy did not succeed to an earlier tenancy, but was independently created at that time.
12. Accordingly it is clear that the requirements of the Act which would allow Teign Housing to resist Ms Bunclark's notice of right to buy are not fulfilled, and the Tribunal therefore allows her appeal.

### **Note on Suitability of Dwelling**

13. The Tribunal would also note that it does not consider the premises to be particularly suitable for occupation by elderly persons. The only obvious adaptation is the provision of an alarm system, but Ms Bunclark's evidence is that she had to sign a disclaimer against using this, and that accordingly it has not been upgraded and so is out of date.
14. The Tribunal also notes that the guidance of circular 07/2004 is that there should be easy access to the dwelling and that "in the case of a flat above ground floor level, there should be access by a lift which is available at all times (except for very short periods of routine maintenance or occasional breakdowns)." There is no such lift access here, simply the flight of steps referred to above.
15. Accordingly the Tribunal concludes that the accommodation does not meet the test of particular suitability, and so would have allowed Ms Bunclark's appeal on that ground, regardless of the question of age.



**Robert Batho**  
**MA BSc LLB FRICS FCI Arb**  
**Chairman**

**1 March 2007**