

RESIDENTIAL PROPERTY TRIBUNAL

Property : 8 Orchard Close,
Stoke Mandeville,
Aylesbury,
Bucks. HP22 5UQ

Appellant : Mrs. Evelyn Hayers

Respondent(s) : Aylesbury Vale District Council

Case number : CAM/38UG/LSC/2005/0005

Date of Application : 6th September 2005

Type of Application : Appeal against denial of tenants' right to buy
(Schedule 5 Housing Act 1985 as amended ("the
1985 Act"))

The Tribunal : Mr. Bruce Edgington (lawyer chair)
Mr. David Brown FRICS MCI Arb
Mr. David Wills ACIB

DECISION FOLLOWING A HEARING ON 18th NOVEMBER 2005

Introduction

1. The Appellant has applied to the Respondent to exercise her right to buy the property which is presently let by the Respondent to the Appellant.
2. By notice to the Appellant dated 9th August 2005, the Respondent refused the right to buy stating (a) that the property was first let before 1990, (b) that it is particularly suitable for occupation by elderly persons and (c) was let for occupation by a person aged 60 or more.
3. This appeal has been lodged within the 8 week statutory period allowed for such appeals.

The Law

4. The principle Statute which sets out the qualifying conditions to the right to buy is the 1985 Act. Schedule 5 deals with the cases where the right to buy does not apply and the Respondent relies upon Paragraph 11 which says:-

- 11(1) The right to buy does not arise if the dwellinghouse*
(a) is particularly suitable, having regard for 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 years 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 in title of his
(3) ... (not applicable to this appeal).
(4) "
(5) "
(6) This paragraph does not apply unless the dwellinghouse concerned was first let before 1st January 1990

The Facts of This Case

5. In her application, the Appellant states that the property was first let to her on the 2nd May 2005 on which date she was 64 although she makes the point that she has been a tenant of the Respondent for 28 years and was a council tenant elsewhere for a further 10 years. She says that the previous tenant was 47 when he died and a bungalow at nearby 14 Hampden Road was rented to a man of 36 in July 2005. She says that she has replaced the worktops on the kitchen and developed the garden including a path from the footpath to the front door.
6. The Appellant says that the reasons why the property is not suitable for the elderly is (a) there is no access from the back of the bungalow to the back garden, (b) the bungalow is not designed for the elderly, (c) access to buses is not convenient and (d) there is no warden and the property cannot be called sheltered housing.

7. A copy of the application form was sent to the Respondent for its observations. It was asked for the specific date when the property was first let to any tenant. The answer is "1970".
8. In a letter dated 23rd September 2005, the Respondent says that the property is within 150 yards of a general store including a post office. At that location it is said that there are bus stops on both sides of the road with buses to and from Aylesbury every 15 minutes. There is a railway station 400 yards away and the walks to both bus stops and station are flat save for a slight incline over a bridge.
9. The Tribunal inspected the property in the presence of the Appellant, Mrs. Hayers, and also Mr. Graham Bell, the Respondent's Housing Property Officer. It is a one bed-roomed bungalow in a pleasant residential area and, as Mrs. Hayers mentioned, there is no door between the bungalow and the rear garden. Access to the rear garden is through a door on the side of the property, down a path which is an access shared by the adjoining property and then through a gate.
10. Mrs. Hayers pointed out that it would be difficult for an elderly person to get out of the lounge window if there were a fire in the hall. The Tribunal noted that the plugs were at a height typical for use by the disabled. The central heating system had a back boiler and it was noted that although the Appellant had put in a front path, there had in fact a concrete path from the pavement to the front door which is still there.

The Hearing

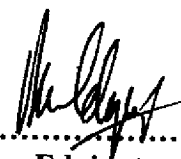
11. The Appellant, Mrs. Hayers and Mr. Bell attending the hearing which was conducted in a friendly atmosphere and without rancour. Mrs. Hayers repeated her earlier points and also said:-
 - (a) that it would be virtually impossible to use the kitchen if you had a walking frame or a wheelchair
 - (b) there was no contact alarm fitted
 - (c) it was awkward to put washing in the back garden

- (d) there is no local doctor's surgery – she has to get 2 buses to her doctor's surgery in Walton Court
 - (e) the local food store – part of the Londis chain – was too expensive to buy all one's daily requirements
 - (f) the buses were not as stated by the Respondent. The only buses which stopped at the bus stops in the village were (i) a free bus every Tuesday to a local Tescos and (ii) a pay bus every Thursday to Wendover Market. The buses to Aylesbury went from bus stops in Risborough Road, about half a mile away every half hour. However they are unreliable, have two steps to enter them which could not be negotiated by an elderly person with a full shopping trolley, and go to Great Weston Street, not the High Street.
 - (g) a taxi fare to Aylesbury is about £4 each way
 - (h) she did not like trains and therefore did not use them
12. Mrs. Hayer's was extremely critical of the policy of preventing homes suitable for the elderly being sold to tenants. She said it was age discrimination although she accepted that she could always transfer to a house and then exercise her right to buy.
13. Mr. Bell said that he could not argue with anything Mrs. Hayers had said. He apologised if his information about buses was wrong. He had obtained his information from the internet.

Decision

14. It is the Tribunal's decision that this appeal must fail because the Statutory criteria are met. It was not challenged that the property had first been let in 1970 i.e. before 1st January 1990.
15. Although Mrs. Hayers clearly started being a tenant of the Respondent before she was 60, the wording of the Statute clearly states that it is the letting of "the dwellinghouse" i.e. 8 Orchard Close which is relevant and when that letting commenced, Mrs. Hayers was then over 60.

16. The only question left is whether the property is particularly suitable, in its unimproved form, for occupation by elderly persons taking into account location, size, design, heating system and 'other features'. This property is in a pleasant, quiet location; it is a small bungalow level with the road and it appears to have a good and sufficient central heating system. Mrs. Hayers did point out some shortcomings but seems, with respect to her, to have confused 'infirm' with 'elderly'. They are not the same, and this Tribunal has to consider whether a property is suitable for a reasonably healthy elderly person. Taking everything into account, this Tribunal decided that it is.
17. As far as local facilities are concerned, the Tribunal noted Mrs. Hayers' reservations but it seemed to the Tribunal that reasonably priced shopping is a weekly free bus ride away to Tesco's even if the Lonsdale store is expensive. There are frequent buses and trains into Aylesbury and the train station is accessible to the elderly.
18. As a final point, the Tribunal has some sympathy with the Appellant's argument that this exception to the right to buy scheme could be seen to be age discriminatory in the sense that if she had been 59 when the property was let to her, she would have been able to buy. However, this Tribunal can only apply the law as it stands which is as set out above. If Mrs. Hayers wants to change the law, she must refer the matter back to her Member of Parliament.


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Bruce Edgington
Chair
18/11/05