

RESIDENTIAL PROPERTY TRIBUNAL FOR THE EASTERN RENT ASSESSMENT PANEL

Property : **17 Bromley
Long Marston
Tring
Hertfordshire HP23 4QU**

Appellant : **Mr Alfred George Terry Wells and
Mrs Christine Ann Wells**

Respondent : **Dacorum Borough Council**

Case Number : **CAM/26UC/RTB/2005/0008**

Date of Application : **12 October 2005**

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

The Tribunal : **Mr Andrew Dutton(Lawyer Chair)
Miss Marina Krisko BSc(ESTMAN)FRICS**

Date of decision : **19th January 2006**

DECISION

Introduction

1. On the 10 October 2005 Mr & Mrs Wells applied to the Tribunal for a determination pursuant to paragraph 11 to Schedule 5 of the Act appealing against the Respondents denial of their right to buy the Property from the Council.
2. The reasons for the denial were that
 - (a) The Property was first let before the 1st January 1990;
 - (b) That it was particularly suitable for occupation by elderly persons;
 - (c) It was let for occupation by a person aged 60 years or more.
3. The application had been lodged within the timescales applicable for such appeals, which is eight weeks.
4. On a review of the application and the Respondents notice indicating an intention to oppose the Appeal, the Tribunal considered that the matter was capable of being dealt with on the basis of a paper determination without hearing. The parties were informed of this decision and were invited to make written submissions to the Tribunal in advance of inspection of the Property.

Evidence:

5. In the application lodged with the Tribunal by Mr & Mrs Wells they described the property and the services available. They also set out in some detail the works of improvement they had carried out and highlighted the extent of the garden area. Mr & Mrs Wells stated that the next-door property had been sold by the Council. Mention was made that when Mrs Wells and her previous husband, Mr Parker, now deceased, had taken over the tenancy of the Property they were not informed that they could be precluded from exercising the right to buy in the future.
6. The Council's response to the Appeal was contained in two submissions dated 3rd and 23rd November 2005. They confirmed that when the Tenancy was granted to Mrs Wells, then Mrs Parker and her deceased husband, that Mr Parker was aged 63. The Council put forward various matters which indicated its belief that the Property was particularly suited to occupation by elderly persons. The Council were not able to indicate when the Property was first let but we were told that the Property had been transferred to Dacorum Borough Council by Tring Rural District Council in 1974. It appeared that the Property had been built in around 1965 and therefore there seemed to be no doubt that it had been first let before the 1st January 1990. This was not in fact challenged by Mr & Mrs Wells.
7. Mr & Mrs Wells had submitted two statements to us. The first, dated 16 November 2005, essentially repeated that which was included in the application. In a subsequent submission dated 13 December 2005, Mr & Mrs Wells confirmed that the original electric storage heaters had been replaced by a gas central heating system, which they had paid for, that works had been carried out to the kitchen and to the rear garden of the property and that they were proposing to erect a conservatory all at no cost to the Council. They indicated that when the conservatory is built in excess of £20,000.00 will have been spent on improvements to the Property in the last twelve years. Mr & Mrs Wells stated that they did not require the assistance of the elderly person's warden and that they enjoyed an active lifestyle which included motor-biking around the British Isles and Europe.

Inspection:

8. The Tribunal inspected the Property on 12 January 2006. The Property is a semi-detached bungalow in a crescent of similar bungalows at the end of a cul-de-sac at the edge of Long Marston village. Access to the Property is reached by a long concrete path from the roadway. There were two steps to enter the front door but otherwise the site was level and access easily obtainable. The bungalow's accommodation consisted of one bedroom with kitchen, living room and bathroom containing a full suite. There was a covered utility area giving access to a large rear garden with open views to the country side beyond. The Property had been the subject of some improvement works both by the Council and by Mr & Mrs Wells. Mr & Mrs Wells improvements do not need to be considered by us and the Council's appeared to be limited to the installation of replacement windows.

The Law:

9. The relevant section of the Act applicable to this application is to be found at Schedule 5 paragraph 11 thereof. Paragraph 11 states as follow:

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

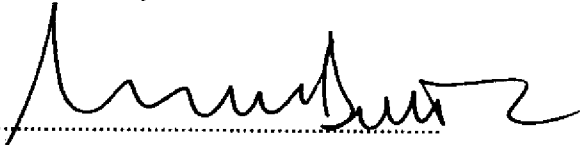
(3) –(5) are not applicable to this appeal.

(6) This paragraph does not apply unless the dwellinghouse concerned was first let before 1st January 1990.

Decision:

10. For the Council to be able to deny Mr & Mrs Wells the right to buy this Property they need to satisfy the Tribunal that the provisions of paragraph 11 to Schedule 5 of the Act apply. There appears to be no disagreement between the parties that the Property had been let to Mr Parker (Mrs Well's deceased husband) in 1993 and that at that time he was aged 63 years. Accordingly the provisions of paragraph 11(1)(b) have been fulfilled.
11. The issue we need to determine is whether of not this property is *particularly suitable* for an elderly person having regard to the matters set out in paragraph 11(1)(a). We find that it is. The Property, being a one-bedroom bungalow, is clearly particularly suitable for an elderly person. The Act does not require us to consider whether the elderly person is frail or disabled. Indeed the provision is made for those persons by other provisions of the Act. We take it to mean it is individuals who are able to live independently although of course there may be some limitations brought about by age. The village of Long Marston has, within 800yards or so, a village shop which is actually located on one the pubs. That also has a Post Office. We are aware there is a regular bus service to Tring and Aylesbury on a daily basis and therefore the shopping needs of the community can be met. The Property originally had electric storage heaters which would provide a suitable form of heating although of course we accept that Mr & Mrs Wells have replaced those with a full central heating system. There is no evidence before us that the previous heating system did not function properly. Access is perfectly suitable for elderly people and although mention is made of the size of the garden, that is not something we believe is relevant in determining the suitability of this Property for occupation by an elderly person. Of course we must also disregard any particular features that have been installed by the tenant or predecessor in title as provided for in paragraph 11(2) of the Act.
12. Accordingly, taking these matters in the round, it does seem to us, as we have indicated above, this is a Property that is particularly suitable for elderly persons and accordingly the Appeal is refused.

13. We do have sympathy with Mr & Mrs Wells in respect of the sale of an adjoining property but of course we cannot guess at the circumstances which may have led to the Council agreeing to sell that bungalow, nor is it relevant to this application. We have also noted Mr & Mrs Wells comments that they were not told, or least Mrs Wells was not told, that the right to buy scheme might not be available to them. It is not clear whether Mr & Mrs Wells would have made the improvements to the Property if they had known of this potential difficulty. Again these are matters that are not within our jurisdiction and Mr & Mrs Wells will need to consider elsewhere whether they are matters that could be pursued.



Chairman



Dated