

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

Case Number: CH1/18UK/RTB/2006/0004

**Decision on an Application under paragraph 11 of schedule 5, Housing Act 1985 (as amended)
(Appeal against refusal of Right to Buy)**

Applicant: Mrs W A Squire
Respondent: Torridge District Council
Property: 21 Southernhay, Winkleigh, Devon
Date of Application: 16 February 2006
Date of Consideration: 27 April 2006
Date of Decision: 11 May 2006
Tribunal Members: Mr A L Strowger, MA (Cantab) (Chairman)
Mr M Creek, MBE

DECISION

Decision: The Tribunal does not allow this appeal and the Applicant tenant shall not have the Right to Buy

Jurisdiction

- 1 The Tribunal is asked to exercise the jurisdiction conferred on it by section 181 of the Housing Act 2004 to make a determination under schedule 5 of the Housing Act 1985 ("the Act") in respect of the refusal by the Respondent of the Applicant's Right to Buy
- 2 Paragraph 11 of schedule 5 of the Act provides that:
 - "(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 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 or another person)

Application and background

Application and background

- 3 The Tenant, Mrs W A Squire, made an application to exercise her Right to Buy from the Landlord, Torridge District Council ("the Council").
- 4 On 30 January 2006 the Council gave Notice in Reply to the Applicant in Form RTB2 , denying the Right to Buy on the grounds in paragraph 11 of Schedule 5 to the Act that the property is particularly suitable for occupation by an elderly person.
- 5 The Applicant submitted her application to the Tribunal on 16 February 2006 with a completed questionnaire. This was copied to the Council.
- 6 The Council responded to the Tribunal on 7 March indicating that it opposed the Appeal as it considered the property particularly suitable for occupation by elderly persons for the reasons set out in its letter. The tenants were advised when they took the tenancy that the Council would resist any application to buy as the property is considered particularly suitable of occupation by elderly persons. The property is within a short walking distance (5 minutes) of local shops and amenities and a similar distance to the nearest bus stop which has regular services to local towns. The property itself also has full electric central heating and is fitted with an emergency community alarm system.

Background

- 7 The Applicant, Mrs Squire, has lived in the property for some 23 years. She originally came as a tenant with her now deceased husband on 23 November 1992. Her husband was aged 72 at the time and Mrs Squire is now aged 80.

Inspection

- 8 The Tribunal carried out an inspection of the property. The property is a bungalow built by the Council in the 1960s as one of a number of similar properties on an estate. She found the location convenient to her; it took her less than 10 minutes to walk to the Post Office and the local Londis store. There was a ring and ride bus service. The bus stop is approximately half a mile away. Mrs Squire said she could travel by the Torridge bus service to Barnstaple and by the West Devon service bus to Barnstaple. Mrs Squire said that her next door neighbours on one side were a working couple and on the other the couple had lived in the house for 40 years and brought up a family there. Mrs Squire advised the Tribunal that a number of nearby similar properties had been sold into private ownership.
- 9 From its own inspection the Tribunal noted that the property was in a quiet road with level easy walking access to local amenities. The adjoining property and others in the road are bungalows of a similar design. The bungalow comprises two bedrooms, a sitting room, kitchen and bathroom. There are electric night storage heaters in each room. Mrs Squire pointed out the emergency alarm system installed by the Council; this is wall-mounted, next to the bed, in the main bedroom. Outside the property enjoys open views to the front and a garden to the rear, mainly laid out to grass, accessed by 5 very shallow steps, formed by large paving slabs. There are 2 steps to the front door and 1 to the side door. Access from the street is by a gently rising concrete footpath. There are no hand rails to the footpath or the steps. Inside the property is on one level.

Consideration of the facts and the law and finding

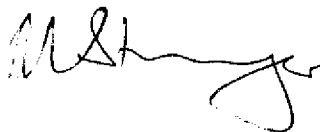
- 10 The Right to Buy legislation was intended to enable people to buy their council houses as part of Government policy to encourage a property owning democracy. At the same time the Government recognised the need to protect certain housing stock from that right to avoid a lack of suitable reasonably priced rented accommodation being available for the elderly. As set out above, Paragraph 11 of schedule 5 of the Act refers under (1) (A) to the exclusion from the right to buy of houses that are “particularly suitable” for letting to elderly persons, having regard to the listed factors, and was let to the tenant or a predecessor in title of his for occupation by a person aged 60 or more (whether the tenant or predecessor or another person).
- 11 In the present case the property was let to a person over the age of 60. Furthermore the Council followed good practice by giving notice to the tenant by letter that it would resist any application to exercise the right to buy because it considered the property to be particularly suitable for occupation by elderly persons.
- 12 The Act does not define what is meant by “particularly suitable” but guidance was provided in the DoE circular 13/93 now replaced and updated by ODPM Circular 07/04 (“the Circular”), following responses to consultation. The Circular is not binding on the Tribunal but particularly in the absence of any definition in the Act, it is highly persuasive and provides valuable guidance as to the appropriate application of the Act and as to particular suitability. The Circular guidance is that “elderly persons” are to be taken as persons who are able to live independently despite some limitations owing to age. It is not intended to include individuals who are frail or severely disabled.
- 13 In looking at the Circular the Tribunal finds that the criteria laid down as to particular suitability do not include items that are specifically designed for elderly people such as alarm systems and high level electrical sockets (or even an alarm system which the Council has installed at this property) – however desirable these features may be considered for elderly persons. Indeed the main features listed in the Circular as making a property particularly suitable for the elderly, would equally make the property attractive to other groups – for example a mother with young children and prams and pushchairs would no doubt enjoy the benefit of a property on the level and with few steps up to it. A particular differentiation in the Circular however is that it indicates a property with no more than 2 bedrooms would be “particularly suitable”.
- 14 The Tribunal has compared the Circular criteria with Mrs Squire’s bungalow. It is conveniently located with regard to local shops and a bus service and meets the criteria of the Circular as to proximity to them. It also meets the criteria with regards to its heating system and the fact that the bungalow is on one level.
- 15 The Tribunal considered the issue of external steps. The criteria refer under paragraph 12 to the ease of access on foot to the dwelling. In assessing ease of access, consideration is to be given to:
 - The number and size (in particular the height) and curvature of any steps to the dwelling itself, and also any steps in its immediate vicinity where these must be negotiated to gain access to it:

- The presence or absence of handrails, or other means of access to the dwelling and in its immediate vicinity that need to be negotiated to gain access to it;
- 16 The Tribunal did not consider that the 2 low steps to the front door and the 1 low step to the side door presented any difficulty to a person over the age of 60 who was able to live independently. Mrs Squire, now over 80, demonstrated this. The Tribunal did not find a handrail was necessary for an elderly person in the case of this property.
- 17 There are 5 shallow steps to the back garden. All references to steps in paragraph 12 of the Circular are to steps that “must be negotiated to gain access” to a property. The Tribunal finds that the steps to the back garden do not fall into this category. However even if they did, the Tribunal would not find that, given the low riser and long going of the steps, a handrail would be necessary to make them and the property “particularly suitable” for an elderly person or that, given the nature of these steps, they presented any difficulty to an elderly person.

Conclusion

- 18 In this case Mrs Squire and her husband were advised before they took occupation that the Council would resist any application to exercise the right to buy. They went into occupation in that full knowledge. The Tribunal notes Mrs Squire’s evidence that other nearby tenants have been granted the right to buy similar properties. However each case falls to be considered on its own particular facts and merits. After careful consideration of the facts in this appeal, the Tribunal finds that Mrs Squire’s property meets the criteria of the Circular as being a property particularly suitable for occupation by an elderly person.
- 19 Accordingly the appeal is dismissed and the decision of the Council to refuse the application to exercise the right to buy is upheld.**

Signed:



Dated: 15 May 2006

A.L.Strowger, Chairman