

RESIDENTIAL PROPERTY TRIBUNAL

Property : 70 Mill Lane,
Tye Green,
Cressing,
Braintree,
Essex CM77 8HW

Appellant : Bernard Edmund Drain

Respondent : Braintree District Council

Case number : CAM/22UC/RTB/2006/0015

Date of Application : 3rd October 2006

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. Richard Marshall FRICS FAAV
Mr. Roger S Rehahn

**Date and
Place of Hearing** : 19th December 2006 at The Old House, 11
Bradford Street, Bocking, Braintree, Essex
CM7 9AS

DECISION

1. This appeal is rejected and the Appellant is therefore not able to pursue his right to buy.

Reasons

Introduction

2. The Appellant applied to the Respondent to exercise what he thought was his

right to buy the property which is presently let by the Respondent to the Appellant.

3. By notice to the Appellant dated 18th September 2006, 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.
4. This appeal has been lodged within the 8 week statutory period allowed for such appeals.

The Law

5. 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

6. In his application, the Appellant states that the property was first let to him on

the 27th May 1997 on which date he was 67. He says that he has replaced the window in the main bedroom with double glazing.

7. The Appellant says that the reasons why the property is not suitable for the elderly are (a) the electricity meter is 7'6" from floor level with the trip switch 6'2" from floor level including all fuse boxes, (b) the internal and external water stop cocks are at skirting board level, (c) if the pilot light on the gas central heating goes out, one has to be a 'contortionist to get at it' and he has had to call out an engineer to deal with this in the past and (d) the amount of work to do in the garden which contains 3 big hedges and grass to cut in the front and rear gardens.
8. In other parts of his application form, he says that it is half a mile to the nearest post office, general store, bus stop and station. He says that planning permission has been given to demolish and rebuild the post office and general store which means that the property will be at least temporarily deprived of that facility. He also says that only the front door caters for wheelchairs although there are handrails in the bathroom and at the front and rear doors.
9. 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 "1945". The Respondent elected not to make any further written representations.
10. The Tribunal inspected the property in the presence of the Appellant, Mr. Drain. The Respondents elected not to attend the inspection. It is a two bed-roomed bungalow in a pleasant rural residential area. It is of brick construction under a tiled roof. The heating is by Baxi type gas heater with back boiler heating hot water and radiators in the living room, hall and both bedrooms. Access to the pilot light for the heating system was indeed

particularly awkward as was access to the meters and stop cock. However, it is clearly not impossible for a reasonable fit person over 60 which is the definition of 'elderly' which the Tribunal has to apply. There was secondary glazing to the main bedroom. The garden was of a reasonably small size and suitable to be maintained by a reasonable fit 60 year old.

11. As far as buses and trains are concerned, the local authority accepted Mr. Drain's comments about this. The bus route is from Braintree to Chelmsford via Witham half hourly on week days. The rail service is Braintree to London hourly which is all week. The shops are as stated by Mr. Drain save that the local authority representatives were unaware of any planning permission having been granted for the rebuilding of the post office.

The Hearing


12. The Appellant, Mr. Drain, and Messrs. Perry and Hawks from Braintree District Council attending the hearing which was conducted in a friendly atmosphere and without rancour. The facts were basically agreed. Mr. Perry accepted that the right to buy had been exercised by others in the locality. They had always opposed this under the old procedure.

Conclusion

13. 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 1945 i.e. before 1st January 1990. It was also accepted by the Appellant that he was over 60 when the property was let to him.
14. Therefore, the only question left to decide 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 relatively small bungalow on the same level as the adjacent road and footpath and it appears to have a

good and sufficient central heating system when working properly. Mr. Drain did point out some shortcomings but he seems, with respect to him, to have confused 'infirm' with 'elderly'. They are not the same, and this Tribunal has to consider whether a property is particularly suitable for a reasonably healthy person over 60. Taking everything into account, this Tribunal decided that it is because it is a bungalow with good level access, reasonable heating and is reasonably close to all the amenities which one would need. It must be said that it could also be said to be particularly suitable for other groups of people but that is not relevant to the issue.

15. As far as local facilities are concerned, the Tribunal noted Mr. Drain's reservations but reasonably priced shopping is at least a bus ride away in Braintree even if the general store is expensive. There are frequent buses although it was noted that the train station is not particularly accessible to the elderly in the sense that it is down a narrow lane with steep banks either side and no footway.
16. The Tribunal also took note that the property came within the guidelines set out in the ODPM Circular 07/2004 'Right to Buy; Exclusion of Elderly Person's Housing' as being particularly suitable for the elderly in terms of design, location, size, heating system and other facilities.
17. As a final point, the Tribunal noted that the pilot light in the heating system does seem to go out fairly frequently and the Respondent should see to this and the apparent lack of efficient lagging to the pipes for the water meter.


.....
Bruce Edgington
Chair
19/12/06