

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

Case No: CHI/23UD/3TB/2005/0001

Re: 27 All Saints Road, Blakeney, Gloucestershire, GL15 4DU.

Between:

Mr John Frederick Wort

("the Applicant")

And

Forest of Dean Housing Association Limited

("the Respondent")

In the matter of an Application under Paragraph 11 of Schedule 5
of the Housing Act 1985 (as amended) by the Housing Act 2004 Section 181

Members of the Tribunal

Mr A D McCallum Gregg, Solicitor Chairman.
Mr J Reichel, BSc, MRICS

INSPECTION AND ADJUDICATION
2nd November 2005

The Application and Background

1. Mr John Frederick Wort who is a tenant of the above property gave notice under Section 122 of the Housing Act 1985 to the landlord, Forest of Dean Housing Association Limited, of his intention to exercise the right to buy his dwelling.
2. The landlord served a notice dated the 3rd of August 2005 (Form RTB2) on Mr Wort under Section 124 of the Housing Act 1985 denying his right to buy on the grounds set out in Paragraph 11 to Schedule 5 of the Housing Act 1985.

3. By an application form dated the 6th of July 2005 but received by the Residential Property Tribunal Service on the 5th of August 2005 Mr Wort 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.
4. The completed form was copied to the Respondent by the Tribunal. The landlord gave notice in a reply to the Tribunal on the 23rd of August 2005 stating that it intended to oppose the tenant's appeal.

Hearing/Written Representations

5. Directions in this matter were given on the 26th of August 2005 when a Tribunal Chairman gave notice to the parties under Regulation 8 of the Residential Property Tribunal (Right to Determinations) Procedure (England) Regulations 2005 of the Tribunal's intention to proceed to determine the matter on the basis only of written representations and without an oral hearing unless either or both parties requested and hearing. Neither party requested a hearing.
6. On the 8th of September 2005 further written representations were received from the Applicant in support of his appeal.

Inspection

7. The Tribunal visited the property on the 2nd day of November 2005 and inspected the property and the surrounding location. The property was found to be a bungalow in good condition that is believed to have been constructed in the early 1970s. The property forms part of a terrace in a mixed development of social housing. The accommodation consisted of one good sized double bedroom, a reception room, a bathroom/WC and a good sized kitchen. All rooms had the benefit of electric storage heaters. At the front and rear there were well tended and reasonably sized gardens. Access to the property can be gained from either the front or the rear. Access via the front is by two flights of steps (10 and 5) with a landing in between and substantial handrails. Access to the rear of the property is by a level and tarmaced path. The property fronts on to a generous road area with more than adequate parking in front of the property. The location of the property is within a terraced estate on a hillside. It is also in a cul-de-sac. The terraces themselves are level but there are gradients between each terrace. At the gradients a number of bench seats have been provided.

8. The property is approximately 6 to 7 minutes walk from the centre of Blakeney which has, amongst other things, the following amenities, a Post Office, a good general Store (Londis), a public house, a fish and chip shop, clothes shops, a modern doctors' surgery (with off street parking), a bus stop (with regular services to Chepstow and Gloucester) and a pelican crossing in between the public and the general store and adjacent to the bus stop.

The Law

9. Paragraph 11 of Schedule 5 of the Housing Act 1985 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 for his occupation by a person who is aged 60 or more (whether the tenant or predecessor or another person).
- (2) In determining whether the dwelling is particularly suitable no regard shall be had for the presence of any feature provided by the tenant or a predecessor in title of his.....
- (6) This paragraph does not apply unless the dwelling house concerned was first let before the 1st of January 1990.

The Submissions

10. The Respondent's case is set out in their letter of the 23rd of August 2005 with accompanying documents and photographs in support which included the bus timetables, location plans and an estimated distance in metres to salient local facilities.
11. The Applicant sets out in detail in his letter of the 8th of September 2005 the reasons why he felt the property was unsuitable for occupation by persons who are aged over 60 or more. The main grounds of the tenant's appeal are set out on Page 54 of the bundle in his Paragraphs 1 and 2 where he refers to the property standing on top of fifteen steps and in describing the area as having steep hills on all sides. He also refers in his detailed submissions to the properties being difficult to let and queries the designation as an elderly person's residence.

12. He also refers to the ages of other tenants living in the vicinity though the Tribunal noted that Mr Wort is himself a fit and sprightly 69 year old.

The Tribunal's Determination

13. It is clear that for the ground set out in Paragraph 11 to apply each of the requirements set out in Paragraphs 11(1)(a) and (b) respectively must be satisfied. This is consistent with the approach adopted by the Secretary of State before the right of appeal was transferred to Residential Property Tribunals from the 4th of July 2005. When making his decision the Secretary of State had regard to the guidance published in the ODPM Circular 7/2004. Paragraph 18 of that circular states that "A significant number of appeals have involved properties that have been let for occupation by persons who are under the age of 60. In such cases the Secretary of State has upheld the appeal. It is important to reiterate that Paragraph 11 of Schedule 5 of the Housing Act 1985 applies only if a dwelling in question was let to the tenant or a predecessor of title of his for occupation by a person who was aged 60 or more".
14. Although this Circular is not binding on the Tribunal it does have regard to the criteria contained therein as a guide whilst deciding each case on its merits. A copy of the Circular had been received by the Applicant. In the present case, as noted above, the Tribunal agrees with the interpretation of the legal requirements set out in Paragraph 11(1)(b) as set out in Paragraph 18 of the Circular. The landlord Respondent had addressed all the criteria set out in Paragraph 11(1)(a) of Schedule 5 as supported with the accompanying documentation including plans, photographs, maps and timetables.
15. The Applicant stated that his tenancy began on the 26th of June 2000 when he was then 64 years of age and it appears that his predecessor(s) had occupied the premises since the early 1970s.
16. The Tribunal were therefore of the view that all the conditions of Paragraph 11 Schedule 5 of the Housing Act 1985 had been satisfied and the only issue for the Tribunal to determine is that set out in (1)(a) namely is the dwelling house particularly suitable, having regard to its location, size, design, heating system and other features for occupation by elderly persons.
17. The Tribunal, having inspected the property and the surrounding area concluded that the property was entirely suitable for occupation by elderly persons and met all the requirements of Paragraph (1)(a) above.

The Tribunal's Decision

- 18. The Tribunal accordingly determines that the appeal by Mr John Frederick Wort should be rejected and that he should be denied the right to buy 27 All Saints Road, Blakeney, Gloucestershire.**



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A D McCallum Gregg

3rd November 2005