

RESIDENTIAL PROPERTY TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

BIR/00CN/RTB/2006/001

*DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL
ON AN APPLICATION UNDER PARAGRAPH 11(4) OF SCHEDULE 5
TO THE HOUSING ACT 1985*

Tenant:	Mrs J. Willetts
Landlord:	Birmingham City Council
Subject property:	21 Clewley Grove Quinton Birmingham B32 1QZ
Date of landlord's notice denying the right to buy:	22 August 2006
Date of application to Residential Property Tribunal:	30 August 2006
Members of the Tribunal:	Mr A.P. Bell MA LLB Mr S. Berg FRICS Mr J. Arain

Introduction

1. This is a decision on an application made to the Residential Property Tribunal by Mrs J. Willetts ("the tenant"), the tenant of the property at 21 Clewley Grove, Quinton, Birmingham B32 1QZ ("the subject property"). The application made to the Residential Property Tribunal on 30 August 2006, is under paragraph 11(4) of Schedule 5 to the Housing Act 1985 ("the 1985 Act") for a determination as to whether the exception to the right to buy set out in paragraph 11 of Schedule 5 (property particularly suitable for occupation by elderly persons) applies to the subject property.
2. The landlord is Birmingham City Council ("the landlord").
3. The tenant gave notice to the landlord under section 122 of the 1985 Act, claiming to exercise her right to buy the subject property. The landlord served on the tenant a notice in reply (form RTB2), dated 22 August 2006, under section 124, denying the tenant's right to buy on the ground set out in paragraph 11 of Schedule 5. The tenant subsequently made the present application.
4. Neither party requested a hearing.

Subject property

5. The Tribunal inspected the subject property on 30 October 2006 in the presence of the tenant.
6. The subject property is a end terraced bungalow of traditional brick and tile construction. The accommodation comprises a lobby, one livingroom, one bedroom, a kitchen and combined bathroom and wc. The property has the benefit of full gas-fired central heating. There are gardens to the front and rear of the subject property.
7. The subject property is located at the end of a cul-de-sac. Access to the front door is by means of a path with a slight gradient from the road through the front garden. There is one step up from the garden path to the front door and one step up from the garden at the rear to the back door and there is no handrail in either case.
8. There are no significant gradients on the paths and pavements in the immediate vicinity of, and providing access to, the subject property.
9. The nearest shop selling basic food items and the nearest bus stop are both less than half a mile from the subject property.

The Applicable Law

10. The material parts of paragraph 11 of Schedule 5 to the 1985 Act provide as follows:
- (1) The right to buy does not arise if the dwellinghouse:-
 - (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 who was aged 60 or more (whether the tenant or a 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 of his.
 - ...
 - (6) This paragraph does not apply unless the dwellinghouse concerned was first let before 1 January 1990.
11. The Office of the Deputy Prime Minister (ODPM) has issued Circular 7/2004 (Right to Buy: Exclusion of Elderly Persons' Housing), which sets out the main criteria to be taken into account in determining the particular suitability of an individual dwellinghouse for occupation by elderly persons. The Tribunal is not bound by the circular, deciding each case on its merits, but it does have regard to the criteria contained in the circular as a guide.

Written representations

12. The Tribunal received written representations from the tenant and the landlord and these were copied to the other party.
13. The tenant questioned the particular suitability of the subject property for occupation by elderly persons on the ground that a tenant was required to walk a distance on foot from the cul-de-sac to the subject property and hence she contended that there was no suitable access for anyone with a disability. Further she mentioned that there was an additional short walk to a part of the cul-de-sac where a tenant could park a car or other vehicle or be picked up. She

also stated her belief that the occupants of the other three bungalows in the terrace of four were not all over 60 years old.


14. The landlord states there was one threshold step to the subject property up a slight sloping path and also a distance of approximately 0.3 miles to the local bus stop and 0.4 miles to the local shops selling basic food items.

Determination of the Tribunal

15. On the evidence of the landlord, which was not disputed by the tenant, the Tribunal finds that the subject property was first let before 1 January 1990 and therefore that the condition in paragraph 11(6) of Schedule 5 is satisfied.
16. The matter for the Tribunal to determine is whether the condition in paragraph 11(1)(a) of Schedule 5 is satisfied, namely that the subject property is particularly suitable for occupation by elderly persons.
17. The Tribunal finds that the subject property (as provided by the landlord and disregarding any features provided by the tenant) satisfies all the relevant criteria set out in paragraphs 12 of ODPM Circular 7/2004:
- There is easy access on foot to the subject property, notwithstanding one step up from the garden path to the front door and one step up from the garden at the rear to the back door and the absence of any handrails in either case;
 - The accommodation is on one level;
 - There are no more than two bedrooms;
 - The heating arrangements function reliably, provide heat to all the accommodation and may safely be left on overnight;
 - The subject property is located reasonably conveniently for shops and public transport, with both the nearest shop selling basic food items and the nearest public transport stop well within the stated maximum distance of 800 metres.
18. The Tribunal finds that there are no relevant factors that would support the conclusion that the subject property is not particularly suitable for occupation by elderly persons and in consequence the Tribunal finds that the subject property is particularly suitable for occupation by elderly persons within the meaning of paragraph 11(1)(a) of Schedule 5.

19. The Tribunal therefore determines that the landlord is entitled to rely on paragraph 11 of Schedule 5 to the 1985 Act to deny the tenant the right to buy the subject property.

Signed



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Mr A.P. Bell
Chairman

Date **15 NOV 2006**