

RESIDENTIAL PROPERTY TRIBUNAL

Case number : CAM/33UB/RTB/2005/0014

Property : 12 Spinners Close, Swaffham, Norfolk PE37 7LS

Application : Appeal against the landlord's denial of the tenant's right to buy [Housing Act 1985, Sch 5, para 11 (as amended)]

Appellant : Mrs Unis Cornwell

Respondent : Peddars Way Housing Association Ltd

DECISION

Handed down 21st February 2006

Inspection date : Monday 20th February 2006

Tribunal : G K Sinclair (Chairman), E A Pennington FRICS, P A Tunley

1. **For the reasons which follow the tenant's appeal against the denial of her right to buy the property is dismissed.**

Procedural

2. The Appellant is currently the tenant of the Respondent Housing Association, having transferred as a secure tenant of Breckland District Council when its housing stock was transferred to the Respondent on 30th March 1993. She is a qualifying person, within the meaning of the Housing Act 1985, by the terms of the Housing (Preservation of Right to Buy) Regulations 1993.
3. By Notice in Reply to the tenant's right to buy claim (Form RTB2) dated 31st October 2005 the Respondent denied that she has the right to buy because paragraph 11 of Schedule 5 to the 1985 Act applies, viz
 - 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 was lodged on 1st December 2005, within the 8 week statutory period allowed for such appeals.
5. Both parties made submissions in writing, upon which the other had the opportunity to comment, but neither party requested an oral hearing. The appeal was therefore conducted on paper after a brief inspection by the tribunal.

The law

6. The principal statute which sets out the qualifying conditions for a tenant's exercise of the the right to buy is the Housing Act 1985. Schedule 5 lists a series of exceptions to the right to buy. The Respondent relies upon paragraph 11. Since 4th July 2005 the avenue of appeal has been altered from the Secretary of State to the tribunal,¹ and the paragraph now reads as follows :
 - (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 who was 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 in title of his.
 - (3) Notwithstanding anything in section 181 (jurisdiction of county court), any question arising under this paragraph shall be determined as follows.
 - (4) If an application for the purpose is made by the tenant to the appropriate tribunal or authority before the end of the period of 56 days beginning with the service of the landlord's notice under section 124, the question shall be determined by the appropriate tribunal or authority.
 - (5) If no such application is so made, the question shall be deemed to have been determined in favour of the landlord.
 - (5A) In this paragraph "the appropriate tribunal or authority" means –
 - (a) in relation to England, a residential property tribunal; and
 - (b) in relation to Wales, the Secretary of State.
 - (5B) Section 231 of the Housing Act 2004 (appeals to Lands Tribunal) does not apply to any decision of a residential property tribunal under this paragraph.
 - (6) This paragraph does not apply unless the dwelling-house concerned was first let before 1st January 1990.
7. Please note, by comparison, the terms of paragraph 10 of the Schedule, which caters for

¹ See Housing Act 2004, s. 181, and the Housing Act 2004 (Commencement No 4 and Transitional Provisions) (England) Order 2005 [SI 2005/1729]

the infirm elderly :

- (1) The right to buy does not arise if the dwelling-house is one of a group of dwelling-houses –
 - (a) which are particularly suitable, having regard to their location, size, design, heating systems and other features, for occupation by elderly persons, and
 - (b) which it is the practice of the landlord to let for occupation by persons aged 60 or more, or for occupation by such persons and physically disabled persons,and special facilities such as are mentioned in sub-paragraph (2) are provided wholly or mainly for the purposes of assisting those persons.
- (2) The facilities referred to above are facilities which consist of or include –
 - (a) the services of a resident warden, or
 - (b) the services of a non-resident warden, a system for calling him and the use of a common room in close proximity to the group of dwelling-houses.

8. Although not binding upon the tribunal, the ODPM has produced revised guidance on the exclusion of elderly persons' housing from the right to buy.² Paragraph 12 of the circular lists the main points which the Secretary of State would normally expect to be satisfied in considering applications under paragraph 11 of the Schedule.

Inspection

9. The tribunal inspected the property in the presence of the tenant, Mrs Cornwell. It is a 2-bedroom semi-detached bungalow built of brick with an interlocking tiled roof in 1954 and occupies a corner site at the head of a small cul-de-sac off a narrow, mainly residential road just to the north of the town centre. The tribunal observed that on Spinners Lane, adjacent to Mrs Cornwell's side of the Close, is a small car repair shop, with quite a number of vehicles parked on land immediately outside it. A road sign also directs visitors to the police station along this road, thereby avoiding the traffic-light controlled junction at the entrance to the Market Place.
10. The front door to the property is quite narrow, about 840mm, and is approached by two small steps. The corridor inside is also narrow, with no room to pass. The property is now fitted with PVCu double glazing and has gas central heating throughout. The accommodation comprises two double bedrooms, each with a radiator under the

² See ODPM Circular 07/2004 (December 2004)

window, a living room, small bathroom with bath and over-bath shower, and (off the living room) a small dated kitchen to which the tenant had added a double wall unit. As well as a small larder there is, off a small passage leading to the rear (side) door, a former internal coal shed which the tenant had adapted for use by her washing machine and tumble dryer. The rear garden to this corner site is generously proportioned, and laid mainly to grass. By contrast, the front garden comprises a pedestrian path with stone chippings to either side, tapering towards the road to a width which, if the fence and gate were removed, would just admit entry for a vehicle to park off the road (but little room for opening the car doors on both sides). The path slopes ever so slightly towards the road, but the general topography of the area is almost level.

Findings of fact

11. Having considered the parties written submissions and the tenant's comments during the inspection, and the evidence obtained by the tribunal from its inspection of the property and surrounding area, the tribunal finds the following facts :
 - a. The property was first let when built in 1954
 - b. The Appellant and her late husband first became tenants of the then Swaffham Rural District Council in 1966, and in 1972 were offered by it the tenancy of a house at North Pickenham, several miles southeast of the town of Swaffham (the original offer letter was produced for inspection, showing an impressive rent of £1.89 per week)
 - c. On 16th August 1999 they accepted a transfer to the subject property because, she told the tribunal, her husband had heart trouble and they no longer wanted the bother of looking after a 3-bedroom house
 - d. At the date of that transfer the Appellant was aged 68 and her husband was 69
 - e. The property comprises no more than two bedrooms, and the accommodation is all on one level
 - f. The gas central heating is recent and would appear to function reliably, provides heat to the living room and both bedrooms, and may safely be left on overnight
 - g. The property is no more than 800 metres from town centre Post Office, basic food shops and many others and, in the other direction, a Waitrose supermarket and medical centre (where a bus indicating a "town centre" service was observed

at a bus stop). A regular bus service to Norwich, King's Lynn and other major towns is provided from the Market Place.

12. By reason of the above findings concerning the letting history of the property, its facilities, and the surrounding area, the tribunal is satisfied that it meets the statutory criteria of being particularly suitable for occupation by elderly persons.
13. By way of postscript, the tribunal appreciates that this decision may seem unfair to Mrs Cornwell, who commented that other bungalows had in the past been sold and at least one was occupied by a family. She said that about three years ago she and her husband applied to buy the property and met no resistance from Peddars Way, but that with her husband soon afterwards dying and the subsequent stress which befell her she withdrew her application. The tribunal has no means to determine the accuracy of this information, nor whether Peddars Way may since then have changed its policy on the preservation of its housing stock in locations such as this, but Parliament has given to the tribunal the duty only to determine whether property is particularly suitable for occupation by the elderly, not the power to decide upon the reasonableness of a landlord's decision to rely upon this exception.

Dated 21st February 2006



Graham Sinclair — Chairman
for the Residential Property Tribunal