

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

Case No. CHI/45UE/RTB/2005/0002

Re: 2 Hogarth Road, Tilgate, Crawley, West Sussex, RH10 5JZ

Between:

Mrs Bagh Roshan

("the Applicant")

and

Crawley Borough Council

("the Respondent")

Members of the Tribunal: Mr J.B. Tarling, Solicitor, MCMI (Chairman)
 Mr R.A. Wilkey, JP FRICS FInstCPD

Decision: 27th January 2006

DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL

**In the matter of an Application Paragraph 11 of Schedule 5 of the
Housing Act 1985 (as amended)
(Appeal against Right to Buy)**

Decision

**The Tribunal ALLOWS THIS APPEAL and the Applicant/Tenant is to
be allowed the Right to Buy**

Jurisdiction

1. Section 181 of the Housing Act 2004 provides that determinations to be made under Schedule 5 of the Housing Act 1985 shall in future be made by a Residential Property Tribunal instead of the Secretary of State. By the Housing Act 2004 (Commencement No. 4 and Transitional Provisions)(England) Order 2005 the provisions of Section 181 of the Housing Act 2004 came into force on 4th July 2005.
2. 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 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 or another person)

(4) If an application for the purpose is made by the tenant... before the end of the period of 56 days beginning with the service of the landlords notice under Section 124 of the Housing Act 1985, the question shall be determined by the Residential Property Tribunal.

3. In this case the Applicant/Tenant had served a Notice under Section 122 of the Housing Act 1985 claiming to exercise the right to buy which was received by the Respondent/Landlord on 11th August 2005. The Respondent/Landlord had served a Notice under Section 124 of the Housing Act 1985 denying the right to buy on 2nd September 2005. It agreed that the Applicant/Tenant was aged 60 or over when the tenancy commenced. The Applicant/Tenant made an Application to the Residential Property Tribunal ("the Tribunal") for a determination under Paragraph 11 of Schedule 5 of the Housing Act 1985 (as amended) on 14th September 2005 which was within 56 days of the date of the Landlords Notice under Section 124 of the Housing Act 1985.
4. On 21st October 2005 the Tribunal gave Directions providing for both parties to supply written representations in support of their case and gave notice under Regulation 8 of the Residential Property Tribunal (Right to Buy Determinations) Procedure (England) Regulations 2005 that it intended to proceed to make the determination on the basis of written representations and without an oral hearing. Neither party requested an oral hearing and the Tribunal proceeded to make the determination on the basis of the matters contained in its Directions made on 21st October 2005.

Inspection

5. The Tribunal carried out an inspection of the property and the surrounding area on 11th January 2006.
 - (i) **The Property.** The property is a ground floor two bedroom flat in the residential area of Tilgate at Crawley in West Sussex. It is part of a two-storey Building with a number of similar Flats at ground floor and first floor level. A non-permanent wheelchair ramp had been installed from the concrete footpath to the top of the threshold at the front door. It was noted that in the neighbouring ground floor flat (No. 6) there was one step plus the threshold to the front door. The subject Flat also had one step up to the threshold of the front door but the ramp covered the step and threshold. The subject flat also had a handrail alongside the ramp attached to the wall. Apart from the wheelchair ramp and handrail, no other adaptations for the elderly had been made to the property. The accommodation comprises two bedrooms, one living room, a bathroom (with bath and wash-basin) and separate WC, and a Kitchen. At the rear of the property is a rear garden area, which was surrounded by two metre close-board fencing, and an outside storage brick-built shed with a corrugated asbestos roof. All the accommodation is on one level. The windows and front door are double-glazed. A gas-fired Baxi boiler provides central heating and hot water. There are radiators in most of the rooms.
 - (ii) **The surrounding area.** The property is situated on level ground with concrete walkways leading to the pavements in Hogarth Road. A short distance away (176 metres according to the information supplied by the

Respondent/Landlord) there is a parade of local shops, which included two small supermarkets selling food and other domestic requirements, a butcher, a baker, a Post Office, two Newsagents and a chemist and other local shops. There were concrete ramps leading down kerbs on the approaches to the shops for easy access. There were bus-stops a short distance away (209 metres according to the information supplied by the Respondent/Landlord) which served two bus routes direct to Crawley town centre.

Consideration

6. The members of the Tribunal first of all considered the evidence that had been produced by both parties.

(i) The Applicant/Tenants evidence The Applicant/Tenant had set out in the Application Form to the Tribunal the reasons why she considered the property to be unsuitable for occupation by the elderly. She referred to the noise made by people leaving the nearby Public House, and the Activity centre. She said the roads were busy, the back gate to her garden was very vulnerable to access by strangers, and the Flats were not very well insulated which made them noisy. In a letter to the Tribunal dated 7th September 2005 the Applicant/Tenant, who was 73 years old, said her Husband had to be removed to a Nursing Home because the Flat could not be adapted to enable him to continue to reside there. She alleged that the Respondent/Landlord did not want to sell the Flat because they have already sold so many that they now wished to hold some back. She wished to continue to live in her home for the rest of her life without having to worry that she might be moved out. In a Questionnaire supplied by the Tribunal the Applicant/Tenant said that apart from the wooden removeable temporary ramp leading to the front door, the rest of the Flat has no adaptations for the elderly. She alleged that the toilet and kitchen were small and did not have much potential for becoming disabled friendly. In a letter to the Tribunal received on 8th December 2005 the Applicant/Tenant referred to the fact that "most people who are elderly/young and have adjoining properties to our house, have purchased their property thus I believe I should be allowed to purchase this property."

(ii) The Respondent/Landlords evidence

The Respondent/Landlord had supplied copies of the Form RTB2 Notice in reply to the Tenants Claim. This confirmed in Part C of that Form that "in the opinion of the Landlord you do not have the right to buy because paragraph 11 of Schedule 5 to the Housing Act 1985 applies. This means that the property was first let before 1st January 1990, is particularly suitable for occupation by elderly persons and was let for occupation by a person aged 60 or more. In a letter to the Tribunal dated 21st September 2005 the Respondent/Landlord had set out in detail the reasons why they considered that the exclusion in Paragraph 11 of Schedule 5 of the Housing Act applied. In summary those reasons were:

- (a) The property was a 2 bedroom Ground Floor Flat
- (b) It had gas central heating and the bedroom and lounge were served by radiators.
- (c) There were no steps leading to the entrance to the property.
- (d) A non-permanent ramp has been installed from over the footpath to the top of the threshold. A handrail alongside the ramp has also been fitted.

- (e) The property was a short distance away from local shops.
- (f) Bus stops were nearby allowing access to the Town centre and the railway station.

Copies of the Bus timetable and a scale plan of the immediate neighbourhood had also been supplied.

- (iii) Copies of the relevant documents setting out the history of the tenancy had also been produced. This revealed that the original tenant had been a Miss H.H. Collier whose tenancy had commenced in 1957. That tenancy had terminated in 1999 and a note on the Record Card indicated she had moved into a Nursing Home. This seemed to indicate that the Flat had been built shortly before 1957 and that the original tenant had occupied the same Flat for approximately 42 years. Miss Collier's age when the tenancy commenced was not known, but the members of the Tribunal calculated that if she had been 60 years of age in 1957, she would have been 102 years of age when she left the Flat to move into a Nursing Home. Although there was no evidence before the Tribunal regarding Miss Collier's age in 1957, it seemed unlikely that she had been over the age of 60 in 1957. This might indicate that when the property was originally let, it was not let to an elderly person. The Tenant who followed Miss Collier was Mr M. Rehman, the Husband of the current Tenant Mrs B. Roshan.
7. There appeared to very little dispute between the parties as to the extent or description of the accommodation and surrounding area. The members of the Tribunal had inspected the property and the results of their inspection are set out in Paragraph 5 above. They then turned their attention to making a decision as to whether the property was particularly suitable for occupation by the elderly. They considered the wording of Paragraph 11 of Schedule 5 of the Housing Act 1985 and noted that Parliament had used the word "particularly" as an adverb before the word "suitable". The Act did not have any Interpretation Section explaining or expanding on the interpretation of the words "particularly suitable". Neither party had referred the Tribunal to any legal authority or statutory definition of these words.
 8. They also considered the Guidance Note ODPM Circular 7/2004, which had been issued in December 2004 by the ODMP to give guidance to those persons charged with making decisions on such appeals. Such Guidance is not binding on the Tribunal but is sometimes helpful in assisting it in making its decisions. Whilst that Guidance Note was of assistance in setting out matters of detail, e.g. the number and size of steps etc, it failed to give any reasoned or authoritative interpretation of the words "particularly suitable".
 9. The Residential Property Tribunal membership includes lawyers and valuers who are experienced professionals who have been appointed because of their expertise in dealing with residential property. The Tribunal is an independent Tribunal, which is charged with making Decision on a wide variety of applications under a large number of Housing and Landlord and Tenant items of legislation. It performs its tasks as a judicial function and in doing this it frequently has to interpret legislation. In this case the Tribunal's duty is to interpret the words "particularly suitable for occupation by the elderly."

Decision

10. In making decisions in these kinds of Applications the Tribunal decides each individual case on its own merits. This is usually done after carrying out a full inspection of the inside and outside of the property and the surrounding area, as it had done in this case. After giving the matter much consideration the Tribunal reached the conclusion that the subject property was suitable for a wide range of people. It was suitable for people with young children as the level access to the Ground Floor Flat was convenient for prams and pushchairs and there was a small garden to hang washing and in which the children could play safely. It was near local shops and bus routes etc. It was also suitable for disabled occupiers. This property had a wheelchair ramp and a handrail allowing access to the front door by disabled people with or without wheelchairs. In fact the property was suitable for occupation by anyone, whether young, old or middle-aged, able-bodied or disabled
11. Using their local and expert knowledge and experience, the Tribunal remind themselves that Crawley was developed in the 1950 and 1960s as a "New Town." The idea was to provide accommodation for the post-war overspill from London. Associated with this expansion in housing was the development of large industrial estates and the nearby large International Airport of Gatwick to provide work for the new residents of the town. The housing estates were all laid out and specially designed to provide easy access to local shops on level ground and with a good bus and transport system for all. Accordingly most of the properties on the Tilgate estate, including the subject property, had these facilities whether they were occupied by elderly persons, or persons of a younger age group.
12. The members of the Tribunal were unable to find anything that made this property *particularly* suitable for occupation by the elderly. In considering the word "particularly" the Oxford English Dictionary was consulted and this defined the word as "in a special degree; more than others or more than in other cases, especially, notably, markedly, more than usual" The members of the tribunal applied those alternative words instead of the word "particularly" and were still unable to find anything that made this property particularly suitable for occupation by the elderly. They then considered what kind of accommodation might be considered to be "particularly suitable" for occupation by the elderly. As an expert Tribunal it considered that clearly, purpose-built sheltered accommodation which included the usual security, possibly with a resident warden, alarm systems, and perhaps communal lounge and washing facilities etc was certainly "particularly suitable" for occupation by the elderly. The subject property had none of these special features.
13. The only adaptation that had been made to the property that might have made it particularly suitable for occupation by the elderly was the non-permanent wheelchair ramp and handrail. The Guidance issued by the ODPM refers to "elderly persons" as meaning individuals who are able to live independently despite some limitations owing to age. It will not mean individuals who are frail or severely disabled." In the opinion of the Tribunal the existence of a wheelchair ramp and handrail is more applicable to disabled persons who might use a wheelchair and who are

“frail or severely disabled”, rather than the persons coming within the description of elderly persons as set out above.

14. The Tribunal members also considered other factors, which might make the subject property “particularly suitable” for occupation by the elderly. The fact that the subject property was a two bedroom Flat Ground Floor did not persuade them that it was “particularly suitable” Many young couples, with or without children, often occupy such accommodation as a first home. The test is being made in 2006 at a time when life has changed considerably since 1985 when the Act was passed. Since then society has changed considerably and one of the main concerns often voiced by the elderly is the fear of violence and anti-social behaviour. Indeed this Applicant had included similar comments about noise and intruders in her Application and supporting documents. In the view of the Tribunal the subject property had little protection against such threats as it had direct access from the public road and footpaths.
15. The Tribunal noted that in the past decisions on such Right to Buy Appeals had been taken by the appropriate Officers of the Secretary of State. That jurisdiction has now been transferred to the Residential Property Tribunal. It noted that in the past the Secretary of State had made the decisions without apparently having inspected the interior of the subject properties. Having reviewed a number of such decisions made by the Secretary of State it noted that these seem to have been decided administratively rather than judicially. The letters informing the parties of such decisions were factual without giving detailed reasons and consideration of any legal arguments to support the decision. The Decision being made by this Tribunal follows the Tribunal’s usual procedures of explaining the reasons for its decisions as required by law.
16. For the reasons given above the Tribunal HEREBY ALLOWS THE APPEAL against the refusal of the Applicant/tenants Right to Buy and the Applicant/Tenant is to be allowed the Right to Buy.

Dated this 27th day of January 2006

J.B.Tarling



John B. Tarling
(Lawyer/Chairman)