

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

Case Number: CH1/18UK/RTB/2006/0004

**Decision on an Application under paragraph 11 of schedule 5, Housing Act 1985 (as amended)
(Appeal against refusal of Right to Buy)**

Applicant: Mr and Mrs O Wilkinson
Respondent: Plymouth City Council
Property: 21 Langley Crescent, Plymouth21 Southernhay, Winkleigh, Devon
Date of Application: 20 March 2006
Date of consideration: 27 April 2006
Date of Decision: 15 May 2006
Tribunal Members: Mr A L Strowger, MA (Cantab) (Chairman)
Mr M Creek, MBE

DECISION

Decision: The Tribunal allows this appeal and the Applicant tenant shall not be denied the Right to Buy

Jurisdiction

- 1 The Tribunal is asked to exercise the jurisdiction conferred on it by section 181 of the Housing Act 2004 to make a determination under schedule 5 of the Housing Act 1985 ("the Act") in respect of the refusal by the Respondent of the Applicant's Right to Buy
- 2 Paragraph 11 of schedule 5 of the Act 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 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...is made by the tenant...before the end of 56 days beginning with the service of the landlord's notice under Section 124 of the Housing Act 1985, the question by the Residential Property Tribunal.

Application and background

- 3 The Applicant tenant, Mr and Mrs O Wilkinson, made an application to exercise their Right to Buy from the Respondent landlord, Plymouth City Council ("the Council").
- 4 On 9 March 2006 the Council gave Notice in Reply to the Applicant in Form RTB2 , denying the Right to Buy on the grounds in paragraph 11 of Schedule 5 to the Act that the property is particularly suitable for occupation by elderly persons (with the handwritten word "disabled" added to the printed form).
- 5 The Applicant submitted her application to the Tribunal on 20 March 2006 and returned the questionnaire on 30 March indicating that they did not want an oral hearing.
- 6 This Council opposed the Application, setting out its views in its letter of 12 April 2006. The Applicants had previously lived in a three-bedroom house but this was not suitable for Mrs Wilkinson's need owing to her disabilities and so they had applied to the Council for re-housing. The Council allocated them a one-bedroom bungalow, 21 Langley Crescent, with, based upon Mrs Wilkinson's disability, a walk-in shower. The Council refers to the property as designated for the elderly. It describes the near proximity of local shops, banks, post office, library and health centre – just a quarter of a mile away in Southway Drive Shopping Precinct. The Council referred to the photographs submitted by the Appellant and commented that the crossing stepped footpaths with handrails enabled the pavement to be accessed without the need to use the steps that lack railings. The Council pointed out that the area is served by frequent bus services – the No. 39 actually stops in Langley Crescent and other services travel along Clifford Road; there are regular services to the city centre and elsewhere.

Background

- 6 The Applicant, Mr and Mrs Wilkinson, commenced their tenancy of the property in July 2003. At that time Mr Wilkinson was 56 years old and Mrs Wilkinson was 35. Mrs Wilkinson has physical disabilities and requires the use of a wheel chair. She indicated on the application form that the only provision in the bungalow for her disability is the walk-in shower cubicle.

Inspection

- 7 The Tribunal carried out an inspection of the property. The property is a brick built flat roofed bungalow and is the end one of a small block of what appear to be externally identical properties built by the Council. The properties are on a hill and are set back from the road. There are steps (with railings) leading down from the road to the path that runs in front of the bungalows. This path has a series of three steps (without railings) at intervals to assist in negotiating the hill. There are similar steps to the footpath running at the rear of the properties.
- 8 The bungalow is situated halfway up a hill, some 6 miles from the city centre of Plymouth. It is approximately a quarter of a mile up a comparatively steep hill to local shops which include a Morrisons food store and a post office in a shopping precinct. There is a bus stop nearby.

- 9 The bungalow has one bedroom, sitting room and quarry tiled kitchen and bathroom. There is central heating with a gas-fired boiler. A Piper Alarm system is fitted. In the bathroom there is a walk-in shower. The garden area to the rear is paved and there is a separate store.

Consideration of the facts and the law and finding

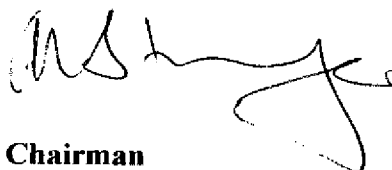
- 8 The Right to Buy legislation was intended to enable people to buy their council houses as part of Government policy to encourage a property owning democracy. At the same time the Government recognised the need to protect certain housing stock from that right to avoid a lack of suitable reasonably priced rented accommodation being available for the elderly. As set out above, Paragraph 11 of schedule 5 of the Act refers under (1) (A) to the exclusion from the right to buy of houses that are “particularly suitable” for letting to elderly persons, having regard to the listed factors, and was let to the tenant or a predecessor in title of his for occupation by a person aged 60 or more (whether the tenant or predecessor or another person).
- 9 The Act does not define what is meant by “particularly suitable” but guidance was provided in the DoE circular 13/93 now replaced and updated by ODPM Circular 07/04 (“the Circular”), following responses to consultation. The Circular is not binding on the Tribunal but particularly in the absence of any definition in the Act, it is highly persuasive and provides valuable guidance as to the appropriate application of the Act and as to particular suitability. The Circular guidance is that “elderly persons” are to be taken as persons who are able to live independently despite some limitations owing to age. It is not intended to include individuals who are frail or severely disabled.
- 10 In looking at the Circular the Tribunal finds that the criteria laid down as to particular suitability do not include items that are specifically designed for elderly people such as high level electrical sockets or alarm systems (which is installed at this property) - however desirable these features may be considered for elderly persons.
- 11 The Tribunal has compared the Circular criteria with Mr and Mrs Wilkinson’s bungalow. It is conveniently located with regard to local shops and other amenities and has a bus stop nearby with a frequent service to the city centre and elsewhere. It meets the criteria of the Circular with regard to the accessibility of these facilities. Internally the property meets the criteria laid down in the Circular: it is on one level, has a satisfactory central heating system and just one bedroom. The alarm system and walk-in shower are additional bonus features but even without these the Tribunal finds that the property itself is particularly suitable for persons over the age of 60.
- 12 The Tribunal considered the issue of external steps. The criteria refer under paragraph 12 to the ease of access on foot to the dwelling. In assessing ease of access, consideration is to be given to:
 - The number and size (in particular the height) and curvature of any steps to the dwelling itself, and also any steps in its immediate vicinity where these must be negotiated to gain access to it;
 - The presence or absence of handrails, or other means of access to the dwelling and in its immediate vicinity that need to be negotiated to gain access to it;

- 13 The Tribunal did not consider that the steps to the pathways running parallel to the properties front and rear presented undue difficulty to elderly persons so as to make the property unsuitable. Whilst these pathways do not have handrails, each set of steps only comprises 3 steps and it is not necessary to use the rear steps at all. To the front it is possible to reach the pavement by going up the cross-pathway which does have a handrail.
- 14 The Applicants referred to the Mrs Wilkinson's difficulties arising from her disability with regard to access to the property. However the criteria laid down in the Circular are in respect of an elderly person who is capable of independent living despite some limitations due to age. Paragraph 11 is not intended to include persons who are frail or severely disabled. In any event the mobility problems that Mrs Wilkinson refers to arise from her physical disability not from age.
- 15 The Tribunal notes the point made by the Council with regard to local topography – that the locality is hilly and that this is a feature of the Plymouth area. Whilst it may be desirable to have houses for the elderly on the flat, this is very difficult to achieve in the locality and to make provision for housing for the elderly in the area there may well have to be compromise.

Conclusion

- 16 In this case the Tribunal finds that the property is particularly suitable for occupation by persons aged 60 or more, applying the guidance laid down in the Circular.
- 17 However the Tribunal has no evidence before it that the property has ever been let to a person aged 60 or more. In its response the Council made no reference to the age of any previous tenants. It said that the Applicant would have been advised that the property would not be eligible for the Right to Buy but produced no evidence that this was actually done. The Council referred in its letter to the property being designated for the elderly but did not elaborate on this. It also added suitability for "the disabled" to the RTB2 Notice. This is irrelevant to this appeal.
- 18 Under paragraph 11, (1) (b) the Right to Buy does not arise if a property "was let to a 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). The converse applies – sub-clause (1) (b) is conjunctive and the Right to Buy does arise if this requirement is not satisfied. In the absence of any evidence to the contrary, the Tribunal finds that the Application must succeed and the Applicant is entitled to exercise the Right to Buy.
- 19 **Accordingly the appeal is allowed and the decision of the Council to refuse the application to exercise the right to buy is not upheld.**

Signed:



A.L. Strowger, Chairman

Dated: 15 May 2006