

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL

Case number : CAM/42UE/RTB/2006/0003

Property : 28 Green Hill, Coddendam, Ipswich, Suffolk IP6 9PU

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 Jitpirom Waite

Respondent : Mid Suffolk District Council

DECISION

Handed down 31st July 2006

Inspection date : Wednesday 26th July 2006

Tribunal : G K Sinclair (Chairman), G R C Petty 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 allowed.**

Procedural

2. The Appellant is currently the tenant of the Respondent Housing Authority under a secure tenancy and is a qualifying person, within the meaning of the Housing Act 1985.
3. By Notice in Reply to the tenant's right to buy claim (Form RTB2) dated 24th April 2006 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 18th May 2006, 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. The Appellant requested an oral hearing, which followed 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 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 the infirm elderly :

- (1) The right to buy does not arise if the dwelling-house is one of a group of dwelling-houses –

¹ See Housing Act 2004, s.181, and the Housing Act 2004 (Commencement No 4 and Transitional Provisions) (England) Order 2005 [15 2005/1729]

- (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 ODPM² has produced revised guidance on the exclusion of elderly persons' housing from the right to buy.³ 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 and hearing

9. The tribunal inspected the property in the presence of the tenant, Mrs Waite and her next-door neighbour, Mrs Taylor. It is a 2-bedroom detached bungalow built of brick with an interlocking tiled roof in 1971 and is the first in a row of three such bungalows situate on a steep slope above and behind a small communal car park off Green Hill, an extension of School Lane, in the village of Coddensham. This car park, owned by the council, is behind another row of three similar sized bungalows – this time in a terrace – on level ground facing directly on to Green Hill.
10. Access to the subject property is obtained by three different routes. As shown on a plan produced by the council and annexed to this decision they are as follows :
- a. From the car park, up a flight of 8 concrete steps (with handrails on each side) to a sloping path (route b), just before its angle steepens and the path becomes a series of 6 elongated steps which meet the horizontal path running immediately in front of the subject property
 - b. From the public highway, by the side of the vehicular access to the car park, up

² Now known as the Department for Communities and Local Government

³ See ODPM Circular 07/2004 (December 2004)

the sustained sloping path (with handrail to one side) which then becomes the series of 6 elongated steps referred to in route a above

- c. From the public highway, just beyond 36 Green Hill, a wide sloping tarmac footpath providing access to numbers 36, 38 and 40 Green Hill and round the top of number 40 along to the row of three top bungalows (including the subject property) has at some time past been converted into a very narrow vehicular route (barely the width of a car), and the path immediately in front of the row of bungalows has been extended to the width of a car by encroaching on their front gardens. This is not a satisfactory vehicular route because there is nowhere to pass, and at the bend by number 40 there is a grass slope dropping steeply to the hard brick corner of the house.
11. The subject property itself was built in 1971 and is now fitted with PVCu double glazing throughout. The accommodation comprises two double bedrooms, each with a single power point, on a split level – up 4 stairs – at the rear (east), and a living room, small bathroom with bath and over-bath shower, separate WC, a small dated kitchen to which the tenant had added a tall double display unit, and (off the other side of the living room) a PVCu front door and small entrance lobby in which the tenant placed a large fridge freezer and separate freezer. Heating is provided by an electric blown air system which heats only the kitchen, living room and hall. The bathroom and WC are immediately off this hall but are not directly heated. The two bedrooms are also reached from the hall, up 4 stairs, but despite being at a higher level the tribunal was told by both Mrs Waite and her neighbour that the bedrooms remain cold. The tribunal noted that Mrs Waite has an electric convector heater in her bedroom. This is notwithstanding the substantial amount of loft insulation which the tenant admitted had been installed by the landlord.
 12. From the kitchen door at the side of the property the rear garden is accessed by a path including 4 high steps. This leads around the side to a gravelled area where the clothes line is situate. At the rear of the property the back garden continues up the hill. 8 badly maintained concrete steps (some in much worse condition than others) lead up a steep slope to the lower end of the lawn, which again slopes upwards for about 20–30 metres to the field boundary at the rear. The tribunal was disturbed to note that the bottom

edge of the lawn was slightly above and not wholly retained by the top step, which was a chamfered kerbstone on its side. One could very easily slip on to and then off the sloping top step, even when dry. At the time of inspection the grass had been cut short and was very dry, brown and slippery under foot, in view of the prevailing hot weather conditions. A small pile of clippings was noted at the top of the garden. The northern side boundary was seen to be secure while that to the south (shared with the neighbour Mrs Taylor) was marked towards the rear by concrete and then metal posts, but with no wire.

13. The hearing commenced at 10:50, at the Limes Hotel, Needham Market. The council was represented by Ms Frieda Hildebrandt, its Home Ownership officer. The Appellant was accompanied by Mrs Taylor. The points made in evidence focussed on the following issues :

- a. *Access.* The Appellant said that in winter the path from the car park is particularly slippery; not only the slope but the steps. Old people would not find it suitable to walk up and down. The vehicular access was very dangerous if slippery in winter, both Mrs Waite and Mrs Taylor commenting on how bad it was when there had been snow or ice. Although sand or grit was supplied by the council the tenants had to treat the surfaces themselves. In the back garden, there were steps before accessing the clothes line and more steps up to the very steep lawn. It was, she said, difficult to cut the grass. Asked about the provision of any assistance to residents in maintaining the gardens Ms Hildebrandt said that she believed there is a care assistance scheme. However, she had no details and was unsure whether it involved the council or another body
- b. *Heating.* There is no heating to bedrooms or bathroom. The tenant of one of the bungalows by the road had problems with his heating system and replaced it with oil. The tribunal had noticed a boiler mounted on the gable wall during its inspection. Recognising that the system was far from perfect, and referring to the council's obligation to comply with the government's "Decent Homes Standard", Ms Hildebrandt stated that the council as landlord intends to bring the heating up to standard. There are plans, and the council is drawing up a rolling programme for all its properties, as the work has to be completed by either 2010 or 2012

- c. *Local facilities and transport.* There are a Post Office and a small, family-run village shop about 800 metres away, in the centre of the village. Access to it is along School Lane and School Road, quite busy narrow roads only parts of which have footpaths. Where vehicles are parked on one side there is only room for one line of vehicles to pass. There are convenient bus stops, but there was a clash of evidence about the number of buses into Ipswich per day. Relying on what she had been told Ms Hildebrandt believed that there were at least 5 services per day. Both Mrs Waite and Mrs Taylor disputed this, saying that there was certainly an early service into Ipswich at 07:16, arriving about an hour before the shops open, with an afternoon bus getting back at about 15:50, and another at 18:15.⁴ There is no bus service into Stowmarket.

Findings of fact

14. Having considered the parties written submissions and oral evidence, and that 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 1971
- b. The Appellant and her late husband first became tenants of the property on 6th July 1998, at which date the Appellant was aged 45 and her husband was 64
- c. The property comprises no more than two bedrooms, but the accommodation is on two levels separated by 4 steps
- d. The blown air heating system is original and would appear to function reliably, provides a dry heat to the living room, and may safely be left on overnight. However, the tribunal is satisfied that it heats neither bedroom nor the bathroom
- e. Access to the property, by any of the routes described, is poor. From car park to the lowest part of the back lawn involves a climb of 26 steps in all. Vehicular access is both sub-standard and dangerous
- f. The back garden is both too steep and too large to be manageable by an elderly resident, with 8 dangerous and badly maintained concrete steps (especially the top step)
- g. The property is about 800 metres from the village Post Office and a basic food

⁴ The departmental guidelines suggest a minimum for rural areas of three services suitable for shopping trips **per week**

shop. There is a daily bus service to Ipswich very early in the morning and a return service in mid-afternoon, not particularly suitable for shopping trips

15. By reason of the above findings concerning the letting history of the property, its facilities, vehicular and pedestrian access, and the surrounding area, the tribunal is not satisfied that it meets the statutory criteria of being particularly suitable for occupation by elderly persons. Had the tribunal been considering any of the single level bungalows on level sites facing directly on to Green Hill, with smaller back gardens, then it may have taken a different view, but for the above reasons the tenant's appeal is therefore allowed.

Dated 31st July 2006



Graham Sinclair — Chairman
for the Residential Property Tribunal

