



**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL
EASTERN RENT ASSESSMENT PANEL**

HOUSING ACT 1985 (the Act)

Ref:	CAM/22UE/RTB/2005/0012
Property:	2 Florence Close, Hadleigh, Essex SS7 2PN
Appellant:	(1) Mrs Eileen Panton (2) Mr William Panton
Respondent:	Castle Point Borough Council
Date of Application:	19 October 2005
Type of Application:	Appeal against the refusal of a tenant's right to buy (Schedule 5 of the Act)
Date of Hearing:	30 December 2005
Date of Decision:	6 January 2006
Tribunal:	Mr John Hewitt Chairman Ms Cheryl St Clair MBE, BA

Decision of the Tribunal

Decision

1. The decision of the Tribunal is that the appeal is allowed.
2. The findings of the Tribunal and its reasons for reaching this decision are set out below.

Introduction

3. The Appellants have applied to the Respondent, pursuant to Part V of the Act, to exercise the right to buy (RTB) the Property which is presently let to them by the Respondent on the terms of a secure tenancy within the meaning of Part IV of the Act.
4. By notice in form RTB2 dated 28 September 2005, the Respondent refused the right to buy stating:
 - a. that the Property was first let before 1st January 1990,
 - b. that the Property is particularly suitable for occupation by elderly persons, and
 - c. that the Property was let for occupation by a person aged 60 or more.
5. The Appellants wish to appeal that decision and do so by notice of appeal dated 18 October 2005 which has been lodged within the 8 week statutory period allowed for such appeals.

The Law

5. The Act is the principle statute which sets out the qualifying conditions under which certain tenants have the right to take advantage of the RTB scheme in respect of the home let to them.
6. Schedule 5 to the Act deals with cases where the RTB does not apply. The Respondent relies upon paragraph 11 of Schedule 5, which, so far as is material to the present proceedings, provides as follows:-

- '11(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 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.*
- (3) ...*
- (4) ...*
- (5) ...*
- (6) This paragraph shall not apply unless the dwelling-house was first let before 1st January 1990.'*

The Procedure

7. This case falls to be determined in accordance with The Residential Property Tribunal (Right to Buy Determinations) Procedure (England) Regulations 2005.
8. By notification dated 18 November 2005 the Appellants said that they would like an oral hearing at which they and their representative would make representations

9. A hearing was arranged for 11:00 Friday 30 December 2005 at the Civic Centre, Victoria Avenue, Southend. Those present were:

Mrs Eileen Panton	Appellant
Mr Dave Godfrey	Appellants' representative
Mr David Randerson	Respondent's representative
10. Shortly prior to the hearing the Tribunal was able to inspect the Property, both internally and externally, and also the immediate locality.

The Facts of the Case

11. In their application form the Appellants say that their tenancy of the Property commenced on 11 November 1991 and at that time they were aged 60.
12. A copy of the application form was sent to the Respondent for its observations. In reply it said that intended to oppose the appeal and its reasons for opposing RTB were:

'The property is a 1 bedroomed single level bungalow with Central Heating and Double Glazing throughout. The property is also only 488 yards from a major supermarket, the town centre of Hadleigh Essex and a bus stop with services to all major surrounding towns.'
13. Mrs Panton gave evidence to the Tribunal. She said that she was formerly employed by the Respondent as a warden in a sheltered housing complex. In October 1991 she turned 60 years of age and retired from her employment. The Respondent offered her a secure tenancy of the Property which she accepted. Mrs Panton (then known as Mrs Beere) produced her tenancy agreement. It is not dated. Mrs Panton told us that the tenancy commenced in November 1991 when she moved in. This was not disputed. Later, following her marriage to Mr William Panton, the tenancy was transferred into the joint names of the Appellants. Evidently no new fresh joint tenancy agreement was issued by the Respondent.
14. We noted from the tenancy agreement that by clause
 4. *Tenant's Right to Be Consulted*
The Council will consult their tenants about matters of housing management which substantially affects all tenants, or a category of tenants, or the tenants on a particular estate. A procedure has been laid down by the Council for consulting tenants and to consider their views before reaching a decision. The Council will publish details of its proposals on the official Council Notice Board and invite comments from secure tenants within a suitable period of time. The comments of secure tenants will be taken into account before a final decision is made on the particular matter of housing management.
 6. *Right to Buy*
Many secure tenants now have the right to buy their homes at a discount, in accordance with the provisions contained in Housing Act 1980, Chapter 1. The full details are outside the

scope of this tenancy agreement, but more information can be found in...

The tenancy agreement incorporated 'Conditions of Tenancy' attached to it.

Condition 3(b) says:

'The Tenant has the benefit of certain tenancy statutory rights contained within ...and Part V (Right to Buy) of the Housing Act 1985...'

Condition 5(b) says:

'The Council has the right to vary the other terms of this tenancy after giving the tenant appropriate notice, and carry out consultations as required in accordance with ss 102-103 to Part IV of the Housing Act, 1985.'

15. Mrs Panton told us that she did not understand why her right to buy had been denied to her. Florence Close contained 27 1 bed or 2 bed roomed bungalows. Of these 10 had been sold off by the Respondent under the RTB scheme. Mrs Panton said that her bungalow was a basic 1 bed roomed bungalow. Whilst she said it was suitable for a range of persons she did not consider it to be particularly suitable for elderly persons. Mrs Panton accepted that the Property was in close proximity to a large supermarket and to local shops and bus stops. Mrs Panton said that in recent years the Respondent had let 2 bungalows in Florence Close to persons who were not elderly. Mrs Panton also drew to the attention of the Tribunal two recent editions of 'The Messenger' a publication issued by the Respondent in which it set out, amongst other things, its current thoughts on selling off its housing stock to housing associations for (mainly) financial reasons.
16. Mr Godfrey spoke on behalf of the Appellants. He told us that he was chairman of the Castle Point Tenant's Association, a borough wide group that was formally recognised by the borough. He said that whilst he did not personally agree with the policy behind the RTB scheme he supported the Appellant's appeal. He said that he was not aware (until recently) of the provisions of paragraph 11 of Schedule 5 to the Act. He said that the Respondent had not drawn these provisions to the attention of his Association and that no discussion or consultation had taken place about them or about any variations to secure tenancy agreements to withdraw rights previously granted.
17. Mr Godfrey also asserted that the Respondent does not always adhere to its own rules. He said that he was aware that many 1 bed roomed bungalows had been sold off under the RTB scheme.
18. Mr David Randerson presented the case on behalf of the Respondent. He said he had been employed by the Respondent since late 1998/early 1999. His present role is that of Business Support Services Manager. He is responsible for supervising RTB applications. He said that the Respondent has a small housing stock of 1560 units which it was keen to hold onto. Since taking up his post in 1999 he has opposed RTB applications wherever

- from RTB housing particularly suitable for elderly persons and that this policy extends to all properties in Florence Close. Mr Randerson was not able to explain when or how this became policy and he was not able to produce any documents prepared or issued by the council which set out this policy. He was also unaware of any consultation with tenants or their representatives (statutory or otherwise) about the change in policy or any variation of or changes to tenancy agreements resulting from it.
19. Mr Randerson confirmed that the Appellant's terms of tenancy remained those set out in the document issued to Mrs Panton (Mrs Beere as she then was) in 1991.
 20. Mr Randerson told us that since the time of his appointment in 1999, no sales under RTB have taken place in respect of properties in Florence Close. 40% of the bungalows in Florence Close had been sold off under the RTB scheme but evidently this was prior to his appointment.
 21. In relation to Florence Close Mr Randerson said that 17 of the 27 bungalows were still owned by the Respondent. He said that 60% were occupied by persons aged 70 or older and 5 are tenanted by persons aged 50-60 years. Mr Randerson was not able to tell us of the ages of the tenants when the bungalows were first let to them. He said that if a bungalow became vacant the policy preference was to let it to an elderly person. Mr Randerson did not dispute the evidence of Mrs Panton that two recent lettings of bungalows in Florence Close had been to persons who were not elderly. He was not able to explain the circumstances of those lettings.
 22. Mr Randerson contended that the bungalows in Florence Close, including the subject Property were particularly suitable for occupation by elderly persons because they are single floor, with full central heating and double glazing and in close proximity to local shops and services. Mr Randerson accepted that to get to the local supermarket it was necessary to cross the busy A13 trunk road, but he said that the distance of 446 metres was measured taking the longer route via a Pelican crossing. The shorter route straight across the A13 measured 304 metres, he said.
 23. Mr Randerson told us that the bungalows in Florence Close were constructed in the mid 1960's and the Respondent's records show that the first letting of the Property took place in 1964. This was not disputed by Mrs Panton.

Findings and Reasons

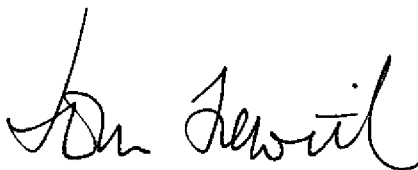
24. There was little factual evidence in issue between the parties. They were agreed as to the terms of the Appellant's tenancy, the bungalows in Florence Close that had been sold off under the RTB scheme and the two recent lettings to persons who were not elderly.
25. It seems to us clear from the evidence that when the Property was first let to Mrs Panton in 1991 the Respondent did not at that time claim that it was particularly suitable for elderly persons and/or that

it was excluded from the RTB scheme. Indeed, on the contrary the Tenancy Conditions make the positive assertion that the tenant has the benefit of the RTB scheme. Equally later when the tenancy was transferred into the joint names of the Appellants, the Respondent did not see fit to issue a new tenancy agreement, but was content to grant the joint tenancy on the same terms as those originally granted.

26. On the basis of Mr Randerson's evidence, which we accept on this point, the Respondent has effected a change in housing management and now seeks to ensure that all properties suitable for the elderly are excluded from the RTB scheme. As noted above, Mr Randerson was not able to produce any documents on this point and he did not claim that contractual and/or statutory consultation had taken place.
27. There may be legal issues arising from the course of conduct adopted by the Respondent, in granting a tenancy which expressly gives the tenant the benefit of the RTB scheme and then seeking to withdraw such right simply by way of a policy change without any consultation (statutory or otherwise). It may be that issues of landlord and tenant law and/or of estoppel arise. However, it is not necessary for the Tribunal to make determinations on these matters and the legal points were not argued before us. We have set out the evidence given to us in some detail in case this aspect of the matter is considered elsewhere.
28. The issue for the Tribunal is whether the Property is particularly suitable for elderly persons. There is no dispute between the parties, and it is self evident, that the Property is, in the main, suitable for elderly persons. It is suitable for a range of persons which includes the elderly. The Appellants argue that the Property is not **particularly** suitable for the elderly whereas the Respondent argues that it is.
29. The Tribunal prefers the evidence and submissions of Mrs Panton. We find that whilst the Property is not unsuitable for many elderly persons, it has no distinguishing features which render it particularly suitable for them. From our inspection of the Property we found that the kitchen was especially small and cramped. There were a limited number of power points in all rooms, which were located at skirting board level. There were no disability aids. The room sizes were at the lower end of acceptable. The Appellants have supplemented the living space by the installation of a conservatory (unheated). Movement around the bungalow was limited and would be rendered more difficult if walking aids were required. In our view this aspect would render the Property unsuitable for persons with mobility difficulties.
30. The Tribunal accepts that good quality upvc double glazing and central heating have been installed, but we did not find that these went beyond what one would expect from routine cyclical maintenance and refurbishment of a property originally built in the mid 60's. The Tribunal also accepts, and it was not disputed that the Property is close in proximity to local shops and services.

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31. Overall the Tribunal was not satisfied that the Respondent had demonstrated that the Property was **particularly** suitable for elderly persons. In the light of our experience and expertise in these matters, and in the light of the evidence put before us we did not find any essential feature or attribute of the Property which took it from the mere **suitable** for elderly persons to the **particularly suitable** for elderly persons. Accordingly and for these reasons we allow the appeal because we find that essential criteria set out in paragraph 11(1)(a) of Schedule 5 to the Act have not been established.
32. For the sake of completeness we record that we find (indeed it was not disputed) that the Property has been let to tenant (or a predecessor in title) who was aged 60 or more. Mrs Panton told us, and we accept her evidence, that she was 60 years of age in October 1991 and the Property was let to her in November 1991. Accordingly we find that paragraph 11(1)(b) of Schedule 5 to the Act is established. We also find (and again it was not disputed) that the Property was first let before 1 January 1990 so that paragraph 11(6) of Schedule 5 to the Act does not disapply paragraph 11.



.....
John Hewitt
Chairman
6 January 2006