

RESIDENTIAL PROPERTY TRIBUNAL

Property: 33 King Street, Wimblington, Nr March, Cambridgeshire
PE15 0QF

Appellant: Mrs Winifred Mary Prior

Respondent(s): Fenland District Council

Case number : CAM/12UD/RTB/2006/0011

Date of Application: 1st August 2006

Type of Application: Appeal against denial of tenants' right to buy
(Schedule 5 Housing Act 1985 as amended ("the 1985 Act"))

The Tribunal: Mr JR Morris (lawyer chair)
Mr GRC Petty FRICS
Mr C Gowman

DECISION

Introduction

1. The Appellants have applied to the Respondents to exercise their right to buy the property, which is presently let by the Respondent to the Appellants.
2. By notice to the Appellants dated 26th May 2006, the Respondent refused the right to buy stating
 - (a) that the property was first let before 1st January 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.
3. This appeal was been lodged on the 12th July 2006, which is within the 8 week statutory period allowed for such appeals.

The Law

4. The principal Statute which sets out the qualifying conditions to the right to buy is the 1985 Act. Schedule 5 deals with the cases where the right to buy does not apply and the Respondent relies upon Paragraph 11 which says:-

- 11(1) *The right to buy does not arise if the dwellinghouse*
 (a) *is particularly suitable, having regard for 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 years 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) *...(not applicable to this appeal).*
 (4) "
 (5) "
 (6) *This paragraph does not apply unless the dwellinghouse concerned was first let before 1st January 1990*

The Facts of This case

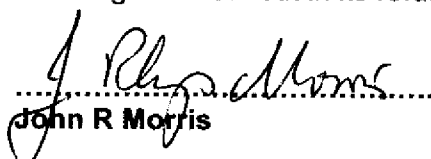
5. In her application to this Tribunal the Appellant, Mrs Prior, stated that the property was first let to her on the 21st November 1987. She stated that the age of the oldest person was 63 in those years and that she was 61 years of age.
6. In addition the Appellant stated that the Property is a two bedroom brick bungalow with lounge, kitchen and bathroom and with gas central heating. She stated that the nearest convenience store was 0.2 miles away and the nearest bus stop was 0.3 miles away and there is an hourly service to March. The railway station is 3.4 miles away.
7. The Applicant stated that the following improvements had been carried out: erection of a detached concrete garage with 'up and over' shutter door, fully fitted kitchen to replace standard basic units fitted by the Council.
8. The Applicant stated that she and her husband had been offered the tenancy in 1987 by the Respondent because they were next in the housing list and not because of being classed as elderly. The Respondent built the bungalow in 1987 as part of an estate of six. The bungalow has not been adapted for use by the elderly e.g. there are no handrails, no light pulleys or ramps. One of the six properties was adapted for disabled use and was bought by the tenant from the Respondent and has since been sold privately. Two other bungalows are occupied with families with children of school age. The Applicant said her husband was 63 on taking the tenancy but still in employment with the retirement age at 65. She considered the statutory provisions, which referred to a person of 60 or more being elderly, were at odds with the

Government's proposals relating to pensions and the raising of the retirement age to 67.

9. A copy of the application form was sent to the Respondent for its observations. It was stated that the property was first let to a tenant before 1st January 1990. The current tenant took the tenancy of the property in 1987 when the tenant was over 60. The Respondent confirmed the Appellants statement that it was a two bedroom bungalow with central heating. There are no steps leading into the property and there is a medium sized garden. The local shop is only a short distance away.
10. The Tribunal inspected the property in the presence of the Appellant and her daughter Miss Linda Prior and the Respondent's Representatives Mrs Dennis and Mr Pillar. It is a brick bungalow. The accommodation comprises a hall, kitchen, living room, two bedrooms and a bathroom. The distance to the nearest convenience shop and to transport are as stated by the Applicant. There is one step up to the property. The accommodation is all on one level. It appears to have a good and sufficient central heating system.

Decision

11. The occupation of other similar properties in the area which are let to persons who are not within the statutory definition of elderly or who have been permitted to purchase the property is not a matter to which the Tribunal can have regard.
12. The Property is a two bedroom bungalow with accommodation on one level with amenities within a reasonable distance for an elderly person.
13. It is the Tribunal's decision that this appeal must fail because the statutory criteria are met. The property is particularly suitable, in its unimproved form, for occupation by elderly persons taking into account location, size, design, heating system and 'other features'.
14. The Respondent therefore can refuse the Appellants' right to buy the property on the ground set out in its refusal notice.


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John R Morris

Date 20th October 2006