

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL

Case number : CAM/42UG/RTB/2006/0012

Property : **49 Winchester Tower, Norwich, Norfolk NR2 2SF**

Application : **Appeal against the landlord's denial of the tenant's right to buy [Housing Act 1985, Sch 5, para 11 (as amended)]**

Appellants : **Mr & Mrs M Stolady**

Respondent : **Norwich City Council**

DECISION

Handed down 10th November 2006

Inspection date : **Wednesday 1st November 2006**

Tribunal : **G K Sinclair (Chairman), G J Dinwiddy FRICS, R S Rehahn**

1. **For the reasons which follow the tenants' appeal against the denial of their right to buy the property is allowed.**

Procedural

2. The Appellants are currently joint tenants of the Respondent Housing Authority under a secure tenancy which they have held for the qualifying period, within the meaning of the Housing Act 1985.
3. By Notice in Reply to the tenants' right to buy claim (Form RTB2) dated 17th July 2006 the Respondent denied that they have 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 16th August 2006, within the 8 week statutory period allowed for such appeals.
5. Apart from stating that “the right to buy has been denied as 49 Winchester Tower is considered particularly suitable for occupation by the elderly” the Respondent has filed no written submissions at all. The Appellant’s agent, one Max Mace of New Mortgage Finance Ltd, observed only that “other tenants in the block have purchased their flats and therefore the rules must be the same for all secure tenants”; upon which the council had the opportunity but chose not to comment. Neither party requested an oral hearing, so the matter was dealt with on paper following the tribunal’s inspection.

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

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

- 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 –
- (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

9. The tribunal inspected the property in the presence of the tenants, Mr & Mrs Stolady, and their daughter and son-in-law. It is a two bedroom flat on the eighth floor of a fifteen storey block of flats constructed in about 1960 between Chapelfield Road and Unthank Road, Norwich. Each floor above the ground floor comprises six flats; a total of eighty four. The block has on-site car parking for only 25 cars. Next to this car park is another private car park for the adjacent Vauxhall Centre. There is also adjacent on-street permit parking, but this has to be shared with residents of the nearby streets.

² Now known as the Department for Communities and Local Government

³ See ODPM Circular 07/2004 (December 2004)

10. Access to the subject property is controlled by a push button door entry system to the ground floor lobby. However, there is a trade button which enables access to be obtained without calling the individual flats until 12.30 pm. From the lobby fire doors lead to a short corridor in which there are two adjacent passenger lifts; one serving odd-numbered floors, the other the even-numbered ones. Behind the lifts is an emergency staircase extending the full height of the building. Each lift is quite small and narrow, accommodating perhaps 4 or 5 persons comfortably. If any particular lift is out of action then the other may be used to reach the floor above, from which one needs then to walk down 14 steps on an emergency staircase. There is no separate goods or service lift.
11. The entrance lobby to the flat is quite generously proportioned and forms the base of a reverse "L"-shape. Almost opposite the front door is the door to the bathroom, a comparatively small room measuring 1.66m x 1.44m. The bath/shower has been adapted for the tenants with the assistance of Norfolk County Council Social Services, not by the Respondent landlord.
12. Along the long arm of the "L" one comes first, on the right, to the main bedroom and then the second bedroom. Almost opposite the second bedroom is a small, narrow WC without hand basin. At the end of the "L" one reaches a quite well-proportioned living room off which, to the left, is a galley kitchen. The tenants had thoroughly modernised the kitchen, moving the sink to a position rather closer to the window and installing a considerable number of work tops and cupboards. However, one matter noted by the tribunal was the fact that all of the internal doors to the flat are quite narrow; never more than 750mm in width.
13. The flat has been double glazed throughout with PVCu sealed units. Heating in the flat is provided by a communal warm air system which discharges heat through two air vents, one behind the door of the living room and the other in the corridor wall close to the WC. There is no heating to either bedroom or the bathroom.
14. Within 800 metres of the flat are a range of shops, including newsagents and basic food shops, on Vauxhall Street to the south, Unthank Road to the southwest, and Guildhall Hill

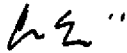
and the Market Place in the city centre to the east. Also within the same distance are branches of the leading banks and Building Societies, the new Chapelfield shopping centre and, beyond the latter, the shopping area of St Stephens. There is a dentist on Unthank Road. There are convenient bus stops nearby, and the main bus station is just beyond St Stephens, but within 800 metres of the property.

Findings of fact

15. Having considered the parties written submissions and the evidence 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 about 1960
 - b. The Appellants first became tenants of the property in February 2003, at which date the Appellants were aged 65 and 61 respectively
 - c. The property comprises no more than two bedrooms, but the doorways are very narrow, and bathroom and WC are cramped
 - d. The blown air heating system is original and would appear to function reliably, provides heat to the living room and corridor, and may safely be left on overnight. However, the tribunal is satisfied that it heats neither bedroom nor the bathroom
 - e. The accommodation is on the 8th floor of a 15 storey block, served directly by only one small lift. If out of use the tenant is required to take the other lift to the next odd-numbered floor and climb or descend 14 stairs on the emergency staircase. If both lifts are out of action (as for example in case of fire) then the property is 112 stairs from the ground floor. The property is within 800 metres of a wide range of shops, banks, etc, including a basic food shop. There are convenient bus services if required, but the main city centre shopping area is within an easy, pleasant walk.
 - f. As changes in council policy to sales of flats, or the inconsistent application of a fixed policy, are matters outwith the jurisdiction of the tribunal it has ignored entirely the Appellants' argument that they should be permitted to buy because previous applications by tenants have not been opposed. The tribunal's task is solely to make findings of fact as to the physical and geographical suitability of the property for use by elderly persons aged 60 or over.

16. By reason of the above findings concerning the letting history of the property, its facilities and access, and the surrounding area, the tribunal is satisfied that (subject to acceptable lift service) the flat is as suitable for mobile elderly tenants as childless young ones. Due to its location on the eighth floor, the narrow doors, cramped WC and bathroom, and the lack of direct heating to the bedrooms and bathroom, it is not, however, satisfied that it meets the statutory criteria of being **particularly** suitable for occupation by elderly persons. For the above reasons the tenants' appeal is therefore allowed.

Dated 10th November 2006



Graham Sinclair — Chairman
for the Residential Property Tribunal