



**FIRST TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY**

Case Reference	: CAM/22UL/RTB/2018/0009
Property	: 32A Hollybush Lane, Welwyn Garden City, AL7 4JN
Applicant	: Lorraine Dean
Respondent	: Welwyn Hatfield Council (“the Council”)
Type of Application	: For a determination as to whether the dwellinghouse is particularly suitable for occupation by elderly persons – Housing Act 1985, Schedule 5, paragraph 11
The Tribunal	: David S Brown FRICS (Chair) Mary E Hardman FRICS John Francis QPM
Date of Decision	: 18th December 2018

DECISION

The Tribunal determines that the Property is not particularly suitable for occupation by elderly persons and so the appeal succeeds.

The Application

1. Ms Dean applied for the right to buy. This was denied on 26th October 2018 on the grounds that paragraph 11 of Schedule 5 to the Housing Act 1985 (“the Act”) applies. Ms Dean has applied to the Tribunal to determine whether the Property is particularly suitable for occupation by elderly persons.

The Law

2. Paragraph 11 of Schedule 5 of the Act provides that:-
 - a. *The right to buy does not arise if the dwelling-house—*
 - i. *is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons, and*

- ii. *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).*
- b. *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.*
- c. *Notwithstanding anything in section 181 (jurisdiction of county court), any question arising under this paragraph shall be determined as follows.*
- d. *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.*
- e. *If no such application is so made, the question shall be deemed to have been determined in favour of the landlord*

The Applicant's case

3. Ms Dean states that the Property is a first floor flat with 14 steps to climb for access, which is very strenuous when carrying shopping or using a shopping trolley. There is no lift. The bathroom is not suitable for elderly persons to get in and out of the bath. There are two bedrooms. The front door is very heavy and awkward. There are no adaptations for wheelchair users.
4. She produces a copy of part of the guidance issued by the Ministry of Housing, Communities and Local Government, entitled "Your Right to Buy Your Home". This states that there should be easy access on foot, which is unlikely to be regarded as easy if it is necessary to climb three or more steps and there is no handrail and that in the case of a flat above ground level there should be easy access by lift.
5. It is not disputed by Ms Dean that the Property was let to her for occupation by a person who was aged 60 or more.

The Respondent's case

6. The Council states that the Property is part of a sheltered housing scheme and applicants for a tenancy need to meet the eligibility criteria of being over 60 or eligibility due to disability or support needs. Ms Dean met those criteria when she was granted the tenancy.

The Property

7. The Tribunal inspected the Property on 13th December in the presence of Ms Dean and Jessica Morris, Home Ownership Officer, at the Council and her colleague Heather Wilson, Neighbourhood Officer.

8. The Property is a first floor flat in a small two-storey brick and tiled block. There is a communal entrance hall with 14-step concrete staircase with handrail to a first floor landing. There is no lift. The flat contains Entrance Hall, Lounge, Kitchen, Bathroom and 2 Bedrooms. There is a rear communal garden. Gas fired central heating is installed and the flat has upvc double glazing.
9. Access to the flat is via a level path from the public highway. There is a bus stop nearby and local shops are within 800 metres.

Particular Suitability for Occupation by the Elderly

10. Circular 7/2004, issued by the Office of the Deputy Prime Minister, sets out the criteria to be taken into account when considering whether a dwelling is particularly suitable for occupation by elderly persons. In this context, “elderly persons” will be taken to mean individuals who are able to live independently despite some limitations owing to age; it will not mean individuals who are frail or severely disabled. The criteria are not binding on the Tribunal but the Tribunal will be guided by them in general terms. Each case is to be decided on its own merits.
11. The Tribunal has considered each of the criteria which are relevant in this case, summarised as follows:-
 - a. *Ease of access on foot, taking into account the number, size and curvature of any steps, the presence or absence of handrails alongside steps and the gradient of ramps, paths pavements or other means of access.*
 - b. *The accommodation should normally be on one level.*
 - c. *There should be no more than two bedrooms.*
 - d. *There should be heating arrangements which function reliably, provide heat to at least one living room and one bedroom and may be safely left on at night.*
 - e. *The dwelling should be located reasonably conveniently for shops and public transport – in an urban area, no more than 800 metres (half a mile) from both the nearest shop selling basic food items and the nearest public transport stop.*

Discussion

12. The flat clearly meets most of the criteria set out in the Circular, having two bedrooms, controllable central heating and reasonable access to shops and bus services. The fact that it is in a sheltered housing scheme, with an alarm system, is an advantage.

13. However, the test of “particularly suitable” is a higher threshold than ‘suitable’ and access via a straight flight of 14-steps, with no half landing, (even with a handrail) and no lift clearly fails to cross that threshold. It is obvious that a requirement to climb a staircase of that height in order to gain access to the flat cannot be regarded as “particularly suitable” for elderly persons, to the extent that this outweighs all of the other criteria.
14. The flat is therefore not particularly suitable for occupation by elderly persons and so is not exempt from the right to buy provisions under paragraph 11 of Schedule 5 to the Act.

D S Brown FRICS (Chair)

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.