

1. The Tribunal determines that the dwelling house is particularly suitable for occupation by elderly persons within the meaning of paragraph 11 of Schedule 5 to the Housing Act 1985.
2. The Respondent's notice dated 9 November 2020 under s124 of the Housing Act 1985 denying the Applicants' right to buy is upheld.

Reasons

1. These proceedings commenced by way of an application dated 26 November 2020 which is marked as received in the Tribunal office on 25 November 2020. Despite this anomaly it is clear that the application was made within the requisite time period.
2. The application is made by Ms Rita Huscroft who is a Tenant in Council-owned property. Ms Huscroft had made a Right to Buy application to Leeds City Council which was denied by the Council in their letter of 9 November 2020 stating that the property is particularly suitable for occupation by elderly persons. Ms Huscroft has applied to the Tribunal for a determination on this point.
3. In view of the situation with Covid-19, the Tribunal concluded that this was a matter which could be dealt with by way of external inspection but without the need for a hearing, neither party having requested a hearing. The Tribunal inspected the exterior of the property and its surrounding area on 28 June 2021. Neither of the parties was present. The Tribunal also had the benefit of written representations from both parties together with a copy of ODPM Circular 07/2004.

The Law

4. Paragraph 11 of schedule 5 to the Housing Act provides:
 - (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 in title 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...
 - (3) ...
 - (4) ...
 - (5) ...

(6) This paragraph does not apply unless the dwelling house concerned was first let before January 1990.

5. ODPM Circular 7/2004 sets out criteria for assessing the suitability of a dwelling house for occupation by elderly persons. It defines an elderly person as one aged 60 or over who is not necessarily disabled but may have some physical disabilities. It covers the location, indicating that the property should be within half a mile of a shop selling basic food items; size, no more than two bedrooms; design, no more than one floor; heating system, which must function reliably, must heat at least the living room and one bedroom and may be safely left on at night. It also addresses accessibility, with particular regard to the number, size and curvature of steps and the presence of handrails where there are more than three steps. Gradients of ramps, paths, pavements or other means of access are to be considered.

Determination

6. The Respondent submits that:
 - a. The Property was first let before 1 January 1990
 - b. The Property was let to the Applicant on 26 July 2004 at which time Ms Huscroft was 62.
 - c. The Property is particularly suitable for occupation by elderly persons.
7. The Applicant does not dispute that the property was first let before 1 January 1990. The Tribunal therefore finds that the test in paragraph 11(6) of Schedule 5 to the Act is met.
8. Upon inspection the Tribunal found the exterior of the property to be a well-maintained bungalow. Whilst the property address is Otley Lane which is largely level in gradient, the access to the property is from Haworth Lane which is on an incline. The written representations from the Applicant state that in her view the steepness of the road is such as to make it virtually impossible for an elderly person to walk up the road. Whilst we note that the road is on a hill, we note that the ODPM circular explicitly states that there is no consensus among stakeholders on what gradients (along the route between the property in question and the nearest shops and public transport stops) might be too severe for an elderly person to negotiate. Therefore whilst not referring to particular guidance on gradients the Tribunal has nevertheless considered whether the gradient in question is sufficiently steep that it appears likely to adversely affect the accessibility of a particular property to elderly persons.
9. In the view of the Tribunal the gradient of Haworth Road is not excessively steep, and indeed during the course of the inspection the Tribunal saw an elderly person successfully negotiating the gradient with the use of a walking frame. We therefore do not find the property to be unsuitable for occupation by elderly persons by virtue of the gradient of Haworth Road.

10. We also gave careful consideration to the layout and gradients in and around the car park area accessed from Haworth Road. We note that the Tenant refers to the immediate access to the property via the car park having steps and the incline via the car park to the steps has a very steep drop. Upon our inspection we noted that there was a small set of steps down from the car park at the end furthest from the road with a handrail at both sides. In addition there was a level sloped accessway out of the car park on to the pavement giving further level access to the sloped ramp up to the door to the far side of the property. The Tribunal notes that the Tenant refers to there being a drop from the car park level to the pathway access level without handrail. We inspected the area referred to and observed that whilst a rail across the length of the car park might offer some degree of protection from people attempting to negotiate the step up the kerb from the car park to the grass, and then back down the steeper drop top the pathway level, there are already two alternative means of access provided, being either the steps with dual handrail or level accessway, and therefore we did not find that the configuration of the car park made the property unsuitable for elderly persons.
11. The Tenant also refers to the balcony on the property which we take to be a reference to the railing along the level access ramp which runs along the Haworth Road side of the property to the door on the Otley Lane side. We found there to be suitable railings along this ramp and accessway and did not observe anything connected with this feature to lead us to conclude that it was unsuitable for elderly persons. Indeed we concluded that taking into account the presence of handrails, the gradients of the paths and the very limited step numbers to the building that the property is suitably accessible for elderly persons.
12. The Tribunal inspected the local area and observed that the location is convenient for local amenities being under 0.5 miles from the nearest shops and under 0.5 miles from the nearest bus stop which has frequent services, being approximately 250m from both. We noted that the closest bus stops to the property (marked Queensway manor Close) appeared to indicate that the services there were no longer running, and therefore the stops may no longer be in use. However upon further inspection the Tribunal found two other sets of bus stops within 0.5 miles marked Kirk Lane/Old Haworth Lane and Silver Lane/Suffolk Court respectively) which were in use and had frequent services.
13. We also note that in addition to accessing Silver Lane via Haworth Lane the Tribunal accessed it through Silver Lane which offered an alternative route with a shallower gradient.
14. The Tribunal note that there is no dispute by Ms Huscroft that the property was first let before 1990. It is also not in dispute that Ms Huscroft was over 60 when the property was let to her in 2004.
15. Being unable to conduct an internal inspection the Tribunal was unable to specifically consider the effect of any improvements made by the Tenant but we note that no representations have been made by the applicant of any tenants' improvements which the Tribunal should have had mind to.

16. Therefore taking into account all of the above features, and using their knowledge and expertise the Tribunal concludes that the property is particularly suitable for occupation by elderly persons. The Tribunal accordingly also determines that the Respondent's notice dated 9 November 2020 under s124 of the Housing Act 1985 denying the Applicants' right to buy is upheld.

Tribunal Judge K Southby

28 June 2021