



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case Reference** : CHI/00HB/RTB/2019/0002

**Property** : 6 Penpole Lane  
Bristol  
BS11 0AU

**Applicants** : Mrs N Fitzgerald

**Representative** : None

**Respondent** : Bristol City Council

**Representative** : Mr J Bannerman

**Type of Application** : Appeal against the denial of the Right to Buy

**Tribunal Members** : Mr I R Perry FRICS  
Mr P E Smith FRICS

**Date and venue of Hearing** : 25<sup>th</sup> November 2019 determined on the papers

**Date of Decision** : 25<sup>th</sup> November 2019

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**DECISION**

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## **Summary Decision**

The application succeeds.

## **Application**

1. The application was subject to Directions made on 10 October 2019. The matter was deemed suitable for Determination on the basis of written submissions unless either party requested a hearing. No requests have been received and the matter is therefore determined in accordance with Rule 31 of the Tribunal Procedure Rules 2013 on the basis of the inspection and the bundle submitted.

## **The Inspection**

2. The property was inspected in the presence of the applicant and her granddaughter Miss J Tudor. There was no representative from the Respondent at the inspection.
3. The property comprises a ground floor flat forming part of a two-storey building. It is approached at the front by 7 concrete steps with a handrail.
4. The property is situated in that part of Penpole Lane with an incline on the road and footpath. There is on street parking, local shops and bus stops are within reasonable distance.
5. Internally the property comprises a hall off which the remaining rooms are situated. There is a living room, kitchen, two small double bedrooms and a narrow shower room with WC. The shower tray is set above floor level so that it requires a step up and into the shower.
6. There is a rear door from the kitchen to a garden which slopes steeply up and away from the building with 10 concrete steps to the upper level. Beyond this there is a garden owned with the flat above 6 Penpole Lane.
7. To the side of the property is a concrete paved area and a garden store. To the front there is a further lawned area sloping down to the road and a drop down to the pavement. The accommodation has double-glazed windows and gas central heating.

## **The Issue**

8. The application follows the Respondent's decision to deny the Applicant the right to buy the Property on the grounds in paragraph 11 of Schedule 5 to the Housing Act 1985. The Applicant requires the Tribunal to determine whether the exception from the right to buy for occupation by elderly persons applies to the Property.

9. The Respondent has denied the Applicant the right to buy the Property on the grounds that it was first let before 1 January 1990, is particularly suitable for occupation by elderly persons and was let for occupation by a person aged 60 or more all in accordance with paragraph 11 of schedule 5 of the Housing Act 1985.

### **The Law**

10. Paragraph 11 of schedule 5 of the Housing Act 1985 provides that a landlord may deny the Right to Buy in respect of a dwelling-house which:
- Was first let before 1 January 1990
  - Is particularly suitable for elderly persons aged 60 and over; and
  - Was let for occupation by such a person (whether or not that person was a tenant)

### **The Evidence and Decision**

11. The Applicant was born on 23<sup>rd</sup> August 1932 and became a tenant in November 1992 when she was aged 60.
12. Our inspection noted that the property is situated on a part of Penhole Lane where there is a fairly steep incline to the road and pathway.
13. Access to the front of the building is via 7 steps and the garden to the rear has a further 10 steps. Gardens to both front and rear slope steeply.
14. The bathroom has a narrow access with a step up and into a shower cubicle.
15. In the Respondent's submission they refer to the physical characteristics of the property which they consider renders it liable to the exception set out in Paragraph 11 of Schedule 5 of the Housing Act 1985. They refer to the presence of central heating; the location of the nearby bus stop and shops, that the heating operates satisfactorily, and that the accommodation is all on one level at ground level.
16. From information provided the Tribunal is satisfied that the Applicant was over 60 at the time the tenancy was entered into and that the property was first let before 1 January 1990.
17. Turning now to whether the property is particularly suitable for elderly persons the Tribunal is assisted by paragraphs 11, 12 and 13 of the ODPM circular at pages 17, 18 and 19 of the bundle. Section 11 sets out what is meant by "elderly persons" namely "individuals who are able to live independently despite some limitations owing to age. It will not mean individuals who are frail or severely disabled"

18. Section 12 sets out those features that need to be satisfied regarding the physical characteristics of the property and its location.
19. Section 13 somewhat unhelpfully states that there is no consensus amongst stakeholders on what gradients might be too severe for an elderly person to negotiate but confirms that any steep gradients that appear likely to adversely affect the accessibility should be taken into account.
20. This is a centrally heated 2 bedroom flat with accommodation on one level and is some 100 metres from a bus stop giving regular access to the city centre and other shopping locations. Local shops are less than ½ mile away.
21. The Tribunal found the only access to the front door to be steep, despite having a handrail. The 10 steps to the top of the rear garden and the steeply sloping nature of the front and rear gardens make access and garden maintenance difficult for any elderly persons. In addition the access to the Shower cubicle within the bathroom is limited in size and requires a step up. Accordingly the Tribunal finds that the property is not particularly suitable for an elderly person.
22. The Tribunal therefore finds that the requirements of paragraph 11 of Schedule 5 of the Housing Act 1985 have not been met and that this application succeeds.

I R Perry FRICS  
25<sup>th</sup> November 2019

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
2. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
3. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking