



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

Case Reference : **MAN/00CL/RTB/2019/0002**

Property : **14 Swallowtail Court, South Shields,
Tyne & Wear NE34 0TL**

Applicant : **Mr Arthur Alder**

Respondent : **South Tyneside Council**

Type of Application : **Determination as to whether a dwelling
house is particularly suitable for
occupation by elderly persons - Schedule
5, Paragraph 11, Housing Act 1985**

Tribunal Members : **Mr S Moorhouse LLB
Mr ID Jefferson TD BA BSc FRICS**

Date of Decision : **11 April 2019**

DECISION

DECISION

The Property is particularly suitable for occupation by elderly persons within the meaning of Schedule 5, paragraph 11, to the Housing Act 1985 and the exception from the right to buy applies.

REASONS

The Application

1. By an application dated 15 January 2019 the Applicant seeks a determination by way of appeal pursuant to paragraph 11 of Schedule 5 to the Housing Act 1985 ('the Act') against the Respondent's decision dated 6 December 2018 to refuse the Applicant's right to buy.
2. A letter giving directions for determination of this case was sent to the parties by the Tribunal on 19 February 2019 (together with a copy of ODPM Circular 07/2004) for the matter to be determined on the basis of written evidence. Neither party requested a hearing.
3. Prior to its deliberations and paper determination the Tribunal inspected the Property. The Tribunal's observations at inspection are reflected in its determination.

Evidence

4. The Applicant challenges the Respondent's refusal of his right to buy, identifying within the application form that he was 57 years of age and had various health problems.
5. The Respondent had completed a written summary of its view as to the application of paragraph 11 of Schedule 5 to the Act in the present case. This included confirmation that in the Respondent's view the following criteria were met:
 - the Property had been let for occupation by a person aged 60 or over, namely for occupation by Miriam Alder who was 73 years old at her tenancy start date;
 - the Property was first let before 1 January 1990; and
 - the Property is an individual dwelling which is particularly suitable for an elderly person.

The Law

6. Schedule 5, paragraph 11, to the Housing Act 1985 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 1 January 1990.
7. ODPM Circular 7/2004 sets out, for guidance purposes, 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 a half 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, heat at least the living room and one bedroom and may safely be 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

8. The appeal is in time since the application was made on 15 January 2019, falling within 56 days of the date of the Respondent's notice of its decision to refuse the right to buy.
9. The Applicant thought the Property was constructed in the late 1980's. The Respondent confirmed that the Property was first let before 1 January 1990. The Tribunal finds that the test in paragraph 11(6) of Schedule 5 to the Act is met.
10. With reference to paragraph 11(1)(b) of Schedule 5 to the Act, the Applicant's late mother had been a tenant and had been over the age of 60 years when she became a tenant. The Tribunal therefore finds that the test in this paragraph is met.

11. The following findings are relevant to the test referred to at paragraph 11(1)(a) of the Act, namely whether the Property is particularly suitable for occupation by elderly persons.
12. The Tribunal finds that bread, milk and other basic essentials are available from a convenience store only 0.2 miles from the Property and that bus stops are situated within 0.1 miles of the Property, with frequent services.
13. The Tribunal finds that the Property is a single storey mid-terrace bungalow comprising reception room, two bedrooms, kitchen and bathroom. It is heated by way of modern radiator central heating from a combi boiler with reliable controls allowing it to be left on safely at night.
14. Externally the Property is approached by an almost flat flagged path from the front pavement. At the rear there is a flagged yard to a rear gate. There are no steep gradients or steps to the Property.
15. The age of the Applicant and his health conditions do not fall within any of the areas to be addressed pursuant to paragraph 11 of schedule 5 to the Housing Act 1985 in determining whether or not the right to buy arises.
16. Accordingly the Tribunal determines that the Property is particularly suitable for occupation by elderly persons within the meaning of Schedule 5, paragraph 11, to the Housing Act 1985 and the exception from the right to buy applies.

S Moorhouse
Tribunal Judge
11 April 2019