



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

**Case Reference** : **MAN/00EJ/RTB/2019/0011**

**Property** : **4 Laburnum Road, West Cornforth,  
Ferryhill, County Durham DL17 9NJ**

**Applicant** : **Colin Covey and Doreen Covey**

**Respondent** : **Livin Housing Limited**

**Type of Application** : **Determination of Right to Buy Housing Act  
1985, Schedule 5, Paragraph 11, as amended  
by Housing Act 2004, Section 181**

**Tribunal Members** : **Mr I D Jefferson TD BA BSc FRICS  
Mrs K Usher**

**Date of Determination** : **11 October 2019**

**Date of Decision** : **18 October 2019**

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**DECISION**

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**Decision: The Tribunal is satisfied that the Property is particularly suitable for occupation by elderly persons and that the Respondent is able to rely upon Schedule 5 paragraph 11 of the Housing Act 1985. The Applicant is therefore denied the right to buy.**

### **Application and Background**

1. The Applicant is the tenant and occupier of the Property and gave notice to the Landlord of intention to exercise the right to buy. The papers are not before the Tribunal but the Tribunal assume that the Application was received.
2. The Landlord then served a Notice (form RTB 2) dated 11 July 2019 on the Applicant under Section 124 of the Act denying the right to buy on the grounds set out in paragraph 11 to Schedule 5 of the Act.
3. By an application dated 26 July 2019 the Applicant applied to the Tribunal for a determination as to whether the dwelling house is suitable for occupation by elderly persons.
4. The Application was copied to the Landlord.

### **Representations and hearing**

5. The Tribunal received written representations from both parties.
6. Neither party requested a hearing. The Tribunal inspected the property on 9 October 2019 as below and deliberated later in the day to make its determination.

### **The Property**

7. The Tribunal wrote to both Parties on 19 September 2019 referring to previous correspondence and setting out that the matter would be determined on 9 October 2019, and that the Tribunal would write again shortly with details of relevant timings. By way of subsequent letter dated 27 September 2019 sent separately to both Parties the Tribunal confirmed that neither Party had requested a Hearing, that the Tribunal would like to inspect the Property at about the appointed time on 9 October 2019 and would consider the matter without the Parties being present thereafter. The Tribunal attended at the property at 10am on 9 October 2019, and a representative of Livin was also present. The Applicants were not at the Property and no internal access was afforded to the Tribunal. The Tribunal were however able to undertake an external inspection, and the internal arrangement and accommodation within the Property is known from the written representations from both Parties.

8. The Property is a single storey bungalow believed to have been built in 1936 under a pitched and hip roof now clad in interlocking concrete tiles. The bungalow has double glazed windows and gas fired radiator central heating. Access is by way of two easy steps to both the front door, and rear door. The path from the pavement to the front door is a gentle slope with a sturdy single handrail full length to one side of the path. Externally there are gardens to front and rear, with a car space at the side.

The internal accommodation is understood to comprise reception room, main bedroom, kitchen and bathroom.

The Tribunal found that there is a bus service serving the estate very close to the Property, and local shops within reasonable walking distance.

### **The Law**

9. Paragraph 11 of Schedule 5 of the Housing Act 1985 provides that:-

(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 a predecessor of 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 .....*

(6) *This paragraph does not apply unless the dwelling house concerned was first let before 1<sup>st</sup> January 1990*

10. The Office of the Deputy Prime Minister (ODPM) ( now the Department of Communities and Local Government) issued Circular 7/2004 (Right to Buy: Exclusion of Elderly Persons' Housing), which sets out the main issues relating to the particular suitability of an individual dwelling house for occupation by elderly persons (paragraph 12). The Tribunal is not bound by this circular, deciding each case on its merits, but does have regard to the criteria contained in the circular as a guide.

## **Tribunal's Determination**

11. The Tribunal has jurisdiction to make a determination on the application by the Applicants as the denial of the right to buy was under paragraph 11 of Schedule 5 of the Act. In doing so it has to consider:
  - (i) whether the dwelling-house was first let before 1 January 1990; and
  - (ii) whether the dwelling-house is particularly suitable for elderly persons aged 60 or over; and
  - (iii) was let to the tenant or a predecessor for occupation by a person who was aged 60 or more.
12. The Respondent confirmed that the Property had been first let before 1 January 1990 and that has not been challenged.
13. The Parties agree that the Property was let in February 2006 to Joint Tenants, one of whom was aged over 60 at the time of the commencement of the Joint Tenancy.
14. The legislative preconditions are therefore satisfied for the Local Authority to deny the right to buy, but it remains for the Tribunal to determine whether the dwelling is particularly suitable in physical terms for occupation by elderly persons.

The tests are set out in Circular 7/2004 of the Office for Deputy Prime Minister although these are simply guidelines not mandatory. Nonetheless the Tribunal did have regard to all of those matters including location, size, design, heating, and other features.
15. The Tribunal found that one of the joint Applicants was aged over 60 when the joint tenancy commenced. The property is one of a group of bungalows which are particularly suitable for elderly persons in an area which is well served by local buses and has local shops nearby. The bungalow is on one level, it is physically attractive to elderly persons, and is close to local amenities.
16. The requirement of paragraph 11 (1)(b) namely that the dwelling house was let to a Tenant who was aged 60 or more was met.
17. The Tribunal were satisfied that there was no dispute that the property had been first let before 1 January 1990 and that the requirement of paragraph 10 (6) was met.

18. The Applicants made written representation that other owners of bungalows on the estate have been permitted to buy, including some fairly close to the subject property.
19. The Applicants also stated in their Application to this Tribunal that when they took the Tenancy they made it plain to Sedgefield Borough Council that they wanted to purchase the Property in the future and they state that the Council advised them to take a Joint Tenancy. The Applicants then state that had they not done so and taken the Tenancy in the name of Mr Covey alone then they would not be in the current position.
20. The Respondents state that Sedgefield Borough Council transferred their residential properties to Sedgefield Borough Homes Limited on 30 March 2009 by large scale voluntary transfer. On 2 November 2011 Sedgefield Borough Homes Limited changed its name to Livin Housing Limited.
21. The Respondents state that bungalows numbered 1, 2, 5, and 7 were sold by Sedgefield Council to private individuals and developers. Of the four remaining bungalows nearby, they accept that three are occupied by persons under 60 years old however all have long term medical needs which prevents the occupiers from working and as such were considered disabled.
22. The Tribunal note that it is perhaps unfortunate that Livin Housing Limited appear to have a different policy from the former Council which has not been clearly communicated to the Applicants and others in their position.
23. The Tribunal note that previous sales may have occurred. It may be in other cases that despite satisfying paragraph 11 (1)(a) the second condition in paragraph 11 (1)(b) was not satisfied. In any event this Tribunal must adhere to the legislation as set out in the Housing Act.
24. The Tribunal are satisfied that the Property is suitable for occupation by elderly persons. Accordingly the Tribunal determines that the Respondent may rely on Schedule 5 paragraph 11 to deny the Applicant the right to buy.

**Mr I Jefferson**  
**17 October 2019**