



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

**Case Reference** : **BIR/00CN/RTB/2018/0009**

**Property** : **19 Turner Street, Sparkbrook, Birmingham  
B11 1XQ**

**Applicant** : **Alema Haddie**

**Representative** : **Abeer Kaida**

**Respondent** : **Birmingham City Council**

**Type of Application** : **Under Paragraph 11 of Schedule 5 Housing  
Act 1985 for a determination whether a  
dwelling house is suitable for occupation by  
elderly persons**

**Tribunal** : **Tribunal Judge P. J. Ellis  
Tribunal Member Mr R.P. Cammidge FRICS.**

**Date of Hearing** : **2 November 2018**

**Date of Decision** : **14 November 2018**

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**DECISION**

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***The Tribunal determines that the dwelling house situate at and known as 19 Turner Street Sparkbrook Birmingham B11 1XQ is suitable for occupation by elderly persons***

1. This is an application for a determination as to whether a dwelling house is suitable for occupation by elderly persons pursuant to Paragraph 11 to Schedule 5 of the Housing Act 1985 (the Act).
2. The Applicant is Alema Haddie, the present tenant of the subject property, which is 19 Turner Street Birmingham B11 1XQ (the Property). The Applicant is represented by Mrs Abeer Kaidah. The Applicant has occupied the Property as a tenant since 28 October 2013.
3. The Respondent is the Birmingham City Council who first let the Property before 1 January 1990 namely on 27 February 1978.
4. The Applicant made her application to the Respondent to buy the Property on 29 May 2018. The Respondent notified the Applicant that it denied the application by notice in reply to the Applicant's right to buy claim on 9 July 2018 on the ground of paragraph 11 of Schedule 5 to the Act because the Property was first let before 1 January 1990, it is particularly suitable for occupation by elderly persons and was let for occupation by a person aged 60 or more.
5. The Applicant issued this application on 24 July 2018. Directions were issued on 2 August 2018 directing the parties to serve statements of case. The Tribunal inspected the Property on 2 November 2018 but the parties did not request an oral hearing. Each side made brief written representations which were considered by the Tribunal in making this decision.

## **The Property and the nearby area**

6. The Property is single story end of terrace dwelling constructed of brick and tile with feature wood cladding to the front and side elevation. The terrace of four dwellings is located at the end of a cul de sac with two story dwellings along the other two sides all around a green space making a reasonably attractive situation.
7. The accommodation comprises one bedroom, kitchen, bathroom/wc and living room. There are store cupboards at the exterior of the front and rear of the Property. There is a small garden securely fenced. At the rear of the Property is a grassed common area behind the terrace of dwellings enclosed with a metal fence and accessible to the residents. Beyond the fenced common area there is an expanse of parkland.
8. The Property is heated by gas central heating and is double glazed throughout. The Applicant has made some improvements to the Property by relaying the floor finishes and coverings to the living room, hallway and bedroom and improving some parts of the ceiling.
9. The part of Turner Street occupied by the Property is a cul de sac closed at the end formed by the terrace including the Property. It is part of an estate built by the local council comprising mainly two storey properties and some three story blocks. The Tribunal did not see other single storey dwellings on the estate. It noticed that some of the properties were in private ownership as there were 'For Sale' signs outside some of the two storey buildings.
10. Turner Street forms a junction with Ladypool Road which runs between two main roads namely Highgate Road (A4167) and Stratford Road (A34). Nearby within 500 metres of the Property are bus routes to Birmingham and other destinations on both Highgate Road and Stratford Road.
11. There are a variety of shops on the Stratford Road including two general provisions stores and a pharmacy within 500 metres. The general provision stores

are situated so that it is not necessary to cross the main road. There are other shops and restaurants on Ladypool Road after its junction with Highgate Road.

12. The area is generally flat with little or no incline on any of the nearby streets. Access to the Property does not involve any steps other than the single step into the Property through the front door.

### **The Statutory Provisions and Ministry Circulars**

13. In the recent case of *Milton Keynes Council v Baily* [2018] UKUT 0207 (LC) Case No: HA/15/201 Mr Peter D McCrea FRICS considered a similar case where the local authority opposed a right to buy claim where the property is “particularly suitable..... for occupation by elderly persons”. He identified the relevant provisions of the Act and the Ministerial Circulars and the Tribunal respectfully reproduces his summary.

*“Statutory Provisions and Ministerial Circulars*

*4. Insofar as relevant, Part V of the Act provides:*

*“118. The right to buy*

*(1) A secure tenant has the right to buy, that is to say, the right, in the circumstances and subject to the conditions and exceptions stated in the following provisions of this Part—*

*(a) if the dwelling-house is a house and the landlord owns the freehold, to acquire the freehold of the dwelling-house; ...*

*120. Exceptions to the right to buy The right to buy does not arise in the cases specified in Schedule 5 (exceptions to the right to buy).”*

*5. Paragraph 11 of Schedule 5 to the Act creates the relevant exception:*

*“11.—*

*(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 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 or a predecessor in title of his.*

*(3) ...any question arising under this paragraph shall be determined as follows.*

*(4) 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. ...*

*(5A) In this paragraph "the appropriate tribunal or authority" means—*

*(a) in relation to England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; ...*

*(6) This paragraph does not apply unless the dwelling-house concerned was first let before 1st January 1990."*

*6. The reference in paragraph 11(4) above to a landlord's notice under section 124 is to the notice which a landlord is required to serve under that section either admitting or denying that the tenant has the right to buy.*

14. After a paragraph not relevant to this case he continued at paragraph 8

*8. Prior to 1 April 2005, determinations under paragraph 11(4) of Schedule 5 were made by the Secretary of State, who provided guidance on how applications would be dealt with in DoE Circular 13/2003. This was updated in December 2004 by the Deputy Prime Minister's Office in ODPM Circular 07/2004. On 1 April 2005, responsibility for the determination of appeals was transferred to the "appropriate tribunal or authority" under section 181 of the Housing Act 2004. Circular 07/2004 was alive to this impending change, indicating that "the criteria set out in this circular will not be binding on [the appropriate tribunal or authority] but they will be guided by them in general terms. Each case will, however, be decided on its own merits.*

9. Circular 07/2004 outlined the main points on which the Secretary of State would normally be expected to be satisfied in considering applications under paragraph 11 of Schedule 5:

*“a) There should be ease of access on foot to the dwelling. In assessing ease of access, consideration should be given to:*

- the number and size (in particular the height) and curvature of any steps up to the dwelling itself, and also of any steps in the immediate vicinity where these must be negotiated to gain access to it (the dwelling);*
- the presence or absence of handrails, or other means of support, alongside any steps up to the dwelling and in its immediate vicinity that need to be negotiated to gain access to it;*
- the gradients of ramps, paths, pavements or other means of access to the dwelling and in its immediate vicinity, where these must be negotiated to gain access to it;*

*In general access is unlikely to be regarded as easy if it is necessary to climb three or more steps (in addition to the threshold) and there is no handrail;*

*b) the accommodation should normally be on one level. The Secretary of State is unlikely to regard a dwelling with two or more floors as being particularly suitable for occupation by an elderly person. However, he may be prepared to make exceptions for dwellings with up to three internal steps, or with stair-lifts or similar devices provided by the landlord;*

*c) in the case of a flat above ground floor level, there should be access by a lift which is available at all times (except for very short periods of routine maintenance or occasional breakdowns);*

*d) there should be no more than two bedrooms, designated as such in the tenancy agreement;*

*e) there should be heating arrangements which;*

- function reliably;*
- provide heat to at least the living room and one bedroom;*
- may safely be left on overnight*

*f) the dwelling should be located reasonably conveniently for shops and public transport, having regard to the nature of the area (the Secretary of State may take into account reliable means of transport other than those provided by*

*public bodies – for instance, transport provided by shops or voluntary organisations);*  
*in an urban area, the dwelling should be located no more than 800 metres (half a mile) from both the nearest shop selling basic food items and the nearest public transport stop. Basic food items include bread and milk;*  
*in a rural area, the dwelling should be located no more than 800 metres (half a mile) from the nearest public transport stop, and such transport should be available from this point frequently enough to provide at least three opportunities for shopping each week.”*

15. In the *Milton Keynes* case the FTT had decided that a property otherwise suitable for occupation by the elderly was rendered unsuitable because it considered that the level of manual handling required to operate the heating system in the normal course of occupation exceeded the that which an elderly person “able to live independently despite some limitation owing to age” would be able to undertake. There was also some criticism of the position of a thermostat.

16. When the appeal was heard Mr McCrea said:

*“In my judgment it would be surprising if the appeal property, which in all other respects was suitable to house an elderly person, and is located in a cul-de-sac of similar properties all of which appear to have been designed specifically for that purpose, was prevented from being considered particularly suitable for occupation by elderly persons because of one individual feature. That cannot have been the intention of the parliamentary draftsman who adopted a non-prescriptive approach which invites consideration of the suitability of the property in the round. I accept the Council’s submission that the characteristics of the property must be assessed in aggregate, and not looked at individually. The question in a case such as this is whether the property is particularly suitable. Some features may tend in one direction, while others point the other way. Some features may be so significant in themselves that they make the property positively unsuitable (for example that it could only be reached by a very steep staircase). But what is required is an*

*assessment of the whole. By focusing on a single feature, the FTT did not make such an assessment.....”*

## **Decision**

17. In the application form the Applicant, who may not have completed the application herself as it is marked with a X, admits that the Property “*is 200yards from the shops*” and that “*transport is readily available*”. It is also admitted that the Property is “entirely suitable” in response to the direction to provide any details or information which makes the applicant believe it is unsuitable for occupation by the elderly.
18. In her written statement the Applicant asserts that the Property was let to her as an elderly person but that a neighbouring single story property was recently let to a young single parent. Also that at the time of the letting the Respondent had supplied information which lead her to believe the that she had a right to buy and consequently paid for some general upgrades to the Property. The Applicant was unable to produce the alleged notification but on inspection the Tribunal was shown the improvements to the property.
19. The Tribunal has adopted Mr McCrea’s observations in the *Milton Keynes* case that the characteristics of the property must be assessed in the aggregate. As a result of the inspection the Tribunal is satisfied the Property is suitable for occupation by elderly persons. Access to the Property is on the flat, heating is to a decent standard and can be operated through the night, it is in reasonable condition with a good bathroom and kitchen. There is a small manageable garden and access to secure larger open outside areas. The Tribunal did not see any significant trip hazards.
20. The Applicant stated that the Property is suitable for the elderly in the application and the statement of case. The Tribunal has not treated those statements as admissions as they may have been made without a full understanding of their significance. However, they are honest observations about the location of the



Property and explain why the Applicant who lacks mobility and in 78 years old wishes to exercise a right to buy.

21. The Applicant did not deny the Respondent's evidence of occupation of the Property from before 1 January 1990.

22. The Applicant's allegation of an apparent change in letting policy is not relevant because the law and ministerial guidance requires the Tribunal to consider the suitability of this Property for occupation by the elderly and not review the letting policy of the Respondent.

23. The Respondent alleged the property was eligible for right to buy at the time of letting. The Tribunal finds that there was insufficient evidence for it to consider that allegation. Even if there was such a letter the effect of the relevant provisions of the Act is that the Respondent can deny the right if the property is suitable for occupation by the elderly.

24. In this case the Tribunal is satisfied that the Property is suitable for occupation by the elderly, that it was first let before 1 January 1990 and as the Applicant was herself over 70 at the date of taking up possession, the Property was let for a person over 60 years.

### **Appeal**

25. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge PJ Ellis

Chair