



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

Case Reference : **MAN/OOCZ/RTB/2021/0001**

Property : **20 Highgate Crescent, Lepton,
Huddersfield, HD 8 0DP**

Applicant : **Mrs Anita Catstree**

Representative : **In person**

Respondent : **Kirklees Neighbourhood Council**

Representative : **Mrs Alexandra Gosling**

Type of Application : **Housing Act 1985, Schedule 5,
Paragraph 11-Right to Buy**

Tribunal Members : **Judge J. E. Oliver
Tribunal Member S.A. Kendall (Valuer)**

**Date of
Determination** : **25th August 2021**

Date of Decision : **21st September 2021**

DECISION

Decision

1. The Property is particularly suitable for occupation by elderly persons.
2. The requirements of Paragraph 11, Schedule 5 of the Housing Act 1985 (“the Act”) as to the date of the first letting and the age of the tenants are met as are the characteristics of the Property regarding the accommodation and location.
3. The Council is entitled to rely upon Paragraph 11, Schedule 5 of the Act to deny the Mr and Mrs Catstree their Right to Buy the Property.

Application

4. Mr John Neville Catstree and Mrs Anita Catstree gave notice to Kirklees Neighbourhood Council (“the Council”) of their wish to buy 20 Highgate Crescent, Lepton, Huddersfield, pursuant to the Act.
5. The Council subsequently served a notice, dated 7th December 2020, under section 124 of the Act, denying the Mr And Mrs Castree their Right to Buy stating that the Property was particularly suitable for occupation by an elderly person as provided for in Paragraph 11, Schedule 5 of the Act.
6. By an application received on 20th February 2019 Mrs Catstree applied to the Tribunal under paragraph 11(4) of the Act for a determination as to whether the grounds contained within Paragraph 11 were satisfied.
7. The Council confirmed its intention to oppose the appeal.
8. Due to the restrictions imposed by COVID-19, the Tribunal advised the parties that an external inspection of the Property would be undertaken.
9. Mrs Catstree requested a hearing and an inspection and video hearing was fixed for 25th August 2021.

The Property

10. On 25th August 2021, the Tribunal undertook an external inspection of the Property in the presence of Mr and Mrs Catstree and their daughter. The Council was not represented.
11. The Property is a brick built, semi-detached bungalow, having large gardens to both the front and rear. It is in an area of mixed local authority housing and within an open plan development of similar bungalows. Mrs Catstree explained that all the residents of the bungalows have access to the gardens surrounding their properties, including that adjoining the Property. There is on-road parking to the front of the Property. There is also a car park to the rear of the development where Mr & Mrs Catstree can park, subject to an available space and from which Mr and Mrs Catstree have pedestrian access via the garden adjoining their neighbour’s property and then an unlit muddy path. Mrs Catstree highlighted the state of disrepair of the car park and that it was poorly lit, having only one light at the far end of it.
12. The Property has 2 double bedrooms, kitchen, bathroom and living room and has the benefit of double-glazing.

13. The Property has gas central heating. Mrs Catstree confirmed it operates reliably and can be safely left on at night, should this be required.
14. Access to the Property is from a path running from the pavement to both the front and rear of the Property. The path is on a gentle gradient although there are no handrails. The entrance to the front door is via three steps made of square paving slabs and to the side of these steps are two lower steps that are not used and are covered by household bins. Consequently, there are effectively two sets of steps next to each other, making those steps that are used somewhat narrow. There is a handrail to the side of the paving slab steps and a grab handle on the right-hand side, affixed to the house. There are then two further steps beyond the front entrance to the house, leading to the path that goes around the side of the house and leads to the back door. At this entrance there are 3 steps to enter the Property, with a handrail.
15. At the inspection Mrs Catstree advised of the hazard created by the number of trees around the Property, there being one large tree at the front and several to the rear. When the leaves fall they create a slip hazard, due to the amount in the garden and cause Mrs Catstree considerable work; she has to ensure they are regularly cleared since her husband is disabled and relies upon a mobility scooter.
16. Mrs Catstree invited the Tribunal to carry out an internal inspection of the Property to see evidence of damp in the Property. Whilst an internal inspection could not be carried out, Mrs Catstree advised of issues in both the bathroom and bedroom. The condensation in the bathroom caused black mould and water to run from the toilet cistern onto the floor, creating a hazard. There was also damp in a corner of a bedroom. There had been issues with the soffits and gutters, both of which had been replaced but the mortar on the gable end kept falling out and was a further hazard. Whilst the Council had undertaken repairs to the mortar, they were of a poor standard and the issue regularly reoccurs.
17. The Property is approximately 160 metres from the convenience store, Lepton Food and Wine, selling basic food items, including bread and milk. The nearest main shopping centre is Huddersfield, 4.2 miles away. There are two bus stops, both approximately 175 metres from the Property travelling to Huddersfield, Fennay Bridge, Waterloo and Aspley.
18. The route to the local shop is on a slight gradient, measured at 5% by the Council.

The Law

19. Paragraph 11 of Schedule 5 of the Act provides 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 an elderly person, and

- (b) was let to the Tenant or a predecessor in title of his for occupation by a person who is aged 60 years or more (whether the Tenant or a predecessor or another person).
20. The Circular from the Office of the Deputy Prime Minister dated December 2004 (ODPM Circular 07/2004) (“the Circular”) gives the criteria for establishing whether a dwelling house is particularly suitable for occupation by an elderly person as provided for within the Act.
21. The Circular states that when considering this, “elderly persons will be taken to mean individuals who are able to live independently despite some limitations owing to age. It will not mean individuals who are frail or severely disabled”.
22. The Circular states the “main points” that should be considered are:
- There should be easy access on foot to the dwelling. In general, access is unlikely to be considered as easy if it is necessary to climb 3 or more steps and there is no handrail.
 - The accommodation should be on one level
 - Where a flat is above ground level, there should be a lift.
 - There should be no more than two bedrooms.
 - There should be heating that is reliable and can be safely left on overnight
 - The property should be located conveniently for local shops and public transport. This, in an urban area, should be no more than 800 metres (half a mile) from the nearest shop selling basic food items, i.e. milk and bread. In a rural area, the property should be no more than 800 metres from the nearest public transport shop that provides at least three opportunities for shopping each week.

The Hearing

23. Mrs Catstree attended the video hearing, supported by her daughter and sister. The Council was represented by Mrs Gosling. Councillor McGuin, who had written to the Council in support of Mr and Mrs Catstree, was also in attendance.
24. Mrs Catstree submitted the Property is not suitable for occupation by an elderly person by reason of its access, the disrepair and access to the car park, the lack of suitable parking on the road at the front of the Property, the hazard caused by the leaves and dampness within the Property.
25. In respect of the issue of access, Mrs Castree argued the steps to the front door are too narrow, making it extremely difficult for her husband to use. He has, on at least one occasion, nearly fallen onto the adjoining steps. Whilst she tries to assist, the steps are too narrow to enable her to do so. He cannot use his mobility scooter to access the front door. Whilst there are handrails at the door, there are none for the two other steps that are beyond the door and are on the pathway leading to the rear of the Property. Mrs Catstree accepted the rear steps are of the correct width, but are wider than those at the front door.

Mrs Gosling stated that the layout and number of steps are deemed suitable for an elderly person.

26. The Tribunal advised the issue of the disrepair and poor lighting in the car park are not factors within its jurisdiction, since it does not form part of the Property within the Right to Buy application. Mrs Catstree confirmed her inclusion of the car park is to show the difficulties in getting to the Property from the car park. The access from it, which is up a step and then across her neighbour's property is unsuitable.
27. Mrs Catstree advised that parking at the front of the Property is difficult due to the fact the road is very narrow and consequently cars are parked with two wheels on the pavement to allow room for other cars to pass. Consequently, her husband cannot use the pavement with his mobility scooter. Mrs Gosling again argued this was not a relevant.
28. There is a large deciduous tree in the front garden and several on the rear boundary of the back garden that shed leaves annually and, when wet, cause a hazard of falling or slipping. They can cover all the steps at the front of the Property. Mrs Catstree submitted this makes the Property unsuitable for an elderly person. Mrs Gosling submitted this is not a factor that has to be considered when considering the Right to Buy, nor is it a problem specific to the Property. However, it is a matter that should be reported to the Housing Manager. Councillor McGiwin confirmed that his understanding was that no action would be taken upon this issue.
29. In respect of the issue of damp and other disrepair in the bathroom, bedroom and to the outside, Mrs Catstree argued they are all hazards that endanger she and her husband and make the Property unsuitable for an elderly person. Mrs Gosling again argued that none are relevant factors but should be reported to the Housing Manager.
30. Mrs Catstree raised the issue of a similar nearby property being let to a person under the age of 60 years. When Mr and Mrs Catstree applied for local authority accommodation Mr Catstree was 58 years of age. The tenancy was not granted to them until he was aged 60. The Tribunal explained the relevant legislation applied to tenants over the age of 60 years and those under that age would have the Right to Buy even if the property was deemed to be suitable for an elderly person. Mrs Gosling confirmed the Council only applied the legislation to bungalows or ground floor flats. Councillor McGiwin advised the Council has a non-discrimination policy and so those properties that may be deemed suitable for the elderly will be let to a person of any age, if available. This results in a shortage of properties suitable for the elderly. Mrs Catstree advised she wished to raise the issue of ageism.
31. Mrs Catstree confirmed the central heating system works satisfactorily. It can be safely left on at night and serves at least the living room and one bedroom. She further confirmed the proximity of the local convenience store and the bus stops are as notified by the Council in their submissions.

Determination

32. The Tribunal considered the requirements of the Act and found the Property fulfils the criteria in that it was first let before 1st January 1990. It was let to the Mr and Mrs Catstree when Mr Castree was over the age of 60 years. Consequently, the requirement that the Property is let to someone over the age of 60 years is met.
33. The Property is on one level, has no more than two bedrooms, as specified by the Act and has a central heating system that operates satisfactorily and can be safely left on at night.
34. Access to the Property is not difficult for a person over the age of 60 years in reasonable health. The Tribunal accepts access to the front of the Property is narrow when compared to the rear. However, when considering the legislation and the guidance given within the Circular, there are 3 steps and a handrail to the left of the steps and a grab handle on the house wall. Access to the Property does not have to accommodate a mobility scooter, nor a disabled person. The requirements are that the access is suitable for a person “in reasonable health”. The access to the Property, both at the front and the rear fulfils this criteria. There are two additional steps at the front, but these do not have to be used to gain entrance to the front of the Property.
35. The Circular in December 2004 suggests that access to a property is not easy if it has more than 3 steps and has no handrail. The Property does not fulfil this criteria.
36. The Property is within half a mile of a shop selling the basic food items, as set out in the Circular and within walking distance of bus stops travelling to Huddersfield and other local areas.
37. The Tribunal does not consider the route to either the convenience store or the bus stops to be unsuitable for a person over the age of 60 in reasonable health. The routes to both on a slight gradient.
38. The Tribunal considered the issues raised relating to both the leaves and the damp within the Property. Whilst the Tribunal recognise these are a source of stress and upset to Mr and Mrs Catstree, they are not matters that it can take into account here.
39. The Tribunal also considered the issue of age discrimination. It accepted the evidence given by Mrs Catstree that she is aware of an identical property let to a tenant under the age of 60. The Act does not exclude tenants under the age of 60 from buying their property even if that property may be suitable for occupation by an elderly person. At the commencement of Mr and Mrs Catstree’s tenancy the Property was let on the basis it was suitable for a person over the age of 60. The Property is still designated as such by the Council. Consequently, the Property is still governed by the requirements of Paragraph 11, Schedule 5 of the Act.
40. The Tribunal considered The Equality Act 2010 and noted that under Schedule 22 of the Act there is specific provision relating to age discrimination

- that prevents its application if there is statutory provision for it. In this case the Act makes the provision for the refusal of a Right to Buy because of age.
41. In addition, the Tribunal also considered section 13 of the Equality Act 2010 that provides a more general right not to be discriminated against a person because of age. Section 13(2) provides that there is no discrimination if it can be shown by the Council that their refusal is a proportionate means of achieving a legitimate aim.
 42. The Tribunal determined the Council's refusal of the Right to Buy is proportionate in allowing them to maintain an adequate housing stock for elderly persons within its area.
 43. The Tribunal considered the requirements of the Act and found that the criteria established by Schedule 5 Paragraph 11 are met such that the Property is particularly suitable for occupation by an elderly person and consequently Mr and Mrs Catstree do not have the Right to Buy.

Tribunal Judge J Oliver.
25 August 2021