IN THE CENTRAL LONDON COUNTY COURT — No. E40CL053

Thomas More Building
Royal Courts of Justice

Thursday, 5 July

Before:

HIS HONOUR JUDGE PARFITT

(In Private)

B E T W E E N :

ANON — Appellant

- and -

LONDON BOROUGH OF LEWISHAM — Respondent

ANONYMISATION APPLIES

MR N. BANO (instructed by Centre 7) appeared on behalf of the Appellant.

MS A. PIEARS (instructed by the Legal Department) appeared on behalf of the Respondent.

J U D G M E N T

(Transcript prepared without the aid of documentation)

HHJ PARFITT:

1 This is my judgment in relation to this homelessness appeal which requires focus on questions of suitability of the relevant accommodation. The material statutory framework is as follows: the duty, sometimes referred to as the "main housing duty", arises under s.193(2) of the Housing Act 1996, which says:

> "Unless the authority refer the application to another local housing authority …, they shall secure that accommodation is available for occupation by the applicant."

2 That duty continues until it ends under the terms provided in that section, and the relevant one for present purposes is s.193(6)(d) which says, reading the necessary context:

> "The local housing authority shall cease to be subject to the duty under this section if the applicant- …
>
> (d) otherwise voluntarily ceases to occupy as his only or principal home the accommodation made available for his occupation."

3 The material background facts of the present case are that the appellant is the mother and carer of three children at all material times, two daughters, born on 6 October 2007 and 27 February 2013, and a son born on 27 July 2016. The appellant approached the local authority and was given temporary accommodation pending the authority deciding whether or not they did owe her the s.193(2) duty, and in a letter of 29 September 2016 the local authority wrote to the appellant and said that they had made the decision that they accepted they owed her that duty and a duty to secure suitable accommodation for her and her family and that they would set about doing that, and one of the things they said in that letter was as follows:

> "Unfortunately, there is a severe shortage of affordable rented properties becoming available in Lewisham. The low supply of accommodation is subject to many and various competing demands. It is not therefore possible to accurately predict how long you may have to wait before you bid successfully through the council's Choice-Based Lettings system, although it will be a considerable number of years. We would strongly recommend, therefore, that you do not rely on the council's housing register to accommodate you within a given period of time and you should try and secure your own alternative accommodation …"

And so on. And it says:

> "In the meantime, please ensure that you pay the charges and abide by the conditions of your agreement to occupy the temporary accommodation you have been provided with. If you experience any difficulties whilst in temporary accommodation please contact the Housing Options team immediately."

4 The temporary accommodation was the accommodation which is in issue for the purposes of this appeal, but in the statutory context it was provided to the appellant by the local authority pursuant to s.188 of the Housing Act 1996, which provides for an interim duty to provide

accommodation in particular circumstances (which applied in this case), and the relevant thing about that interim duty is that, by s.188(3), it ceases and comes to an end once the local authority has made the decision about the existence or otherwise of the s.193(2) duty, so that the local authority's obligations towards the appellant had moved from s.188 to s.193(2) at the time of the sending, or perhaps the receipt, of the 29 September 2016 letter.

5 With that background, I can turn to the four grounds of appeal. I shall say now, at the outset, so that particularly the appellant, who is listening to this, does not have to be worried about what the outcome is going to be, that I am going to allow this appeal and quash the decision, but only on one of the grounds that have been relied on. But, for the appellant's benefit, I let her know that now, as the judgment may take a little while.

6 So, dealing with the grounds that I am going to dismiss first, I will take ground 2, which essentially raises what I regard as factual disagreements with the review letter, in particular in relation to the condition of the property and also in relation to in relation to her son's health conditions. What is said in relation to both of those is, firstly, that the property was not suitable because it was subject to damp and mould and related-type conditions of disrepair and, secondly, that, as a result of those things, and also independently perhaps of them, the property was not suitable because the son had a particular eczema-type complaint which was exacerbated and/or could not suitably be dealt with within the context of the particular property concerned.

7 In relation to both those matters, the review letter goes into quite some detail as to the relevant and material evidence in a number of different places and I am satisfied that all material things were taken into account and that there were no immaterial things taken into account, and also that there were no further enquiries which were necessitated in respect of the information available.

8 By way of example I will use the detail of the question of M and his skin complaint and the assertion that he would need to have a bath available to him and that the accommodation only had a very small loo/shower room. Certainly it is right that the accommodation only had a very small loo/shower room, that is well demonstrated by a photograph that I have got in the bundle, but in considering that issue the review officer approaches it entirely appropriately and considers what alternatives are available and reaches a factual conclusion which is both unchallengeable in the context of a factual challenge on appeal but also plainly correct:

> "I have considered your solicitor's argument that you are unable to administer your son's skin medication in your temporary accommodation because you needed a bath in order to do this. You say the temporary accommodation only had a shower and this was not suitable…I considered this…I have taken the view that you could have simply used a baby bath…" The reviewer continues and says that he has taken medical advice and that the particular treatment that was relevant is a Dermol 600 bath treatment, but that he has discovered that, actually, there is an alternative treatment, a Dermol 500 lotion, which you could apply as a lotion rather than having in the bath.

9 This demonstrates a full and thorough consideration, in fact of suitability with regard to the son's needs. I could, but do not, give similar examples that would demonstrate the same point in relation to the mould issues. Having found, as I consider he properly did, that there was not a serious mould issue, i.e. one that was material to the suitability question, it then followed that his decision that the mould or potential mould was not a sufficiently serious

influence on the health of the son to mean that the property was unsuitable also was an entirely rational and reasonable factual decision for him to take. The two findings go together.

10 The next ground I want to consider is ground 1, which is a more legal and technical ground. The appellant's case is that the reviewer went wrong because he created a category of temporary accommodation which is not available under the statute and, in doing that, applied a lesser standard to the question of suitability than he was entitled to do. The argument continued that, in having regard to this accommodation as temporary, it was therefore not being considered as suitable pursuant to the main housing duty under s.193(2). The respondent's position included the proposition that this was only temporary accommodation and so it really should only be treated in that way, but also the respondent's position included that it was relevant to take into account the duration of time for which the accommodation was being provided for, it was relevant to see it as accommodation that was not intended to be the absolute fulfilment of the duty, in the sense that it would trigger the potential for the duty to come to an end as a result of, for example, the offered accommodation being rejected, and so that it was appropriate for the reviewer to bear in mind that it was temporary accommodation.

11 My decision in relation to this ground is as follows: firstly, that I agree with the basic starting point of the appellant's argument: for the purposes of fulfilling the section 193 duty there is no separate category of temporary accommodation which might lead to a different and less rigorous suitability requirement.

12 The most straightforward way to demonstrate that for present purposes is that the issue for the reviewer here, and therefore of course the issue which this court has to have regard to, to see whether or not the reviewer carried out his duties appropriately, is whether or not the main housing duty was brought to an end by the appellant ceasing to occupy as her only or principal home the accommodation made available for her occupation, and because the accommodation that is made available for her occupation needs to be treated as accommodation that was made available pursuant to s.193(2) it follows that the suitability requirement that is implicit in s.193(2) also applies to s.193(6)(d). There is no separate category of suitable accommodation, the only question is: is the accommodation which is no longer occupied one that was suitable? The duty will not come to an end if a party leaves accommodation which is not suitable; it is only if the relevant accommodation is suitable that the local authority are freed from what otherwise would be their obligation.

13 The next question, logically, is whether or not suitability is impacted at all by the amount of time for which that accommodation is made available, and it seems to me that that question is determined by the case of *Codona v Mid-Bedfordshire District Council* [2005] HLR 1, in which, on very different and particular facts in relation to the very temporary provision of bed and breakfast accommodation to a gypsy family, which obviously raised issues very different from those that I am considering today, the Court of Appeal was faced with a situation where the local authority had, in the exercise of its s.193(2) obligation, made available to a family bed and breakfast accommodation only for a few days, or at least with the intention that it would only be for a few days, and the issue was whether or not the accommodation was suitable, which raised all sorts of matters, but one of the things that the Court of Appeal plainly considered to be relevant to the question of suitability in the context of the exercise of the 193(2) duty was the amount of time within which they would be living there. So, for example, at para.60, it was said:

> "In my view, depending on the quality of bed and breakfast accommodation offered and, on the reasonable assumption that the Council will see to it that

> their stay there will only be for a short time, the Council has, so far, discharged its statutory duty to secure accommodation for the Codona family, and has done so without violation of Articles 8 and/or 14. I say 'so far' because the bed and breakfast accommodation offered could become unsuitable as a matter of domestic law and/or in violation of Article 8 if it goes on too long before suitable long-term accommodation in the form of conventional housing or, if it can be found, a caravan site can be provided."

14 Now, it follows from that that the question of suitability is one, to use the language I used, I think, in the course of discussions with counsel, that can flex relevant to the amount of time that it is considered to be available. This does not mean that there is a separate category of temporary accommodation, there is not, but it means that, when considering suitability, a local authority, or indeed a person to whom the duty is owed, can take into account the period of time within which that accommodation is going to be available. The question then, when looking at any particular review, is whether or not the correct question has been asked, that is, simply, "Is the accommodation suitable?", and, within that, issues of duration or intended duration can be taken into account.

15 If I was satisfied that the reviewer in this case had allowed his description of the property as temporary to obscure the real question then I would have allowed this review on that basis, but looking at the decision as a whole and notwithstanding the number of times he used the phrase "temporary accommodation", I consider that the reviewer did apply the right test and the reason I say that is because in one of his summary paragraphs he says:

> "In consideration of this and for the reasons given above, I am satisfied the temporary accommodation you were licensed was suitable for you and your family at the time it was licensed by you, and I am satisfied the accommodation would have been reasonable for you and your family to have continued to occupy for the period during which you can have expected to have lived there until you receive an offer of accommodation under Part 6 of the Act."

16 The phrase, "would have been reasonable for you and your family to have continued to occupy for the period during which you can have expected to have lived there" seems to me an entirely accurate description of the relevant test so far as suitability and the flexing of suitability to time is concerned and shows that the reviewer has applied the right test.

17 So, to emphasise, if the reviewer had applied a test that meant: this is only temporary accommodation, therefore it does not have to be suitable pursuant to section 193 and does not have to meet obligations attaching to the 193 duty, then it would have been wrong, but because I do not think that, in fact, this reviewer has applied such an incorrect test or has allowed such considerations as are reflected in that incorrect test to obscure the correct test then I think that the review survives, at that level of analysis, that particular criticism.

18 So, I can now move on to the ground on which I am going to allow the appeal, and that is essentially the *Nzolameso* ground. The relevant part of the *Nzolameso* case is well-known, but I just remind myself of it. Paragraph 27. The citation for the case is [2015] UKSC 22, and para.27 reads:

> "The question of whether the accommodation offered is 'suitable' for the applicant and each member of her household clearly requires the local authority to have regard to the need to safeguard and promote the welfare of

> any children in her household. Its suitability to meet their needs is a key component in its suitability generally."

19 And that requires, of course, an identification of what those needs are and then express consideration of the duty to safeguard and promote those needs and, in my judgment, the review officer failed to satisfy that requirement, not in relation to, obviously, the mould-type issue, because I have held that that does not arise, but in relation to the children's education requirements and the interests of and impact on the son who is also impacted by the difficulties surrounding the education. The difficulties surrounding the education relate to the distance between the primary school attended by the two daughters and the accommodation provided to the appellant.

20 The review officer did address this and what he said was as follows, and I need to read out both paragraphs of this, but to give the relevant background, one of the points made by the appellant was that the accommodation was too far away from the children's school and it was said that the school had written and complained about lateness. The review officer noted that there was a letter from the school complaining about lateness, but also noted that there had been lateness at previous schools, so I suspect, although it is not entirely clear, that he was saying, "Well, it is not really to do with the distance and the journey, it is more to do with an inability to get your child to school on time." Be that as it may, the real question, which the appellant addressed in detail, was the journey time. Necessarily, a long and complicated journey will have an impact on lateness, but also a long and complicated journey is problematic of itself in terms of the child's development and tiredness but the review officer did not pay that any regard to that at all, and also he failed in any way to have regard to the impact on the son in relation to that journey, it obviously being a necessary inference that the older children were not going to be able, at primary school age, to make that journey themselves and so the appellant would have to bring her son along with her. Here is what the journey is, and I am going to quote, as I say, the two paragraphs from the review:

> "I have made enquiries of the Transport for London journey planner. The journey to your children's school from your temporary accommodation, should you leave at 6.57 a.m., would generally have taken you around eighty minutes. In summary, this would have required a two-minute walk from the temporary accommodation to the 314 or 233 bus stop, a six-minute bus journey to Eltham and then a six-minute walk to take a South Eastern train to London Bridge, which would generally have taken you a further twenty-two minutes. You would then have needed to take a Northern Line train to Clapham Junction (twelve minutes) and then a twenty-minute walk to your children's school. You would have arrived at approximately 8.17 and in time for your children's schooling.
>
> "Although not ideal, I think this journey would have been reasonable for you and your family. If you took the view that this journey was too onerous and made your temporary accommodation unsuitable for you and your family, you could have requested a suitability review of the accommodation. The matter at the time could have been considered and decided on review and possibly other statutory processes. I do not take the view that you voluntarily ceasing to occupy the temporary accommodation as your only or principal home was an appropriate response to this and neither did the matter make the accommodation unsuitable for you or your family."

21 It was not really until the end of that extract that I have read out, "and neither did the matter make the accommodation unsuitable for you and your family" that the reviewer posited to himself the right question. What he had to say before about "the matter at the time could have been considered and decided on review and possibly other statutory processes" makes no sense and was irrelevant in the context of the question he was addressing and needed to address, which was the suitability of the accommodation, not whether it was reasonable for the appellant to leave the accommodation. The question is suitability, and whether it was suitable or not is actually not influenced by the reasonableness of a decision to leave, though I suppose the reasonableness of a decision to leave might impact on and be evidentially relevant to the question of suitability, but it is suitability that is at the core of this.

22 In order to have due regard to the interests of the children in relation to this suitability issue, he needed to identify, first, what those needs were and how to safeguard and promote them. It was a failing on his part to do that without regard to the son and the influence on the son and the difficulties that there would be, both for the mother and the mother's relationship with the son, in having to undertake this journey four times a day. Of course, for the children at the school it is difficult, they have to undertake the journey two times a day, but for the mother and the son, they have to undertake it four times a day, and that needed to be expressly thought about, expressly considered and the son's interests needed to have been a focus of the review in this respect. In fact they are entirely ignored – the reviewer says nothing about the son in this respect. I also think that he did not give sufficient regard to the interests of the other two children and it is not just about whether or not they had been late on a few occasions and whether that had happened previously or otherwise, the issue is not that, the issue is the interests and needs of these children as they developed, and that needed to be seen in the context of this accommodation being available potentially for years, that being what was stated in the 29 September 2016 letter. A journey of this type of difficulty, going into the centre of London during very busy times for the transport system and then going out again to be able to get to the school, that difficulty of journey might well have been appropriate or manageable for a very short period of time; it becomes potentially less manageable and less appropriate as time goes on, and if it is intended that children are going to have that journey for a number of years, as they are starting at and then developing through their primary school years, then there needed to be express consideration of the difficulties, or potential difficulties, in relation to that, express consideration as to whether that was something that needed to be thought about further and they needed to be safeguarded in relation to the problems associated with that, both in terms of their development and in terms of their ability to have a fulfilling life within and without school as well, and I think the reviewer failed in that regard. And in that respect, which is essentially part of ground 3, but focusing on the children and the schooling issue, which involved the son as well, but that was ignored, the reviewer failed, and I will quash the decision on that basis.

23 I do not think it is necessary for me to say anything more about ground 4. I do not think that there is anything in that separately that would have led to me setting aside the review if it had not been for the points arising from the *Nzolameso* analysis and the schooling issue. That is my decision.

CERTIFICATE

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