IN THE COUNTY COURT AT CENTRAL LONDON

Claim No: G40CL144
Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL

Date: 1st October 2020

Before:

HIS HONOUR JUDGE SAUNDERS

Between:

AB **Appellant**

- and -

THE LONDON BOROUGH OF BARNET **Respondents**

Mr Joshua Hitchens of Counsel (instructed by Lawstop, Solicitors) for the **Appellant**
Ms Genevieve Screeche - Powell of Counsel (instructed by the Respondent) for the **Respondent**

Hearing date: 8th September 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

HHJ Saunders:

1. This is an appeal under section 204 of the Housing Act 1996 ("the Act") against the Respondent local housing authority's review decision of the 1st June 2020 in which a finding that an offer of accommodation in West Yorkshire was suitable in discharge of its duty was upheld by the Reviewing Officer.

2. At the hearing before me, the Appellant was represented by Mr Joshua Hitchens of counsel, the Respondent by Ms Genevieve Screeche – Powell, also of counsel. I am hugely grateful to them for their detailed submissions based upon their respective skeleton arguments. I have considered the agreed bundles of documents and authorities. The Review Decision is found at Page 56 of the bundle.

3. The law is well – established. The Appellant's complaint about the offered accommodation centres around its suitability and its location. It would involve a move from the London area to West Yorkshire.

4. I will deal with the various legal principles involved when considering the grounds of appeal. However, there are some fundamental principles which should be set out first.

5. Homelessness is governed by Part VII of the Housing Act 1996. In this case, the Respondent accepted that a housing duty was owed to the Appellant. Section 206 provides that a local housing authority discharges its housing duty by securing that suitable accommodation provided by them is available.

6. An applicant has a right of review against a decision to discharge duty consequent upon a suitable offer being made. This is afforded by Section 202 of the Act. This was made in this case.

7. Section 208 of the Act provides that, so far as reasonably practicable, accommodation that is secured shall be in district. There are exceptions to this. For example, it has been held not to be practical for obvious reasons – I have been taken to *Alibkhiet v Brent*

[2018] EWCA Civ 1405. Aside from high demand and lack of resources, accommodation must be affordable.

8. Where accommodation is outside of district, the matters identified in *Homelessness (Suitability of Accommodation) (England) Order 2012* are to be considered. These include the significance of any disruption caused by the property's location to schools, support networks, caring responsibilities and the proximity and/or accessibility to medical facilities and other support.

9. I also remind myself from the outset that it is not my function to supplant my own findings on the decision but decide the matter on a point of law – I am not the finder of primary facts (that is for the local housing authority) [Runa begum}. This is a judicial review exercise. It is simply a question of whether the decision was made lawfully – *Bubb v LB of Wandsworth [2011] EWCA Civ 1285*.

10. This is a difficult appeal. It would be wrong of me not to consider it in the context of what has happened to the Appellant and his family – and it is this characteristic which takes me in directions that would most likely not occur in similar appeals of this nature.

11. The Appellant is originally from Afghanistan and was granted Refugee Status by the Home Office as recently as the 23rd August 2018. Prior to that he had been living in temporary accommodation provided under Section 95 of the Immigration and Asylum Act (date). Upon the grant of his refugee status, he became eligible for mainstream local authority housing.

12. He is a torture survivor. He has been diagnosed with Post – Traumatic Stress Disorder. The Medical Foundation has described his symptoms as having a "significant impact" on his day to day life. He has variously been described as anxious and secluded, having nightmares and flashbacks consistent with his PTSD, and that he has a high level of anxiety caused by his experiences in Afghanistan – which has led to him having regular counselling sessions. He is described as "more vulnerable than an ordinary homeless person". I refer to page 148 of the bundle where this is set out by the Medical Foundation.

13. I pause here to comment that it is generally accepted that this organisation is highly experienced in treating the victims of torture from abroad – and that, whilst assisting those who have such difficulties and caring for them, it writes objective reports relying on its expertise in this area.

14. The history of the Appellant's homelessness application is that he was supported, in terms of accommodation and support, by the Home Office until 19th September 2019 – following his having arrived in the country on a date which appears unclear but unimportant to this appeal. Having been granted Refugee Status, and no longer eligible for asylum support, he technically became street homeless in the rather ironic way that this works.

15. No doubt armed with an appropriate letter showing his new status, the medical Foundation made an application to the Respondent upon his behalf on the 5th November 2018. The position after this is unclear but a housing duty, under section 189B of the Act, was accepted by the Respondent on the 1st October 2019.

16. On the 15th October 2019, the Respondent's made a final offer of private rented accommodation at the Yorkshire address. A "minded to" letter was issued on the 6th March 2020. On the 7th May 2020, the Appellant's solicitors made representations to try to change the local housing authority's mind. On the 1st June 2020 the Respondent's Reviewing Officer confirmed the decision.

17. This leads to this appeal which was lodged with this court on 22nd June 2020.

18. There were originally a significant number of grounds of appeal (10 in number) but, by the time of this hearing, these had been reduced in number to six – and as one of these was not actively pursued at the hearing (ground 6), for my purposes is reduced to five – conveniently being grounds 1 – 5 in the grounds of appeal (Pages 12 -25 inclusive). [set out]

19. I should state, from the outset, that the Review Decision is well-structured and reasoned. It has been conscientiously drafted. I have no concerns as to the Reviewing

Officer's competence. Any criticisms I may make are directed towards the legality of this decision.

20. I remind myself that the courts should adopt a benevolent approach to the interpretation of review decisions, and should not take too technical a view of the language used, or search for inconsistencies, or adopt a "nit-picking" approach, It should be realistic and practical in its approach to the interpretation of review decisions (*Holmes-Moorhouse v LB Richmond upon Thames* [2009] UKHL 7 - paragraphs 49-51) but, irrespective of the force of this authority, it still remains important to consider whether the Reviewing Officer's decision is lawful.

21. That being the case, my focus (as it is the primary issue that Mr Hitchens relies upon) is directed towards ground 5 – where it is claimed that there is a breach of section 11 of the Children Act 2004.

22. It is said by the Appellant that the Respondent failed to identify the needs of the children and the benefits derived from a wider family support network in circumstances where the parents are inherently vulnerable and suffering from mental health issues.

23. For example, it is claimed that there has been no consideration of the effect of the appellant's disability on his parenting abilities.

24. In the wider context, the Appellant criticises the Respondent, even when considering the impact of a move to Yorkshire for the children, for failing to regard the interests of the children as a paramount (or primary) consideration ranking above all others.

25. The Respondent disputes that this is the case. It says that this was expressly considered – by reference to paragraphs 55, 56, 57, 58 and 59 of the Review Decision.

26. I am asked, by Ms Screeche – Powell, to follow the wording of Section 11 which is said to show that the local housing authority's duty only extends to "have regard to" rather than regard the interests of the children as a paramount (or primary) consideration – and which, by these paragraphs, it is said, this exercise has been properly conducted. The suggestion that it is the primary consideration is said to be misconceived.

27. Moreover, in the context of the equality duty, it is appropriate for the local housing authority to make an evaluative judgment on the appropriate weight to be attached to such duty.

28. Furthermore, it is said that public policy dictates that, accepting that there is a well-established shortage of available accommodation, the position of the children must feature as one of the many considerations that the local housing authority must take into account when making its decision. To make it the primary consideration goes too far. A compelling example of those requiring medical treatment is set out as an example of where this may provide a counter balancing entitlement.

29. These are all well -made arguments but upon the facts of this specific case is, as Mr Hitchens suggests, one which, in my view, falls into a special category. I say this within the context of the Appellant and his family's current circumstances as set out above.

30. An examination of the relevant paragraphs in the Review Decision letter, as set out above, shows that the way this issue has been treated by the Reviewing officer is consistent with the approach suggested by Ms Screeche - Powell. I think it fair to say that an accurate assessment of such wording is that it is regarded as generalist – it is one of many factors taken into consideration in the decision.

31. For example, at paragraph 56, after setting out the question of school availability, it is said:

> "Whilst I accept that the move may cause some disruption for children, there is no evidence to suggest that it will or has significant effect on the children's well – being as they had only just arrived in the UK…."

32. At paragraph 58, there is reference to stability and security being important and the Respondent being satisfied that some level of disruption is inevitable – considering the need to protect the local authority's housing stock and that change in many circumstances with family housing is inevitable.

33. Recognising that this is a difficult exercise for any local housing authority, this does not, in my view, deal with the important core issues surrounding this family. There is limited attention to the Appellant's mental health difficulties – because of the move to Yorkshire and how that would, for example, affect the children. There is no mention of the effect upon his ability to parent his two young children.

34. I consider that these must be circumstances where Article 8 of the European Convention on Human Rights is engaged as raised in the amended grounds of appeal. It is established that such grounds can be raised in proceedings relating to homeless persons.

35. In these circumstances, I consider that I have been correctly referred to the Supreme Court decision in *ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4.* The leading judgment is given by Baroness Hale and I refer, in particular, to the passage in her judgment from paragraph 21 onwards where she sets out the application of Article 3(1) of the United Nations Declaration on the Rights of the Child 1959 to UK domestic law and, specifically, the Children Act 2004. There is here direct reference to Section 11.

36. It is important for me to set out an excerpt of the judgment which is relevant to deciding this appeal. In that excerpt, she says as follows:

> "21. It is not difficult to understand why the Strasbourg Court has become more sensitive to the welfare of the children who are innocent victims of their parents' choices. For example, in *Neulinger v Switzerland* (2010) 28 BHRC 706, para 131, the Court observed that "the Convention cannot be interpreted in a vacuum but must be interpreted in harmony with the general principles of international law. Account should be taken . . . of 'any relevant rules of international law applicable in the relations between the parties' and in particular the rules concerning the international protection of human rights". The Court went on to note, at para 135, that "there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount".
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> 22. The Court had earlier, in paras 49 to 56, collected references in support of this proposition from several international human rights instruments: from the second principle of the United Nations Declaration on the Rights of the Child 1959; from article 3(1) of the Convention on the Rights of the Child 1989 (UNCRC); from articles 5(b) and 16(d) of the Convention on the Elimination of All Forms of Discrimination against Women 1979; from General Comments 17 and 19 of the Human Rights Committee in relation to the International Covenant

on Civil and Political Rights 1966; and from article 24 of the European Union's Charter of Fundamental Rights. All of these refer to the best interests of the child, variously describing these as "paramount", or "primordial", or "a primary consideration". To a United Kingdom lawyer, however, these do not mean the same thing.

23. For our purposes the most relevant national and international obligation of the United Kingdom is contained in article 3(1) of the UNCRC:

> "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

This is a binding obligation in international law, and the spirit, if not the precise language has also been translated into our national law. Section 11 of the Children Act 2004 places a duty upon a wide range of public bodies to carry out their functions having regard to the need to safeguard and promote the welfare of children……

……Miss Joanna Dodson QC, to whom we are grateful for representing the separate interests of the children in this case, boldly argued that immigration and removal decisions might be covered by section 1(1) of the Children Act 1989:

> "When a court determines any question with respect to –
> (a) the upbringing of a child; or
> (b) the administration of a child's property or the application of any income arising from it,
> the child's welfare shall be the court's paramount consideration."

37. Whilst accepting that this is an immigration case, it still contains a detailed analysis of how Article 3(1) UNDRC obligations in international law are relevant to the interpretation of section 11 of the Children Act 2004 - analogous to the decision made under appeal. It is a decision of the Supreme Court and, whilst there may be an interesting academic argument over whether this is correct, it is, in my view, binding upon me and I must take it into account and follow it.

38. The position is, in some ways, made clearer by Lord Kerr's following short judgment. In a highly succinct passage, he comments:

> 46. ….. which Lady Hale has referred that, in reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interests. This is not, it is agreed, a factor of limitless importance in the sense that it will prevail over all
> other considerations. It is a factor, however, that must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of

> considerable force displaces them. It is not necessary to express this in terms of a presumption but the primacy of this consideration needs to be made clear in emphatic terms. What is determined to be in a child's best interests should customarily dictate the outcome of cases such as the present, therefore, and it will require considerations of substantial moment to permit a different result.

39. It is my view that this must apply here.

40. The difficulty with the Review Decision when considered through the lens of *ZH* is that it fails, in my view, to sufficiently drill down into the effects of a prospective move to Yorkshire upon the children (and also the Appellant's ability to parent). I find that it does not go far enough in identifying the children's needs against the background of their relatively complex situation.

41. A concern has been raised about the Appellant's mental health difficulties – and that should, in my view, have been considered in terms of the loss of his support network (which will on any interpretation be subject to significant change).

42. More importantly, there is nothing within the Review Decision letter which indicates that the children's welfare was considered as a primary consideration – in fact, the Respondent's argued position suggests that it was considered along with many other considerations. That, in my view, and for the reasons I have set out above, is not correct.

43. In these circumstances, and on balance, this ground succeeds.

44. Even if I am wrong about that, I also consider that Ground 2 is also made out in terms of irrationality in one respect. That is that I find that there was insufficient weight applied to the medical evidence submitted by the Appellant.

45. I accept that irrationality in this context sets a high bar. It is claimed that this section of the Review Decision is "Wednesbury unreasonable". It is quite correct to say that whether a decision falls foul of that, I should have regard to what Lord Diplock said in *Council of Civil Service Unions v Minster for the Civil Service [1983] UKHL 6*:

> "By irrationality I mean what can now be succinctly referred to as "Wednesbury unreasonableness" ... It applies to a decision which is so outrageous in its defiance of

logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it"

46. The Appellant has relied upon his assertion that the Respondent failed to have sufficient regard for his medical condition from the material that he disclosed. There are many occasions upon which the local authority correctly refers the Appellant's condition to an independent medical advisor and relies upon that decision. That is perfectly acceptable.

47. However, in this appeal, the Appellant has a history which, in my opinion, needed close examination. A close reading of the Review Decision demonstrates that little (if any) weight was placed on the Appellant's solicitor's representations in the light of a very long and detailed Medico – Legal Report provided by the Appellant.

48. The significance of that report should have been considered more fully by the Respondent. It deals with his diagnosis of Post – Traumatic Stress Disorder and a detailed history of how he arrived at that condition. More importantly, there seems to have been little consideration of how he presented himself – I refer to the passages of Dr Kamlana's report between paragraphs 66 and 78 are particularly relevant. This portrays a picture of someone who is far from well.

49. In these circumstances, this ground also succeeds.

50. In these circumstances, it is unnecessary for me to consider the other grounds of appeal.

51. In my view, this is a case that should be remitted back to the Respondent to conduct a further review with the required consideration of the children's welfare that I have found necessary.

52. To this extent, the appeal is allowed.

53. I invite the parties to draw up an appropriate order. If there are any issues that arise out of this appeal then these can be dealt with either on papers or, if the parties wish, by further hearing.

HHJ Saunders

1st October 2020