IN THE COUNTY COURT AT
CENTRAL LONDON

Case No: K40CL288

Thomas More Building
Royal Courts of Justice
Strand
London, WC2A 2LL

Date: 9th December 2024

Before :

HIS HONOUR JUDGE HOLMES

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Between :

MR MILOS ZIKIC **Appellant**

-and-

THE LONDON BOROUGH OF HARINGEY **Respondent**

- -

Ms Geeta Koska (instructed by **Haringey Law Centre**) for the **Claimant**
Mr Iain Colville (instructed by **The London Borough of Haringey**) for the **Defendant**

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Hearing date: 28th October 2024
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JUDGMENT

His Honour Judge Holmes:

1. Milos Zikic is 45 years old and he lives at 15 The Close in Muswell Hill ("the property") with his wife and their 16-year-old son. Mr Zikic is disabled. He suffers from gallstones, functional neurological disorder, Hashimoto's disease, chronic fatigue, glaucoma, short term memory loss, fatty liver, renal calculus, bilateral L5 & right L3 possible nerve root compression, mobility and pain symptoms, and depression.

2. The property is a first floor flat. It comprises one bedroom, a living room, a kitchen, bathroom and separate toilet. Mr Zikic rents the property privately subject to an assured shorthold tenancy. Mr Zikic applied to the London Borough of Haringey to be housed under the provisions of the Housing Act 1996 on the basis that it was not reasonable for him to continue to occupy the property (s.175). Haringey refused the application on 28th June 2023. That decision was maintained by the review officer in a decision dated 24th November 2023. By an Appellant's Notice, Mr Zikic seeks to challenge the lawfulness of that decision.

3. The underlying issue in this appeal is the ability of Mr Zikic to navigate the 15 steps from the front door of the building in which the property is located, to the property itself. The nature of the court's task is not to answer that question but to consider whether the decision maker on behalf of Haringey, made an error of law.

4. Section 204 of the 1996 Act provides the right to appeal to the County Court "on any point of law arising from the decision". There are nine grounds of appeal, although helpfully Ms Koska, on behalf of Mr Zikic, narrowed that to three 'targets'. The first is "The Respondent failed to have regard to the Appellant's circumstances as a whole in assessing whether it was reasonable for him to continue to occupy the accommodation/took into relevant considerations (Ground 2, Ground 4 and Ground 5)." I granted permission to amend ground 2 at the hearing. There was no opposition to the amendment.

5. The second target is that "The Respondent failed to apply the public sector equality duty Equality Act 2010, s.149 (Ground 7)." The third and final target is "The Respondent failed to comply with its duty under s.11 Children Act 2004 and failed to discharge its functions having regard to the need to safeguard and promote the welfare of the Appellant's child (Ground 6 and Ground 9)." Grounds 1, 3 and 8 were not pursued.

LEGAL FRAMEWORK

6. The appeal is brought under section 204 of the 1996 Act. There is no dispute about the legal principles applicable here, both in relation to the authority's duties and to my approach to this appeal.

7. An appeal under section 204 can only be in relation to a point of law, although the court's jurisdiction on review extends to the full range of issues that would otherwise be the subject of a High Court application for judicial review: *James v. Hertsmere Borough Council* [2020] EWCA Civ. 489, [2020] 1 W.L.R. 3606. It is in effect a judicial review of the review decision, as to which *Begum v. Tower Hamlets LBC* [2003] UKHL 5; [2003] 2 A.C. 430 applies; see Lord Bingham's speech at paragraph 7.

8. In *Holmes-Moorhouse v. Richmond-upon-Thames LBC* [2009] UKHL 7; [2009] 1 W.L.R. 413, at paragraphs 47 and 50, Lord Neuberger made the following comments:

> "47. … review decisions are prepared by housing officers, who occupy a post of considerable responsibility and who have substantial experience in the housing field, but they are not lawyers. It is not therefore appropriate to subject their decisions to the same sort of analysis as may be applied to a contract drafted by solicitors, to an Act of Parliament, or to a court's judgment.
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> …
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> "50. Accordingly, a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision. That is not to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions."

9. In *Rother District Council v. Freeman-Roach* [2018] EWCA Civ. 368, [2018] H.L.R. 22, the Court of Appeal said:

> "51. These and many other cases were reviewed by Lord Brown in *South Bucks DC v. Porter (No. 2)* [2004] UKHL 33, [2004] 1 W.L.R. 1953. He confirmed at [29] that the burden is on the challenger to show that the decision maker made an error of law. His well-known summary of principle is at [36]. For the purposes of this case it will suffice if I only quote part of it:

> 'Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn … Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced.'

> "52. Accordingly, in the present context it is not for the reviewing officer to demonstrate positively that he has correctly understood the law. It is for the applicant to show that he has not. The reviewing officer is not writing an examination paper in housing law. Nor is he required to expound on the finer points of a decision of the Supreme Court…"

10. Section 175 sets out that a person is homeless if he has no accommodation which he has a legal entitlement to occupy: s.175(1). A person is not treated as having accommodation unless it would be reasonable for him to continue to occupy it: s.175(3). This is only satisfied if it is reasonable for an applicant to occupy the accommodation indefinitely, or at least for as long as the applicant otherwise would do so if the authority did not intervene to rehouse them, *Birmingham CC v. Aweys* [2009] UKHL 36; [2009] 1 W.L.R. 1506.

11. Accommodation secured for an applicant in discharge of the duty must be suitable: section 206(1) of the 1996 Act. In determining suitability, the authority must have regard to the matters set out in section 210(1) of the 1996 Act as well as being satisfied that the property is suitable for the person or persons to whom the duty is owed, and the authority must clearly have regard to the circumstances of the applicant and their family, in so far as those circumstances are relevant to the suitability of the accommodation: *R v. Brent LBC ex p. Omar* (1991) 23 H.L.R. 446; *R v. Haringey LBC ex p. Karaman* (1997) 29 H.L.R. 366; *R (Sacupima) v. Newham LBC* [2001] 1 W.L.R. 563.

12. Accommodation may be suitable in the short term even if it would not be suitable in the medium or long term: *R (Elkundi and others) v. Birmingham CC* [2022] EWCA Civ. 601; [2022] Q.B. 604. The authority must have regard to the individual circumstances of the applicant and their family; it has to apply its mind to what is suitable for that family: *R (Ojuri [No.3]) v. Newham LBC* (1999) 31 H.L.R. 452. The authority must also have regard to the need to safeguard and

promote the welfare of any children in the household, and the suitability of a property to meet their needs is a "key component in its suitability generally"; "The decision maker should identify the principal needs of the children, both individually and collectively, and have regard to the need to safeguard and promote them when making the decision.": *Nzolameso v. City of Westminster* [2015] UKSC 22; [2015] H.L.R. 22.

13. In reaching a decision on suitability, the authority should pay close regard to medical evidence submitted in support of the application: *Osmani v. Camden LBC* [2004] EWCA Civ. 1706, [2005] H.L.R. 22. The authority may obtain its own expert evidence to assist in reaching their decision: *Hall v. Wandsworth LBC* [2004] EWCA Civ. 1740, [2005] H.L.R. 23.

14. Housing officers should not be expected to make their own critical evaluation of applicants' medical evidence and should have access to specialist advice. The function of an authority's medical adviser is to enable housing officers to understand the medical issues and to evaluate for themselves the expert evidence. Absent an examination of the patient, the medical adviser's evidence cannot itself ordinarily constitute expert evidence. On these points, see *Shala v. Birmingham CC* [2007] EWCA Civ. 624; [2008] H.L.R. 8.

15. The authority must have regard to the provisions of the Equality Act 2010 and the Public Sector Equality Duty (PSED). In broad terms, this requires the authority, when carrying out its functions, to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The authority must have due regard to the need to take steps to take account of disabled persons' disabilities: see *Pieretti v. Enfield LBC* [2010] EWCA Civ. 1104, [2011] H.L.R. 3, at [31], cited with approval in *Hotak v. Southwark LBC* [2015] UKSC 30, [2016] A.C. 811 at [73].

16. The inquiries made by an authority must be sufficient, and will be inadequate only where it failed to make inquiries which no reasonable authority could have failed to make: *R (Bayani) v. Royal Borough of Kensington and Chelsea* (1990) 22 H.L.R. 406. An authority which has made inquiries can only be criticised for failing to make further inquiries if no reasonable authority could have failed to regard them as necessary, *R v. Nottingham CC ex p. Costello* (1989) 21 H.L.R. 301; and *Cramp v. Hastings BC* [2005] EWCA Civ. 1005; [2005] H.L.R. 48.

TARGET 1: THE 15 STEPS

17. The central issue on the first ground is Mr Zikic's mobility. Haringey's own adult social care department had identified the property as not being suitable for him on this basis. Mr Johnson Francis an occupational therapy practitioner provided a "Strengths Based Assessment" for Haringey on 12th March 2023. Under OT Input Details, Mr Francis has recorded, "Falls: Report of multiple falls due to weakness and balance issues. Reports of sudden stiffness or freezing of movements (like seizures) which results in falls. Most recent fall was outdoors when attempting to walk to local coffee shop to meet wife."

18. Against "Bed Mobility" is recorded: "Lifted legs using hands on to bed when getting into bed. Reports abilities can fluctuate wife supports with getting into and out of bed during bad days." On "Front door Access" this is said, "Communal stairs leading to single step at front door. Requires assistance of 1 person to access stairs. Son supports with pushing Mr Zikic up on stairs when tired. Uses walking stick and banister to mobilise on stairs. Reports of significant difficulty climbing stairs due to weakness and fatigue."

19. There is reference to using furniture inside the flat for support when walking around. Reference is made again to a recent fall, the need for a stick to mobilise outdoors and to requiring the assistance of one person for safety when mobilising outdoors.

20. The next steps section has been the subject of a substantial amount of debate by counsel. It says under "Next Actions", the following, "1. Referral to Haringey Engage Advocacy to support with re-housing. 2. Housing needs OT report." Then, in a substantive paragraph, there is this:

> "Mr Zikic has difficulties accessing stairs is living in a first floor privately rented flat family physically assist Mr Zikic to access stairs which increases risk of falls for Mr Zikic and assisting family members. Property does not of lift access, Mr Zikic due to recent fall outdoors is anxious of accessing stairs and going outdoors. Mr Zikic would benefit from moving into a property on ground floor or property with lift access to enable him safely access community with or without support of family."

21. On 26th March 2023, Mr Francis completed a housing report. He recommends various adaptations, but also, "Two-bedroom flat or house level access at front/back where applicable or lift access if not ground floor."

22. Before the review officer were a number of letters from different medical practitioners. Dr Thomas Bouriaris, a neurology locum consultant, saw Mr Zikic

on 25th April 2022. Dr Bouriaris records, "His day-to-day functioning is now significantly impaired, especially due to fatigue and memory problems. He rarely goes out because he is worried that he is going to lose his way and he also suffers from a tremendous amount of physical and mental fatigue with every activity …" There is a diagnosis of chronic fatigue syndrome.

23. There is a letter from the Department of Neurology at the North Middlesex University Hospital dated 3rd January 2023. The letter notes that Mr Zikic was awaiting an appointment at the Royal Free Hospital's Chronic Fatigue Syndrome clinic. He gets easily dizzy and "does not go out for fear of being dizzy/falling." The author of the letter, Dr Quattrocchi, a consultant neurologist, notes, "[Mr Zikic] will try to go out more and engage in social activities such as volunteering. I explained [to] him that trying to break the reinforcing cycle of negative thoughts may, even if partially, help him and he is going to work on this." There is a further letter from Dr Quattrocchi dated 6th June 2023 which records the position as it was then, although there does not appear to have been a material change in the intervening six months.

24. Dr James Blackburn, a consultant anaesthetist, wrote a letter on 8th August 2023 in which he notes widespread pain and says that he has been referred to the pain management programme.

25. Dr Sridevi Sira Mahalingappa, a consultant psychiatrist, saw Mr Zikic on 10th August 2023. She set out a detailed history. Within that history, Dr Mahalingappa notes that "climbing those stairs up and down is a big problem for him." In addition there is this, "At present he said most of the days he tries to climb up and down the stairs and tries to go for a walk near the block near his home." The diagnosis is given as, "chronic fatigue syndrome with functional neurological symptoms. He also has ongoing generalised anxiety."

26. Haringey sought advice from NowMedical. In the first document dated 9th February 2023, Dr Giovanna Hornibrook, who is a general practitioner, noted, "He does not require the use of any permanent walking aids to mobilise and whilst I acknowledge his symptoms of fatigue, there is nothing specifically to preclude the use of some stairs." Later, Dr Hornibrook says, "The issue of suitability of the current accommodation, which is a one-bedroom property of the first floor. It is contended this accommodation is unsuitable due to the property having no lift. There is nothing specifically to preclude the use of some stairs in this case and the current accommodation would appear suitable." It is then noted, "housing needs: first floor maximum if unlifted any floor with a lift".

27. After the input of the occupational therapist, Dr John Keen of NowMedical, in an email dated 21st April 2023, suggests some adaptations to the bathroom of the property and then says, "I think the current accommodation is suitable if not ideal on medical grounds. Medical priority doesn't apply."

SUBMISSIONS

28. Ms Koska, on behalf of Mr Zikic, makes a number of points. She makes reference to the chronic nature of the health conditions which I have already set out. She says that the review officer's assessment of the evidence was defective. She says that there was only selective and partial reference to the Strengths Based Assessment. As an example she cites the review officer referring to the occupational therapist's comment that Mr Zikic was seen to be "mobilising indoors independently", but there is no reference to the observation that whilst Mr Zikic was able to stand from a chair unaided, that he was "unsteady on [his] feet [and] required assistance."

29. Ms Koska criticises the conclusion that Mr Zikic has "a sufficient degree of mobility to be able to manage the stairs." She says that such a conclusion could only be reached by failing to have regard to the evidence that Mr Zikic has a heightened risk of falling in consequence of his condition, that he regularly requires assistance to use the stairs, and that his condition fluctuates.

30. Next Ms Koska says that insufficient emphasis was placed on the occupational therapist's opinion. This was particularly so where the occupational therapist's assessment was based on a face-to-face appointment at Mr Zikic's home. Whereas, she says, the NowMedical practitioners have never assessed Mr Zikic and are basing conclusions on medical reports from practitioners of disparate disciplines who were not focused on the suitability of the flat for Mr Zikic.

31. Finally on this ground, Ms Koska says that the review officer's conclusion that whilst "it would be ideal for [the Appellant] to have ground floor accommodation or, if higher, that [the Appellant] have a lift but […] this would not necessarily increase the amount of times [the Appellant] will go out on [his] own" is unsupported by the evidence and fails to take into account the relevant considerations and evidence.

32. Mr Colville for Haringey says that this ground is misconceived. Mr Colville placed significant reliance on the failure of Mr Zikic to make any representations to Haringey during the process. He says that the decision maker clearly had the relevant criteria well in mind and made a reasonable conclusion based on the facts before the Council. He makes reference to *Holmes-Moorhouse* and the other authorities which require the court not to nit-pick and to stand back from

the review decision as a whole. He also, entirely correctly, emphasises that Mr Zikic can only succeed if an error of law can be shown.

DISCUSSION

33. The starting point must be the review decision. *Holmes-Moorhouse*, *Freeman-Roach*, and *Porter (No. 2)* all make clear the deference to be accorded to the review officer's conclusions. It is not sufficient that I would have made a different decision, it is necessary for the appellant to demonstrate an error of law.

34. The review decision is susceptible, like so many others, to line by line analysis. The essential reasoning is that the various doctors do not suggest that the stairs provide an insurmountable difficulty. Paragraph 10 of the review decision contains this,

> "Your statements to the Assessment Worker suggest that you have lost confidence in leaving the flat but this is much more than just the stairs. You stated that you had a fall into a bush whilst walking to meet your wife at a coffee shop. The fall was not on the stairs and you still managed the stairs without any support on that day. Despite the stated incident you continue to try and go out even if this may be family. You have also reported having memory problems and are worried that you may lose your way if you went out on your own. This leads me to conclude that what makes it difficult for you to want to go out by yourself is not the stairs in your building but your fear of falling outside and losing your way. I appreciate that it would be ideal for you to have ground floor accommodation or, if higher, that you have a lift but as I have highlighted above this would not necessarily increase the amount of times you will go out on your own."

35. There is a fundamental error in approach adopted by the review officer. The best evidence as to the suitability of the property for Mr Zikic comes from the occupational therapist whose specialism it is to look at adaptations and suitability. His conclusions are clear and they are not dealt with adequately in the review decision. He was not the Appellant's expert, but rather someone who's opinion was obtained by Haringey itself. Too much weight is placed upon letters from various treating clinicians, some of whom are simply not considering mobility at all; others are not answering a question as to the ability to negotiate 15 stairs to the flat. It is guesswork to suggest what they would have said about the issue had they been asked.

36. Dr Hornibrook did not have the information from the occupational therapist and therefore her advice is of no real significance. Haringey clearly realised that

when they sought further advice from NowMedical. Dr Keen's email is perfunctory. It is not clear what information he had available to him, although it does appear likely that he had the Strengths Based Assessment, given what he says in his email. The appeal was argued on the basis that he did have the Strengths Based Assessment and I will determine the appeal on that basis.

37. In my judgment too much weight was attached to the advice of Dr Keen. Dr Keen does not explain why the Strengths Based Assessment is wrong. Dr Keen had not met Mr Zikic and had not been to the property, Mr Francis had. Dr Keen is a general practitioner, whereas Mr Francis, as an occupational therapist, specialises in making the exact type of assessment required in this case: whether Mr Zikic safely use the stairs. There is a wholesale failure in the review decision to acknowledge the difference in expertise. There is also a failure to deal with Mr Francis' conclusions.

38. The review officer places too much weight on whether Mr Zikic needs or would want to leave the property. Whilst those may be appropriate factors in some cases, here Mr Zikic does use the stairs, and the question for the review officer is whether he can use the stairs safely. In addition the evidence from the various clinicians was supportive of Mr Zikic leaving the property for the benefit of his mental health: a point acknowledged by the review officer.

39. Finally, the review officer fails to consider the position of Mr Zikic's wife, and especially the position of his son. The Strengths Based Assessment makes these observations, "Son supports with pushing Mr Zikic up on stairs when tired. Uses walking stick and banister to mobilise on stairs. Reports of significant difficulty climbing stairs due to weakness and fatigue." Then later, "Mr Zikic has difficulties accessing stairs in living in a first floor privately rented flat family physically assist Mr Zikic to access stairs which increases risk of falls for Mr Zikic and assisting family members." This information is not dealt with by the review officer.

40. Whilst acknowledging the limited role which the court has in identifying the lawfulness of a review decision. In my judgment, even adopting Lord Neuberger's benevolent approach in *Holmes-Moorhouse*, the decision here does not adequately deal with the evidence which was before the review officer and those errors cumulatively amount to an error of law. The review decision must be quashed and taken again.

TARGET 2: PUBLIC SECTOR EQUALITY DUTY

41. Given my conclusion in relation to Target 1, the remaining Targets can be taken relatively briefly.

42. The public sector equality duty (PSED) is found in s.149 of the Equality Act 2010:

> (1) A public authority must, in the exercise of its functions, have due regard to the need to—
>
> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
>
> (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
>
> (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
>
> …
>
> (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
>
> (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
>
> (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
>
> (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
>
> (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
>
> …
>
> (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

43. It is accepted that Mr Zikic is disabled within the meaning of the Equality Act. The PSED is therefore engaged.

44. In *Baker v. Secretary of State for Communities and Local Government* [2008] EWCA Civ. 141; [2009] P.T.S.R. 809 at [31], Dyson L.J. emphasised that the PSED is not a duty to achieve a particular result, but a duty to have due regard to the need to achieve the goals identified in s.149. In *R (Brown) v. Secretary of*

State for Work and Pensions [2008] EWHC 3158 (Admin); [2009] P.T.S.R. 1506 at [92] Aikens L.J. noted that the duty must be exercised in substance, with rigour, and with an open mind. Both were referred to in *Hotak v. Southwark LBC* [2015] UKSC 30; [2016] A.C. 811, a case which concerned the application of the PSED in the context of vulnerability in s.189(1)(c) of the Housing Act 1996. It is clear from that case that the court must stand back from the reviewing officer's decision, read as a whole, and to ask whether it is possible to discern from it that the reviewing officer has adopted the approach to s.149 required by the Supreme Court in *Hotak*.

45. In *R (Hurley) v. Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin); [2012] H.R.L.R. 13, Elias L.J. said, at para. 78, "The concept of 'due regard' requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, but if that is done, the court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision-maker."

46. Briggs L.J. in *Haque v. Hackney LBC* [2017] EWCA Civ. 4; [2017] P.T.S.R. 769 reviewed the various authorities. Adapting the questions he posed in paragraph 43, what is required in this case is:

(i) A recognition that Mr Zikic suffered from a physical or mental impairment having a substantial and long-term adverse effect on his ability to carry out normal day to day activities; i.e. that he was disabled within the meaning of s.6 of the Equality Act, and therefore had a protected characteristic.

(ii) A focus upon the specific aspects of his impairments, to the extent relevant to the suitability of the flat as accommodation for him.

(iii) A focus upon the consequences of his impairments, both in terms of the disadvantages which he might suffer in using the flat as his accommodation, by comparison with persons without those impairments: see s.149(3)(a).

(iv) A focus upon his particular needs in relation to accommodation arising from those impairments, by comparison with the needs of persons without such impairments, and the extent to which the flat met those particular needs: see ss.149(3)(b) and (4).

(v) A recognition that Mr Zikic's particular needs arising from those impairments might require him to be treated more favourably in terms of the provision of accommodation than other persons not suffering from disability or other protected characteristics: see s.149(6).

(vi) A review of the suitability of the flat as accommodation for Mr Zikic which paid due regard to those matters.

SUBMISSIONS

47. It is suggested by Ms Koska that there was a failure to inquire about the level of personal independence payment. A failure to carry out further inquiries with the authorities own adult social care team to ascertain his eligibility under the Care and Support Regulations 2015. A failure to make inquiries of Mr Zikic's GP: the review officer had evidence before him from another department within Haringey, which was assisting Mr Zikic with his accommodation needs, that said the council should approach them directly for a medical report. If the evidence of the occupational therapist was not to be accepted, then to obtain a further independent assessment from an occupational therapist. It is also pointed out that the case notes in the housing file demonstrate a wholesale failure in the duty to inquire.

48. Mr Colville reminded the court that the need to have "due regard" does not mean that there is a requirement to achieve a particular result, or to give specific weight to the PSED, *Haque's* case. That there is no duty to give reasons or follow a structured approach, *McMahon v. Watford BC* [2020] EWCA Civ. 497; [2020] P.T.S.R. 1217 at paragraphs 52 and 62.

49. Mr Colville also says this, "There were no representations made concerning the PSED and in what way the duty owed meant it was not reasonable for Mr Zikic to continue to occupy the property. Accordingly, it is not open to Mr Zikic to contend the Council failed to make necessary inquiries."

50. Finally, Mr Colville says that in considering the medical evidence and the problems which Mr Zikic had, the review officer was having due regard to that evidence and therefore was engaging with the key factors.

DISCUSSION

51. The only reference to the PSED is in paragraph 22 of the decision letter. That paragraph does read like a "defensive ritual incantation" (to adopt the phrase used by Lewison L.J. in *Kannan v. Newham LBC* [2019] EWCA Civ. 57; [2019] H.L.R. 363). The mere assertion that the PSED has been considered, without evidence that it has, does little to demonstrate compliance. That said, compliance is about substance, not form, and a review officer who was wholly ignorant of the PSED may still comply with it.

52. Turning then to the six questions derived from Briggs LJ's judgment in *Haque*. I am satisfied that there is an acceptance that Mr Zikic is disabled and that the PSED is engaged.

53. A fair reading of the Strengths Based Assessment demonstrates a clear inability to safely use the stairs. Mr Zikic is prone to falls. There is evidence of his teenage son having to push him up the stairs on occasions. There is no direct medical evidence as to his ability to climb the stairs. The review decision does not deal properly with the evidence in the Strengths Based Assessment.

54. The review decision, to a degree, looks at the consequence of the impairment, but in a superficial way. It does not answer whether he can or cannot safely climb the stairs. It does not engage with the occupational therapy evidence in relation to this. It gives no, or no adequate, regard to the neurologist's desire for Mr Zikic to get out of the house and engage in activities in the community. There is a failure to give adequate weight to this.

55. There is a failure to consider the particular needs which Mr Zikic has by comparison with the needs of persons without such impairments, and the extent to which the flat met those particular needs. A person without the impairments which Mr Zikic has would be able to leave their home without the additional hurdle which Mr Zikic has. There is a failure to give adequate weight to this.

56. There is a recognition that the PSED might mean that Mr Zikic would need to be treated more favourably in terms of the provision of accommodation than other persons not suffering from disability or other protected characteristics. That is stated in paragraph 22 of the review decision. There is no explanation of how that has been considered. That said, there is no reason to conclude that the review officer has not done so.

57. The final stage is to draw those issues together and review the suitability of the flat as accommodation for Mr Zikic having considered the various matters. It will be obvious from my observations that in my judgment the review decision fails to engage in a number of important issues and does not adequately assess Mr Zikic's needs under the PSED.

58. Ms Koska's submissions in relation to further inquiries do have some force to them. Mr Colville emphasised the failure of Mr Zikic to provide information to the council to assist with its task. But, as he had to accept, there will be cases where a disability may make that difficult or impossible for a person to do. It cannot be a complete answer. The evidence that the review officer needed was before him, that was the Strengths Based Assessment. If the review officer

doubted the validity of the opinion provided, he could have obtained further evidence from a similarly qualified practitioner.

59. The failure to obtain the personal independence payment information may or may not have taken matters further forward. On the evidence, Mr Zikic had a clear issue with his mobility. I am not satisfied that it is appropriate to allow additional evidence on the appeal as Mr Zikic sought in his application of 26th September 2024. Whilst Ms Koska's stated aim was to illustrate the failure to make additional inquiries, in my judgment the evidence is not necessary to make good that point.

60. Where the council has failed to make reasonable inquiries is in relation to Mr Zikic's GP. In an email dated 18th April 2023, the Engage Haringey team, which were supporting Mr Zikic, wrote to the housing department. That email said, "Please note that Mr Zikic asked his GP to provide a supporting letter to explain how his medical condition affects his mobility and why is it important for him to move to a property where he can have ground floor access. His GP informed him that they will provide this information if you request this from them directly. Please feel free to get in touch with Mr Zikic's GP surgery to request further information on his medical condition." There is no evidence that this was done. That was a reasonable inquiry which Haringey should have undertaken.

TARGET 3: SECTION 11 OF THE CHILDREN ACT 2004

61. Section 11(2)(a) of the Children Act 2004 requires a local authority to make arrangement for ensuring their functions are discharged having regard to the need to safeguard and promote the welfare of children. The well-being of a child is said to include physical well-being (s.10(2)(a)).

62. Baroness Hale in *Nzolameso v. Westminster CC* [2015] UKSC 22; [2015] P.T.S.R. 549 at paragraph 23 said, "the welfare of the child has long been given a broad meaning in family proceedings, encompassing physical, psychological, social, educational and economic welfare." In relation to the housing duty, Baroness Hale said that in circumstances where a housing authority is exercising its discretion or making an evaluation, the duty to safeguard and promote the welfare of children should be consider. This will require the decision maker to take a structured approach and "identify the principal needs of the children, both individually and collectively, and have regard to the need to safeguard and promote them when making the decision (see paragraph 27).

63. The review decision says, "This decision is also not in breach of our duty under Section 11 Children Act 2004 in relation to your son." That conclusion is devoid of any reasons. The conclusion is also surprising if proper consideration had been

given to the evidence. The Strengths Based Assessment by the occupational therapist notes that Mr Zikic is 100 kgs (15 stone, 10 lbs); that he is liable to fall; that his son "supports with pushing Mr Zikic up on stairs when tired"; and that whilst family members assist with accessing the stairs this, "increases risk of falls for Mr Zikic and assisting family members." There is no engagement with the son's safety and welfare in so doing.

64. Section 11 is not a panacea for all housing applicants with children. In *Nzolameso* it was said, at paragraph 28, that s.11 "does not in terms require that the children's welfare should be the paramount or even a primary consideration." And in *Mohamoud v. Kensington & Chelsea RLBC* [2015] EWCA Civ. 780; [2016] P.T.S.R. 289 at paragraphs 63 to 71 it was said that not every homelessness case which involves children will require an assessment of the child's needs.

65. Mr Colville says that Mr Zikic did not raise his son's needs. He did not request an assessment under s.17 of the Children Act 1989. But in my judgment this is one of those rare cases where a clear risk to the physical wellbeing of a child was identified on the papers. This required a consideration by Haringey. The conclusion is wholly unsupported by any reasoning. There is no evidence of consideration bar a single sentence and that sentence is impossible to support against the evidence before the review officer.

66. Even outside the duty contained in s.11, this was a relevant factor which should have been considered under the Housing Act. In my judgment s.11 is simply another mechanism to demonstrate an issue which should have been in the review officer's mind.

DISPOSAL

67. The appeal is allowed on all three 'targets'. The review decision is quashed and the council must make the decision again.

68. I make the order in the form agreed by counsel.