B5/2015/2990

Neutral Citation Number: [2016] EWCA Civ 1278
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE CENTRAL LONDON COUNTY COURT
(MR RECORDER BERKLEY)

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 26 October 2016

B e f o r e:

LADY JUSTICE GLOSTER

Between:
ELMER

Appellant

v

THE LONDON BOROUGH OF WANDSWORTH

Respondent

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Miss S Steinhardt (instructed by TV Edwards LLP) appeared on behalf of the **Appellant**
Mr W Beglan (instructed by Sharpe Pritchard) appeared on behalf of the **Respondent**

J U D G M E N T
(Approved)

1. LADY JUSTICE GLOSTER: This is a second appeal. It is an application for permission to appeal against the decision of Mr Recorder Berkley dated 21 August 2015. It is made pursuant to section 204 of the Housing Act 1996. Permission to appeal was refused by Briggs LJ on the papers.

2. The first ground is that the review officer, who was an experienced officer working for the London Borough of Wandsworth, failed to take into account relevant matters or to make relevant inquiries or findings as to statutory overcrowding.

3. Miss Steinhardt, who has articulated her submissions carefully and in a focused manner, submits that the finding that there was a degree of overcrowding was wholly inadequate in the circumstances. She submits that the authority was obliged to consider the extent and degree of overcrowding and to determine whether the property was statutorily overcrowded. She submitted in the grounds of appeal that the issue of statutory overcrowding was highly significant to the determination of whether it was reasonable to continue to occupy the property. The failure to take account of this issue, and in particular the failure to measure the dimensions of the accommodation to allow the finding to have been made, she submits, vitiates the lawfulness of the review decision.

4. She therefore submits that it follows that, as a result of the failure to make inquiries as to the extent and degree of overcrowding and to determine whether the property was statutorily overcrowded, the authority was not entitled pursuant to section 177(2) of the Housing Act 1996 to find that the overcrowding was not "of such of a degree to be unusual in the prevailing circumstances of this authority's district".

5. She submits, for the various reasons set out in her advocate's statement and in comprehensive skeleton argument, that an important point of principle is raised. That, she says, is because there has been, no sufficient authority as to what are the requirements that an authority should comply with in coming to this conclusion. Part of the problem here was that if the relevant statutory provisions were construed in such a way that the courts in effect are prepared to assume in the authority's favour that all proper inquiries have been made, that would, in the words of Baroness Hale in Nzolameso v Westminster City Council:

> "immunise from judicial scrutiny the "automatic" decisions to house people far from their home district, which was just what the 2012 Order and Supplementary Guidance were designed to prevent."

6. She submits that, what is relevant here is, the potential for immunising from judicial scrutiny the decisions made by housing officers. She submits that the first ground raises an important point of principle or practice as to the extent of the duty to make inquiries or give reasons under section 177(2). She submits that the point is of substantial importance to homeless applicants because the absence of inquiries or reasons have the potential, as I have said, to immunise review officers from judicial scrutiny.

7. I am not satisfied in relation to ground one that an important point of principle arises or that there is some other compelling reason for an appeal to be heard. First, I have to take into account as a reality check the fact that there were a number of letters in relation to this issue. In particular, at the critical moment, the solicitors acting for the Appellant did not, in fact, raise the issue of overcrowding as being a reason why it was unreasonable for the Appellant and her children to continue living at the property.

8. I am not satisfied that any important point of law or principle arises. Essentially, ground one is an inquiries challenge. The principles relating to the extent of inquiries that require to be undertaken have been well ventilated in various cases. It is clear that statutory overcrowding is a relevant factor to be taken into account. In my judgment, having looked at the correspondence, it is clear that statutory overcrowding was taken into account, as was the degree of statutory overcrowding, which is why the reviewer expressly referred to that fact.

9. Ground two is a complaint that the authority was in breach of section 11 of the Children Act 2004 in that it failed to assess or consider the welfare of the Appellant's four children in reaching the decision that it was reasonable for them to continue to occupy their accommodation and failed to promote their welfare. In particular, it is submitted that the authority failed to assess the impact of overcrowding on them or consider the effect of living in accommodation in which they had been subjected to domestic abuse.

10. Further or alternatively, it is submitted under ground two that no reasons were given such as to demonstrate that section 11 was complied with. It is also said that the judge's conclusion that it could be inferred from the reference to overcrowding that this necessarily included consideration of the children was wrong.

11. Again, it is submitted, based on Nzolameso, that simply taking it as a given (from what the reviewing officer said) that he must have had the considerations in relation to the children well in mind, again tends to immunise from judicial scrutiny the decision actually taken by the reviewing officer.

12. Miss Steinhardt in her written and oral submissions submits that the failure to identify or assess the best interests and needs of the children was fatal in this case. She says that it was not enough for the reviewing officer simply to have the welfare of the children in mind. In circumstances where the decision does not even refer to the children, it was an impermissible step to infer that the obligations under section 11 had been complied with.

13. She further submits that the ground raises an important point of principle because this court should give consideration to the extent of the requirement to give reasons. She submits further that an important issue is raised as to whether the principle in Cramp v Hastings that a reviewing officer need only consider such matters as they are invited to consider or that there are obvious matters, needs to be qualified in light of the statutory obligation under section 11 following various decisions, including Nzolameso.

14. I am not persuaded that an important point of law, principle or practice arises or that there is any other compelling reason for the appeal to be heard. The extent of the

reasoning required in a review such as that which was carried out in the present case has been well ventilated in a number of cases, including the exposition contained in the judgment of Lord Neuberger in Holmes-Moorhouse subject to the various provisions set out in paragraph 78 to 79 of Hotak.

15. Again, I am not persuaded, looking at the actual contents of the correspondence, that there is any prospect of success in this respect. It is obvious from the correspondence, as indeed the judge held, that the reviewer was well aware of the composition of the household, the number of children, the nature of the accommodation occupied and was obviously aware of the local prevailing circumstances to which he expressly referred.

16. Moreover, the representations made by the solicitors on behalf of the Applicant did not refer to section 11 at all or articulate why it required particular consideration in this case. In particular, this was a situation where the reviewing officer in response to the solicitor's correspondence himself suggested in his letter dated 25 February that he was:

> "a little surprised by the brevity of your representations as set out in your letter and that you seem to consider it unavoidable and inevitable that this matter should proceed to a section 204 appeal."

The reviewing officer says that he would have expected some more detail from the fairly short statements submitted.

17. In any event, I am satisfied in reading through the correspondence in its entirety that the reviewing officer clearly took into account the position of the children and was entitled on the evidence before him to come to the conclusion that "notwithstanding there was a degree of overcrowding in the property occupied as it is by your client and her children", to reach the conclusion he was "not satisfied that the overcrowding was sufficient to make the property unreasonable for her continued occupation because it was not of such degree to be unusual in the prevailing circumstances in this authority's district".

18. Again, this was essentially a reasons challenge. The fact that specific matters were not raised is not sufficient, in my judgment, to lead to the conclusion that the matter was not taken into account by this very experienced reviewing officer.

19. Accordingly, I refuse this application.