



Neutral Citation Number: [2019] EWCA Civ 1592

Case No: C1/2019/0501

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
(Mr Jeremy Johnson QC, sitting as a Deputy High Court Judge)

The Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday, 31 July 2019

Before:

LORD JUSTICE MALES

Between:

B

Applicant

- and -

LONDON BOROUGH OF REDBRIDGE

Respondent

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Mr Lindsay Johnson (instructed by **Hopkin Murray Beskine**)
appeared on behalf of the **Applicant**

Mr Stephen Evans (instructed by **Redbridge Council Legal Department**) appeared on behalf of the **Respondent**

Judgment

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Lord Justice Males:

1. This has been the oral hearing of an application for permission to appeal from the decision of Mr Jeremy Johnson QC, sitting as a Deputy Judge of the High Court, in which he dismissed the applicant's claim for judicial review ([2019] EWHC 250 (Admin)). She sought judicial review of the defendant/respondent council's refusal to conduct a review under section 202 of the Housing Act 1996 of the suitability of the accommodation which the council is providing to her. She says that the accommodation is unsuitable because it is unaffordable, affordability being a matter which must be taken into account when assessing whether accommodation is suitable for a person to whom a local authority has a duty to provide accommodation (see the Homelessness (Suitability of Accommodation) Order 1996). She said that it was unaffordable because the actual bill which she faced for electricity supplied to the accommodation was materially higher than the estimate of £20 a week on the basis of which the property was originally allocated to her.
2. Section 202(1) of the 1996 Act provides that a person has a right to request a review of (among other matters):

“(f) any decision of the local housing authority as to the suitability of accommodation offered to him in discharge of their duty under any of the provisions mentioned in paragraph (b) or (e) or as to the suitability of accommodation offered to him as mentioned in section 193(7).”

3. However, section 202(3) provides that:

"A request for review must be made before the end of the period of 21 days beginning with the day on which he is notified of the authority's decision or such longer period as the authority may in writing allow."

4. The judge held that the applicant was not entitled to what was in effect a second review of the decision on suitability because she had not made the application within the 21-day period referred to in section 202(3). (A previous request for a review, made on 22 December 2017 as a result of the impact of the “benefit cap”, had concluded that the accommodation was suitable, albeit “extremely borderline in terms of affordability”).
5. That the request was made out of time appears to have been the judge's own point taken at the hearing, but it appears that counsel were prepared to deal with it and, in any event, there appears to be no answer to it that I can see. The wording of the statute is clear. A request for review must be made within 21 days unless the authority allows a longer period. Mr Lindsay Johnson for the applicant suggests that a person has an absolute right to request a review even after the 21 day period, that there needs to be an appeal so that that point can be considered, and that the alternative remedies to which the judge referred are not sufficient remedies.
6. The judge held that, notwithstanding the time limit in the statute, there were other means by which affordability and hence suitability could be raised by a person in the applicant's position in the event of a change of financial circumstances after the expiry of the 21 day period. He said, at [35] of the judgment:

"In any event, I do not agree that the consequences of applying s202(3) to a s202(1)(f) request are as significant as is suggested. A local authority can be asked to consider a request out of time. In deciding whether to consider a request out of time the local authority must act rationally. If it does not do so it can be challenged by judicial review – see *C v London Borough of Lewisham* [2003] EWCA Civ 927 *per* Ward LJ at [44]."

7. The judge went on to say that the council was under a continuing obligation to secure that the accommodation provided was suitable and that it could be asked to make a further decision as to suitability if, for example, circumstances changed. That would then place an obligation on the council to consider whether circumstances had changed and to act rationally in dealing with that request. Mr Stephen Evans, for the council, has confirmed that that is the course which the council would take in the event that such a request were to be made.

8. Although the applicant had estimated that her cost of electricity would be £20 per week, her first electricity bill at the property allocated to her, which she received on 28 March 2018, was equivalent to a weekly cost of £28.58 in the period covered (11 December 2017 to 22 March 2018). As a result she asked the council to carry out a further review of its decision as to the suitability of the accommodation for her.

9. The applicant's case has been that the unaffordability, and hence unsuitability, of the accommodation provided to her is demonstrated by the electricity bill which she received. It was not suggested when requesting this further review, or in the court below, that there was any other reason to suppose that there had been a material change of circumstances since the property was allocated to her. However, although the particular electricity bill was higher than the estimate of £20 a week originally provided, it covered the coldest part of the year and was therefore likely to be atypical when balanced out over the year as a whole. In the light of that, I directed that the applicant should produce her electricity bills over a longer period. Those have been produced and confirm that the cost of electricity, averaged out over a longer and representative period, is actually below the estimate of £20 a week on which the

conclusion as to suitability and affordability was initially based. Strictly speaking, I accept that this is not directly relevant, but it does to my mind confirm that the decision not to conduct a review based on the single electricity bill put forward, but which covered only the winter period, was a rational decision.

10. I would therefore conclude that the applicant has no real prospect of showing on appeal that the judge's conclusion that it was too late to request a statutory review should be overturned, and moreover that there is no basis to suppose that the council's refusal to reconsider the question of affordability in the light of the electricity bill produced was irrational. Accordingly there is no real prospect of a successful challenge to the decision which is actually in dispute in these proceedings and for that reason permission to appeal must be refused.

11. In the course of providing the updated evidence as to electricity bills, the applicant's solicitor has produced further and more recent information about the applicant's finances. It is said that her expenses have increased, largely as a result of her children growing older and having additional needs. I need not go into those matters. It is accepted that, if the applicant's financial circumstances have changed as a result of those matters, such that there has been a material change so far as affordability is concerned, then that is a matter which the council would be obliged to consider if requested to carry out a review out of time. If there has been a change of circumstances since the period with which these proceedings are concerned (that is to say, the position in April 2018), then the applicant has the possibility of the remedy to which I have referred. But those later matters cannot affect the rationality of the council's decision not to reconsider suitability in April 2018.

12. Accordingly all I need to say is that permission to appeal is refused and that I am grateful to both counsel for their assistance in elucidating these matters.

13. After I had given this judgment Mr Johnson suggested that my comments above may be relevant to the position of a person whose financial circumstances deteriorate after the expiry of the 21 day period referred to in section 202(3) and who therefore seeks a review of suitability out of time. He asked me to give permission for this judgment to be cited. I give such permission, although this remains a judgment on permission to appeal given by a single judge. I have, however, upheld the decision and reasoning of the judge, which is a reserved judgment of the Administrative Court.

Order: Application refused

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