Neutral Citation Number: [2022] EWCA Civ 670

Case No: CA-2021-000722 (Formerly C1/2021/1474)

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
Mr Justice Cavanagh
CO/3139/2020

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 May 2022

Before:

LORD JUSTICE DINGEMANS
LADY JUSTICE ANDREWS
and
LADY JUSTICE ELISABETH LAING

- -

Between:

THE QUEEN (on the application of [KALONGA])	**Appellant/ Claimant**
- and -	
LONDON BOROUGH OF CROYDON	**Respondent/ Defendant**

- -
- -

Justin Bates and Anneli Robins (instructed by **GT Stewart Solicitors**) for the **Appellant**
Riccardo Calzavara (instructed by **Croydon London Borough Council**) for the **Respondent**

Hearing date: 6 April 2022

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Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be 11 o'clock on 17 May 2022.

Lady Justice Elisabeth Laing :

Introduction

1. The Appellant ('A') appeals from a decision of Cavanagh J ('the Judge'), with the leave of the Judge. The Judge dismissed A's application for judicial review of a decision by the Respondent, Croydon London Borough Council ('the Council'). That decision was described in A's judicial review claim form as a decision by the Council 'that it had no power to extend time for [A] to request a review under section 107E [of the Housing Act 1985] and even if it did have the "power" to extend time for an out of time review, it would not'.

2. On this appeal, Mr Bates appeared for A, and Mr Calzavara for the Council. Both counsel argued the case before the Judge. Mr Bates also acknowledged his debt to Ms Robins, who appeared with him both on the appeal and below. She was unable to attend in person, but attended via video link. I thank all counsel for their excellent written and oral submissions, which described the issues clearly and succinctly.

3. For the reasons I give below, I agree with the Judge that the Council had no power to extend the time for making an application for a review under section 107E of the Housing Act 1985 ('the Act'). The issue on this appeal is a short issue of statutory construction. It is not, therefore, necessary for me to refer to the Judge's reasons in any detail.

4. Paragraph references are to the Judge's judgment unless the context shows that they are to a different judgment.

The facts

5. This summary of the facts is based on paragraphs 1-13. In May 2015, the Council granted A a five-year fixed term secure tenancy of 61, the Crescent, Croydon ('the Property'). Such a tenancy is also known as a 'flexible tenancy'. Mr Bates told the Court that there were about 30,000 such tenancies. The parties clarified, after the hearing, that those were in England only, and that that estimate related to 2019. There were problems with this particular tenancy, however. The Council brought possession proceedings before the expiry of the fixed term, on the grounds that A was behind with her rent payments and that there had been anti-social behaviour. A resisted the proceedings on several grounds. One of her arguments was that since there was no forfeiture clause in the tenancy agreement, the Council could not bring the tenancy to an end before the end of the fixed term. A succeeded in the High Court and in the Court of Appeal. The Supreme Court held, for reasons which were not the same as those given by the courts below, that the Council's possession claim was bound to fail (*Croydon London Borough Council v Kalonga* [2022] UKSC 7; [2022] 2 WLR 592).

6. A's statement of facts and grounds explained that A had completed an on-line form on 20 June 2019, to enable the Council to consider whether or not to grant a new flexible tenancy. She gave her solicitors' address as her address for service (in relation to that form). It later turned out, as Mr Bates told the Court in his submissions, that, the Council having decided not to grant any more flexible tenancies, and although that part of the Council's website was active between 2015 and 2019, it was not being monitored in

June 2019. As a result, the Council did not realise that A had given her solicitors' address as an address for service.

7. The fixed term expired on 24 May 2020. There is a statutory procedure under which a county court can make a possession order after the expiry of a flexible tenancy. I say more about that procedure in paragraphs 23 and 24, below. In short, the landlord must, among other things, give notice to the tenant that he does not intend to give the tenant a new fixed-term tenancy ('the Notice'). The tenant has the opportunity to ask for a review of the decision not to grant a new tenancy, but must do so before the end of the period of 21 days beginning with the date when the Notice is served. If the tenant asks for a review and the landlord does not comply with that request, or if the landlord complies but his decision on the review is wrong in law, the county court may refuse to make a possession order.

8. The Council's case was that it posted a Notice through the letter box of the Property and attached a copy to the front door on 15 April 2020. A did not accept that the Notice had been posted through her letter box, but recognised on the application for judicial review that the Administrative Court could not resolve that dispute. A's case was that the Notice did not come to her attention until after the expiry of the deadline, because she had been away for some weeks. She only saw the Notice on 9 May, when she got back home. It was common ground before the Judge, and common ground before this Court, that A asked for a review after the expiry of the 21-day period. The dispute about the date of the service of the Notice can be resolved in any possession proceedings, if they are eventually brought (see footnote 9 of A's statement of facts and grounds).

9. The 21-day period expired on 6 May 2020. On 11 May 2020, A's solicitor emailed the Council, saying that A had only just seen the Notice and that she would like to apply for a review. A's solicitor asked for an extension of time of 14 days in which to make an application for a review. A's solicitor explained, in an email dated 18 May, that A had been away in Durham between 15 April and 9 May 2020, staying with her mother and son. That email also attached the representations which A wanted to make in support of her application for a review. In short, she challenged the Council's reasons for deciding not to renew her flexible tenancy, and drew attention to her learning difficulties, her serious health difficulties and the impact which being homeless would have on her.

10. The Council replied on 20 May 2020. Mr Aston said, on behalf of the Council, that the Council did not have power to extend the time for making an application for a review, but, if the Council did have such a power, it would not have been exercised in A's favour. On 22 May 2020, the Council gave A notice that it required possession of the property. A has not moved out. The Council has not begun proceedings for possession.

11. On 20 August 2020, A filed a judicial review claim form. Permission to apply for judicial review was granted by Lang J on 12 October 2020. On 16 November 2020, Thornton J ordered a trial of two preliminary issues. They were whether:
    i. a local housing authority can accept an application for a review of a decision not to grant a new flexible tenancy if it is made more than 21 days after the service of a Notice and, if they may,
    ii. the underlying merits of the application are relevant to the exercise of the discretion to extend time.

The statutory framework

The relevant provisions of the Act

12. Sections 1-3 of the Act make provision for local housing authorities and their districts. Sections 4-6A make provision for other authorities. Part II of the Act is headed 'Provision of housing accommodation'. Section 9 confers on local housing authorities a wide power to provide housing accommodation, by building such accommodation, or converting buildings into houses on land which they own, and to alter, enlarge, repair or improve such housing accommodation. A local housing authority may provide, in connection with housing accommodation, furnishings and fittings (section 10), board and laundry facilities (section 11), welfare services (section 11A), with the consent of the Secretary of State, shops, recreation grounds and other buildings or land which will, in the opinion of the Secretary of State, benefit tenants (section 12), and streets roads open spaces and development generally (section 13). Section 17 gives local housing authorities power to acquire land for housing purposes, and section 19, a power to appropriate land for such purposes.

13. Section 20 provides that sections 21 to 27BA '(general provisions on housing management matters)' apply in relation to 'all houses held by a local authority for housing purposes'.

14. Section 21 is headed 'General powers of management'. Mr Bates showed the Court that there has been a provision similar to section 21 ever since the enactment of section 61(1) of the Housing of the Working Classes Act 1890. Section 21 of the Act provides:

> *'(1) The general management, regulation and control of a local housing authority's houses is vested in and shall be exercised by the authority and the houses shall at all times be open to inspection by the authority.*
>
> *(2) Subsection (1) has effect subject to section 27 and to any requirement imposed on the authority under Part 2 of the Housing and Regeneration Act 2008.'*

Section 27(1) of the Act enables a local housing authority to agree that another person shall exercise, in relation to such of the authority's housing and other land held for a related purpose as are specified in the agreement, such of the authority's management functions as are so specified. Section 27 makes detailed provision about management agreements.

15. Section 82 is headed 'Security of tenure'. Section 82(1) provides that a secure tenancy (whether it is a weekly or other periodic tenancy, or a tenancy for a term certain but subject to termination by the landlord) can only be brought to an end by the landlord in accordance with section 82(1A), principally by an order for possession. Section 83 imposes notice requirements on the landlord. Section 83ZA requires a landlord who seeks possession on the absolute ground of possession for anti-social behaviour in section 84A to serve a notice which complies with the requirements listed in that section.

16. Section 85ZA gives a tenant a right to ask for a review of the landlord's decision to seek an order under section 84AA. 'Such a request *must* be made in writing before the

end of the period of 7 days beginning with the day on which' the notice is served (section 85ZA(2)). 'On a request being *duly made* to it, the landlord *must* review its decision' (section 85ZA(3)). I have italicised the words in this provision which are relevant to the arguments in this case.

The Localism Act 2011: flexible tenancies

17. As A explained in her statement of facts and grounds, the Localism Act 2011 ('the 2011 Act') changed the powers of local housing authorities. It created a new tenancy, the flexible tenancy. Part 7 of the 2011 Act is headed 'Housing'. Chapter 2 of Part 7 is headed 'Social housing: tenure reform'. Sections 150-153 make provision about tenancy strategies. Section 150(1) requires a local housing authority to prepare and publish a tenancy strategy which describes the factors to which registered providers of social housing for its district are to have regard when they make policies about the kinds of tenancies they grant, the circumstances in which they will grant a tenancy of a particular kind, the lengths of fixed-term tenancies, and the circumstances in which they will grant a further tenancy. A local housing authority must have regard to its tenancy strategy when it exercises its functions of housing management (section 150(7)).

18. Section 154 of the 2011 Act is headed 'Flexible tenancies'. It inserts sections 107A-107E in the Act after section 106A. The Judge set out the relevant provisions in some detail in paragraphs 27-35. I need do no more, therefore, than to summarise them. In my summary I have again italicised or underlined the words which are relevant to the arguments in this case.

19. The Judge said (paragraph 27) that the underlying policy was to encourage landlords to grant fixed-term tenancies rather than periodic tenancies '(ie tenancies for life)'. He said that the intention was that, on the expiry of the flexible tenancy it would be relatively easy for the landlord to recover possession if it did not want to grant a further tenancy to the tenant.

20. A flexible tenancy is a secure tenancy to which any of subsections (2)-(6) of section 154 applies (section 154(1)). Section 107A(2) applies to a secure tenancy if it is granted by a landlord in England for a term certain of not less than two years and before it was granted the person who became the landlord under the tenancy served, on the person who became the tenant, written notice that the tenancy would be a flexible tenancy.

21. If a prospective landlord offers to grant a flexible tenancy, section 107B(2) gives the offeree a right to ask for a review of the decision of the prospective landlord about the length of the tenancy, but only on the ground that the length of the term offered does not accord with the landlord's relevant policy (section 107B(3)). Section 107B(4) provides that a request for a review '*must* be made before the end of - (a) the period of 21 days beginning with the day on which [the offeree] receives the offer or notice, or (b) such longer period as the prospective landlord may in writing allow'. If a request is '*duly made* to it' the prospective landlord '*must* review its decision' (section 107B(5)). Section 107B(6)-(10) makes procedural provisions about such reviews.

22. Section 107C provides for the termination of a flexible tenancy by the tenant. Section 107C(2)-(3) imposes two requirements on a tenant who wishes to terminate a flexible

tenancy. A landlord '*may agree* with the tenant to *dispense with*' either requirement (section 107C(4)).

23. Section 107D(1) requires a court to make a possession order when, or after, a flexible tenancy ends, if the three conditions in section 107D(2)-(4) are met. Condition 2 is that the landlord has given the tenant not less than six months' notice in writing that the landlord does not propose to grant another tenancy on the expiry of the flexible tenancy, giving the reasons why, and telling the tenant that he has 'a right to request a review of the landlord's proposal and of the time within which such a request *must* be made' (section 107D(3)). A court may refuse to make an order for possession if a tenant 'has *in accordance* with section 107E' asked for a review of the landlord's proposal not to grant another flexible tenancy and the court is satisfied that the landlord had failed to 'carry out the review *in accordance with* provision made by or under' section 107E, or the decision on the review is 'otherwise wrong in law' (section 107D(6)). Section 107D(7) gives the court power, if it refuses to make an order for possession 'by virtue of subsection (6) to make such directions as to the holding of a review or further review *under section 107E* as it thinks fit'.

24. Section 107E is headed 'Review of decision to seek possession'.

> *'(1) A request for a review of a landlord's decision to seek an order for possession of a dwelling-house let under a flexible tenancy must be made before the end of the period of 21 days beginning with the day on which the notice under section 107D(3) is served.*
>
> *(2) On a request duly made to it, the landlord must review its decision.*
>
> *(3) The review must, in particular, consider whether the decision is in accordance with any policy of the landlord as to the circumstances in which it will grant a further tenancy on the coming to end of an existing flexible tenancy…*
>
> *(6) The landlord must notify the tenant in writing of the decision on the review.*
>
> *(7) If the decision is to confirm the original decision, the landlord must also notify the tenant of the reasons for the decision.*
>
> *(8) The review must be carried out, and the tenant notified, before the date specified in the notice of proceedings as the date after which proceedings for the possession of the dwelling-house may be begun…'*

25. It is convenient here to mention paragraph 38, in which the Judge listed six different other provisions for reviews in the Act and in the Housing Act 1996 ('the 1996 Act'). Two expressly permit the landlord to extend the time limit for an application (sections 124B(3) and 202(3) of the 1996 Act), and four do not (sections 85ZA(2) of the Act and sections 125B(1), 129(1), and 143F(1) of the 1996 Act). I have already referred to section 85ZA(3) of the Act (paragraph 16, above). Like section 107E(2), section 85ZA(3) provides that 'On a request being *duly made* to it the landlord *must* review its decision'. Sections 125B(2) and 129(2) of the 1996 Act are in the same terms. The language of section 143F(2) is somewhat different, but its effect is the same.

The Localism Act 2011: general power of competence

26. Section 1 of the 2011 Act is headed 'Local authority's general power of competence'. Section 1(1) gives a local authority 'power to do anything that individuals generally may do'. Section 2 is headed 'Boundaries of the general power'. It provides for the relationship between the general power and express statutory limitations enacted before and after the commencement of section 1.

Section 111 of the Local Government Act 1972

27. Section 111 of the Local Government Act 1972 ('the 1972 Act') is in Part VII of the 1972 Act (Miscellaneous Powers of Local Authorities). It is headed 'Subsidiary powers of local authorities'. Section 111(1) provides:

> *'Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.'*

Section 222 of the Local Government Act 1972

28. Section 222(1) of the 1972 Act gives a local authority power, if they 'consider it expedient for the promotion or protection of the interests of the inhabitants of their area' to 'prosecute or defend or appear in any legal proceedings. And in the case of civil proceedings, they may institute them in their own name'.

Section 12 of the Interpretation Act 1978

29. Section 12(1) of the Interpretation Act 1978 ('the 1978 Act') is headed 'Continuity of powers and duties'. It provides

> *'Where an Act confers a power or imposes a duty it is implied, unless the contrary intention appears, that the power may be exercised, or the duty is to be performed, from time to time as occasion requires.'*

The authorities

Ultra vires and section 111 of the Local Government Act 1972

30. The issue in this case is whether the Council had power to extend the time in which A could ask for a review under section 107E. The Council is a statutory body and only has the powers which Parliament has given it. Lawyers refer to that doctrine as the ultra vires rule. The principal authority, both on the ultra vires rule and on the interpretation of section 111, is *Hazell v Hammersmith and Fulham London Borough Council* [1992] 2 AC 1. Lord Templeman, with whom the other members of the Appellate Committee agreed, gave the leading speech. The issue in that case was whether local authorities had power to make contracts for interest rate swaps. Lord Templeman referred to a nineteenth century authority which establishes that where Parliament creates a statutory body for a particular purpose or purposes, and gives it express powers for that purpose, 'what it does not expressly or impliedly authorise is to be taken to be prohibited', unless something 'may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised ought not (unless expressly prohibited) to be held,

by judicial construction, to be ultra vires' (see *Attorney-General v Great Eastern Railway Co* (1880) 5 App Cas 473 at pp 473 per Lord Blackburn and at p 478 per Lord Selborne LC). He said that section 111 'embodies those principles' (p 29B-E).

31. Local authorities' borrowing powers were 'defined and controlled by Part 1 of Schedule 13 to the 1972 Act' (per Lord Templeman, at p 22F-G). The banks who were the counterparties to the swaps conceded that local authorities had no express power to make swaps, but contended that they had an implied power to make certain kinds of swap, and that the respondent council had power to make some swaps after July 1988 in order to mitigate the effect of earlier unlawful swaps, relying on section 111 (ibid, p 28F-G).

32. The authorities showed that when a power is claimed to be incidental, 'the provisions of the statute which confer and limit functions must be considered and construed. The question was not whether swaps were incidental to a local authority's borrowing function, but whether they were incidental to 'a local authority's borrowing function having regard to the provisions and limitations of the Act of 1972 regulating that function' (ibid, p 31D-E). Schedule 13 established a 'comprehensive code which defines and limits the powers of a local authority with regard to its borrowing. The Schedule is in my view inconsistent with any incidental power to enter into swap transactions' (ibid, pp 33H-34A).

33. Lord Templeman also considered whether the respondent's interim strategy of making fresh swaps to hedge the risks of earlier transactions was lawful. It was not, because the local authority had no power to make swaps of any kind (p 37E-F). No authority had been cited in argument which suggested that an ultra vires transaction could be remedied by another ultra vires transaction (p 38A). The authorities showed that a corporation could compromise an ultra vires claim, but 'in each case, the compromise did not involve the corporation in performing any unlawful act' (p 38B). 'No authority is needed for the proposition that the law should lean in favour of such *lawful* solution as enables the situation to be so far as possible rectified with minimum loss and inconvenience to all involved' (original emphasis) (p 39B).

Section 21 of the Act and its predecessors

34. Mr Bates referred to several authorities on the effect of section 21 of the Act and of its predecessors. In *Shelley v London County Council* [1949] AC 56 the House of Lords held that the power of 'general management regulation and control of' of the houses which a local authority provided which was conferred by one of those predecessors, section 83(1) of the Housing Act 1936, included 'a right to terminate the tenancy so far as the general law allows, ie, after due notice' (p 114, per Lord Porter).

35. The issue in *Attorney-General v Crayford Urban District Council* [1962] 1 Ch 575 was whether another predecessor of section 21 of the Act, section 111(1) of the Housing Act 1957, gave a local authority power to arrange insurance of its tenants' possessions and to deduct a weekly contribution to the cost from their rent. It is clear from the judgments that this activity cost the ratepayers nothing. Lord Evershed MR, giving a judgment with which the other members of this Court agreed, held that the judge had been right to decide that such an arrangement was 'an act done in the general management of his property' by the landlord, in circumstances where tenants did not

generally insure their possessions independently, and, if they lost their possessions, were likely not to pay their rent. A 'prudent landlord, acting in his interests as such, may reasonably seek to protect his rent by facilitating insurance against such loss' (p 586). Lord Evershed then quoted the same passage from the judgment of Lord Selborne CJ in *Attorney-General v Great Eastern Railway Co* as had Lord Templeman in *Hazell* (see paragraph 30, above).

36. Lord Evershed added that the relevant standard of management was the standard which was 'appropriate not to a private land owner concerned to turn to account to his best advantage his own estate'. It was, rather, 'the standard of management appropriate to a local authority providing dwellings for a particular class of the community under a statutory duty to do so, such class of the community having the limitations to which I have referred' (p 587). He said, further, at p 598, that 'It must be the concern, if not the duty, of local authorities to maintain the general quality and standard of its housing estate which it is its duty to provide and to take such steps as may be fairly regarded as prudent to that end, and also so as to ensure, so far as may be, that the rents due to it will be paid and that the council will not be unduly involved in the consequences that would follow from a tenant's failure to pay his rent and observe the ordinary obligations of his tenancy'. He referred to the council's related powers (summarised in paragraph 12, above). Those express powers did not affect the point that, 'from the point of view of management', a council housing estate is 'sui generis' (p 589). The council's obligations included a welfare element, and 'the widest significance should be given to the word "management" in this context'.

37. Harman LJ agreed that the "management" of 'this house does fairly extend, as an incident to management, to the insurance of its contents' (p 591). If the arrangement was not act of management, as the judge had thought, it was 'clearly incidental to management, which means…the running of these houses which is the council's duty and, indeed, their burden' (p 592).

38. Donovan LJ (as he then was) agreed that this arrangement was part of the 'general management of houses'. The risk insured against closely affected the 'productiveness of the houses' (p 592).

39. The issue in *Akumah v Hackney London Borough Council* [2005] UKHL 17; [2005] 1 WLR 985 was whether section 21(1) of the Act, either on its own, or read with section 111 of the 1972 Act, gave the respondent council power to regulate, on one of its housing estates, parking by tenants and their visitors. Lord Carswell gave the leading speech, with which the other members of the Appellate Committee agreed. This Court had decided that section 21 did authorise such a scheme, but that, if it did not, it did so when read with section 111. The appellant argued, among other things, that the council could only establish a parking scheme under section 23 of the Act, which confers a power to make byelaws 'for the management, use and regulation of their houses'.

40. Lord Carswell said (at paragraph 21) that 'management' should, consistently with the authorities, be given 'a wide construction' and a 'generous interpretation', and should be 'construed in the widest possible sense'. He agreed with Moses J (as he then was) in this Court that 'it is inherent in the management of houses in a housing estate that parking on the estate should be regulated'. He described the factors associated with unregulated parking which were 'clearly capable of affecting the amenity of life for

residents and their access to and enjoyment of their houses and flats…' He found 'no difficulty in accepting that safeguarding and improving that amenity and facilitating access and enjoyment are proper functions of a council managing a housing estate' (at paragraph 22).

41. The matter was put 'beyond doubt' by section 111. The regulation of parking on an estate 'facilitates and/or is conducive or incidental to the council's discharge of its function of the management of houses in the estate', for the reasons he had given in paragraph 22 (at paragraph 23). In paragraph 24, he said that it was necessary, in accordance with the reasoning in *Hazell*, to identify the council's relevant functions. He, too, quoted the two passages in *Attorney-General v Great Eastern Railway Co* which Lord Templeman cited.

42. In *PB v Haringey London Borough Council* [2006] EWHC 2255 (Admin); [2007] HLR 13 Andrew Nicol QC (as he then was), sitting as a Deputy Judge of the High Court, considered, among other things, whether section 21 of the Act enabled a local housing authority to house a person who was subject to immigration control, and thus barred (by section 160A(3) and (4) and by section 185(2) and (2A) of the 1996 Act), from the allocation of housing under Part VI of the 1996 Act, and from assistance as a homeless person under Part VII of the 1996 Act. He recorded the claimant's argument, based on *Shelley* and on *Bristol District Council v Clark* [1975] 1 WLR 1443, that section 21 gave a council power to grant tenancies and licences, and 'to pick and choose their tenants at will' (at paragraph 12). The claimant accepted that section 21 had to be read in the context of later housing legislation, but nevertheless argued that there were gaps, and that a local housing authority could rely on section 21 to 'give access to their accommodation'.

43. The Deputy Judge accepted an argument that section 183 of the 1996 Act was a clear indication that Parliament intended all homeless applicants to be 'funnelled through Pt 7 of the 1996 Act', and that section 183 would be subverted if a homeless person who was subject to immigration control could 'circumvent the restriction in s. 185 by invoking the general power of management in s.21' of the Act. That argument treated the housing legislation as a 'coherent whole, whereas [the claimant's] argument envisages a gap in the legislative scheme for which it is difficult to fathom a parliamentary purpose' (at paragraphs 23 and 24). He noted in paragraph 25 that the authorities on which the claimant relied all pre-dated the enactment of the 1996 Act, and so did not have to consider the relationship of section 21 of the Act with 'the specific provisions concerning the homeless'. Even if section 21 still enabled a local housing authority to 'pick and choose tenants', it must, 'in the case of those who are homeless, or threatened with homelessness, be exercised in accordance with the provisions of Pt 7 of' the 1996 Act. See also paragraph 26.

44. The question in *R (Kilby) v Basildon District Council* [2007] EWCA Civ 479; [2007] HRL 39 was whether a local housing authority could rely on section 21 of the Act to agree with its tenants (by clause 11 of its tenancy agreement) that it would not vary the terms of its tenancies unless a majority of tenants' representatives agreed, when section 102(1) of the Act provides that 'The terms of a secure tenancy may be varied in the following [three] ways, and not otherwise…' The three ways were (i) by agreement, (ii) in the case of variations about rent, or certain other payments, by the landlord or the tenant in accordance with a provision of tenancy (as originally agreed, or as later

varied), and (iii) in accordance with section 103, which provides for a notice of variation. Section 103 requires a local housing authority to consult the tenants, but permits it to vary a tenancy even if they do not consent.

45. Rix LJ, with whom Moses J agreed, described section 102 as limiting the power of a local housing authority to vary its tenancies (at paragraph 3). He said that the need for a power unilaterally to vary secure tenancies was obvious (paragraph 4). He held that the council was exercising its management powers under section 21 'for the single purpose of regulating secure tenancies and ss. 102 and 103 in that context mandate that, in the absence of proceeding by agreement or pursuant to agreement, the Council was to have a unilateral right to vary conditions of a tenancy by notice, following consultation'. Clause 11 'prevents that unilateral right'. Clause 11 gave the tenants' representatives an 'absolute veto over the Council's proposals…Such a clause is therefore simply incompatible with the Council's statutory right and power to vary their tenancies unilaterally' (paragraph 32). By putting clause 11 in the tenancy agreements, the respondent authority had 'effectively…abrogated the statutory third way. In my judgment the Council did not have the power to amend statute by these means, in other words, to give up its power of unilateral variation' (paragraph 34).

Section 85ZA of the Act

46. *Hounslow London Borough Council v Harris* [2017] EWCA Civ 1476 concerned the correct construction of section 85ZA of the Act. Section 85ZA was part of a group of provisions which were inserted in the Act by the Anti-social Behaviour, Crime and Policing Act 2014 ('the 2014 Act'). Giving a judgment with which the other members of this Court agreed, Lewison LJ said that the 2014 Act 'introduced a large number of remedies for anti-social behaviour. The overall purpose of the legislation was to put victims first'. It created two linked remedies: a closure order which could be made by the magistrates' court, and a new mandatory ground for possession of a dwelling let under a secure tenancy in a case where a closure order had been made (section 84(A)). Both were designed to be 'speedy' (paragraph 2).

47. Section 83ZA requires a local housing authority to serve a notice before applying to the court for a possession order. The notice must tell the tenant that the court will be asked to make a possession order under section 84A, give the landlord's reasons, and tell the tenant that he has a right to ask for a review of the landlord's decision, and of the time within which the request must be made (section 83ZA(3)). Section 85ZA gives some tenants a right to ask for a review. I have quoted section 85ZA(2) and (3) in paragraph 16, above.

48. The respondent council had been receiving complaints about the noise coming from the appellant's flat for some time, and about the large numbers of visitors hanging around in the nearby stairwell, smoking, drinking, and taking drugs. Eventually the police applied for a closure order. The respondent council then served a section 83ZA notice on the appellant. That notice told him that he had to apply for a review by 30 December 2015. He did not do so. His solicitors emailed the council on 4 and 18 January 2016, asking for an extension of time in which to apply for a review of the decision to seek possession. The council refused an extension of time and issued proceedings for possession. Some months later, the council offered to review its decision, reviewed it, and did not change its mind.

49. Lewison LJ said that the first question was whether the council had power to extend time; although he did not consider that that was 'quite the right question'. The real question, rather, was whether the council 'had the power to agree to accept an out of time request for a statutory review, or, to put it another way, to waive compliance with the statutory time limit'. He noted that there was no express power in section 85ZA, either to extend the time for making a request, or the time by which any review must be completed (section 85ZA(6)). It was also common ground that there was no power to extend the time for completing the review. That meant that if there was a power to extend the time for making a request, its exercise 'might severely curtail the time permitted for the review'. That was 'a strong contextual indication that the seven-day period…cannot be extended or waived either' (paragraph 17).

50. The authorities which showed that a statutory time limit imposed solely for the benefit of one party could be waived (such as *Kammins Ballrooms Limited v Zenith Investments (Torquay) Limited* [1971] AC 850) were not in point, because the purpose of the anti-social behaviour provisions 'plainly engages the public interest'. That conclusion was supported by the statutory language. A request was only '*duly made*' if made within the seven-day period. Section 84A(2) could not bite because, no request having been '*duly made*', the council had no obligations under section 85ZA. He held that a tenant who asks for a statutory review outside the seven-day limit is not entitled to one, and that the landlord has no obligation, or power, to conduct one (paragraph 22). Even if a landlord had power to serve a fresh notice, 'it would need to have a good reason to do so, particularly in the light of the legislative purpose of bringing speedy relief to the victims of anti-social behaviour' (paragraph 23). On the facts, the council could not be criticised, as, even as late as 18 January, the appellant's solicitors had not given any reason for requesting a review (paragraph 24). The council accepted that, if further information came to light, any of the decisions which it made in deciding to press ahead with possession proceedings were, in theory, amenable to challenge on public law grounds, but that any such decision would not amount to a statutory review pursuant to section 85ZA. Lewison LJ agreed, adding that 'the general application of public law principles to decisions of a local authority landlord must not be allowed to undermine the legislative scheme of this mandatory ground for possession' (paragraph 27).

Section 202 of the 1996 Act

51. Mr Bates also referred to three cases about section 202 of the 1996 Act. Section 202 gives a person who asks a local housing authority for assistance under Part VII a right to ask for a review of a decision which is adverse to him. Section 202(2) provides that 'there is no right to request a review of a decision on an earlier review'. Section 202(3) provides that a request for a review must be made before the end of the period of 21 days beginning with the day on which the applicant is notified of the authority's decision, 'or such longer period as the authority may in writing allow'. By section 202(4) 'On a request being *duly made* to it, the authority…concerned shall review their decision'. An applicant who is dissatisfied with a decision on a review may appeal to the county court on a point of law (section 204). There is a 21-day time limit, which, by amendment, may in some circumstances be extended by the court (section 204(2) and (2A)).

52. *R v Westminster City Council ex p Ellioua* (1998) 31 HLR 440 was a renewed application for permission to apply for judicial review. The appellant applied to the respondent for re-housing. The respondent told her on 8 August 1997 that it had decided that she was intentionally homeless. She was told that she could ask for a review of that decision, provided that she did so within 21 days. She did so. On 28 August, the council maintained its original decision and told the appellant that she could appeal to the county court. She did not appeal. Her solicitors wrote to the council challenging the council's view of the facts, and asking for a further review. The council refused, and said, in any event, the further representations had not caused it to change its decision. She applied for judicial review of that refusal. Ognall J refused permission to apply for judicial review and she renewed that application to this Court.

53. Judge LJ (as he then was) (with whom the other members of this Court agreed) said (p 444) that section 202(2) did not prevent the authority from reconsidering its decision if it was minded to do so, but that they were not required to do so. He recorded the appellant's submission that if a local housing authority had a discretion to re-review its earlier decision, the exercise of that decision was amenable to judicial review. He held that the statutory provisions were intended to ensure that there should be only one route to relief for a person who was dissatisfied with a decision on a review, that is, an appeal to a county court on a point of law. The reality was that the appellant was dissatisfied with the decision on the review. The statutory procedures were intended to cover not only the decision of the authority on a review requested under section 202(2) but 'also any subsequent decision by the housing authority to exercise its discretion to reconsider its decision on the earlier review'. The relief claimed was based 'entirely on alleged errors of law'. Those issues should have been canvassed in the county court. As the statutory remedy had not been properly exhausted, the application for judicial review was inappropriate and permission to apply for judicial review should be refused.

54. The appellant in *Demetri v Westminster City Council* [2000] 1 WLR 772 applied to the respondent for assistance under Part VII of the 1996 Act. The respondent council decided that it had discharged its duty to her. It confirmed that decision after a review pursuant to section 202. Her solicitors asked the respondent whether it would re-consider its decision on the review, believing that the 21-day time limit for an appeal to the county court under section 204 would run from the date of any decision on the reconsideration. The council agreed to reconsider its decision, and maintained it. She then tried to appeal to county court, but the county court struck out her appeal on the grounds that she had brought it after the 21-day period for appealing had elapsed, and it therefore had no jurisdiction to hear it. She appealed to this Court.

55. Douglas Brown J, giving a judgment with which the other members of this Court agreed, recorded that the appellant had three arguments.

    i. The council had agreed to re-open the review; there was, by implication, no need to appeal the original decision on the review. The review continued until the council's reconsideration of the decision on the review, so that time for appealing ran from that second date. She relied on a passage in the judgment of Forbes J in *R v Hambleton District Council ex p Geoghan* [1985] JPL 395.

    ii. The parties had agreed to have a second review under section 202(2). The appellant submitted that there were two review procedures under section 202: a mandatory procedure under section 202(1) and a

discretionary procedure under section 202(2). There was a right of appeal in respect of both, since section 204 did not distinguish between section 202(1) and section 202(2), simply referring to 'section 202'. The appellant relied on *Ellioua* and, on the issue of waiver, on *Kammins Ballrooms*.

iii. The council had agreed to reconsider the case on the understanding that the appellant would not immediately appeal but could appeal later if she was dissatisfied with the decision on reconsideration. The council could waive the 21-day period, or were estopped from relying on it.

56. The council conceded that it could lawfully re-open the decision-making process, either by reconsidering the decision made under section 202(1), or by doing a new review, in which case the council would have to make clear that the first review decision no longer stood. The council's primary submission was that it had made two distinct decisions. The council accepted that, in an appropriate case, it could agree that an inadequate decision on a statutory review should be quashed, and that it could then do another statutory review.

57. Douglas Brown J said that there was no doubt that a council 'in its discretion can decide to reconsider or review a review decision formerly given under section 202(1) (p 778)'. This was an appropriate case for such a reconsideration. But the correspondence did not support the submission that the council was being asked to open the review and keep it open. He rejected the first argument. The appellant's second argument misunderstood section 204. There was only one right of review, conferred by section 202(1), and the right of appeal was against the decision on a review, which must mean the review under section 202(1). Section 202 was silent about this, but the only discretion available to the council was a discretion to decide whether or not to review the decision it had made on the statutory review. If the council was minded to conduct a fresh review, and not just to reconsider its decision on the statutory review, it could only do so if it made it absolutely clear that it did not regard the first review decision as continuing to have effect. If there is any doubt about the council's position, an applicant should ask it to make its position clear. The only decision which can be challenged on an appeal is the original review decision, unless the council makes it clear that it has no continuing effect.

58. Properly understood, *Ellioua* did not help the appellant. This Court's primary approach was based on the view that the errors of law relied on were really errors of law in the original review, and that the county court was the correct forum in which to address them.

59. Mance LJ added that it was common ground 'and clearly correct' that the council 'may as a matter of extra-statutory discretion, agree to [reconsider a decision on a review] even though section 202…provides that an applicant has no right to request such a review or reconsideration…'(p.780). The right of appeal only applied, however, to the first decision on a review, that is, to the decision under section 202(1).

60. *R (C) v Lewisham London Borough Council* [2003] EWCA Civ 927; [2004] HLR 4 was a renewed application for permission to apply for judicial review. The appellant had applied for assistance under Part VII of the 1996 Act. In January 2001, the respondent council refused to help her on the ground that she was intentionally homeless. The

council told her that she could apply, within 21 days, for a review of that decision. She did not do so. She approached the council again in April. The council treated this as a fresh application. On July 18, the council refused to help her on the ground that her circumstances had not changed since January. Her solicitors wrote to the council on 31 August, asking for it to extend the time for a review. She applied for judicial review. There was further correspondence, and two decisions of the Administrative Court. Eventually, on 4 March 2002, the council told her solicitors that it would not extend the time for a review, or conduct an extra-statutory review.

61. The issue on the appeal was the nature of the discretion, conferred by section 202(3), to extend the time for applying for a review. Ward LJ, giving the judgment of this Court, described the discretion in paragraph 44; it is a typical discretion governed by the principles of public law. The question for this Court on the appeal was therefore a narrow one (paragraph 45). How a local housing authority balanced the relevant factors was entirely a matter for it (paragraph 49). The prospects of success could be a relevant factor (paragraph 50).

62. The decision of 4 March was taken outside the statutory scheme. One question which this Court considered was whether the appellant was entitled to make repeated applications for extensions of time (paragraph 56). This Court considered *Ellioua* and *Demetri* in that context. It had not heard full argument on the point, but agreed with those decisions. 'It seems to us to follow that a housing authority is not bound to entertain a succession of applications for review or for extensions of time for review given that Parliament has circumscribed the applicant's right to seek them' (paragraph 59). The scheme envisaged one application for a review and one application for an extension of time for a review. A local housing authority might choose, in its discretion, to entertain a further application for a review or for an extension of time. It could choose to reconsider matters of fact which fell outside the scope of the appeal to county court. 'These are, however, decisions of good housing management and this extra-statutory discretion of the local housing authority is likely to be held to be close to being absolute' (paragraph 59).

Submissions

63. A's main submission was that the power conferred by section 21 of the Act was wide enough to enable the Council to consider a request for a review which is made outside the time stipulated in section 107E(1). As a matter of law, that was an exercise of the power of housing management. The authorities showed that section 21 must be construed widely. Mr Bates accepted (at any rate, to an extent) that section 21 has to be read in the light of later housing legislation. *PB* was an example of that approach. The starting point was always section 21, and the question in any given case was whether Parliament had limited that power in some way. Section 107B is a restriction on the general power of management, but section 107E was traditional housing management power. Section 107D and 107E were not a complete code.

64. A added that section 107E did not in terms prevent a local housing authority from giving an extension of time, for three reasons.

    i. Choosing tenants is a facet of housing management. Section 21 is to be given the widest possible meaning, which is not to be cut down unless by clear words.

ii. In analogous areas of housing law, the authorities show that a local housing authority can exercise its powers under section 21 in the absence of express statutory provision. It can withdraw a notice seeking possession and it has a power (but not a duty) to accept a request for a second review in a homelessness case, even when the 1996 Act expressly prohibits that. The reference in *C v Lewisham* to 'good housing management' must be a reference to section 21. Here, too, the Council has a power, but not a duty, to accept a late request for a review.
iii. There was no reason why these questions should only be for a District Judge to decide in the possession proceedings.

65. He accepted that the context of the early authorities on the predecessors of section 21 was different, as, until 1980, there was almost no statutory regulation of the tenancies local housing authorities could grant, and the Rent Acts did not apply to them. It was significant that section 107E did not expressly prohibit a late review. The absence of such a prohibition meant that section 21 enabled the Council to accept a late review as a matter of housing management.

66. He had to accept (in this Court) that *Harris* is correct, but submitted that it can be distinguished because it concerns a different statutory scheme, which was enacted for the benefit of victims of anti-social behaviour and because section 21, and the cases Mr Bates cited, were not considered. Parliament had there decided to exclude section 21 because the protection of victims was paramount. Speed was critical in that case, and is not so critical in this context. The reasoning about the interests of the public does not apply here.

67. He accepted that section 21 could be subject to an implied limitation.

68. Mr Calzavara's submission, as he put it, 'in a nutshell' was that section 21 was not wide enough to give the Council a power to extend the time for a review under section 107E. Even if it was, Parliament, had, in section 107E, curtailed that power.

69. He made three broad points about the statutory scheme.
i. Parliament has distinguished, in this group of provisions about flexible tenancies, and in other provisions, between the circumstances in which a local housing authority could, and could not, extend the time for making a request for a review. A's argument drove a coach and horses through that scheme, by suggesting that words should be read into section 107E which were missing from its text. A's argument did not grapple with the question whether the power to extend time for which she contended was a power only to do so in writing, or whether time could be extended orally. Some of the express legislative provisions required an extension of time to be in writing and some did not.
ii. If A was right, section 107B(4)(b) was redundant.
iii. *PB* shows that section 21 must be read in the light of subsequent housing legislation. It cannot confer powers which are inconsistent with features of the later legislation, or be used to subvert that legislation.

70. A's attempts to distinguish *Harris* did not work. The relevant statutory provisions are materially the same. Neither provision expressly confers a power to extend time.

71. As a matter of language, the function of conducting statutory reviews of flexible tenancies or in homelessness cases has nothing to do with housing management. *Ellioua* and *Demetri* show no more than that a local housing authority can reconsider a decision on a section 202 review, as a matter of discretion. That is non-statutory process and is not a further review under section 202. In this case, the Council could have withdrawn a decision on a review, but could not have extended the time for making a review.

72. A's concession that section 107E was a limitation on section 21 was fatal to her argument.

Discussion

73. This case is about a flexible tenancy. The provisions inserted in the Act by section 154 of the 2011 Act are the source of the Council's power to grant, and of the restrictions on its ability to end, such a tenancy. The starting point for analysing the parties' rights and duties in that context is, therefore, those provisions. They are a specific substantive and procedural code about flexible tenancies. To the extent that they make express provision, or provision by necessary implication (and subject to the effect of section 111 of the 1972 Act, to which I will come) they are an exhaustive statement of a tenant's rights, and of a local housing authority's procedural functions, as respects flexible tenancies. In this context, the ultra vires rule, as explained in *Hazell*, is important. If a local housing authority does not have an express power to do 'x', then it cannot do 'x', unless 'x' is within section 111 of the 1972 Act, that is, is something which is calculated to facilitate, or is conducive or incidental to, the exercise of an express function. Moreover, as is clear from *Hazell*, and from *PB*, more general powers (such as section 111 of the 1972 Act and section 21 of the Act) cannot confer a power on an authority to do things which, if there is a specific code governing the function in question, that code does not expressly authorise.

74. One of the provisions of this code expressly gives a local housing authority power to extend a time limit for making an application (107B(4)(b)) and another permits a local housing authority to agree to dispense with specific statutory requirements (section 107C(4)). Those provisions show that Parliament has chosen, in those two contexts, to confer an express power on a local housing authority to change the statutory procedural requirements in some circumstances, in two different respects. So that technique was known, and available, to Parliament. Parliament has nevertheless chosen not to confer such a power on a local housing authority in the context of section 107E. The ultra vires rule means, straightforwardly, that in those circumstances in which Parliament has not expressly conferred a power to change the procedural requirements of this code, a local housing authority simply has no power to do so.

75. As a matter of language, the juxtaposition, in closely connected provisions, of an express power to change procedural requirements in some, and of its absence in another, is a strong indication that, by necessary implication, there is no such power in the provision from which the express power is missing. That linguistic approach supports, but is independent of, Lord Templeman's analysis of the ultra vires doctrine (see paragraph 30, above).

76. Section 111 does not change this analysis. If the relevant code contains no power to extend the time for making an application for a review of a decision to seek possession, section 111 cannot confer one: see, by analogy, Lord Templeman's analysis of the respondent council's borrowing powers by reference to the code in Schedule 13 to the 1972 Act (see paragraph 31, above). Mr Bates relied strongly on the citations from *Attorney-General v Great Eastern Railway Co* in the *Crayford* case. Those must be understood, however, in the light of two linked factors. The first is Lord Templeman's approach in *Hazell*. Those citations do not, contrary to A's submissions, show that if a local housing authority is not expressly prohibited from doing 'x' it may, by relying on section 21, do 'x'. The reasoning in *Kilby* (paragraphs 44 and 45, above) does not support A's submissions. Rather, the phrase 'and not otherwise' in section 102(1) of the Act put the right answer in that case beyond argument. It does not follow that, without such statutory pointer, A's argument should succeed. For the reasons I have already given, such an argument is closed off by the express provisions in sections 107A-E of the Act and by the reasoning in *Hazell*. The second factor, recognised by the Deputy Judge in *PB*, is that, during the period since the authorities on section 21 were decided, statutory intervention in this field has vastly increased. The field in which an untrammelled general housing management power could operate has, correspondingly, shrunk.

77. The decision in *Harris* supports this general approach. A key feature of this Court's analysis in that case was the recognition of the importance of the phrase 'if duly made' in that statutory scheme (see paragraph 50, above). This feature of the statutory language was also recognised by the Judge (for example in paragraphs 40, 61 and 76). As Mr Calzavara submitted, the provisions in that case and in this are materially the same, and this Court's analysis of their effect in *Harris* is binding. I have italicised or underlined the phrase '*if duly made*' when it is used in other provisions in the housing legislation. It is used frequently, and must have the same effect wherever it occurs.

78. Mr Bates' attempts to distinguish *Harris* did not convince me. First, the fact that the provisions in *Harris* were introduced to deal with anti-social behaviour and to benefit its victims does not mean that they engage the public interest more than the provisions in this case. The provisions in this case are concerned with the correct and fair allocation of a scarce resource, and engage the public interest as much, albeit in a different way. In neither case is the purpose of the provisions solely the protection of the tenant. Second, the fact that section 21 was not mentioned is irrelevant, for the reasons I give in the next paragraph.

79. Mr Bates insisted that the analysis should start with section 21. I reject that submission, for the reasons given in paragraph 73, above, and for two further reasons. As I have already said, sections 107A-107E of the Act are a detailed and specific procedural code about flexible tenancies. Section 21, on the other hand, is a wide general power. On conventional principles of statutory construction, general provisions cannot be relied on to cut down, or to contradict (or, indeed, to supplement, in the context of local authority powers), specific provisions. Second, section 21 is a general power to manage, regulate and control a local housing authority's houses. I do not consider that the posited power to supplement a detailed statutory substantive procedural code about a particular type of new tenancy is, in any respect, an exercise of a power to manage, regulate or control houses (or other accommodation).

80. The reasoning in the cases about homelessness reviews is somewhat opaque. For that reason alone, they do not support A's submission that section 21 confers a power to supplement express statutory procedural provisions. *Ellioua* is best understood as a case in which an application for permission to apply for judicial review was refused because there was a suitable alternative remedy (see paragraphs 53 and 58, above). The core of the reasoning in *Demetri* is that, in the context of section 202 of the 1996 Act, a local housing authority may reconsider its decision on a review, but there will be no statutory right to a further review (or it follows, to an appeal to the county court) unless the authority expressly withdraws its first review decision. Neither case refers to section 21. Nor does *C v Lewisham*. The decision in that case concerns, and only concerns, the nature of the discretion to extend time which is conferred by section 202(3) of the 1996 Act. There was some obiter discussion of whether an applicant could make repeated applications for extensions of time. It was in that context that the Court referred to 'decisions of good housing management' and an 'extra-statutory discretion'. That is far too fragile a basis, particularly in the light of my analysis so far, for a persuasive submission that section 21 is the source of any relevant power.

81. There can be no doubt that, as a decision maker governed by public law, and as a custodian of ratepayers' money, a local housing authority has power, in an appropriate case, to reconsider a decision it has made, whether or not it is yet the subject of litigation, and, if it considers that it is wrong, or arguably wrong, to withdraw it and to reconsider it, rather than maintaining it through thick and thin, and ultimately losing a challenge in court. It is not accurate to refer to this as a 'non-statutory review' or as the exercise of a 'non-statutory discretion'. That gives the wrong impression that local authorities have power to do things which are not authorised by statute. I consider that if any legal framework is required for the actions of the local housing authorities in the section 202 cases, it can be found in section 111, and in section 222(1), of the 1972 Act, or in the two provisions read together, or, in some cases, in section 12 of the 1978 Act. It is, however, correct to say that if a local authority chooses to reconsider a decision (whether or not it expressly withdraws that decision), it is exercising a discretionary power. It is also a discretion which, by its very nature, is broad, and very much depends on fine judgments. For that reason it is unlikely to be the subject of a successful application for judicial review. Although I have referred to section 1 of the 2011 Act (for completeness) I do not consider that it is relevant to the issue in this case. Mr Bates, rightly, did not rely on it.

82. In this case, for the reasons I have already given, the Council was right to say that it had no power to extend the time for requesting a review under section 107E of the Act. It is clear from its letter dated 20 May 2020, and from its continued defence of this claim, that, if it had had power to extend time, it would not have done so, and that, in turn, it did not consider that it was appropriate, as a matter of discretion, to reconsider the conclusion it had reached on that review.

Conclusion

83. For those reasons, I would dismiss this appeal.

Andrews LJ

84. The authorities to which we were referred and which have been comprehensively analysed by Elisabeth Laing LJ in her judgment, which I have had the advantage of

reading in draft, (and with which I agree) appear to me to establish the following key propositions:

a. The powers of a local housing authority are exclusively derived from statute;
b. If a statute confers express powers on a local authority for a particular purpose, that which it does not expressly or impliedly authorise is prohibited;
c. The powers conferred on local authorities by section 111 of the 1972 Act (or section 1 of the 2011 Act) cannot be used to circumvent statutory restrictions on their primary powers. Those powers are ancillary to the exercise of primary powers and therefore cannot fill a lacuna in such powers;
d. Nor can the general powers of management, regulation and control of housing provided by a local authority conferred by section 21 of the Act (and its predecessors). In principle, the general must yield to the specific.

85. This means that when considering whether a local housing authority has the power to do something, such as carry out a formal review of a decision it has made, the first step in the analysis must be to ask whether the relevant statute has conferred any express power on the local authority and, if so, whether as a matter of statutory construction, that power is limited in any way. That is the approach mandated in *Hazell*. It follows that the correct starting point is not section 21, as Mr Bates contended, but sections 107A-E, because that is where the specific powers conferred on a local housing authority relating to flexible tenancies are to be found.

86. The review of its decision which the local authority is being asked to conduct in this case is purely the creature of statute. As a matter of straightforward interpretation, a request for a statutory review that is "duly made" under section 107E(2) of the Act must be a request that complies with section 107E(1) in all respects, including its (mandatory) timing. As in *Harris*, the obligation (and power) to carry out a statutory review can only arise in response to a compliant request.

87. The importance of adherence to the requirements of section 107E is reinforced by the impact this has on the power of the court to make a possession order under section 107D. Provided that the conditions set out in that section are met, it is only when a request for review has been made "in accordance with the requirements of" section 107E and is not complied with by the local authority, or the decision on such a review is wrong in law, that the court has the power to refuse to make an order for possession under section 107D(6).

88. The potential impact on the operation of section 107D, plus the mandatory language of section 107E(1) itself, strongly militate against there being any implied power to extend the time limit for making a request for review. This is then put beyond doubt by the absence of language of the type found in section 107B(4). The draftsman chose not to mirror that language in section 107E. It is impossible to imply those words into the text.

89. Even if they are wide enough to encompass reviewing a decision not to renew a flexible tenancy, which I very much doubt, the local authority's general powers of housing management under section 21 cannot be used in place of a specific power which it must be assumed Parliament deliberately intended not to confer on it. The presence of section 107B(4) and similar provisions in the Act are conclusive indicators that the general powers under section 21 could not be used to extend the specific statutory time limit.

90. As my Lady makes clear in paragraph 81, the absence of a power to extend the statutory time limit for a review does not affect the general power of a local authority to reconsider and, if it so chooses, withdraw its decisions, which is of an entirely different nature.

91. For those reasons, which accord with those expressed more fully by my Lady, I too would dismiss this appeal.

Dingemans LJ

92. I agree with both judgments.