Neutral Citation Number: [2014] EWHC 1206 (Admin)

CO/2977/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 26 March 2014

B e f o r e:

HER HONOUR JUDGE WALDEN-SMITH
(SITTING AS A JUDGE OF THE HIGH COURT)

Between:
JOHN PRESTON

Appellant

v

(1) AREA ESTATES LIMITED
(2) THE LONDON RENT ASSESSMENT PANEL

Respondents

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Mr Toby Vanhegan (instructed by ARKrights Solicitors) appeared on behalf of the **Appellant**
The Respondents did not attend and were not represented

J U D G M E N T
(Approved)

1. JUDGE WALDEN-SMITH: This is an appeal brought by Mr John Preston, the assured periodic tenant of premises at the first floor of 24 Drayton Green, London W13 0JF. The appeal is against a decision of the London Rent Assessment Panel made on 24 October 2012, the members of that Panel being Mrs N Dhanai LLB (Hons) and Mr JF Barlow JP FRICS.

2. The appeal was issued on 8 March 2013. Attached to it were two grounds of appeal: first, that the Panel had no jurisdiction to make an assessment because of the provisions of section 13(1) of the Housing Act 1988; and ground 2, that the Panel were in breach of section 14 of the Housing Act 1988 in that they erred in their approach to the improvements that had allegedly been undertaken by Mr Preston, that they failed to take proper account of those improvements and gave no reasons or proper reasons as to how those improvements affected the market rent.

3. Prior to this oral hearing, a consent order was entered into between Mr Preston and the first respondent to the appeal, Area Estates Limited, the current landlord of the property at 24 Drayton Green. So far as the second respondent is concerned, the London Rent Assessment Panel, they take no part in these proceedings. The consent order involving Area Estates Limited was that Mr Preston no longer proceeded with ground 1 (the jurisdiction point), and I am asked today to make an order giving Mr Preston permission to amend the grounds of appeal so as to remove ground 1, and I do so.

4. So far as ground 2 is concerned, it was agreed between the first respondent and the appellant that the respondent would not seek to challenge that ground of appeal but that the appellant would not seek an order for costs. The only matter for me to determine, therefore, is whether the appeal (which I will refer to as the section 14 point) should succeed; and, if it succeeds, the consequence of its succeeding is that the matter be remitted back to what is now the First-tier Tribunal (Property Chamber) in order for there to be a fresh determination of the rent of the property pursuant to the provisions of sections 13 and 14 of the Housing Act 1988. Mr Vanhegan appears before me today presenting the arguments on behalf of Mr Preston and he has also helpfully set out those submissions in written skeleton arguments.

5. The brief history of this matter is that Mr Preston is the assured periodic tenant of the premises. When he originally entered into occupation of the premises they were in a very poor condition. In various documents which were before the Rent Assessment Panel, he describes the premises as being "like a shell". He provided to the Rent Assessment Panel (and I have been referred to these documents today) lengthy lists of the work that he carried out to the premises. It is clear from his correspondence and those lists that he effectively made what would have been an uninhabitable property an inhabitable property, dealing with matters such as decoration in all parts, but also reglazing various doors, putting in stairs, securing balustrades, replacing damaged floor boards and mounting electric heaters, insulating sash windows and overhauling sash windows, and the list goes on. Quite clearly, substantial works of repair and improvement.

6. The property was purchased by Area Estates, the first respondent. Area Estates served a notice in September 2012 proposing an increase in rent from £338 per calendar month to £1,050 per calendar month to take effect from 1 November 2012. In accordance with the provisions of section 13 of the Housing Act 1988, the tenant, Mr Preston, made an application to the Rent Assessment Panel on 24 October 2012. There was a hearing of the Panel on 12 December 2012 and there were oral submissions, both from the appellant and his witness. The decision, as I have already noted, was given on 4 February 2013.

7. In that decision letter, which covers approximately 3 1/2 pages, the Panel set out the background to the matter: that the periodic tenancy commenced on 13 February 1995 and that the current rent is £338 with a proposed rent of £1,050. They refer to the inspection that took place on the same day as the hearing on 12 December 2012, at which point they found the property to be in good condition, it being situated on the first floor of a converted Victorian semi-detached house, and they set out that the accommodation benefits from full central heating, comprising kitchen, diner, reception room bedroom, bathroom and WC on the first floor with an additional bedroom at the top of the house and a shared garden. Reference is made to the representations made and also to the comparables provided by the landlord's agent: three properties in Drayton Green varying between £1,300 and £1,250 per calendar month.

8. The Panel then set out in their decision letter that Mr Preston had explained that when he first took the tenancy of the flat in 1995 it was in a state of disrepair and that major works were necessary in order to make the place habitable and safe. There is then further detail that they set out with regard to the condition of the flat and that Mr Preston set out that he had carried out extensive repairs and improvements and that he had also installed a new kitchen at his own cost. The Panel do not set out the detail or attach to their decision letter the detail of the major improvements that he carried out, which I have referred to briefly but which carry over four pages of detailed works. The Panel then set out the relevant law in section 13 and deal with the jurisdictional point that was then being raised before them.

9. They then come to the issue I have to determine, which is the section 14 point. What they say is that:

> "In accordance with the terms of section 14 of the Housing Act 1988 the Committee proceeded to determine the rent at which it considered the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy.
>
> In so doing the Committee as required by section 14(1) ignored the effect on the rental value on the property of any relevant tenant's improvements as defined in section 14(2) of the Act.
>
> In coming to its decision the Committee had regard to the evidence supplied by the parties and the members' own general knowledge of market rent levels in the area of Ealing and concluded that an appropriate market rent for the property would be £1,020.00 per month.

The decision

> The Committee therefore concluded that the rent at which the property might reasonably be expected to be let on the open market would be £1020 per month inclusive of water charges of £403.21 per annum."

10. In that decision letter there are three principal criticisms that are levelled against the Panel. First, that the Panel failed to comply with the provisions of section 14(2) of the Housing Act 1988, despite their reference to it in the decision letter. Second, that there was a failure to set out reasons or sufficient reasons so as to enable the parties reading that decision letter to understand properly the basis upon which they reached their conclusion of £1,020 per month. Third, it is criticised on the basis that they refer to their own general knowledge of market rent levels, and that that being one of the deciding issues with regard to the rent that they fixed, without letting it be known what they meant by their "own general knowledge of market rent levels" and failing to give the parties opportunity to challenge that evidence that they were purporting to rely upon.

11. Dealing with those three criticisms in turn, section 14(2) of the Housing Act 1988 provides as follows:

> "In making a determination under this section, there shall be disregarded—
>
> ...
>
> (b) any increase in the value of the dwelling-house attributable to a relevant improvement carried out by a person who at the time it was carried out was the tenant, if the improvement—
>
> (i) was carried out otherwise than in pursuance of an obligation to his immediate landlord..."

12. While the Tribunal, the Rent Assessment Panel, say that they ignored the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2) of that Act, in my judgment it would have been appropriate and sensible for the Tribunal to in fact quote the wording of section 14 in the same way that they had quoted the wording of section 13. While they have properly expressed the principle behind section 14, in my judgment it can often be of assistance to a fact-making tribunal to have the statutory words laid out in front of them in order to ensure that they strictly comply with their obligations.

13. So far as section 14(2) is concerned, what a tribunal has to do is neatly set out by Goldring J, as he then was, in Rowe v South West Rental Assessment Panel, a decision of the Administrative Court [2001] EWHC (Admin) 865. In that case, Goldring J adopts the submissions put before him by counsel that section 14(2) is simple in its wording; that in subsection (b) it states that any increase in the value of the dwelling house attributable to a relevant improvement shall be disregarded:

> "13. ... What that means in this case ... is not some discount capitalised in the way that was done here, but simply, when setting the appropriate rent, taking as the value of the house its current value, less the relevant improvements carried out. That would form the basis of the calculation to be made by the Committee.
>
> 14. ... In short, to determine the market letting value, the Committee should disregard the improvements when valuing the house. That is not what happened here. The decision therefore was defective."

14. In my judgment, quite clearly what the Tribunal needed to do is to determine what the rental value of this property was in its current state; to determine, secondly, what the value of the improvements were; and then to make a determination from that as to what the proper rent should be, having disregarded the value of the improvements in accordance with section 14(2)(b). There is nothing in this decision to indicate that the Tribunal proceeded in that stepped process and, in my judgment, therefore, on the first limb of ground 2 of the appeal this appeal must succeed and the matter be remitted back to the Tribunal.

15. So far as the second ground is concerned, it is clear and well-trod authority that in coming to any conclusions the parties must understand the basis upon which decisions are reached. In English v Emery Reimbold & Strick Ltd, a decision of the Court of Appeal [2002] 1 WLR 2409, it was made clear by Lord Phillips that when giving reasons, a judge must set out what evidence is being relied upon and what is being rejected. He said in paragraph 21 of that judgment:

> "Provided that the reference is clear, it may be unnecessary to detail, or even summarise, the evidence or submission in question. The essential requirement is that the terms of the judgment should enable the parties and any appellate tribunal readily to analyse the reasoning that was essential to the Judge's decision."

16. In this matter, having failed to set out what conclusions the Tribunal had reached with regard to the value of the property and the rent that the property could recover before disregarding the improvements, and failing to set out what value they had given to those improvements before coming to their conclusion that the proper rental income was £1,020 per month, the Tribunal had failed to give the parties the opportunity to understand the reasoning behind their conclusion, and the decision, therefore, is defective on that ground. The second limb of ground 2 of the grounds of appeal also succeeds and gives rise to this matter needing to be remitted for further consideration.

17. The third point and the third limb of the challenge brought by Mr Preston is with regard to the Tribunal's statement that it had had regard to the evidence supplied by the parties and to the members' own general knowledge of market rent levels. What the Committee had not set out is what those market rent levels that were within their own general knowledge were being relied upon in coming to the conclusions that they did. In R v Deputy Industrial Injuries Commissioner ex parte Moore [1965] 1 QB 457, the Court of Appeal, in that case Willmer LJ, said as follows:

> "... the commissioner [for which can be replaced 'the Committee'] must be prepared to hear both sides, assuming that he has been requested to grant a hearing, and that on such hearing he must allow both sides to comment on or contradict any information that he has obtained. This would doubtless apply equally where a hearing had been requested but refused, for in such a case it would not be in accordance with natural justice to act on information obtained behind the backs of the parties without affording them an opportunity of commenting on it."

Further, Diplock LJ said:

> "Where ... there is a hearing, whether requested or not, the second rule requires the deputy commissioner (a) to consider such 'evidence' relevant to the question to be decided as any person entitled to be represented wishes to put before him; (b) to inform every person represented of any 'evidence' which the deputy commissioner proposes to take into consideration, whether such 'evidence' be proffered by another person represented at the hearing, or is discovered by the deputy commissioner as a result of his own investigations; (c) to allow each person represented to comment upon any such 'evidence' and, where the 'evidence' is given orally by witnesses, to put questions to those witnesses; and (d) to allow each person represented to address argument to him on the whole of the case."

18. Those principles are part of the principles of natural justice: that if a fact-finding body is going to rely on evidence then that evidence must be known by the parties appearing before them and the parties must have an opportunity to comment and make submissions with regard to that evidence. If the phrase "the members' own general knowledge of market rent levels" in fact meant something, then the Committee were obliged to let the parties know what that "own general knowledge" was. I suspect (although of course I do not know) that it may well not have meant anything at all and nothing in particular was being taken into account by the Committee and it was just a phrase used, but the parties do not know that and there must, by the use of that phrase, be a suspicion that the Committee were taking into account evidence that the parties had no knowledge or understanding of whatsoever. Quite plainly, that is against the principles of natural justice and is not something that can allow this decision to stand.

19. Finally, and by way of completeness, Mr Vanhegan has referred me to R v Mental Health Review Tribunal ex parte Clatworthy, again a decision of the Administrative Court, [1985] 3 All ER 699. In that case, Mann J said as follows:

> "Were it to be the case (as I say, there is nothing to explicitly suggest that it was) that this tribunal proceeded on some basis unknown to others but known to themselves, then I would have regarded the decision as flawed by reference to that principle of natural justice. For the reasons which I have given, an order of certiorari to quash will go. The result of that will be that the applicant's application stands undetermined."

20. In this case, by reason of the applicant succeeding on all three limbs of ground 2 of his appeal, I am going to accede to the second part of the application made on Mr Preston's behalf, namely that the appeal be allowed on ground 2 and that the case be remitted to the First-tier Tribunal (Property Chamber), as it is now known, for a fresh determination of the rent pursuant to sections 13 and 14 of the 1988 Housing Act.

21. So far as costs are concerned, and in accordance with the agreement reached, I am making no order as to costs.

22. Mr Vanhegan, could I ask you to draw up an order in the terms that I have given and provide that to the associate and then that can be sealed.

23. MR VANHEGAN: Yes, my Lady.