



Neutral Citation Number: [2024] EWHC 184 (Admin)

Case No: AC-2023-LDS-000114

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LEEDS

Wednesday, 31st January 2024

Before:
FORDHAM J

Between:
THE KING (on the application of **Claimant**
CARE NORTH EAST)
- and -
NORTHUMBERLAND COUNTY COUNCIL **Defendant**

Chris Buttler KC (instructed by David Collins Solicitors) for the **Claimant**
Joanne Clement KC (instructed by Northumberland County Council) for the **Defendant**

Hearing date: 31.1.24

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

FORDHAM J:

What Now

1. I have had a full 2½ hours of oral submissions by way of what, to a large extent, was a ‘dress rehearsal’ of all the arguments in this case. Papers have been meticulously prepared and the written and oral submissions have been of a high quality. I have no doubt that the Defendant has an arguable defence to this claim for judicial review. It would not, in my judgment, be right to do other than apply the conventional (and modest) threshold of arguability, used for the purposes of the judicial review permission stage. My view is that the claim, on all four of its grounds, does cross that threshold of arguability (Judicial Review Guide 2023 §9.1.3). There is, as at today, no ‘knockout blow’ which – in my judgment – can properly warrant the dismissal of the claim.
2. There are various ‘discretionary bar’ arguments (Guide §§9.1.4-9.1.6). I am satisfied that, in this case, these do need to be fully and substantively considered, alongside a properly informed evaluation of all the judicial review grounds, and viewing the case in the round. It would not be right to shut out – or impair – the Defendant’s full ability to seek to defeat the grant of any remedy by relying, for example, on: a delay argument; a utility argument; or the statutory materiality test (highly likely: not substantially different). As to that last point, I am duty-bound at the permission stage to consider that question (Guide §9.1.4.2). I have done so, but I am not in a position – today – to conclude that it is highly likely that the outcome would not have been substantially different had the claimed unlawfulness, in its various different respects, not occurred.

What Next

3. I am of the clear view that what this case needs is: (a) a substantive decision on all of the issues, with expedition; (b) if at all possible, using the value of the exercise that has taken place today, consistently with the overriding objective, to promote determination on all issues as soon as reasonably possible. I will hear brief observations on whether, in light of the conclusions that I have described, I should now be directing a ‘rolled up’ hearing in order to best give effect to the position that I have described. I will also hear observations as to what timetable is needed to bring this case to a conclusion preserving, if possible, the effectiveness of the steps which have taken place to today.

Case-Retention

4. Promoting the efficient use of judicial resources, case management and expedition, and consistently with the overriding objective (see R (Sneddon) v Secretary of State for Justice [2023] EWHC 3303 (Admin) at §5), and having heard submissions from both Counsel, I am going to retain this case and deal with the substantive hearing myself. I am grateful to both Counsel for their assistance as to timetable. I am going to hear the case substantively, in April 2024, in this Court. In some ways, in practical terms, that means this case is effectively “part heard”. This course maximises the value of this early ventilation – across a half day of court time – of the arguments on both sides, dealing with the case substantively while it remains fresh for us all.

Rolled-Up Hearing

5. In all the circumstances the cleanest mechanism, in my judgment, is to direct this be a “rolled-up” hearing (Guide §9.2.1.5), given the fully deferred questions (§2 above). But I do so, having already recorded the views at which I have arrived so far (§§1-2 above). The parties will be able to proceed on that basis.

Materials

6. I will not need any replication of any of the bundle materials or authorities already filed in this case. I lift the prohibition on incorporating documents by reference (Guide §20.2.2). I will not, at this stage, formally grant permission for them, but I have two reply documents (Guide §8.5) and the amended grounds (with the fourth ground for judicial review) (Guide §10.2.1). These documents will be before me at the rolled-up hearing.

Timetable

7. I will grant expedition and the following deadlines: (1) 4pm on 28 February 2024 for the Defendant’s evidence and anything further to add to the (very full) Summary Grounds of Resistance (and response to the fourth ground); (2) 4pm on 13 March 2024 for the Claimant’s reply evidence, skeleton argument, any further authorities and anything further to the existing bundle; and (3) 4pm on 28 March 2024 for the Defendant’s skeleton argument and any further authorities. It follows that the costs order made on the papers by the Deputy High Court Judge is in abeyance. I will need to reconfirm with listing in Leeds, but the expectation is this: I will allow two days for the oral arguments to continue through to completion, on 17 and 18 April 2024. I record my gratitude to both legal teams for their assistance, and will look forward to seeing them again then.

31.1.24