



Neutral Citation Number: [2023] EWCA Civ 322

Case Nos: CA-2022-001589 and CA-2022-001429

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON**  
**His Honour Judge Gerald and His Honour Judge Saggerson**  
**Case Nos J40CL014 and H40CL123**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24/03/2023

**Before:**

**LORD JUSTICE NEWEY**  
**LADY JUSTICE ASPLIN**  
and  
**LADY JUSTICE NICOLA DAVIES**

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**Between:**

<b>NADIA ZAMAN</b>	<b><u>Appellant</u></b>
<b>- and -</b>	
<b>LONDON BOROUGH OF WALTHAM FOREST</b>	<b><u>Respondent</u></b>

**And between:**

<b>RITA IFEOMA UDUEZUE</b>	<b><u>Appellant</u></b>
<b>- and -</b>	
<b>BEXLEY LONDON BOROUGH COUNCIL</b>	<b><u>Respondent</u></b>

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**Jamie Burton KC and Siân McGibbon (instructed by Camden Community Law Centre) for Ms Zaman**

**Nicholas Grundy KC and Michael Mullin (instructed by London Borough of Waltham Forest) for the London Borough of Waltham Forest**

**Martin Hodgson and Daniel Grütters (instructed by Lawstop) for Ms Uduezue**  
**Riccardo Calzavara (instructed by Bexley London Borough Council) for Bexley London Borough Council**

Hearing dates: 7 & 8 February 2023  
Further written submissions: 5 & 8 March 2023

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 24 March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

## **Lord Justice Newey:**

1. In *Alibkhiat v Brent London Borough Council* [2018] EWCA Civ 2742, [2019] HLR 15 (“*Alibkhiat*”), Lewison LJ remarked in paragraph 1 that “[y]ou would need to be a hermit not to know that there is an acute shortage of housing, especially affordable housing, in London”. It will doubtless be largely for that reason that it has become common for London councils to offer those to whom they owe the “main housing duty” under section 193(2) of the Housing Act 1996 (“the 1996 Act”) accommodation outside their boroughs and, sometimes, a long way from them.
2. Both of these appeals concern “out of borough” offers. One of the appellants, Ms Nadia Zaman, was offered accommodation in Stoke-on-Trent, more than 160 miles from where she was living. The accommodation offered to the other appellant, Ms Rita Uduezue, was much closer to London, but would still have involved a move of in excess of 20 miles. In each case, the relevant London borough made what was stated to be a “private rented sector offer” (or “PRSO”).

## **Basic facts: Ms Zaman**

3. Ms Zaman used to live with her husband and three children, born respectively on 12 December 2012, 11 April 2013 and 17 October 2016, at 10 Lime Street, Walthamstow, London E17. In about July 2019, Ms Zaman and her husband separated and her husband left 10 Lime Street. Ms Zaman remained in occupation with the children, but she struggled to afford the rent. On 14 November 2019, after she had received a “no fault” eviction notice, Ms Zaman approached the London Borough of Waltham Forest (“Waltham Forest”) for assistance under Part VII of the 1996 Act. On 2 October 2020, Waltham Forest accepted that it owed Ms Zaman the “main housing duty” and, Ms Zaman having been given notice of eviction, Waltham Forest provided her and her children with temporary accommodation at 51 Abbots Park Road, Leyton, London E10 from about 12 July 2021.
4. In a letter dated 22 July 2021, Waltham Forest told Ms Zaman that it had “decided to bring the duty under s.193(2) to an end by arranging an offer of an assured shorthold tenancy in the private sector with a fixed term of 24 months”. The accommodation in question comprised a 3-bedroom maisonette at 65 Longshaw Street, Stoke-on-Trent. Waltham Forest warned that the offer would discharge its duty to Ms Zaman whether she accepted or refused the property.
5. That same morning, Ms Zaman telephoned Waltham Forest and, according to a note made by Waltham Forest, said that she was not going to accept the offer. On the following day, Mr Derek Bernardi of Camden Community Law Centre wrote to Waltham Forest on Ms Zaman’s behalf asking that the offer be withdrawn and “an alternative offer in or as close as possible to Waltham Forest is made”. Mr Bernardi explained that Ms Zaman wished to have the offer withdrawn as she was “an informal carer for her mother who lives locally”, her children were settled at a local primary school, she required support from her sister and mother to help with childcare which “cannot be replaced in Stoke on Trent” and she was concerned that she might suffer racism or discrimination in Stoke-on-Trent. He further said that, if the offer were not withdrawn, “then whether or not Ms Zaman decides to accept it, she wishes to request a suitability review”.

6. Waltham Forest did not withdraw the offer but, in an email of 27 July 2021, confirmed that the PRSO in respect of 65 Longshaw Street was still available for Ms Zaman. On 1 August, Ms Zaman told Waltham Forest in an email that, although “[w]e are a 3 bedroom family”, “I am willing to take a two private rented place”.
7. On 15 September 2021, Mr Bernardi sent the reviewing officer, Ms Veena Bhatt, submissions in support of Ms Zaman’s suitability review. He argued that 65 Longshaw Street “was not suitable, and/or ... the Council was not justified in finding that it was suitable, and accordingly ... [Ms Zaman] is still owed the main housing duty under s.193(2) Housing Act 1996”. Under the heading “Distance of property from local area”, Mr Bernardi said:

“The Council will be aware that, where it is considering making an offer of accommodation out of borough, it is under an obligation to seek to secure accommodation as close as possible to its local area – see s.208 Housing Act 1996 and the case of *Nzolameso v Westminster City Council* [2015] UKSC 22; [2015] HLR 22.

Our client’s housing file tellingly contains no evidence that the Council sought accommodation any closer than Stoke on Trent. It is unclear whether efforts were made to secure accommodation in borough, or alternatively in a neighbouring borough or indeed in the whole of Greater London. It is difficult to imagine that, had such efforts been made, the Council would have been unable to find a suitable property in that entire area. Even if that were so, it simply defies logic that the Council could not secure accommodation closer than approximately three hours away in Stoke on Trent.”

8. On 29 September 2021, Ms Bhatt sent Ms Zaman (care of Mr Bernardi) a letter in which she explained that she was “minded to conclude that the property offered to you at 65 Longshaw Street ... to end the authority’s duty towards you under Section 193(2) of the Housing Act 1996 was a reasonable and suitable offer”. With regard to the location of the property, Ms Bhatt said:

“[Y]ou failed to take into account that the Council’s resources are severely strained. When sourcing accommodation local authorities have to be mindful about the costs they incur for each property. When a household is placed in accommodation, they can only be charged the local housing allowance however, the actual cost of procuring the accommodation charges for accommodation is higher than this, and this cost is incurred by the local authority. Moreover, and for your information, whilst we do our best to house all applicants in their area of choice and as close to the previous residence before they became homeless as far as it is reasonably practical unfortunately this is not always possible. The demand for housing far outweighs the supply, and local authorities have no option but to source accommodation not just outside the borough, but even

outside of London and this was the case with you even though it took some time.”

Ms Bhatt went on to explain that it had “been demonstrated that you would have been unable to afford accommodation in Zone A [i.e. within the borough itself] considering the information on file and your individual circumstances”, but that she had none the less checked what properties were available when Ms Zaman was offered the Stoke-on-Trent accommodation. Aside from 65 Longshaw Street itself, these comprised rooms, 1-bedroom or (in one case) 5-bedroom temporary accommodation or a room in shared accommodation. Ms Bhatt continued:

“122. I have demonstrated above why you were not provided with a Zone A property or a property in London. This is because there were no properties that were available and suitable for your household apart from the property that was offered to you in Stoke On Trent.

123. In line with our Policy, the property offered at 65 Longshaw Street ... was the only property available at the point of offer and this was an appropriate offer for you and your household. As is demonstrated, there was no other 3-bedroom property available to us in London or near London.

124. In any event, when examining your case overall, it is reasonable for me to say that even if there were 3-bedroom properties available in London or near London, it is unlikely that they may have been offered to your family unit for the reason that you were a non-working household at the time, who was benefit capped and with children who were not at a critical stage in their studies. And if anything, it is possible that they would have been offered to families who would have fallen within the criteria for a placement within the borough or within London.”

On 28 September, when Ms Bhatt drafted her letter, there was no 3-bedroom accommodation available anywhere, even in Waltham Forest’s “Zone C” (i.e. locations other than the borough itself and “neighbouring districts in Essex, Hertfordshire, Kent, Surrey, Berkshire and Buckinghamshire” – see paragraph 39 below).

9. On 29 October 2021, Mr Bernardi wrote to Ms Bhatt in response to her “minded to” letter of 29 September. Mr Bernardi’s letter included these passages:

“[W]e submit that the Council has unlawfully adopted a policy of rehousing homeless households in Stoke-on-Trent, presumably via a supply agreement with a housing provider in that area. This is evident from the fact that over the past two financial years, the Council has rehoused 121 homeless households in Stoke-on-Trent (as per the enclosed FOI response).

We submit that it is unlikely in the extreme that on at least 121 occasions, the Council was unable to secure a property closer to the borough than Stoke-on-Trent. While we would accept that it would not be possible for the Council to check every town and city in between, it was required as a bare minimum to seek to secure and/or procure properties within its Zone B, in accordance with the Council's own policies.

It follows that the Council cannot have been satisfied that the property offered to our client was suitable”

and:

“We submit that the Council has failed to comply with its Accommodation Acquisitions Policy, including as follows.

The Council has not provided any evidence that the relevant acquisitions process has been followed under section 6.0.

Additionally, we submit that the Council has failed to secure adequate numbers of properties in borough and/or near the borough, and/or that the Acquisitions Policy is inadequate in providing that such properties will be secured.”

10. On 12 November 2021, Ms Bhatt notified Ms Zaman that she had concluded the offer in respect of 65 Longshaw Street was “a reasonable and a suitable offer” and that she was satisfied that Waltham Forest’s decision to end the “main housing duty” was “lawful and correct”. To a great extent, this decision letter replicated Ms Bhatt’s “minded to” letter. In particular, paragraphs 137 and 122-124 of the decision letter mirrored paragraphs 120 and 144-146 of the “minded to” letter, paragraph 116 of the decision letter substantially replicated paragraph 139 of the “minded to” letter and Ms Bhatt once again listed the properties that had been available on 22 July 2021 and 28 September 2021, adding that at the time the letter was drafted on 11 November 2021 there were no properties available. Ms Bhatt further said this in the decision letter:

“140. I am awfully confused with your Solicitor’s responses to the Minded To letter because he is challenging the Council’s policies however, in hindsight, this does not fall within this particular review. In any event, it is manifestly clear that there is nothing unlawful about the arrangement in the way this Council has procured their properties. It is common knowledge that the Council have shortages of in borough units and that units need to be procured outside of its area and it is not unlawful for accommodation to be provided outside of the district because of the cost and pressure of resources which are relevant considerations that need to be taken into account particularly when the Council need to meet the needs of homeless people or those threatened with homelessness, at an appropriate cost.

141. It is correct for me to remind you that this review is in regard to the suitability of accommodation offered in Stoke On Trent and not the method of procurement or the method of any procurement having any material impact on its suitability. As a result, the submission made by your Solicitor needs no further scrutiny.”

11. Ms Zaman appealed to the County Court pursuant to section 204 of the 1996 Act. In the course of that appeal, Ms Bhatt made a witness statement in which she said:

“13. On 09/03/2022, I took some further time to speak to Ms Yasmin Hussein, manager of the Procurement Team to ask whether or not accommodation is sourced in other areas i.e., Essex, Hertfordshire, Kent, Surrey, Berkshire, and Buckinghamshire. Whilst caselaw *Abderahim Alibkhiat V London Borough of Brent [2018]* guides that the Respondent is not required to scour every estate agent’s window, Ms Hussein confirmed that when the team go out to procure properties, they seek to procure in all locations including Essex, Hertfordshire, Kent, Surrey, Berkshire and Buckinghamshire and do not limited their procuring to certain locations only.

14. The Procurement Team can only secure accommodation that is available on the market. The Respondent cannot run a service by keeping people in temporary accommodation for an indeterminate period in the hope that at some point in the unknown future, properties in a specific location become affordable for applicants including those who are benefit capped.”

12. Ms Zaman’s appeal came before His Honour Judge Gerald, sitting in the County Court at Central London, on 21 July 2022. He dismissed the appeal, but Ms Zaman now challenges that in this Court.

**Basic facts: Ms Uduezue**

13. Ms Uduezue approached Bexley London Borough Council (“Bexley”) for assistance under Part VII of the 1996 Act on 27 September 2019. On 25 November, Bexley concluded that it owed the “main housing duty” and, from 23 December, provided Ms Uduezue and her children with temporary accommodation in a 2-bedroom property at 133 Frobisher Road, Erith. At the time, Ms Uduezue had two children: Catherine, born on 8 May 2011, and Favour, born on 13 September 2018.
14. On 19 March 2020, Bexley notified Ms Uduezue that her application for housing under Part VI of the 1996 Act had been approved and that she was eligible for a 2-bedroom property. On 16 June, Ms Uduezue gave birth to a third daughter, Victoria, as a result of which she qualified for a 3-bedroom property. On 27 July, Ms Uduezue and her children moved into 3-bedroom temporary accommodation at 13 Mildred Road, Erith.
15. On 11 August 2020, Bexley said this in a letter to Ms Uduezue:

“The council intends to end our duty and resolve your homelessness by arranging for a private landlord to make you an offer of an assured short-hold tenancy in the private rented sector for a period of at least 12 months (‘a private rented sector offer – PRSO’).

I am pleased to offer you accommodation at – 85 Hartington Street, Chatham, Kent ....

This property is a 3 bedroom house.”

It was stressed that the offer would discharge Bexley’s duty to Ms Uduezue whether she accepted or refused the property. The letter also stated as follows:

“I must also inform you of what will happen if you were to become homeless again within two years of acceptance of this offer and make a further application to this or any other English Local Authority. This is information concerning our reapplication duty. If you become homeless again within 2 years of accepting the PRSO offer and make a re-application for assistance within this 2 year period of accepting a private rented sector offer, and you are at that time eligible for assistance and have become homeless unintentionally, a new duty to accommodate you will occur under section 193(2) regardless of whether you still have a priority need.

This is a *private rented sector offer* defined by section 193(7AC) as an offer of an assured shorthold tenancy made by a private landlord to an applicant in relation to any accommodation which:

- a) Is made with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the section 193(2) duty to an end, and
- b) Has been made available for the applicant’s occupation by a private landlord,
- c) Is a fixed term Assured Shorthold Tenancy for a period of at least 12 months.”

16. On 12 August 2020, Ms Uduezue indicated to Bexley over the telephone that she did not consider that what she was being offered was suitable and she gave her reasons as follows in an email:

“I had a Pre-term (PREMATURE) Baby couple of weeks ago and the child’s health is still very vulnerable to be subjected to such rigour. Victoria is still under surveillance. shes still have a follow up checks by the Doctors.

My health at the moment is vulnerable die to the Cesarean section I had and am not fit for the stress relocation. Due to our

recent moving on the 27/7/2020 am still recovering from the pain.

I am unable to sustain my children's needs fully at the moment due to the operation I had most help are from friends and family that lives around our present location. If we are been moved to the offered accommodation all these support will be Cut off, such condition will be traumatic for me and the children and am not driving at the moment.

My eldest daughter education, she is preparing for her 6+ examination that is forth coming and moving that far will be a distraction to her studies and most especially the bond she had with her friends around her will be cut off.

In view of all these I believe it is not suitable to move me and my children to the offered accommodation due to the far distance.”

(Mr Martin Hodgson, who appeared for Ms Uduezue with Mr Daniel Grütters, explained that Ms Uduezue's references to “family” in this and other communications related to fellow churchgoers rather than relatives.)

17. Replying on 13 August 2020, Bexley said:

“I understand that moving again in a short time may not feel ideal to you, however the Council does have a duty to make you an offer of accommodation to resolve your homelessness. Our records show that it is 8 weeks since you had your daughter via C Section and that you were discharged from the hospital on 22 June. There are good transport links from the property to Queen Elizabeth hospital should you choose to continue any further checks for your baby there, however there are GP surgeries located near to the property, in addition to this Medway Maritime hospital is located very near to the property should any hospital treatment be required.

In regards to your daughter's school, Medway Council have advised that there are places available in schools local to the property. These schools would give the same level of education your daughter is currently receiving.

In terms of your support network, you will still be able to contact them via telephone, email, social media etc, and due to the good transport links from Bexley borough to the property you would still be able to visit them / they would be able to visit you.”

18. Ms Uduezue, however, maintained her objections to 85 Hartington Street. With regard to Bexley's comments, she said in an email of 13 August 2020:



“In response, firstly my children, most importantly my Pre-term (premature) baby is still fragile and vulnerable to be exposed in these critical period of Covid, I cannot put her life at risk moving up and down.

Risk of exposure to Covid 19. Regarding our recent moving experience two weeks ago, I know the pain I went through both health wise and physical. Trying to keep my children safe from the removal people moving and handling our stuffs and especially my new born belongings whose immune system is still very low. overcoming the fear and disinfecting each of our belonging, packing and unpacking I cannot cope with all that again in this short space of time.

Secondly, the location is very far and out of reach of our friends and family who usually help me with childcare, shopping and other things especially during this Covid 19 pandemic., for example during my recent hospital admission prior my delivery, my children was taking care of by my family and friends. Looking at the whole scenario our social life will be affected seriously because it will be hard for friends and family coming all the way from London to offer us help as often as we need will be difficult. and also for me and the children to travel on public and that will make us struggle. In addition to these, I will not be able to cope without the help from people around me.

My older daughter is preparing for her forth exams. Although they are good schools around there but it will take her sometime to settle in an unfamiliar area, new school and making new friends these will definitely affect her performance in her coming exam, as she is already unhappy hearing the news moving to an unknown area, losing the bond she have developed with her friends and family.”

19. Bexley emailed back that it felt that the offer of accommodation made to Ms Uduetzue was suitable and reasonable. It attached a letter dated 13 August 2020 in which it said that its duty under section 193(2) of the 1996 Act had come to an end because Ms Uduetzue had refused the 85 Hartington Street offer. The letter stated:

“We arranged for a private landlord to make you an offer of a 12-month fixed term assured shorthold tenancy. The offer was a final offer made with our approval and with the intention of bringing our duty to you to an end. We notified you when we made the offer that if accepted or rejected it would end our duty.”

20. On 1 September 2020, Ms Uduetzue emailed asking for a review. She voiced concerns along the lines of those she had previously expressed.

21. On 28 October 2020, the reviewing officer, Mr Kingsley Ekechukwu, notified Ms Uduezue that he was satisfied that 85 Hartington Street was suitable and so had concluded that Ms Uduezue had refused a suitable PRSO and that Bexley's duty towards her was discharged. In the course of his letter, Mr Ekechukwu explained that it was considered that, since Ms Uduezue lived with her three children, it was considered that a 3-bedroom property was suitable for her needs and that he was satisfied that 85 Hartington Street "had sufficient space for a family of [Ms Uduezue's] size and reasonable belongings". He also noted that Ms Uduezue had "not raised any suitability concern with regard to the size of the accommodation". Mr Ekechukwu further said that, while he accepted that Ms Uduezue "may not consider it ideal to organise a move to a new accommodation with a preterm new born given that [she had] recently been provided alternative temporary accommodation at 13 Mildred Road", he was "not satisfied that these issues render the accommodation offered at 85, Hartington Street unsuitable for [her] occupation", observing in this connection that "there is no suggestion in ... all [Ms Uduezue's] medical notes that [she is] unable to travel or move to new accommodation", that "85, Hartington Street is only approximately 1 mile from Medway Marine Hospital" and that "[t]here are local GP's within the Chatham area which can be accessed for medical support". Mr Ekechukwu said, too, that Ms Uduezue could "maintain contact with friends in the usual manner over the phone and on social media" and could "travel occasionally to visit friends and acquaintances should [she] wish". With regard to the position of Ms Uduezue's eldest daughter, Mr Ekechukwu made these comments:

i) In a section of the letter headed "Needs, requirements and circumstances":

"I admit that ideally you would prefer accommodation closer to your child's current school, however, there is no medical requirement to provide you with accommodation that is close to your child's school and there is no evidence to suggest that the accommodation at 85, Hartington Street is unsuitable on medical grounds. Your daughter is not of GCSE age and can access a similar school within the Chatham area. When you raised the argument in protest against the accommodation offered at 85, Hartington Street[, this] Authority took steps to address this concern by contacting Medway Council requesting information on places available at local school[s] in the area and you were given a list of schools and available places which are in close proximity of the 85, Hartington Street. I am satisfied that this issue was adequately addressed prior to this Authority discharging its duty";

ii) In a section of the letter headed "Location":

"You submit that your eldest daughter will lose friends from school .... I have considered the above submission however, I am not satisfied that this would render the accommodation unsuitable or unreasonable for your occupation .... [I]t is not feasible for the Council to take into consideration your child's bond with her friends at school prior to making an offer particularly where there is no medical ground for such a consideration."

Mr Ekechukwu said this, too:

“56. ... As at the day of 85 Hartington Street being offered there were no 3 bedroom housing association properties available.

57. The Council record shows that ... the following private sector tenancies were available:

- 5a Bostall Hill, Abbeywood, SE2 0RB – 2 bedroom flat.
- 8 Bayliss Avenue, Thamesmead, SE28 8NJ – 2 bedroom house.
- 85, Hartington Street, Chatham, ME4 5PJ – 3 bedroom house.
- 8, Brook Street, Erith – 4 bedroom house

58. The 2 and 4 bedroom properties were not deemed suitable for your housing needs and you were offered the accommodation at 85, Hartington Street ....”

22. Ms Uduezue appealed to the County Court, but on 1 July 2022 His Honour Judge Saggerson dismissed the appeal. Ms Uduezue challenges that in this Court.
23. Ms Uduezue now has four children, a fourth daughter, Chikaima, having been born on 20 May 2022.

### **The legal regime in outline**

24. Part VII of the 1996 Act, comprising section 175-218, is concerned with homelessness. The “main housing duty” is provided for by one of its provisions, section 193, headed “Duty to persons with priority need who are not homeless intentionally”. That states:

“(1) This section applies where—

(a) the local housing authority—

(i) are satisfied that an applicant is homeless and eligible for assistance, and

(ii) are not satisfied that the applicant became homeless intentionally,

(b) the authority are also satisfied that the applicant has a priority need, and

(c) the authority’s duty to the applicant under section 189B(2) has come to an end.

...

(2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.

(3) The authority are subject to the duty under this section until it ceases by virtue of any of the following provisions of this section.

...

(5) The local housing authority shall cease to be subject to the duty under this section if—

(a) the applicant, having been informed by the authority of the possible consequence of refusal or acceptance and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for the applicant,

(b) that offer of accommodation is not an offer of accommodation under Part 6 or a private rented sector offer, and

(c) the authority notify the applicant that they regard themselves as ceasing to be subject to the duty under this section.

...

(7AA) [The] authority shall also cease to be subject to the duty under this section if the applicant, having been informed in writing of the matters mentioned in subsection (7AB)—

(a) accepts a private rented sector offer, or

(b) refuses such an offer.

(7AB) The matters are—

(a) the possible consequence of refusal or acceptance of the offer, and

(b) that the applicant has the right to request a review of the suitability of the accommodation, and

(c) in a case which is not a restricted case, the effect under section 195A of a further application to a local housing authority within two years of acceptance of the offer.

(7AC) For the purposes of this section an offer is a private rented sector offer if—

(a) it is an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant's occupation,

(b) it is made, with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the authority's duty under this section to an end, and

(c) the tenancy being offered is a fixed term tenancy (within the meaning of Part 1 of the Housing Act 1988) for a period of at least 12 months ....”

25. Section 195A of the 1996 Act, to which there is reference in section 193(7AB)(c), reads:

“(1) If within two years beginning with the date on which an applicant accepts an offer under section 193(7AA) (private rented sector offer), the applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the local housing authority—

(a) is satisfied that the applicant is homeless and eligible for assistance, and

(b) is not satisfied that the applicant became homeless intentionally, the duty under section 193(2) applies regardless of whether the applicant has a priority need.

(2) For the purpose of subsection (1), an applicant in respect of whom a valid notice under section 21 of the Housing Act 1988 (orders for possession on expiry or termination of assured shorthold tenancy) has been given is to be treated as homeless from the date on which that notice expires ....”

26. Section 193(7AA) assumed its present form as a result of amendments made by section 148 of the Localism Act 2011. The explanatory notes to that Act explained that the changes “enable[d] a local authority in England or Wales fully to discharge the main homelessness duty to secure accommodation with an offer of suitable accommodation from a private landlord, without requiring the applicant's agreement”.

27. By section 206 of the 1996 Act, a local housing authority may discharge its housing functions under Part VII only in the following ways:

“(a) by securing that suitable accommodation provided by them is available,

(b) by securing that he obtains suitable accommodation from some other person, or

(c) by giving him such advice and assistance as will secure that suitable accommodation is available from some other person.”

28. Section 208(1) of the 1996 Act stipulates that, “[s]o far as reasonably practicable”, a local housing authority shall in discharging its housing functions under Part VII, “secure that accommodation is available for the occupation of the applicant in their district”.

29. Section 210 of the 1996 Act empowers the Secretary of State to specify by order matters to be taken into account or disregarded in determining whether accommodation is suitable for a person. The Homelessness (Suitability of Accommodation) (England) Order 2012 (“the 2012 Order”), made pursuant to that provision, provides as follows in article 2:

“In determining whether accommodation is suitable for a person, the local housing authority must take into account the location of the accommodation, including—

(a) where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority;

(b) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the person’s household;

(c) the proximity and accessibility of the accommodation to medical facilities and other support which—

(i) are currently used by or provided to the person or members of the person’s household; and

(ii) are essential to the well-being of the person or members of the person’s household; and

(d) the proximity and accessibility of the accommodation to local services, amenities and transport.”

30. Section 182 of the 1996 Act requires local housing authorities to have regard to guidance issued by the Secretary of State. In its present form, the “Homelessness Code of Guidance for Local Authorities” (“the Code”), issued by the Secretary of State, says this about the significance of the location of accommodation:

“17.48 The suitability of the location for all the members of the household must be considered by the authority. Section 208(1) of the 1996 Act requires that authorities shall, in

discharging their housing functions under Part 7 of the 1996 Act, in so far as is reasonably practicable, secure accommodation within the authority's own district.

17.49 Housing authorities, particularly those that find it necessary to make out of district placements, are advised to develop policies for the procurement and allocation of accommodation which will help to ensure suitability requirements are met. This would provide helpful guidance for staff responsible for identifying and making offers of accommodation, and would make local arrangements, and the challenges involved with sourcing accommodation, clearer to applicants.

17.50 Where it is not reasonably practicable to secure accommodation within district and an authority has secured accommodation outside their district, the housing authority is required to take into account the distance of that accommodation from the district of the authority. Where accommodation which is otherwise suitable and affordable is available nearer to the authority's district than the accommodation which it has secured, the accommodation which it has secured is not likely to be suitable unless the applicant has specified a preference, or the accommodation has been offered in accordance with a published policy which provides for fair and reasonable allocation of accommodation that is or may become available to applicants.

17.51 Generally, where possible, housing authorities should try to secure accommodation that is as close as possible to where an applicant was previously living. Securing accommodation for an applicant in a different location can cause difficulties for some applicants. Where possible the authority should seek to retain established links with schools, doctors, social workers and other key services and support."

31. In August 2020 and July 2021, when the offers to Ms Uduezue and Ms Zaman were made, these paragraphs of the Code were numbered 17.47 to 17.50 rather than 17.48 to 17.51 but they were in the same terms. I shall use the current numbering in this judgment.
32. Section 202 of the 1996 Act confers on an applicant a right to request a review of various decisions of local housing authorities. Such decisions include, by section 202(1)(g), "any decision of a local housing authority as to the suitability of accommodation offered to him by way of a private rented sector offer (within the meaning of section 193)".
33. "[W]here the authority has already decided that accommodation offered was suitable, and that the duty owed under section 193 had therefore already been discharged, the question the reviewer must address is whether, on the facts as they are known to be at the date of the review, the accommodation previously offered would now be

considered suitable” (*Osseily v Westminster City Council* [2007] EWCA Civ 1108, [2008] HLR, at paragraph 13, per Laws LJ). That means that a reviewer “is entitled to have regard to facts discovered since the original decision, but they must have been facts that would have existed and did exist at the time of the original decision”: “what they should be examining is the facts that existed as of [the date of the original decision], albeit they may discover what facts existed as at that date, between the date of that original decision and the date of the review” (*Omar v Westminster City Council* [2008] EWCA Civ 421, [2008] HLR 36, at paragraphs 30 and 32, per Waller LJ).

34. In *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413, in a passage endorsed by the Supreme Court in *Poshteh v Kensington and Chelsea Royal London Borough Council* [2017] UKSC 36, [2017] AC 624, Lord Neuberger said this about review decisions at paragraph 50:

“a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical a view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision. That is not to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions.”

On the other hand, “[i]t must be clear from the decision that proper consideration has been given to the relevant matters required by the Act and the Code” (*Nzolameso v Westminster City Council*, [2015] UKSC 22, [2015] PTSR 549 (“*Nzolameso*”), at paragraph 32, per Baroness Hale, with whom Lords Clarke, Reed, Hughes and Toulson agreed).

35. By section 204 of the 1996 Act, a person dissatisfied with a review decision may appeal to the County Court on “any point of law arising from the decision or, as the case may be, the original decision”. “Although the county court’s jurisdiction is appellate, it is in substance the same as that of the High Court in judicial review” (*Runa Begum v Tower Hamlets London Borough Council* [2003] UKHL 5, [2003] 2 AC 430, at paragraph 7, per Lord Bingham). The grounds of challenge can include “procedural error, the extent of legal powers (*vires*), irrationality and inadequacy of reasons”: see *James v Hertsmere Borough Council* [2020] EWCA Civ 489, [2020] 1 WLR 3606, at paragraph 31, per Peter Jackson LJ, and also *Abdikadir v Ealing London Borough Council* [2022] EWCA Civ 979, [2022] PTSR 1455 (“*Abdikadir*”), at paragraph 8.
36. Where there is a further appeal to this Court, “the primary question is normally not whether the tribunal deciding the first appeal was right but whether the original decision was right, or at least one the decider was entitled to reach”: *Danesh v Kensington and Chelsea Royal London Borough Council* [2006] EWCA Civ 1404, [2007] 1 WLR 69, at paragraph 30, per Neuberger LJ.



## **Ms Zaman's appeal**

### *The parties' cases in outline*

37. Although Mr Jamie Burton KC, who appeared for Ms Zaman with Ms Siân McGibbon, advanced a number of contentions, I can concentrate on one strand of his case: the submission that it was incumbent on Waltham Forest to secure accommodation as close as possible to where Ms Zaman was living and that the evidence does not show it to have done so. Mr Burton did not deny that, on the day Ms Zaman was offered accommodation at 65 Longshaw Street, there was no other 3-bedroom property available, but he disputed that that should have been the case. Waltham Forest, he said, has not produced evidence demonstrating that it had been impossible for it to obtain accommodation nearer to the borough. On the face of it, Waltham Forest could be expected to have been able to find such accommodation (say, in Norwich, Peterborough, Birmingham, Northampton or Stafford), and the fact that it had not done so has not been adequately explained.
38. Mr Burton made reference to Waltham Forest's response to a freedom of information request. It can be seen from this that in 2019-2020 70 of Waltham Forest's 247 Zone C PRSOs related to accommodation in Stoke-on-Trent and that in 2020-2021 Stoke-on-Trent accounted for 51 of Waltham Forest's 116 Zone C PRSOs. Those statistics suggest, Mr Burton submitted, that Waltham Forest had not been trying to obtain accommodation as close as possible to the borough.
39. As Mr Burton noted, Waltham Forest had formulated and published both a "Private Rented Sector Offer Policy", setting out principles on which PRSO accommodation should be offered, and an "Accommodation Acquisitions Policy", "set[ting] out the Council's policy for the acquisition of privately owned properties for use as accommodation for households towards whom a duty to secure accommodation has been accepted under the Housing Act 1996" (to quote from paragraph 1.1). The "Accommodation Acquisitions Policy" explained that, where possible, units of accommodation would be procured in the borough ("Zone A") and that, where there was a shortfall in the number of "in borough" units, Waltham Forest would endeavour to acquire units in "nearby locations" ("Zone B", comprising "Greater London and neighbouring districts in Essex, Hertfordshire, Kent, Surrey, Berkshire and Buckinghamshire") "in order to minimise, as far as possible, the distance between the borough itself and the location of accommodation being offered to households who cannot be accommodated in the borough" (paragraph 2.1). Where it was unlikely to be possible to acquire sufficient properties for all homeless households in Zones A and B, the council "may acquire properties in other locations ('Zone C')" (paragraph 2.1), but "[a]ll properties procured under the policy will be as close to the borough as is reasonably practicable, given the financial constraints within which the service operates and the practical difficulties which can prevent units being procured in the borough or nearby locations" (paragraph 4.3). Waltham Forest used suppliers to procure properties on its behalf, but the council had to "ensure that the suppliers' actions are compliant with the acquisitions policy" (paragraph 5.2), and suppliers "are requested to procure as many properties as possible in the borough, to procure properties in nearby locations wherever possible, and to procure properties as close as possible when considering other areas" (paragraph 5.4). Mr Burton accepted that this policy was not itself unlawful, but he argued that it is not apparent that it was applied lawfully in relation to Ms Zaman.

40. Mr Nicholas Grundy KC, who appeared for Waltham Forest with Mr Michael Mullin, did not accept that Waltham Forest necessarily had to provide accommodation as close as possible to the borough. He said that the council must, so far as “reasonably practicable”, secure accommodation in the borough (i.e. Zone A) and, failing that, should “[g]enerally, where possible”, try to offer accommodation in Zone B so that the applicant could retain established links. Where, however, accommodation could be supplied only in Zone C, there was not the same need for it to be as close as possible to where the applicant had been living. In particular, it sufficed that accommodation was offered “in accordance with a published policy which provides for fair and reasonable allocation of accommodation that is or may become available”. At one stage, Mr Grundy suggested that, if a policy provided for Zone C accommodation to be provided exclusively in Penzance, there could be no complaint about offers being made in line that that policy.
41. In any event, Mr Grundy said, Waltham Forest’s “Accommodation Acquisitions Policy” provided for properties to be procured “as close to the borough as possible”, and the evidence does not establish that that policy was not duly implemented. To the contrary, the response to the freedom of information request confirms that the council provided Zone C accommodation elsewhere than in Stoke-on-Trent. Moreover, Ms Bhatt explained in her witness statement that the council sought to procure properties in “all locations”.

*Was it incumbent on Waltham Forest to ensure that Zone C accommodation was as close as possible to the borough?*

42. In *Nzolameso*, having cited from, among other things, section 208 of the 1996 Act, article 2 of the 2012 Order, the Code and “Supplementary Guidance on the homelessness changes in the Localism Act and on the Homelessness (Suitability of Accommodation) (England) Order 2012” (“the Supplementary Guidance”, again issued by the Secretary of State), Baroness Hale said this in paragraph 19:

“The effect, therefore, is that local authorities have a statutory duty to accommodate within their area so far as this is reasonably practicable. ‘Reasonable practicability’ imports a stronger duty than simply being reasonable. But if it is not reasonably practicable to accommodate ‘in borough’ they must generally, and where possible, try to place the household as close as possible to where they were previously living. There will be some cases where this does not apply, for example where there are clear benefits in placing the applicant outside the district, because of domestic violence or to break links with negative influences within the district, and others where the applicant does not mind where she goes or actively wants to move out of the area. The combined effect of the 2012 Order and the Supplementary Guidance changes, and was meant to change, the legal landscape as it was when previous cases dealing with an ‘out of borough’ placement policy, such as *R (Yumsak) v Enfield London Borough Council* [2003] HLR 1, and *R (Calgin) v Enfield London Borough Council* [2006] 1 All ER 112, were decided.”

43. Baroness Hale thus said that, if it is not reasonably practicable to accommodate “in borough”, the local housing authority “must generally, and where possible, try to place the household as close as possible to where they were previously living”. In a similar vein, in *Waltham Forest London Borough Council v Saleh* [2019] EWCA Civ 1944. [2020] PTSR 621, Patten LJ, with whom Asplin LJ and Sir Rupert Jackson agreed, said at paragraph 26:

“But paragraph 48 of the 2012 Supplementary Guidance makes it clear that where accommodation which is also suitable exists closer to the housing authority’s district it is likely, all other things being equal, to displace on grounds of suitability other available accommodation which is further away. To that extent, the housing authority is required to carry out a comparative exercise. This is now confirmed by paragraphs 17.47 and 17.48 of the 2018 Code which incorporates not only the guidance which appeared in paragraph 48 of the 2012 Supplementary Guidance but also the effect of various intervening decisions, in particular that of the Supreme Court in *Nzolameso* [2015] PTSR 549.”

44. Mr Grundy, however, drew attention to changes in the Secretary of State’s guidance which post-date *Nzolameso*. As can be seen from paragraph 15 of Baroness Hale’s judgment, at the time *Nzolameso* was before the Courts the Code said this, in paragraph 17.41, about the location of accommodation:

“The location of the accommodation will be relevant to suitability and the suitability of the location for all the members of the household will have to be considered. Where, for example, applicants are in paid employment account will need to be taken of their need to reach their normal workplace from the accommodation secured. The Secretary of State recommends that local authorities take into account the need to minimise disruption to the education of young people, particularly at critical points in time such as close to taking GCSE examinations. Housing authorities should avoid placing applicants in isolated accommodation away from public transport, shops and other facilities, and, wherever possible, secure accommodation that is as close as possible to where they were previously living, so they can retain established links with schools, doctors, social workers and other key services and support essential to the well-being of the household.”

The Supplementary Guidance added:

“48. Where it is not possible to secure accommodation within district and an authority has secured accommodation outside their district, the authority is required to take into account the distance of that accommodation from the district of the authority. Where accommodation which is otherwise suitable and affordable is available nearer to the authority’s district than the accommodation which it has secured, the

accommodation which it has secured is not likely to be suitable unless the authority has a justifiable reason or the applicant has specified a preference.

49. Generally, where possible, authorities should try to secure accommodation that is as close as possible to where an applicant was previously living. Securing accommodation for an applicant in a different location can cause difficulties for some applicants. Local authorities are required to take into account the significance of any disruption with specific regard to employment, caring responsibilities or education of the applicant or members of their household. Where possible the authority should seek to retain established links with schools, doctors, social workers and other key services and support.”

45. These paragraphs of the Supplementary Guidance correspond closely to what are now paragraphs 17.50 and 17.51 of the Code: see paragraph 30 above. As, however, Mr Grundy stressed, the second sentence of what has become paragraph 17.50 of the Code has been revised. Whereas paragraph 48 of the Supplementary Guidance stated that accommodation farther from the authority’s district was “not likely to be suitable unless the authority has a justifiable reason or the applicant has specified a preference”, paragraph 17.50 of the Code says that such accommodation is “not likely to be suitable unless the applicant has specified a preference, or the accommodation has been offered in accordance with a published policy which provides for fair and reasonable allocation of accommodation that is or may become available to applicants”. That, Mr Grundy argued, shows that accommodation that is not as close as possible to the local housing authority’s district may be offered if that is “in accordance with a published policy which provides for fair and reasonable allocation of accommodation that is or may become available to applicants”.
46. In *Nzolameso*, Baroness Hale had encouraged local housing authorities to have, and to make publicly available, policies “for procuring sufficient units of temporary accommodation to meet the anticipated demand during the coming year” and “for allocating those units to individual homeless households”: see paragraph 39. “This approach,” Baroness Hale said in paragraph 40, “would have many advantages”. She went on:

“It would enable homeless people, and the local agencies which advise them, to understand what to expect and what factors will be relevant to the decision. It would enable temporary letting teams to know how they should go about their business. It would enable reviewing officers to review the decisions made in individual cases by reference to those published policies and how they were applied in the particular case. It would enable reviewing officers to explain whether or not the individual decision met the authorities’ obligations. It would enable applicants to challenge, not only the lawfulness of the individual decision, but also the lawfulness of the policies themselves.”

In paragraph 38, Baroness Hale had commented that “[t]he decision in any individual case will depend on the policies which the authority has adopted both for the procurement of temporary accommodation, together with any policies for its allocation”.

47. It will, I imagine, have been with Baroness Hale’s remarks in mind that the second sentence of what is now paragraph 17.50 of the Code was altered. I do not think, however, that the change serves to excuse local housing authorities from seeking to provide accommodation as near as possible to their districts. My reasons include these:
- i) Article 2(a) of the 2012 Order requires local housing authorities to take into account in determining whether accommodation is suitable for a person “the distance of the accommodation from the district of the authority” where accommodation is to be situated outside that district. That obligation applies generally and not merely where accommodation is in a neighbouring county (Waltham Forest’s Zone B) or there would be “disruption ... to the employment, caring responsibilities or education of the person or members of the person’s household” (as mentioned in article 2(b));
  - ii) Paragraph 17.51 of the Code states that “[g]enerally, where possible, housing authorities should try to secure accommodation that is as close as possible to where an applicant was previously living”. Again, this is expressed in general terms and is not limited to circumstances in which it is possible to supply accommodation in a neighbouring county;
  - iii) When Baroness Hale said in *Nzolameso*, at paragraph 19, that “if it is not reasonably practicable to accommodate ‘in borough’, they must generally, and where possible, try to place the household as close as possible to where they were previously living”, she was reflecting the first sentence of paragraph 49 of the Supplementary Guidance. There is no material difference between that sentence and the first sentence of paragraph 17.51 of the Code;
  - iv) It is inherently improbable that the Secretary of State intended the modification to the second sentence of paragraph 17.50 of the Code to relieve a local housing authority of any obligation to try to provide accommodation as close as possible to its district where the accommodation cannot be in the district or a neighbouring county. Distance from the authority’s district may still be of considerable importance to an applicant. In Waltham Forest’s case, it may matter a great deal to an applicant where within Zone C accommodation is located. An applicant would, for example, be better placed to maintain existing links from Luton than from Penzance;
  - v) As Lewison LJ noted in *Abdikadir*, at paragraph 37(vii), “In principle, where a public authority has a lawful policy, then provided that it implements the policy correctly, its decision in an individual case will itself be lawful: *Alibkhiet v Brent London Borough Council* [2019] HLR 15, para 48, citing *Mandalia v Secretary of State for the Home Department* [2015] 1 WLR 4546, para 31”. That being so, it is not surprising that the present paragraph 17.50 of the Code should envisage that compliance with “a published policy which provides for fair and reasonable allocation of accommodation that is or may

become available to applicants” should be capable of establishing suitability. Moreover, it is not difficult to think of circumstances in which it could be permissible for a local housing authority to offer an applicant accommodation less close to the district in pursuance of a policy. A policy might, for instance, provide for properties nearer the district to be allocated to persons considered to have greater need or for accommodation to be held in reserve. With regard to the latter possibility, Baroness Hale said in *Nzolameso*, at paragraph 38, that “[i]t may ... be acceptable to retain a few units, if it can be predicted that applicants with a particularly pressing need to remain in the borough will come forward in the relatively near future”. There is, therefore, no reason to read the revised version of paragraph 17.50 of the Code as derogating from the need “[g]enerally, where possible, [to] try to secure accommodation that is as close as possible to where an applicant was previously living”. A property offered in pursuance of a policy which (a) respects that principle and (b) has been duly implemented may well be deemed suitable, but that is not to say that a policy can properly be framed without regard to the principle.

*The present case*

48. It follows that, in my view, it was incumbent on Waltham Forest to try to accommodate homeless households as close as possible to the borough even where accommodation was available only in Zone C unless there was a particular reason not to do so. That, of course, accords with the council’s “Accommodation Acquisitions Policy”, which specifically provides for properties to be “as close to the borough as is reasonably practicable”. Mr Burton, however, argued that the policy cannot have been followed or, at least, that the evidence does not show that it had been.
49. We were referred to two cases in which comparable issues have arisen: *Alibkhiet* and *Abdikadir*.
50. In *Alibkhiet*, the London Borough of Brent (“Brent”) had offered Mr Alibkhiet a flat in Smethwick in the West Midlands. One of the arguments advanced on his behalf was that Brent had “not explained *how* [units in London] are procured or the success that is achieved in obtaining them” and “barely anything is said in relation to accommodation between London and Birmingham or in relation to any other town that is outside London but closer to Brent than Birmingham”: see paragraphs 77 and 78. However, the Court of Appeal rejected the criticism. Lewison LJ, with whom Henderson and Asplin LJ agreed, said this:

“79. Brent’s review decision treats London and the South East together. It begins by explaining the shortage of social housing in Brent. It goes on to explain that there is a chronic shortage of affordable private rented sector accommodation within both Brent and London and the South East; and that Brent cannot compete with other tenants for the limited supply of such accommodation. It explains that suitable affordable accommodation is only procurable in major conurbations. The review decision deals in terms with Brent’s previous ability to offer placements in Luton, High Wycombe and Margate; and explains why that is no longer possible. Such units of accommodation that are available are allocated by applying

Brent's policy. In my judgment, that is an adequate explanation of why Brent does not have access to accommodation within London and the South East.

80. Once that area is eliminated, the West Midlands seems to me to be the next available pool of supply. It is, I suppose, theoretically possible that Brent might have been able to find somewhere in East Anglia or the East Midlands that was closer to Brent than Birmingham as the crow flies; but that places an onerous burden on a housing authority. [Counsel for Mr Alibkhiat] accepted that Brent was not required to scour every estate agent's window between Brent and Birmingham. In addition the review decision explained that suitable affordable accommodation is only available in main metropolitan locations. Moreover, I am by no means convinced that the simple metric of distance as the crow flies is the be-all and end-all, if one leaves out of account means of communication between the offered accommodation and the borough to which the application is made. The review decision goes into a lot of detail about means of communication between Brent and Birmingham by car, coach and train. These, in my judgment, are legitimate factors for a housing authority to take into account when considering an out of borough placement."

51. In *Abdikadir*, Ealing London Borough Council ("Ealing") had offered Mr Abdikadir accommodation in West Drayton, in the London Borough of Hillingdon. It was argued on his behalf that Ealing "did not make a sufficient search for in-borough accommodation before making the out of borough placement; and did not comply with its procurement policy": see paragraph 40. Lewison LJ, with whom King and Asplin LJ agreed, identified the "real question" as "whether Ealing actually complied with its policies": see paragraph 56. As Lewison LJ explained in paragraph 57, "both the original letter ... accepting the full housing duty and the acquisition policy contemplate the acquisition of private sector rented property and the making of private sector rental offers", but Ealing's response to an inquiry as to what steps it had taken to comply with its duty under section 208(1) of the 1996 Act "did not mention any steps taken to investigate the availability of private sector property". "The acquisition policy stated that acquisition officers 'check relevant websites on a daily basis for new supply'", but, as Lewison LJ noted in paragraph 57, "there was no evidence that that had been done". "If in fact", Lewison LJ said in paragraph 59, "Ealing had followed its policy, all that would have been required would have been a statement saying that it had, and explaining how it had done that". As it was, Lewison LJ came to the "reluctant" conclusion that this ground of appeal succeeded: see paragraph 60.
52. In my view, the present case is analogous to *Abdikadir*. There was nothing wrong with Waltham's Forest's "Accommodation Acquisitions Policy", but there is a dearth of evidence to show that it was followed, and common sense rather suggests that it was not. Mr Bernardi said in his submissions of 15 September 2021 that Ms Zaman's housing file "tellingly contains no evidence that the Council sought accommodation any closer than Stoke on Trent" and that it "simply defies logic that the Council could

not secure accommodation closer than approximately three hours away in Stoke on Trent”. In further submissions of 29 October, Mr Bernardi submitted that “the Council has unlawfully adopted a policy of rehousing homeless households in Stoke-on-Trent”, that “it is unlikely in the extreme that on at least 121 occasions, the Council was unable to secure a property closer to the borough than Stoke-on-Trent” and that “the Council has failed to comply with its Accommodation Acquisitions Policy”. No adequate response is to be found in the decision letter of 12 November. Ms Bhatt said that it was “common knowledge that ... units need to be procured outside of [the Council’s] area” and that “this review is in regard to the suitability of accommodation offered in Stoke On Trent and not the method of procurement or the method of any procurement having any material impact on its suitability”. She did not confirm that Waltham Forest had been seeking to ensure that Zone C properties were “as close to the borough as is reasonably practicable”, in accordance with the “Accommodation Acquisitions Policy”, or offer any explanation for the fact so many Zone C properties were in Stoke-on-Trent when common sense indicates that it should normally have been possible to obtain accommodation closer to the borough, for example in “the major metropolitan locations” in the West Midlands to which Brent had resorted in *Alibkhiat*. Nor is any sufficient reason for property having been unavailable any closer than Stoke-on-Trent to be found in Ms Bhatt’s witness statement. Ms Bhatt there recounted that the manager of the Procurement Team had “confirmed that when the team go out to procure properties, they seek to procure in all locations including Essex, Hertfordshire, Kent, Surrey, Berkshire and Buckinghamshire and do not limit their procuring to certain locations only”. Strikingly, Ms Bhatt did not say that the Procurement Team prioritised properties closer to the borough or give any reason for so many Zone C properties being as far away as Stoke-on-Trent.

53. In short, while Waltham Forest’s “Accommodation Acquisitions Policy” was lawful, it is not apparent that it was duly implemented or, therefore, that 65 Longshaw Street was the closest property to the borough that the council could secure.

### Conclusion

54. I would allow Ms Zaman’s appeal.

### **Ms Uduezue’s appeal**

#### The grounds of appeal

55. Ms Uduezue’s existing grounds of appeal raise essentially three issues:
- i) Did Bexley wrongly fail to consider the possibility of offering Ms Uduezue 2-bedroom accommodation?
  - ii) Did Bexley fail to take proper steps to assess the impact which moving to 85 Hartington Street would have on Ms Uduezue’s daughter Catherine?
  - iii) Did the offer made to Ms Uduezue in respect of 85 Hartington Street fail to qualify as a PRSO because (a) the offer was made by Bexley rather than the relevant “private landlord” and (b) the “private landlord” was not identified?



56. Ms Uduezue further seeks permission to appeal on an additional ground, namely, that Bexley did not inform her of “the effect under section 195A of a further application to a local housing authority within two years of acceptance of the offer” in accordance with section 193(7AA) and (7AB) of the 1996 Act in that she was not told of the effect of section 195A(2). On 19 January 2023, Underhill LJ gave directions for the application for permission to appeal on this ground to be determined at the hearing.
57. I shall take these points in turn.

2-bedroom accommodation

58. Mr Hodgson pointed out that, at the date Bexley offered Ms Uduezue accommodation at 85 Hartington Street, a 2-bedroom flat and a 2-bedroom house were available within the borough. These, he said, would have been suitable for Ms Uduezue. Ms Uduezue could have shared one bedroom with her baby and her other daughters could have shared the remaining bedroom. Bexley, however, discounted that accommodation and looked no further than the only 3-bedroom property that was available: 85 Hartington Street. It thus failed to do all that was “reasonably practicable”, in accordance with section 208(1) of the 1996 Act, to secure accommodation for Ms Uduezue within the borough.
59. The first answer to this contention is that Ms Uduezue did not intimate that a 2-bedroom property would suffice. She had been moved from a 2-bedroom property to a 3-bedroom one in July 2020 following Victoria’s birth. There is no suggestion that she indicated that a smaller property would do either at that stage, or at any time before she was offered 85 Hartington Street or even during the review process.
60. In *Cramp v Hastings Borough Council* [2005] HLR 786 (“*Cramp*”), Brooke LJ, with whom Arden and Longmore LJ agreed, said in paragraph 14:
- “[T]he review procedure gives the applicant and/or another person on his behalf the opportunity of making representations about the elements of the original decision that dissatisfy them, and of course they may suggest that further inquiries ought to have been made on particular aspects of the case .... Given the full-scale nature of the review, a court whose powers are limited to considering points of law should now be even more hesitant than the High Court was encouraged to be at the time of [*R v Kensington and Chelsea London Borough Council, ex p Bayani* (1990) 22 HLR 406] if the appellant’s ground of appeal relates to a matter which the reviewing officer was never invited to consider, and which was not an obvious matter he should have considered.”
61. In *Pieretti v Enfield London Borough Council* [2010] EWCA Civ 1104, [2011] PTSR 565, Wilson LJ observed at paragraph 32 that Brooke LJ’s dictum required qualification in the light of the coming into force of section 49A of the Disability Discrimination Act 1995, which required public authorities to have due regard to various matters related to disability. Further, in *Hajjaj v Westminster City Council* [2021] EWCA Civ 1688, [2022] PTSR 420, Bean LJ, with whom Nugee LJ and Falk J agreed, concluded in paragraphs 70 and 71 that, to approve a PRSO, a local housing

authority “must ... be satisfied that none of the ten bars to suitability established by article 3(1) [of the 2012 Order] exists” and that, in that context, “[i]t cannot be right that it is for the applicant for the accommodation to raise a red flag”. Bean LJ explained in paragraph 71:

“At the time the PRSO is made, the applicant has had no input at all. It would be contrary to the scheme of the Act to shift the burden onto the prospective tenant to object, particularly since a failure to accept the PRSO has potentially drastic adverse consequences if the objection is not upheld. The PRSO must not be made unless the LHA are satisfied that the accommodation is suitable: section 193(7F).”

The present case, however, does not raise any issue as to either disability or the “bars to suitability” found in article 3 of the 2012 Order.

62. Mr Hodgson submitted that the *Cramp* principle cannot apply as Ms Uduezue was unaware of the availability of 2-bedroom accommodation until she saw the review decision. While, however, Ms Uduezue will not have *known* the position as regards 2-bedroom accommodation, the possibility of such accommodation being available was an obvious one. If, therefore, Ms Uduezue wished to be considered for a 2-bedroom property rather than 3-bedroom accommodation such as that to which she had recently moved following Victoria’s birth, she could have said so. The fact that she did not means, I think, that Mr Ekechukwu cannot be criticised for not dealing with the point specifically.
63. In fact, however, it can be seen from the review decision that Bexley’s view was that only 3-bedroom accommodation would be suitable for Ms Uduezue. Mr Ekechukwu said not only that he was satisfied that 85 Hartington Street was suitable (see paragraphs 26, 30, 36 and 43 of the decision letter), but that the 2-bedroom and 4-bedroom properties which were available when Ms Uduezue was offered 85 Hartington Street “were not deemed suitable for [her] housing needs” (paragraph 58 of the decision letter). Further, that view cannot be said to have been by any means an irrational one. By 11 August 2020, Ms Uduezue had three children and was living in a 3-bedroom house. It is true that, at that point, Victoria was still less than two months old and so could sleep in her mother’s bedroom (provided it was large enough), but she would have been 14 months or so even if Ms Uduezue had remained at 85 Hartington Street for no more than a year. In the circumstances, it is hardly surprising that Bexley considered that 2-bedroom accommodation would not be suitable for Ms Uduezue, and it was essentially for Bexley to assess what would be suitable (compare e.g. *Ali v Newham London Borough Council* [2001] EWCA Civ 73, [2002] HLR 20 (“*Ali*”), at paragraph 18). Bexley’s view could be impugned if it were irrational, but, as I say, it was not. Perhaps Bexley would have taken a different view if Ms Uduezue had voiced a willingness to accept a 2-bedroom property, but she did not do so.

#### Impact on Catherine

64. As Mr Hodgson developed his submissions before us, the thrust of the criticism as regards Catherine was that Bexley failed to *investigate* what impact moving to Chatham would have on her and her education. More specifically, Mr Hodgson argued that Bexley should have spoken to the school she was then attending.

65. However, in *R v Royal Borough of Kensington and Chelsea, ex p Bayani* (1990) 22 HLR 405 Neill LJ said of a local housing authority's statutory duty "to make such inquiries as are necessary to satisfy themselves as to whether [the applicant] is homeless or threatened with homelessness", at 409:

"Before I turn to the facts in the present case, I think it is right to draw attention to some general considerations:

- (1) The duty to make inquiries is to make such inquiries as are necessary to satisfy the authority: see section 62(2). It follows therefore that as it is the authority which have to be satisfied the scope and scale of the inquiries is, primarily at least, a matter for them. But the introduction of the word 'necessary' indicates that there is a standard which these inquiries must observe. In other words, the inquiries must be those which are 'necessary' to enable the authority to make a decision.
- (2) If the Court is to intervene by way of judicial review, it must be on the basis, as I see it, that the inquiries have not reached the required standard in the circumstances of the case. The appropriate test in a case of possible intentional homelessness is whether a reasonable authority, having made the inquiries and only the inquiries which the authority in question in fact made, could have been satisfied that the applicant was homeless intentionally .... If a reasonable authority could not have been so satisfied, the 'necessary' inquiries will not have been made.
- (3) In deciding how a reasonable authority would have acted and what inquiries they would have made in the circumstances, the court must have regard to the speech of Lord Brightman in *R. v. Hillingdon L.B.C., ex parte Puhlhofer* [1986] A.C. 484 where he said at p. 518:

'... it is not, in my opinion, appropriate that the remedy of judicial review, which is a discretionary remedy, should be made use of to monitor the actions of local authorities under the Act save in the exceptional case ... Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision-making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely.'

At 415, Neill LJ said:

“The court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable housing authority could have been satisfied on the basis of the inquiries made.”

66. *Cramp* is to similar effect. In that case, Brooke LJ said this:

“57. ... Parliament has imposed the duty of making the necessary inquiries on a housing officer, and in the event of a review, on a senior housing officer as well ....

58. In each case it was for the council to judge what inquiries were necessary, and it was susceptible to a successful challenge on a point of law if and only if a judge in the county court considered that no reasonable council could have failed to regard as necessary the further inquiries suggested by the appellants’ advisers ....

59. Similarly in the Phillips case it was pure speculation on the judge’s part to think that an approach to a probation officer would have yielded more information than Camden already possessed. It was not open to him to quash Camden’s decision as a matter of law on the grounds ‘that it would have been helpful’ if those inquiries had been made, or that ‘there might well have been additional information’ which the probation officer could have given. [The reviewing officer] had considered that it was not necessary to make these further inquiries, or to go behind the GP’s report, and Mr Phillips’s solicitors had never suggested that she should .... In these circumstances it was not in my judgment open to the judge to hold that no reasonable council would have refrained from making these further inquiries, and the judge should not have interfered with Camden’s decision on the review.”

67. In the present case, Ms Uduezue could be expected to be aware of, and to draw Mr Ekechukwu’s attention to, matters relating to the impact which moving to Chatham would be likely to have on Catherine, and she did so. She explained that Catherine, who was due to return to school on 4 September 2020, was preparing for 11+ (or, as she put it, 6+) examinations and that moving to Chatham would both affect her performance and cut off bonds with friends. It can be seen from his decision letter that Mr Ekechukwu took all these points on board.

68. In the circumstances, it is unsurprising that Mr Ekechukwu saw no need to make further inquiries in relation to Catherine. He was entitled to think that he already knew enough. Ms Uduezue had highlighted her concerns, and they did not obviously raise any point that called for additional investigation. In fact, it is not clear even now what speaking to Catherine’s school might have added. Of course, Catherine might have preferred to stay at the primary school she was then attending (though she was anyway going to have to change school at the end of the forthcoming academic year),

but her circumstances remained broadly typical and there was no evident need to find out more. This is certainly not a case in which no reasonable local authority would have failed to make further inquiries. To the contrary, I should have thought that few, if any, would have done so.

Did the offer qualify as a PRSO?

69. To be a PRSO, an offer must, among other things, be “an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant’s occupation”: see section 193(7AC)(a) of the 1996 Act.
70. In the present case, Mr Hodgson argued that the offer made to Ms Uduezue of accommodation at 85 Hartington Street was not a PRSO as (a) it was made by Bexley rather than the proposed “private landlord” and (b) the proposed “private landlord” was not identified to Ms Uduezue.
71. While, however, Bexley said in its offer letter of 11 August 2020 that it was “pleased to offer” Ms Uduezue accommodation at 85 Hartington Street, it also explained that it intended to end its duty and resolve Ms Uduezue’s homelessness by “arranging for a private landlord to make you an offer of an assured short-hold tenancy in the private rented sector” and that the offer was “a *private rented sector offer* defined by section 193(7AC) as an offer of an assured shorthold tenancy made by a private landlord to an applicant”. As was pointed out by Mr Riccardo Calzavara, who appeared for Bexley, it is impossible for a tenancy granted by a local authority to be an “assured shorthold tenancy”: see sections 1(2) and 19A of, and paragraph 12 of schedule 1 to, the Housing Act 1988. In all the circumstances, it is plain, I think, that the offer letter served to inform Ms Uduezue of “an offer of an assured shorthold tenancy made by a private landlord” rather than being just an offer from Bexley itself. Bexley is to be understood to have *communicated* an offer made by a private landlord.
72. As for the fact that the offer letter did not identify the “private landlord”, there is, in my view, no such requirement. Section 193(7AC) does not state that the identity of the “private landlord” must be revealed, and I see no reason to infer that that was Parliament’s intention.

The new ground of appeal

73. The additional ground of appeal for which Ms Uduezue seeks permission has been prompted by the recent decision of this Court in *Norton v Haringey London Borough Council* [2022] EWCA Civ 1340, [2022] PTSR 1802 (“*Norton*”).
74. Section 193(7AA) of the 1996 Act provides for a local housing authority to cease to be subject to the “main housing duty” “if the applicant, having been informed in writing of the matters mentioned in subsection (7AB)” accepts or refuses a PRSO. Those matters include, by section 193(7AB)(c), “in a case which is not a restricted case, the effect under section 195A of a further application to a local authority within two years of acceptance of the offer”.
75. One of the issues in *Norton* was whether Haringey London Borough Council (“Haringey”) had failed to inform the appellant of “the effect under section 195A of a

further application to a local authority within two years of acceptance of the offer”. The relevant parts of section 195A are set out in paragraph 25 above. In *Norton*, Haringey had explained in its offer letter that section 195A “absolves a person who makes an application for accommodation within two years of acceptance of a PRSO of the need to show that they are still in priority need” (to use words of Males LJ at paragraph 55). The Court of Appeal concluded, however, that Haringey should also have told the appellant about section 195A(2).

76. In that regard, Elisabeth Laing LJ, with whom Asplin and Males LJJ agreed, said in paragraph 43:

“The question is what is the ‘effect under section 195A of a further application’ within two years of the current application. The introductory words of section 195A(2) are ‘For the purpose of subsection (1)’. Section 195A(2) is a special rule, for the purpose of section 195A(1), about the time at which a person becomes homeless. In my judgment, ‘the effect under section 195A’ includes the effect of section 195A(2) . It was common ground that A was not notified of the effect of section 195A(2). On the ordinary meaning of those words, he was not, therefore, told of the effect, ‘under section 195A of a further application’.”

77. For his part, Males LJ, with whom Asplin LJ also agreed, said:

“56. [S]ection 195A provides in subsection (2) that an applicant making a further application within two years of accepting a PRSO will be treated as homeless from the date on which a valid notice under section 21 of the Housing Act 1988 expires, even though they continue to occupy the property. Put shortly, such an applicant is treated as homeless for the purpose of a further application within two years, even though in fact, as a matter of ordinary language, they are not (or not yet) homeless. That was not explained in the local authority’s offer letter. In my judgment it should have been. It may have an important effect on a further application within two years, which an applicant needs to understand.

...

58. In the event, it is clear that the appellant was aware, well within the two-year period (which has not yet expired) of the effect of section 195A. Nevertheless, however technical this may be, Parliament has stipulated that if a local authority’s housing duty to a person in priority need is to cease by virtue of a PRSO, the offer must comply with section 193 (7AA) and (7AB)(c).”

78. The Court thus concluded that Haringey’s duty to the appellant continued: see paragraphs 51 and 54.

79. In the present case, there is no dispute but that, while the offer letter to Ms Uduezue sought to inform her of the implications of section 195A(1) of the 1996 Act, it did not inform her of the effect of section 195A(2). That being so, Ms Uduezue seeks permission to appeal on this ground.
80. Opposing this, Mr Calzavara advanced three main arguments. First, he said that, since this is a second appeal, it could not be appropriate to grant permission to appeal on the new ground unless it “raised an important point of principle or practice” as well as having a real prospect of success. That condition, he said, was not satisfied as the relevant legal principles have already been established, in *Norton*. Secondly, he contended that, had the point on which Ms Uduezue now wishes to rely been raised earlier, Bexley could have sought to persuade Judge Saggerson that he should refuse her relief in the exercise of his discretion, and, that opportunity having been denied to Bexley, it would not be right to allow Ms Uduezue to raise the point in this Court. Thirdly, Mr Calzavara submitted that permission to appeal should be refused because no explanation has been given for the 84-day delay between the decision in *Norton* and the new ground of appeal being raised.
81. With regard to the first of these contentions, there is no doubt that a second appeal can be brought only if this Court considers that it raises “an important point of principle or practice” or there is “some other compelling reason for the Court of Appeal to hear it”. Section 55(1) of the Access to Justice Act 1999 provides:

“Where an appeal is made to the county court, the family court or the High Court in relation to any matter, and on hearing the appeal the court makes a decision in relation to that matter, no appeal may be made to the Court of Appeal from that decision unless the Court of Appeal considers that—

- (a) the appeal would raise an important point of principle or practice, or
- (b) there is some other compelling reason for the Court of Appeal to hear it.”

Consistently with that, CPR 52.7 states as regards second appeals:

“The Court of Appeal will not give permission unless it considers that—

- (a) the appeal would—
  - (i) have a real prospect of success; and
  - (ii) raise an important point of principle or practice; or
- (b) there is some other compelling reason for the Court of Appeal to hear it.”

82. However, neither section 55 of the Access to Justice Act 1999 nor CPR 52.7 stipulates that every ground of appeal for which permission to appeal is given must (absent another compelling reason for this Court to hear it) raise an important point of

principle or practice, and in my view that is not the law. The appeal as a whole must raise such a point, but, if one ground of appeal with a real prospect of success does so, permission to appeal can be given in respect of one or more other grounds of appeal which have real prospects of success but are of no wider significance. As Brooke LJ explained in *Tanfern Ltd v Cameron-Macdonald* [2000] EWCA Civ 3023, [2000] 1 WLR 1311, at paragraph 42, the enactment of section 55 of the Access to Justice Act 1999 introduced a “major change to our appeal procedures” such that it would “no longer be possible to pursue a second appeal to the Court of Appeal merely because the appeal is ‘properly arguable’ or ‘because it has a real prospect of success’”. If, though, “the appeal”, overall, gives rise to an important point of principle or practice, permission to appeal can be granted for grounds which do not themselves do so but have “a real prospect of success” even in the case of a second appeal. It cannot therefore assist Mr Calzavara to say that the new ground of appeal does not raise an important point of principle or practice.

83. Turning to Mr Calzavara’s second contention, he cited in that connection *Singh v Dass* [2019] EWCA Civ 360, where Haddon-Cave LJ said this:

“15. The following legal principles apply where a party seeks to raise a new point on appeal which was not raised below.

16. First, an appellate court will be cautious about allowing a new point to be raised on appeal that was not raised before the first instance court.

17. Second, an appellate court will not, generally, permit a new point to be raised on appeal if that point is such that either (a) it would necessitate new evidence or (b), had it been run below, it would have resulted in the trial being conducted differently with regards to the evidence at the trial (*Mullarkey v Broad* [2009] EWCA Civ 2 at [30] and [49]).

18. Third, even where the point might be considered a ‘pure point of law’, the appellate court will only allow it to be raised if three criteria are satisfied: (a) the other party has had adequate time to deal with the point; (b) the other party has not acted to his detriment on the faith of the earlier omission to raise it; and (c) the other party can be adequately protected in costs. (*R (on the application of Humphreys) v Parking and Traffic Appeals Service* [2017] EWCA Civ 24; [2017] R.T.R. 22 at [29]).”

84. In the present case, Mr Calzavara said, the fact that the *Norton* point was not advanced before Judge Saggerson has robbed Bexley of the chance to argue that Ms Uduezue should, as a matter of the exercise of the Court’s discretion, be refused relief. Had the issue been raised in the County Court, Mr Calzavara suggested, Bexley might have wished to adduce other evidence or otherwise have conducted the proceedings differently so that it has “acted to [its] detriment on the faith of the earlier omission to raise it”.



85. Mr Calzavara also relied in this context on *R v Islington London Borough Council ex p Degnan* (1998) 30 HLR 723 (“*Degnan*”) and *Ali*. In *Degnan*, a local housing authority had failed to comply with its obligations “in the manner of its communication of an offer of accommodation to Mrs Degnan” (as Judge Rich QC put it at first instance, “the decision as communicated to the applicant did not follow from the form of the decision made by the [council] committee”), but, “even if the manner of the communication of the offer had been lawful, it would have made no difference to the outcome since Mrs Degnan had unreasonably refused the offer for other reasons”: see 725. In the exercise of his discretion, the judge refused relief, and an appeal was dismissed. Auld LJ, with whom Staughton LJ and Sir John Balcombe agreed, expressed the view, at 729, that the judge had proceeded on the basis that “he should only refuse relief in the exercise of his discretion if the unlawfulness of the decision made no difference to the outcome”, and concluded at 732:

“In this case, ... this court should not interfere with the exercise of discretion by the judge below unless the discretion was clearly exercised on wrong principles. In my view, that cannot be shown here.”

86. In *Ali*, the judge found that there had been several procedural flaws in a local housing authority’s decision-making (for example, it had failed to investigate certain matters), but “decided that the decision of the respondents would inevitably have been the same, even if they had followed a fair procedure”: see paragraph 3. Latham LJ, with whom Sir Christopher Slade agreed, concluded in paragraph 20 that, on the facts, the judge had been “wrong to conclude that he should confirm the decision of the review”, but he had explained in paragraph 13:

“It is accepted that, in a situation such as this, the county court should only confirm a decision otherwise vitiated by procedural irregularity if it can properly be said that the decision would inevitably have been the same even if the matter had been dealt with properly: See *Barty-King v. Ministry of Defence* [1979] 2 All E.R. 80.”

87. In contrast, Mr Hodgson argued that cases such as *Degnan* and *Ali* are not in point and, hence, that Bexley would have been no better placed if the new ground of appeal had been raised at an earlier stage. It necessarily follows from the fact that Ms Uduezue was not informed of all the matters mentioned in section 193(7AB) of the 1996 Act that Bexley’s duty towards her did not cease in accordance with section 193(7AA). It could not have helped Bexley, Mr Hodgson maintained, to adduce evidence designed to show that Ms Uduezue would have acted no differently if she had been told about section 195A(2).

88. For my part, I find it hard to see what evidence Bexley could usefully have put forward on the question whether Ms Uduezue would have acted differently had she been informed of the effect of section 195A(2) of the 1996 Act. The issue would, on the face of it, have been outside Bexley’s own knowledge. Even assuming, however, that Bexley had somehow been able to demonstrate that Ms Uduezue would have behaved in just the same way despite her attention being directed to section 195A(2), *Norton* indicates that that would not have mattered. As I understand *Norton*, the Court of Appeal’s view was that, where a person to whom a local housing authority owed

the “main housing duty” was not informed of the matters mentioned in section 195(7AB), the duty simply continues, the conditions for its cessation not having been met. Thus, in *Norton* Males LJ said in paragraph 54 that, “[u]nless [it provided the requisite information], the local authority’s housing duty to the appellant continued”. The logic is evidently as follows: section 193(3) provides that the “main housing duty” is owed “until it ceases by virtue of any of the following provisions of this section”; the only such provision relevant in a case such as *Norton* or the present one is section 193(7AA); and, under section 193(7AA), cessation of the duty is dependent on the applicant “having been informed in writing of the matters mentioned in subsection (7AB)”. On that basis, the fact that the *Norton* point was not raised earlier in these proceedings cannot have prejudiced Bexley. Supposing that it had been advanced before Judge Saggerson, he would have had no discretion to exercise and it could not have availed Bexley to adduce any additional evidence.

89. We invited counsel to comment on the relevance, if any, of *R v Soneji* [2005] UKHL 49, [2006] 1 AC 340 (“*Soneji*”) and subsequent cases such as *Natt v Osman* [2014] EWCA Civ 1520, [2015] 1 WLR 1536 and *Elim Court v Avon Freeholds* [2017] EWCA Civ 89, [2018] QB 571. In *Soneji*, the House of Lords had to consider the effect of a failure to comply with a statutory requirement. Lord Steyn said in paragraph 23 that “the rigid mandatory and directory distinction, and its many artificial refinements”, which had formerly been adopted, “have outlived their usefulness” and that “the emphasis ought to be on the consequences of non-compliance, and posing the question whether Parliament can fairly be taken to have intended total invalidity”. Mr Hodgson’s response to our invitation was to the effect that the requirement in section 193(7AA) of the 1996 Act to inform an applicant of the matters mentioned in section 193(7AB) “is intended to be mandatory in the sense that non-compliance will invalidate the offer and the local authority cannot then seek to discharge its duty”. Nor did Mr Calzavara suggest that the *Soneji* line of cases could assist Bexley. He observed that citation of the authorities might have affected the Court’s analysis in *Norton*, but accepted that the Court had come to the clear conclusion that Parliament intended invalidity and that we are bound by *Norton* on the point.
90. With regard, finally, to Mr Calzavara’s third contention, the appeal had already been initiated when judgment was given in *Norton* on 19 October 2022; Ms Uduezue raised the *Norton* point in the first half of January of this year, shortly after she had been granted permission to appeal and in time for Bexley to address the issue in its skeleton argument; and there is no reason to suppose that the delay has otherwise caused Bexley any prejudice.

### Conclusion

91. In all the circumstances, I would both grant Ms Uduezue permission to appeal on the additional ground and allow the appeal on that basis.

### Overall conclusion

92. I would allow both appeals.

**Lady Justice Asplin:**

93. I agree that both appeals should be allowed for all the reasons given by Newey LJ.

**Lady Justice Nicola Davies:**

94. I agree.