



Neutral Citation Number: [2024] EWHC 158 (Admin)

Case No: AC-2023-LON-003801

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 January 2024

Before :

MRS JUSTICE LANG DBE

Between :

THE KING

Claimant

on the application of

SK

- and -

**ROYAL BOROUGH OF
WINDSOR AND MAIDENHEAD**

Defendant

Ian Wise KC and Clodhna Kelleher (instructed by **Miles & Partners LLP**) for the **Claimant**
Riccardo Calzavara (instructed by **Legal Services**) for the **Defendant**

Hearing date: 25 January 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 31 January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Lang :

1. The Claimant seeks judicial review of the Defendant’s failure to meet its obligations, in its capacity as the local housing authority, to:
 - i) produce a lawful housing needs assessment (“HNA”) and personalised housing plan (“PHP”) for her and her children, as required by section 189A Housing Act 1996 (“HA 1996”), and comply with the duty, in section 11(2) of the Children Act 2004 (“CA 2004”), to discharge its functions having regard to the need to safeguard and promote the welfare of children (**Ground 1**);
 - ii) comply with its duty under section 193 HA 1996, to secure accommodation for the Claimant and her children which is “suitable”, as required by section 206 HA 1996 (**Ground 2**).
2. On Ground 2, the Defendant concedes that the Claimant is currently in accommodation that is not suitable for her and her household, whether as currently or previously composed; that the Defendant is in breach of its statutory duty under section 193 HA 1996 for having failed to secure that she is provided with suitable accommodation; and that the Defendant cannot show that it took all reasonable steps to provide her with suitable accommodation prior to the filing of this claim.
3. However, the Defendant submits that no relief should be granted on Ground 2, because, on 17 January 2024, it offered the Claimant suitable accommodation in Canterbury Avenue. The Claimant’s challenge to the suitability of the Canterbury Avenue property should proceed by way of an application for statutory review under section 202 HA 1996. The Claimant has a statutory right of appeal to the County Court against an adverse review decision by the Defendant. In response, the Claimant submits that the Canterbury Avenue property is clearly unsuitable, and the alternative remedy of a statutory review and appeal would be unacceptably slow, given the severe disabilities of GZ and HZ, and the delay to date.
4. In the light of its concessions on Ground 2, and its desire to limit the expenditure on these proceedings, the Defendant has agreed to produce a further joint HNA/PHP, whilst maintaining that the current joint HNA/PHP, dated 8 November 2023, is lawful.
5. On 12 January 2024, I granted permission to apply for judicial review on Ground 2, on the papers. Ground 1 was initially pleaded on the basis that the Defendant had failed to update the HNA/PHP from June 2023. Following the issue of the claim, the Defendant notified the Claimant that it had drawn up a HNA/PHP in November 2023, but it failed to disclose these documents to the Claimant or her solicitor when they were issued. Therefore, I granted the Claimant permission to amend her Statement of Facts and Grounds to take account of the November 2023 HNA/PHP, and I adjourned the application for permission on Ground 1 to be heard at a rolled-up hearing on the same occasion as the substantive hearing on Ground 2.
6. The hearing was expedited so that it could be listed prior to the care proceedings which are due to take place in the Family Court in the week commencing 29 January 2024. The availability of suitable accommodation in a family home for HZ, JZ and KZ is a consideration in the care proceedings.

History

7. The Claimant has eight children, four of whom are adults and live elsewhere, and four of whom are children who, until June 2023, lived with her in a privately rented house (“home”) in the Defendant’s area. She has three daughters: GZ, aged 18 (DOB 11.1.06); JZ, aged 14 (DOB 23.3.09) and HZ, aged 13 (DOB 20.6.10). She also has a son, KZ, aged 12 (DOB 21.7.11).
8. Sadly GZ and HZ are profoundly disabled with Pantothenate kinase-associated neurodegeneration (“PKAN”), which is a degenerative neurological condition, leading to an early death. They suffer from rigid muscles which spasm (dystonia) and affect mobilising and speaking. Whereas once they were able to talk, walk, carry out self-care, and eat unassisted, they are now both wheelchair users, incontinent, fed through a device in their stomachs, and have difficulty communicating.
9. The Claimant is a single parent, and has an exclusion order against her husband because of abusive treatment who lives nearby. However, she wishes to remain in the area because she has support from her family (her mother and four siblings) and GZ and HZ attend a specialist school in the area.
10. In March 2023, HZ was admitted to Great Ormond Street Hospital following a dystonic episode, and she has received further treatment and care at the Evelina Children’s Hospital and Wexham Park Hospital. She has been medically fit for discharge for many months, but unfortunately the home is not considered suitable for her.
11. In May 2023, the Defendant obtained interim care orders in respect of JZ and KZ who were placed in foster care in June 2023. An interim care order was also made in respect of HZ. Ongoing consideration is being given to the possibility that HZ will be placed in residential care once she is discharged from hospital. The Defendant has now applied for final care orders in respect of all three children, and a hearing in the Family Court is listed for the final week in January 2024. GZ continues to live at home with the Claimant.
12. The question of where HZ will live will be a core consideration in the care proceedings. It is common ground that the Claimant’s current home is unsuitable for the family because it is not fully wheelchair accessible for GZ and HZ and there is not enough space for appropriate ramps and other equipment to be installed. GZ and HZ have to share a room, and the Claimant has to share a room with KZ. These arrangements are unsatisfactory.
13. The Claimant has sought assistance from the Defendant in relation to the family’s housing since 2015. In 2020 she was accepted on to the Defendant’s Housing Register under Part 6 HA 1996. She is in Band A for rehousing.
14. In June 2022 she applied to be housed as a homeless person, because of the unsuitability of her accommodation, and the Defendant accepted the family as homeless in June 2022. In December 2022, the Defendant recorded that it owed the family a duty under section 193 HA 1996 to provide them with suitable accommodation.
15. On 19 January 2022, Jacky Hardman, occupational therapist (“OT”) at ‘*Achieving for children*’, prepared a report entitled “Housing Needs Assessment” for the Claimant and

her family, on behalf of the Defendant's Children and Young People Disability Services. It was not made pursuant to section 189A HA 1996.

16. A HNA/PHP was prepared by Naseem Lister, Housing Options Officer, on 8 June 2022.
17. Because of the Defendant's failure to provide suitable accommodation, the Claimant filed a claim for judicial review in April 2023 ("the first claim"), seeking an order obliging the Defendant to prepare a lawful HNA/PHP pursuant to section 189A HA 1996, and to house the Claimant and her family under section 193 HA 1996.
18. On 12 April 2023, Rachel King, an independent OT instructed by the Claimant, undertook an assessment of the family's housing needs.
19. In April 2023, the Defendant offered the Claimant a 3 bedroom bungalow at 14 Abercrombie Road. Initially, the Claimant was not permitted to view the property with her OT. She accepted it with very significant reservations as to its suitability, to protect her position, and sought a review of suitability under section 202 HA 1996. Ms Hardman assessed it as suitable, on 27 March 2023, but Ms King disagreed, because there was insufficient space for the family in the living area and GZ and HZ would have to share a bedroom which was too small for their needs. GZ and HZ would have to be hoisted in and out of a bath, which was unsafe, unhygienic and medically inadvisable because of their gastrostomies. Ms King noted that this was offered as temporary accommodation with no prospect of adaptations. The outcome of the statutory review, on 4 August 2023, was that the Defendant found the property to be unsuitable, because it was no longer available for letting.
20. On 2 May 2023, an updated HNA/PHP was prepared by Ms Lister, Housing Options Officer.
21. On 18 July 2023, Ms King prepared her second report.
22. The first claim was withdrawn by consent on 19 July 2023, in the light of the offer of accommodation at 14 Abercrombie Road, and the removal of JZ and KZ into foster care under the interim care orders.
23. As no further offers of accommodation were made, the Claimant sent a pre-action protocol letter to the Defendant on 19 September 2023. In response, the Defendant stated that it was taking all reasonable steps to accommodate the family, and would provide details within 14 days. It also agreed to conduct a review of the family's housing needs. The Defendant failed to take these steps, and so on 2 November 2023, the Claimant wrote again asking the Defendant to comply with its commitments and statutory obligations.
24. On 6 October 2023, Sophie Pitfield, OT at '*Achieving for children*', prepared a document entitled "Housing Needs Assessment, on behalf of the Defendant's Children and Young People Disability Services, which focused on the needs of HZ and GZ. It was not made pursuant to section 189A HA 1996.
25. On 8 November 2023, an updated HNA/PHP was prepared by Ms Lister, Housing Options Officer, but it was not made available to the Claimant or her solicitors.

26. On 21 November 2023, the Claimant was notified that a one bedroom property had been identified in Beaconsfield which would be offered to her, subject to assessment by an OT.
27. This claim was issued on 19 December 2023. The Defendant then informed the Claimant that a revised HNA/PHP had been completed on 8 November 2023, and posted on its homelessness portal, which is accessed on the Defendant's website, on 18 December 2023. However, it could not be viewed by the Claimant as the required setting, to make the document visible, had not been selected. The Defendant only discovered this on 18 December 2023, whereupon it sent the document by email to the Claimant. It provided the document to the Claimant's solicitors on 19 December 2023.
28. Inexplicably, the Defendant failed to notify the Claimant's solicitors in November that the revised HNA/PHP had been completed, even though the parties were engaged in ongoing pre-action correspondence. Furthermore, the Defendant had previously been informed that the Claimant could not access the portal because she lacked the required IT equipment.
29. On 17 January 2024, the Defendant offered the Claimant a 4 bedroom property at 127 Canterbury Avenue. The Defendant has disclosed a report by Elizabeth Peskin, OT, dated 18 January 2024, assessing GZ's occupation of the property, which concludes that it would be suitable with some adaptations. The OT states "Please note I have never met the resident and do not have access to her records to be able to make a full evaluation of the property in respect of her housing needs, eg means of transfer and equipment requirements". This has led to a fundamental factual error in her assessment, namely, that GZ's wheelchair is "for outdoor use only" whereas in fact it is used all the time.
30. Ms King has assessed 127 Canterbury Avenue and produced her third report, dated 24 January 2024, which concludes that the property is not suitable. In particular, the proposed wheelchair access by ramp to the property for GZ or HZ is not safe. There is insufficient turning space for a wheelchair in the hallway. There is only one ground floor bedroom, and it is not wheelchair accessible. It also has a low beam on the ceiling which would restrict options on the location of a ceiling hoist. Access through the living room door and kitchen door is too restricted, and removing the fire door hinges is unlikely to widen the doors sufficiently. The bathroom facilities are not accessible and are wholly inadequate, as there is insufficient space for them to access the shower or the toilet, or to dress/undress in the bathroom.
31. In a witness statement dated 19 January 2024, Mr Alex Szantai, Housing Operations Manager, explains that the Defendant does not hold any of its housing stock. Instead, it has arrangements with registered providers of social housing for allocations under Part 6 HA 1996, and a panel of private rented sector providers for homelessness applications under Part 7 HA 1996. Mr Szantai has provided information about the properties available, and the difficulty in finding a property which is fully wheelchair-accessible. In addition to the properties I have already referred to above, he refers to a property at Lake View which the OT has assessed as suitable with adaptations which would take at least 10 weeks to secure. He also mentions that the Defendant has considered adapting the Claimant's current home to make it suitable, but has decided that there are structural issues which cannot be overcome.

32. For the sake of completeness, I mention that the Claimant seeks a proper package of continuing healthcare support from NHS Frimley ICB, to enable her to care for HZ at home when she is discharged from hospital. She has filed a judicial review claim challenging NHS Frimley’s decision that HZ is not eligible for such a package.

Ground 1

Legal framework

33. Part 7 HA 1996 contains a “graduated series of duties” (*R (Aweys) v Birmingham CC* [2009] UKHL 36, at [17]) aimed at requiring housing authorities to determine whether and to what extent it owes a duty to a given individual to alleviate their homelessness.
34. A local authority must first determine whether an individual is homeless and whether they are eligible for assistance by the housing authority. If it is so satisfied, section 189A HA 1996 provides that it must assess the applicant’s case and provide a personalised plan, which has to be kept under review. It states:

“189A Assessments and personalised plan

(1) If the local housing authority are satisfied that an applicant is—

- (a) homeless or threatened with homelessness, and
- (b) eligible for assistance,

the authority must make an assessment of the applicant's case.

(2) The authority's assessment of the applicant's case must include an assessment of—

- (a) the circumstances that caused the applicant to become homeless or threatened with homelessness,
- (b) the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides or might reasonably be expected to reside (“other relevant persons”), and
- (c) what support would be necessary for the applicant and any other relevant persons to be able to have and retain suitable accommodation.

(3) The authority must notify the applicant, in writing, of the assessment that the authority make.

(4) After the assessment has been made, the authority must try to agree with the applicant—

- (a) any steps the applicant is to be required to take for the purposes of securing that the applicant and any other relevant persons have and are able to retain suitable accommodation, and
 - (b) the steps the authority are to take under this Part for those purposes.
- (5) If the authority and the applicant reach an agreement, the authority must record it in writing.
- (6) If the authority and the applicant cannot reach an agreement, the authority must record in writing—
- (a) why they could not agree,
 - (b) any steps the authority consider it would be reasonable to require the applicant to take for the purposes mentioned in subsection (4)(a), and
 - (c) the steps the authority are to take under this Part for those purposes.
- (7) The authority may include in a written record produced under subsection (5) or (6) any advice for the applicant that the authority consider appropriate (including any steps the authority consider it would be a good idea for the applicant to take but which the applicant should not be required to take).
- (8) The authority must give to the applicant a copy of any written record produced under subsection (5) or (6).
- (9) Until such time as the authority consider that they owe the applicant no duty under any of the following sections of this Part, the authority must keep under review—
- (a) their assessment of the applicant's case, and
 - (b) the appropriateness of any agreement reached under subsection (4) or steps recorded under subsection (6)(b) or (c).
- (10) If—
- (a) the authority's assessment of any of the matters mentioned in subsection (2) changes, or
 - (b) the authority's assessment of the applicant's case otherwise changes such that the authority consider it appropriate to do so,

the authority must notify the applicant, in writing, of how their assessment of the applicant's case has changed (whether by providing the applicant with a revised written assessment or otherwise).

(11) If the authority consider that any agreement reached under subsection (4) or any step recorded under subsection (6)(b) or (c) is no longer appropriate—

(a) the authority must notify the applicant, in writing, that they consider the agreement or step is no longer appropriate,

(b) any failure, after the notification is given, to take a step that was agreed to in the agreement or recorded under subsection (6)(b) or (c) is to be disregarded for the purposes of this Part, and

(c) subsections (4) to (8) apply as they applied after the assessment was made.

(12) A notification under this section or a copy of any written record produced under subsection (5) or (6), if not received by the applicant, is to be treated as having been given to the applicant if it is made available at the authority's office for a reasonable period for collection by or on behalf of the applicant.”

35. The assessment stage is generally referred to as a “housing needs assessment” and the record of the steps to be taken by the housing authority and the applicant is generally referred to as a “personalised housing plan”.
36. Housing needs have been described as the “nuts and bolts” of an applicant’s need for housing: see *R (S) v Waltham Forest LBC* [2016] HLR 41. They encompass matters such as the household composition, the medical needs of any member of the household, the required space and arrangement of any property, the cost or affordability of the accommodation, etc. The assessment of an applicant’s needs is a highly significant step in the process of alleviating an applicant’s homelessness, because it provides the basis on which accommodation will be offered to an applicant. If a family’s needs are incorrectly assessed, it is unlikely that accommodation offered to that applicant under the housing authority’s housing law obligations will meet the applicant’s needs, unless it does so by happy accident.
37. The assessment must be “sufficiently reasoned to demonstrate that the authority has addressed the statutory matters” (*R (UO) v LB Redbridge* [2023] HLR 39 at [62]). Proper assessment is essential to understanding what it is that the plan should achieve. Assessment is more than merely noting the factual background. As Munby J. stated, in the context of assessments of children leaving care, in *R (G) v Nottingham City Council and Anor* [2008] 1 FLR 1668 at [36]:

“... the local authority’s duty during assessment is not merely to identify the child’s needs – though that is presumably part of the process of assessing them – it is to “assess” the child’s needs.

“Assessment” goes beyond mere identification of needs; it involves analysis and evaluation of the nature, extent and severity of the child’s need, a process which must go far enough to enable a pathway plan to be prepared setting out in sufficiently precise detail the “manner” in which those needs are to be met”.

Conclusions

38. It was common ground between the parties that typically a housing authority will combine its assessment and its plan in one document, as in the case of the “Personal Housing Plan” produced on 8 November 2023. No criticism is made of that.
39. I agree with the Defendant’s submission that, as this was a review, the author would have been entitled to cross-refer back to earlier HNAs and PHPs. Ms Lister prepared a much more detailed HNA of the entire family on 2 May 2023. But regrettably Ms Lister did not cross-refer back to that earlier assessment in the current assessment, nor is there any indication that she took it into account.
40. I also agree with the Defendant that it is likely that, in making an assessment and plan under section 189A HA 1996, a housing officer may well have regard to relevant information held by other departments in the Council. For example, Ms Lister referred on 2 May 2023 to Ms Hardman’s OT report prepared on behalf of the Defendant’s Children and Young People Disability Services, and I have seen emails from Ms Lister to Ms Hardman requesting information. That said, there is no evidence to suggest that, when preparing the current assessment, Ms Lister had regard to the housing needs assessment, prepared on 6 October 2023, by Sophie Pitfield, OT, on behalf of the Defendant’s Children and Young People Disability Services, which focused on the needs of HZ and GZ.
41. The Claimant correctly submits that the current assessment does not include an assessment of “the circumstances that caused the applicant to become homeless” as required by subsection 2(a) of section 189A HA 1996. This is particularly important in a claim such as this where the reason the family is homeless due to the disability needs of GZ and HZ and the inability to meet those needs in the Claimant’s current home. GZ and HZ have a degenerative disease which means that their needs will intensify and they are likely to require increased support. This ought to be taken into account in the assessment as it informs the choice of property. Ms Lister could have cross-referred to her May 2023 assessment to address this requirement, but regrettably failed to do so.
42. The Claimant’s primary criticism is that the current assessment only assesses the needs of SK and GZ. It does not include or assess any of HZ’s needs, or those of JZ or KZ. The assessment (and consequently, the plan) proceeds on the basis that, as GZ is the only person currently living with SK, theirs are the only needs that fall to be assessed in the plan. This is wrong. A lawful assessment pursuant to section 189A HA 1996 “must” include an assessment of the housing needs of the applicant and of any persons “with whom the applicant resides or might reasonably be expected to reside” (section 189A(2)(b) HA 1996).
43. I do not accept the Defendant’s submission that the duty to assess persons with whom the applicant might reasonably be expected to reside only arises in the initial

assessment, and not on review. Such a narrow interpretation could produce absurd results in those cases, such as this one, where there was a possible change in composition of the household in the near future.

44. The Defendant submits that it was a matter for them to decide with whom the Claimant could reasonably be expected to reside. However, there is no indication in the evidence that Ms Lister even addressed her mind to the question whether there were persons with whom the Claimant might reasonably be expected to reside, as opposed to those with whom she was currently residing. In an email exchange on 30 October 2023 Ms Lister asked the Claimant whether her current need was for a 3 bedroom property, but she did not go on to discuss with the Claimant whether she hoped or expected the other children to return to live with her in the near future, and if so, what her bedroom requirements would be then.
45. In this case, since the last assessment, interim care orders had been made in respect of HK, JZ and KZ. As contested Family Court proceedings were ongoing, it was obvious that some or all of the children might well return to live with their mother in the near future, and Ms Lister's assessment should have taken that into account, as a possibility. Whilst it is true that a further assessment could be undertaken in the event that the other children returned to live with her, that would cause further detrimental delay to the children, especially to HZ who has been in hospital since March 2023 and is medically fit for discharge and missing family life. The evidence demonstrates that there have been considerable delays in obtaining up-to-date assessments and in finding suitable accommodation for wheelchair users.
46. I turn now to the Claimant's criticisms of the PHP. First, in my judgment, the plan was not underpinned by a lawful assessment for the reasons set out above. Second, I am not persuaded that the Defendant was required to set out further details in the PHP as to how it would conduct its search for suitable property. Third, in my view, the housing authority is under an obligation to consult with an applicant before making changes to a HNA/PHP, but it appears that there was some consultation by Ms Lister with the Claimant in this case on 30 October 2023. However, the Claimant was not made aware of the existence of the revised HNA/PHP dated 8 November 2023 until 18 December 2023. The Defendant unreasonably delayed in complying with subsection (10) of section 189A HA 1996, which requires the authority to "notify the applicant in writing of how their assessment of the applicant's case has changed (whether by providing the applicant with a revised written assessment or otherwise)", for the reasons set out at paragraphs 27 and 28 above.
47. Finally, I accept that, by section 11 of the Children Act 2004, the Defendant is under a duty to have regard to the need to safeguard and promote the welfare of children, in individual cases, as well as when formulating general policies and practices (see *Nzolameso v City of Westminster* [2015] UKSC 22; *R (E) v Islington LB* [2018] PTSR 349). However, I am not persuaded that it is appropriate or necessary to explore whether or not the duty has been breached by the failure to comply with section 189A HA 1996, as identified under Ground 1.
48. For the reasons set out above, I grant permission to apply for judicial review on Ground 1, and Ground 1 succeeds in the substantive claim for judicial review.

Ground 2

49. In the light of the Defendant's concessions, neither party invited me to address the substantive grounds. The focus of the submissions was the grant of relief. In my judgment, this is a case in which a mandatory order to comply with the duty to accommodate the family under section 193 HA 1996 may well be appropriate, having regard to *R(Imam) v LB Croydon* [2023] UKSC 45. However, there are two outstanding matters which ideally ought to be resolved prior to my determination on that issue. First, whether or not the accommodation at 127 Canterbury Avenue is suitable. Second, the outcome of the Family Court proceedings in the week commencing 29 January 2024 which will decide whether HZ, JZ and KZ are to be taken into care. That in turn will determine the size and type of accommodation that the Claimant requires.
50. I am grateful to Counsel for reaching agreement on the way forward, as follows. The Defendant shall produce a new housing needs assessment and personalised housing plan, pursuant to section 189A of the Housing Act 1996, in consultation with the Claimant, and in accordance with the law, within 14 days of the date of the order in the claim and shall provide a copy of it to the Claimant's solicitors by that date.
51. No later than 7 days of the date on which the Defendant is required to produce a new housing needs assessment and personalised housing plan, pursuant to paragraph 5 of the order in this claim, the Defendant shall reconsider the suitability of 127 Canterbury Avenue ("the Property") in the light of the new housing needs assessment, the reports of Elizabeth Peskin, dated 18 January, 2024 and of Rachel King, dated 24 January 2024, and any other relevant information, and shall notify the outcome of that reconsideration to the Claimant's solicitor by that date.
52. If the Defendant considers that the Property is suitable, it may, within 7 days of the date on which it is due to consider the suitability of the Property, re-offer it by sending a letter to that effect to the Claimant's solicitors. If instead it considers that the property is not suitable, it will withdraw the offer and the duty pursuant to section 193(2) Housing Act 1996 will remain extant.
53. The Claimant's application for relief on Ground 2 is adjourned until after the determination of the current care proceedings in the Family Court, or of any decision of the Family Court determining that it is in the best interests of any of the children to return to live with their mother, before final determination of the care proceedings.

Final conclusion

54. The Claimant's application for permission to apply for judicial review on Ground 1 is granted. Judicial review is allowed on Grounds 1 and 2. The issue of relief on Ground 2 is adjourned, to a date to be fixed, as set out in paragraph 53 above.