Neutral Citation Number: [2019] EWHC 1154 (Admin)

Case No: CO/3329/2018

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
ADMINISTRATIVE COURT

Rolls Building
Fetter Lane,
London, EC4A 1NL

Date: 16/05/2019

Before :

Upper Tribunal Judge Markus QC sitting as a Judge of the High Court

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Between :

The Queen on the application of Alexander Kuznetsov	**Claimant**
- and –	
The London Borough of Camden	**Defendant**

- -
- -

Mr Michael Paget (direct access) for the **Claimant**
Ms Victoria Osler (instructed by **Mark Reihill, London Borough of Camden**) for the **Defendant**

Hearing date: 1st May 2019

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Approved Judgment

I direct that pursuant to
CPR PD 39A para 6.1 on official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

....
Upper Tribunal Judge Markus QC

Upper Tribunal Judge Markus QC:

Introduction

1. In this application for judicial review, the Claimant challenges decisions of the London Borough of Camden that he was not qualified for the allocation of housing under Part 6 of the Housing Act 1996.

2. The Claimant had raised numerous grounds for judicial review. At an oral hearing, Mr John Bowers QC sitting as a Deputy High Court Judge gave permission on one ground only: whether section 2.2.5 of the Defendant's Housing Allocation Scheme was properly applied by the Defendant in refusing the Claimant entry to its housing register. At the substantive judicial review hearing the Claimant sought, unsuccessfully, to reintroduce issues on which he had failed to obtain permission, and the hearing proceeded on the basis of the sole ground on which permission had been given.

3. Before setting out the factual background, it is helpful to set out the relevant statutory framework and the provisions of the Council's allocations scheme which are in issue in these proceedings.

The Statutory Framework

4. A local housing authority is required by law to allocate housing accommodation (ie to select people to be secure or introductory tenants of council accommodation, or to nominate people to be tenants of social housing providers or landlords) in accordance with the provisions of Part 6 of the Housing Act 1996. By section 160ZA(6) housing accommodation may be allocated only to "qualifying persons". Subject to provisions which are not material for present purposes, section 160ZA(7) provides that it is for the local housing authority to decide which classes of persons are or are not qualifying persons.

5. Section 166A(1) requires every local housing authority to have a scheme for determining priorities and procedures to be followed in allocating housing accommodation. Section 166A(11) provides that, subject to the provisions of Part 6 and regulations made under them, "the authority may decide on what principles the scheme is to be framed." Section 166A(14) prohibits an authority from allocating housing accommodation except in accordance with their allocation scheme.

6. The statutory code of guidance, *Allocation of accommodation: guidance for local housing authorities in England*, to which authorities are required to have regard under s169(1), issued in June 2012, explains the objectives of the current provisions of Part 6 (introduced by the Localism Act 2011) at para 2.1:

> "The main policy objectives behind these amendments are to enable housing authorities to better manage their housing waiting list by giving them the power to determine which applicants do or do not qualify for an allocation of social housing. Authorities will be able to operate a more focused list which better reflects local circumstances and can be understood more readily by local people. It will also be easier for authorities to manage unrealistic expectations by excluding people who have little or no prospect of being allocated accommodation …".

Camden's housing allocation scheme

7. Section 2.2 of Camden's allocation scheme sets out those who do not qualify for entry onto the housing register, including the following:

> "2.2.5 You or anyone included in your application have a high level of household savings or assets, including if:
>
> • you own or have recently owned a property or an interest in a property in the UK or elsewhere. If you recently owned a home, you will be asked for evidence of

the sale and details of any capital gained from the sale to help decide whether you qualify for the housing register, or

• you have financial assets, such as savings, above £32,000…You will…not be subject to this test if you are awarded points or are entitled to a direct offer for under-occupation, regeneration or redevelopment. The Council will exempt some people where it is in the Council's legal, financial or strategic interest to do so."

8. Paragraph 4.5.6 provides for 600 points to be awarded for regeneration or redevelopment, if:

"you are a Camden Council tenant and are required to leave your property because it has been identified for regeneration under a major redevelopment project…"

9. Section 7.1 provides for direct offers of accommodation. It includes the following:

"7.1.2 The Council may also make direct offers of properties in some limited circumstances where it is in our financial or strategic interests…

7.1.3 You may receive a direct offer if:

• you need to move urgently so that Community Investment Programme or other redevelopment work can be completed….

• it is in the Council's wider strategic interests to move you or it helps the Council manage the housing stock more effectively…"

Factual background

10. The Claimant had purchased the leasehold interest in 150 Bacton, which was on the Bacton Low Rise Estate in the London Borough of Camden. In 2012 the Defendant approved a redevelopment strategy for the estate. The Claimant's property was valued by estate agents instructed by the Council at £620,000 and in April 2015, the Defendant offered the Claimant £654,000 to purchase his interest in the property. The Claimant refused that offer. The Defendant made a compulsory purchase order on the Claimant's property. In 2016, the Defendant repeated the offer of £654,000 as compensation for the Claimant's interest in the property. The Claimant refused that offer and an offer of an interim payment pending his challenge to the compensation offered to him. He believes that the property is worth over £900,000. On 20th October 2017 the Claimant was evicted from 150 Bacton and in January 2018 the property was demolished.

11. Following his eviction, on 24th November 2017 the Claimant applied for entry to the Defendant's housing register. On the application form he said he was homeless because he could no longer live in his home "because of its condition", said he had no current permanent address but gave his contact address as 150 Bacton, named Oxana Kuznetsov as his spouse or partner, stated his household savings to be £21,000 and declared that no one in his household had any shares or bonds. On 29th November 2017, the Claimant made a second application for entry to the Defendant's housing register. Much of the details provided were the same as in the previous application, but the declared household savings were £13,000.

12. On 13th December 2017 Ms Julie Newsam, Accommodation Services Placement Manager, wrote to the Claimant informing him that his housing application has been closed. She referred to the provisions in the Council's Allocations Scheme for those who cannot qualify for the register, including at paragraph 2.2.5. She referred to the valuation of 150 Bacton, and the Claimant's belief that it was worth over £900,000. She also said that, although the Claimant had declared that he had no financial assets, the Defendant had found evidence of that he was company director of three companies and that he and his spouse owned shares to a total value of £540,260. As this placed him well above the £32,000 threshold in the scheme, he did not qualify to be on the register. She advised him of his right to request a review of the decision. The Claimant sought a Stage 1 review. The decision was upheld, as notified to the Claimant by a letter dated 27th December 2017.

13. The Claimant made a third application on 1st January 2018. Oxana Kuznetsov was omitted from the application, household savings were declared as £8,000 and he stated that he had shares worth under £5,000. A fourth application was made on 10th April. In relation to his current housing situation the Claimant said "I have somewhere to live but am required to leave", and also stated "I can no longer live in my home because of its condition", gave the date of losing his home as 10th April 2018 but gave his current address as 150 Bacton. He declared the household savings to be £5,200 and the value of shares as under £3,000. Four further similar applications followed in April and May, the main difference being that the date for losing his home was stated to be the same as the date of each of the applications.

14. On 24th April 2018 the Claimant requested a review of the Stage 1 review decision dated 27th December 2017 and of the determination of his fourth application dated 10th April 2018. Mr Bianchi, Team Manager (Accommodation Placements Team), was assigned to conduct that review. During the course of correspondence with Mr Bianchi, the Claimant confirmed that he requested reviews of all his applications. On 9th May 2018 Mr Bianchi asked the Claimant to provide details regarding his current address, household composition and details of his financial assets. The Claimant replied that the questions raised had been addressed in his application. On 11th May Mr Bianchi repeated his request for information. The Claimant replied on the same day stating this his address was that on the application form, that it was a four bedroom property, that he had £2,000 savings and shares worth under £3,000 and they were "in a private company which does not have exchange listing, they could not be sold for value." He went on to make representations as to the application of paragraph 2.2.5 to his case, and to complain about Ms Andrews' decision. On 16th May Mr Bianchi requested documentation to support the value and amount of assets stated by the Claimant. He pointed out that 150 Bacton no longer existed and so it could not be the Claimant's current address, and that the Claimant had ignored the request for information regarding household members. The Claimant was warned that failure to comply with the requests could result in the stage 2 review being closed.

15. On 16th May the Claimant emailed Mr Bianchi. He repeated that information about household composition had already been provided, and attached a bank statement showing a balance of £361.08. He failed to supply any documentation in support of his claimed assets or their value, or to provide details of his current address and those who occupied it with him. Mr Bianchi replied by email of 17th May explaining that the information regarding household composition differed from one application to another, and repeating his request for that information, for information confirming the value and amounts of the assets which he had claimed to have, and for his current address, to be provided by the end of the working day on 18th May. The Claimant replied taking issue with the review process but failing to provide the requested information. Mr Bianchi replied on 17th May. He explained the process and repeated the request for information. The Claimant's response on the same day was, in essence, further procrastination. Mr Bianchi asked for the information "one final time", to which the Claimant replied by repeating the claim that the information had been provided, taking issue with the application of the policy and complaining about the process.

16. The information requested not having been provided by the 18th May, Mr Bianchi sent his review decision letter at the end of that day. He summarised his unsuccessful attempts to obtain information from the Claimant, noted that in the different applications the Claimant had given his address as "NFA" and as "Flat 150 Bacton" although it had been demolished the previous year, and that he had not provided a contact or correspondence address. He noted that Oxana had been included as a household member in some applications but not others. Next he said:

> "Your assets, which is the key issue – you have stated in your email of the 11th May 2018 that your assets consist of "approximately £2,000 in savings and shares worth under £3,000. Since the shares were in a private company which does not have exchange listing, they could not be sold for value." I asked you to provide documentation to substantiate the above, but instead you emailed me details of a First

> Direct Bank account with a balance of £361.08. You did not make any reference regarding the asset information, as detailed in Ms Andrews' letter, during our email exchanges.
>
> Following our numerous email exchanges and your refusal to provide the information requested…I gave you a deadline, of Friday, 18th May (on the 16th May) in order not to prolong this matter any further than is necessary. You have not met the deadline, or even given an indication as to when you could provide the information,"

17. Mr Bianchi noted that instead of providing information the Claimant had asked for the review to be assigned to someone else on the basis of unsubstantiated complaints of bias and prejudice, and that the Claimant had said that Ms Andrews's assessment of assets was "wrong and unfounded" but had not provided any evidence or documentation in support. The letter concluded:

> "Although I have given you ample opportunity to respond and provide the information requested, you have not complied and in fact repeatedly ignored and avoided my appeals for facts/evidence. I am therefore upholding Ms Andrew's decision to disqualify you from joining the housing register on the basis of your assets – as detailed in her letter. I am also concluding my review on the basis of non-cooperation and also because the information provided (on your multiple applications) is factually incorrect".

18. On 19th May 2018, the Claimant made various allegations of "misfeasance and misconduct" against the Defendant's allocation team. By a letter dated 19th June 2018, Ms Vivienne Caswell, the Complaints Investigation Officer, wrote to the Claimant to inform him that she had decided not to uphold his complaint. Amongst other things, she noted the Claimant's complaint that the review had not addressed paragraphs 4.5.6 or 7.1.3 of the scheme and said she was "sorry if this was not fully covered". However, she said that paragraph 4.5.6 did not apply as he was not a council tenant and, in relation to paragraph 7.1.3, that "the council would not normally make direct offers to home owners, or former owners who have been offered adequate payment for their former home. As you have not received a direct offer, section 7.1.3 does not apply." She concluded:

> "As you are not entitled to points under sub-section 4.5.6 or to a direct offer under 7.1.3, section 2.2.5 is applicable. I have therefore concluded that the Allocations Team have correctly taken your assets into account when assessing your application and that you have also been provided with opportunity to provide more information".

<u>The submissions</u>

19. Mr Paget submitted that the two bullet points within paragraph 2.2.5 are exhaustive of its application, and that neither applied to the Claimant. He submitted that the first bullet point did not apply to the Claimant because he did not own 150 Bacton as it had been repossessed and demolished, and, although he had recently owned it, he had not sold it. As for the second bullet point, he said that there was insufficient evidence to enable the Defendant reasonably to conclude that the Claimant had assets over £32,000, alternatively the Defendant had failed to make adequate enquiries before reaching that conclusion.

20. Mr Paget also submitted that the Claimant had been entitled to the benefit of the exemptions to paragraph 2.2.5 set out in the second half of the second bullet point. First, he was eligible for points under paragraph 4.5.6. The term "council tenant" included a long leaseholder, and the Claimant had been required to leave his property because it had been identified for regeneration under a major redevelopment project. Second, although paragraph 7.1.3 was discretionary, the Claimant had a right to be considered for a direct offer either because he needed to move urgently so that redevelopment work could be completed, or because it was in the Council's strategic interests to move him. As acknowledged by Ms Caswill in the letter

of 19th June, the Defendant had not considered these provisions in either the original or the review decisions and it was not possible to say that it was inevitable that the Defendant would not have made a direct offer had the provision been considered.

21. Ms Osler submitted that the two bullet points were merely examples of the general policy set out in the opening sentence of paragraph 2.2.5. In any event, the Council's decision that either bullet point applied to the Claimant was reasonable. There was no need for the Council to have considered paragraph 7.1.3 because it was clearly of no application.

Discussion and conclusions.

22. The context for the exclusion in paragraph 2.2.5 was set out in the witness statement of Mr Dwyer, a housing needs improvement manager employed by the Defendant:

> "Camden is a central London borough with great disparities of wealth and property values. Non-council housing in central London becomes increasingly unaffordable and the rent to income ratio increases each year. Taking this into account our scheme disqualifies, as well as home owners, people with a certain level of financial resources (the example is £32,000 or more)…In brief, the scheme is primarily a scheme for people who need housing (that is, who do not already have suitable housing) and who cannot afford to obtain it."

23. It is abundantly clear from the plain wording of the policy that the exclusion applies to applicants with a "high level of household savings or assets". The paragraph does not state what constitutes a "high level of household savings or assets" (although a footnote to that sentence states that the thresholds will be the subject of regular review and approval by the Director for Housing and Adult Social Care). It is also clear from the word "including" that what follows are examples of the general exclusion. They do not define the the extent or limit of the exclusion.

24. Whatever else might be said about the application of either of the two examples to the Claimant's case, there can be no doubt that, on the evidence, the Defendant was entitled to conclude that the Claimant had a "high level of household savings or assets". He was entitled to compensation pursuant to the compulsory purchase of his flat. The value of the flat had been assessed by estate agents as £620,000, the Defendant had offered £654,000 and, on the Claimant's case, he was entitled to over £900,000. The Claimant had rejected the offer of payment and an offer of an interim payment while the dispute as to the amount was ongoing. The Claimant could not reasonably contend that he did not have money which had been offered and which he had refused to accept, in particular in this case where it remained available to him. Mr Paget said that the Defendant did not know whether the property had been encumbered with a mortgage or otherwise, but the Claimant had never contended that this was the case and the Defendant was entitled to proceed on the basis that the money was the Claimant's. It was wholly reasonable for the Defendant to treat him as having a high level of assets.

25. Moreover, the Defendant had found evidence that the Claimant held company shares to a very high value. The Defendant had asked the Claimant to provide information to support his contention that the shares were not of that value or could not be liquidated, but the Claimant had failed to do so. All that the Defendant had was the Claimant's assertion that the shares were held in a private company and so could not be sold. There was no reason why the Defendant should have accepted that assertion as accurate. The Claimant had been provided with ample opportunity to support his claim as to their value. He failed to do so. For the purpose of this hearing, the Claimant has provided unaudited accounts showing shareholder funds in each of the three companies of very much lower amounts than that identified by the Defendant, but these accounts are for a different year to that relied on by the Defendant and there has been no explanation why the Claimant did not produce the accounts for the previous year, nor any explanation for the asserted decrease in value. In any event, that information was not before the Defendant at the time of its decisions. Finally, the Defendant was entitled

to treat the Claimant's assertions with a high level of scepticism given the inconsistent and incomplete information that he had provided in the various applications and in his obstructive responses to Mr Bianchi's inquiries.

26. The Defendant's conclusion that he had a "high level of household savings or assets" was a reasonable one. Further, even if the two examples under paragraph 2.2.5 were exclusive of its application, it was clear that either or both applied in this case.

27. The first bullet point applied to someone who had recently owned a property. The Claimant had recently owned his flat. The second sentence of that paragraph, explaining that an applicant would be asked for evidence of the sale, cannot be read as meaning that the exclusion applied only where ownership had ended by means of a sale. This sentence simply illustrates the requirement to provide evidence of asserted assets derived from a recently owned property. It could not be material whether the property had been sold or compulsorily purchased. The point was that the Claimant had (or was entitled to) capital generated by his recent ownership of the property.

28. The value of the compensation to which the Claimant was entitled meant that the second bullet point also applied. In any event, as I have explained above, the Defendant's conclusion that the Claimant held shares worth well over £32,000 was an entirely reasonable one.

29. Finally, the exclusions from the exemption which applied in a case of regeneration or redevelopment were not capable of applying to the Claimant.

30. I reject Mr Paget's submission that the Claimant was a "Council tenant" and so within the scope of paragraph 4.5.6. The allocation scheme is a policy which is to be understood in context. The Claimant had been a council tenant. He had exercised the right to buy and purchased a lease. Although, as a matter of law, he was a "tenant", he was not a "council tenant". The latter is a term which is readily understood by members of the public, local authorities and housing lawyers, and broadly refers to a tenant holding under one of the forms of tenancy provided for in the Housing Acts. As a matter of ordinary usage, the term does not include those who have purchased a lease under the right to buy.

31. The allocation scheme makes specific provision for leaseholders to obtain a council tenancy:

> "8.1.1 If you are a Council leaseholder, you can sell your property back to the Council under its buy back scheme. Under this scheme we may grant a tenancy to the leaseholder".

32. This shows that, within the terms of this scheme, a leaseholder is not a council tenant. The distinction also follows from the different treatment afforded by the Defendant to tenants and leaseholders who are affected by regeneration or redevelopment. Where a tenant is required to leave their home for those reasons, the scheme assists them in obtaining an allocation of alternative premises in which their status as a social tenant will continue. Different considerations apply to the protection of a leaseholder's asset, where the concern is not with protection of status or tenure but with compensation for loss of the asset. This difference is recognised by the Defendant's regeneration policy which includes a section "Options for Leaseholders". This acknowledges that, once a leaseholder has agreed a price for their property, generally they will be able to buy another property for themselves on the open market. The policy also offers leaseholders other options for purchasing property (shared ownership or shared equity). There is a residual option for leaseholders who are unable to purchase another property and are experiencing severe hardship, to become social rented tenants either in the regeneration scheme or another part of Camden. The phrase "*become* social rented tenant" shows that the premise of the policy is that a leaseholder is not a social housing tenant. It is apparent from these different and very specific provisions for leaseholders that paragraph 4.5.6 of the allocation scheme is not intended to apply to them.

33. I endorse Ms Osler's submission that "The Claimant's attempt to shoehorn himself within the definition of a 'Council tenant' entirely (and perhaps deliberately) misunderstands the

different interests enjoyed by tenants and leaseholders respectively, and the very purpose of this paragraph in seeking to protect the interests of the former, while outside this paragraph compensating for the lost interest of the latter."

34. Finally, the Claimant could not possibly have fallen within the scope of paragraph 7.1.3 of the Scheme. The first class of case within this policy did not apply to the Claimant as, by the time he made his application, he had already moved out of the property and so did not need to move "urgently". Nor was there any basis on which it could be said that it was in the Defendant's wider strategic interests to move him. The Defendant had already obtained possession of the flat. When this was put to Mr Paget, he did not attempt to advance any factual basis on which it could be said that the provision applied to the Claimant. Even if the Claimant could have brought himself within any of the categories of person who may receive a direct offer, it is clear from paragraph 7.1.3, read along with 7.1.2, that there is no *right* to a direct offer. The Claimant was not "entitled" to a direct offer to exempt him from paragraph 2.2.5. Ms Caswell's apology, in her decision letter, for the Defendant having failed to consider those exemptions was generous but unnecessary. The exemptions were of no possible application and they simply did not call for consideration in this case.

Postscript

35. After I handed down the draft judgment, Mr Paget sent further written submissions regarding the meaning of "council tenant" referring to sections 11 and 21 of the Interpretation Act 1978 and section 219 of the Housing Act 1996. He asked the court to "consider" the above conclusion and "provide further reasons, if necessary". Ms Osler responded in writing, objecting to the request.

36. The approach to a request to reconsider a draft judgment has been considered in detail by Fraser J in *Gosvenor London Ltd v Aygun AluminiumUK Ltd* [2018] EWHC 227 (TCC); [2018] Bus LR 1439 in particular at [44]-[48] and [52]. As the judge said there, a draft judgment is not "an open invitation to embark on an additional round of litigation…raising further arguments". However, it is also clear that the power of the judge to reconsider the draft judgment is not limited to "exceptional circumstances". The judge has a discretion which depends on all the circumstances of the case.

37. In this case, although the question whether the Claimant was a "council tenant" within the allocation scheme was squarely before the court, no mention was made of the above statutory provisions until after the draft judgment was circulated. No explanation has been provided for this omission. On the other hand, it is undesirable to fail to address statutory provisions now drawn to my attention if they are material to the decision in hand. It should not be necessary for a party to appeal to correct an error which has been drawn to my attention and I could have corrected. I have therefore decided that it is in the interests of justice to consider Mr Paget's new submissions. However, I am satisfied that the analysis and conclusions in my draft judgment are consistent with them for reasons which I now explain.

38. The provisions which the Claimant relies on are as follows:

Interpretation Act 1978

"11. Where an Act confers power to make subordinate legislation, expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in the Act."

"21(1) In this Act "Act" includes a local and personal or private Act; and "subordinate legislation" means Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act."

Housing Act 1996

219. Meaning of "lease" and "tenancy" and related expressions.

(1) In this Act "lease" and "tenancy" have the same meaning.

(2) Both expressions include—

(a) a sub-lease or a sub-tenancy, and
(b) an agreement for a lease or tenancy (or sub-lease or sub-tenancy).

(3) The expressions “lessor” and “lessee” and “landlord” and “tenant”, and references to letting, to the grant of a lease or to covenants or terms, shall be construed accordingly.”

39. These provisions do not alter my conclusion as to the meaning of “council tenant” in the allocation scheme, although I have slightly altered some of the wording (but not the substance) of paragraph 30 above by way of clarification. My acknowledgment that the Claimant was a “tenant” as a matter of law is consistent with section 219 of the Housing Act 1996. However, for the reasons which I have given in paragraphs 30 to 33, the term “council tenant” as used in the scheme is intended to mean something different. It follows that the word “tenant” as used in the term “council tenant” in the allocation scheme is not to be given the meaning in section 219 of the Housing Act 1996 because “the contrary intention appears”.

40. Further submissions were also received from the Claimant, after the deadline for returns had passed. It is not clear to me on what basis the Claimant rather than counsel has made these submissions. However it is not necessary for me to inquire further into the position because there is no possible justification for my reconsidering the draft judgment in the light of those submissions. The new submissions are no more than disagreement with the draft judgment. Some of the submissions are repetitious of points already made and which I have addressed. To the extent that the submissions make new points, they could and should have been raised at the hearing (see *Gosvenor London* at [52]).

Conclusion

41. For these reasons, the application for judicial review is dismissed.