Neutral Citation Number: [2019] EWHC 2618 (Admin)

Case No: CO/2377/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 October 2019

Before :

DAVID PITTAWAY QC

Sitting as a Deputy Judge of the High Court

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Between :

THE QUEEN	**Claimant**
on the application of SH	
- and –	
THE LONDON BOROUGH OF WALTHAM FOREST	**Defendant**

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- -

Lindsay Johnson (instructed by **Hopkin Murray Beskine**) for the **claimant**
Millie Polimac (instructed by the **London Borough of Waltham Forest**) for the **defendant**

Hearing date: 2 October 2019

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Approved Judgment

David Pittaway QC :

1. The claimant challenges two decisions of the London Borough of Waltham Forest regarding the application of its housing policy on homelessness. First, the defendant's failure to comply with its duties under section 193 of the Housing Act 1996 ("Part 7 challenge"). Second, the failure of the defendant to permit the claimant entry to its housing allocation scheme ("Part 6 challenge"). At the outset of the hearing, the parties indicated that they had reached agreement on the second ground on the basis that the claimant would be placed on the housing allocation scheme backdated to 20 April 2015 and that part of the claim would be discontinued.

2. The claimant travelled to the UK in 2012, having fled trafficking for the purposes of sexual exploitation. She was at that time pregnant as a result of forced sexual intercourse. She was granted refugee status in 2014. She applied to the defendant as homeless in September 2014. The defendant accepted the duty to offer her suitable accommodation under section 193(2) of the Housing Act 1996, on 20 April 2015. It was satisfied that the claimant was eligible for assistance, homeless, in priority need and not intentionally homeless. She was housed in various temporary accommodation across London. On 14 May 2016, the defendant offered the claimant accommodation in Ilford. It is common ground that the defendant's offer letter is not in evidence. In 2017, the claimant was served with a no-fault eviction notice in respect of that property, requiring her to vacate the property.

3. On 25 August 2017 the defendant made an offer of accommodation in Tottenham, which the claimant accepted. At that time the defendant acknowledged that it owed the claimant a duty under section 193(2) to secure suitable property, which it sought to discharge by way of a Private Rented Sector Offer ("PRSO"). From the start of the tenancy, the claimant and her daughter experienced significant difficulties with living in the property. The claimant sets out in her statement the nature of those difficulties. They are comprehensively detailed in a letter from the Refugee Council to the defendant dated 26 July 2018. In summary, the communal grounds of the block of flats are used as an open-air brothel where sexual activity can be seen by the claimant and her daughter. The claimant has taken videos from her flat of the activities in the gardens around her flat. The claimant's daughter's school had written to the defendant, stating that witnessing such activities was having a detrimental impact on the child, and a psychotherapist from the Refugee Council had written as to the effect on the claimant's mental health.

4. On 27 July 2018, the claimant approached the authority asserting that she was homeless. The defendant treated this as a fresh application as homeless whereas it is submitted on behalf of the claimant that it should be treated as a re-application. On 31 October 2018 the defendant made an offer of a property in Kettering, under section 189B(2) of the Act, which was refused. On 24 April 2019, a letter before action was sent to the defendant by the claimant. A response was received on 8 May 2019.

5. The outcome of this case turns on the application by the defendant of section 193 of the Housing Act 1996 and, to a certain extent, its inter-relationship with section 189B of the same Act. The central issue is whether the offers of the tenancies of either the Ilford or Tottenham properties were made in accordance with the provisions relating to private

rented sector offers contained in section 193 (7AA) and (7AB) of the Act and the Homelessness (Suitability Accommodation) (England) Order 2012.

6. The claimant submits that the absence of the defendant's offer letter for the Ilford property, and the absence of proper enquiry into the suitability of the Tottenham property, means that neither property satisfied the statutory requirements for an offer of private sector accommodation under section 7(AA) and (AB) of the Act. Thus, the claimant submits that the defendant has failed to discharge its duty under section 193 of the Act.

7. The defendant submits that it discharged its duty under section 193 (2) of the Act by securing suitable alternative accommodation with both the Ilford and Tottenham properties and in accordance with the Homelessness (Suitability of Accommodation) (England) Order 2012. It submits that where the documents are no longer available, the court should infer that the procedures were followed in accordance with the statutory requirements. It relies upon the principle of regularity. The defendant submits that the refusal of the offer of the Kettering property, offered under section 189B of the Act, discharged the defendant's duty to provide property under section 193 (3) of the Act.

8. I have not set out the myriad of statutory provisions in this judgment. Taken from the defendant's clear skeleton argument, the basic structure of the statutory provisions is as follows.

9. The section 193 duty can be discharged under section 193(7AA) of the Act if the applicant, having been informed in writing of the matters mentioned in section 193(7AB), accepts or refuses a PRS offer. Thus, to be a valid discharge of the section 193 duty, the following conditions need to be met. There has to be an offer of property in writing, which warns the applicant of the matters in section 193(7AB), namely: (i) the possible consequences of refusal or acceptance of the offer; (ii) the right to request a review of suitability; and (iii) the effect under section 195A of a further application to an authority within 2 years of acceptance of the offer. The property has to comply with the conditions in section 193(7AC), namely, (i) it has to be an AST for a fixed term of at least 12 months, (ii) it has to be made with the approval of the authority in pursuance of arrangements made by the authority with a view to bringing the authority's duty to an end. The authority have to be satisfied that the property is suitable (section 193(7F)).

10. The first issue I have to decide is whether the section 193 duty was discharged by the offer made of the Ilford property on 16 May 2016.

11. As set out above, it is agreed between the parties that the defendant's duty to secure suitable accommodation for the claimant under section 193(2) was accepted on 20 April 2015.

12. Mr Johnson explained that prior to November 2012, refusal of an offer would only lead to discharge of duty if the offer was of social housing. The Localism Act 2011 introduced the concept of a "Private Rented Sector Offer" ("PRSO"), refusal of which would enable an authority to discharge the duty towards an applicant. Parliament imposed a wide range of additional criteria which a PRS offer letter should satisfy (see section 193(7AC), (7F) and the Homelessness (Suitability of Property) (England) Order 2012/2601). The Act itself also imposes additional procedural requirements, namely

> "(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."

13. In the letter from the defendant, dated 20 April 2015, in which it accepted that it owed a duty to the claimant under section 193(2) of the Act to secure suitable accommodation, reference is made to both the provision of temporary accommodation under section 193, and the offer of future suitable property and the consequences of refusal of an offer of suitable property. There is no reference in that letter to the particular provisions attached to the offer of private sector property. It does not alert a prospective tenant to the particular provisions of section 193(7AA) and (7AB).

14. When the defendant's offer of the Ilford property was made, the claimant was granted a 12 month assured shorthold tenancy, which, in the absence of the defendant's offer letter, Mr Johnson contends was temporary accommodation. As I have said, there is no letter, in the defendant's standard form, on the housing file giving the notification required by subsection 193 (7AA) of the Act. The claimant submits that there is no evidence of such letter being sent and that is fatal to the defendant's discharge of its duty under section 193 of the Act. Mr Joseph, the defendant's Head of Prevention and Assessment, proffered tentative explanations in his witness statements as to why there was no copy of the offer letter on the housing file, namely that the Lettings Waltham Forest ("LWF") team had been disbanded and a new Private Sector Lettings Team was created. He also explained that the defendant had changed from paper to electronic records. The defendant relied upon those two events as possibly accounting for why a large number of documents had been difficult to find in this case. By contrast the claimant's witness statement states that she kept all the defendant's communications and is not in possession of an offer letter in respect of the Ilford property. The defendant accepts that when it was unable to locate the tenancy agreement, the EPC and the energy certificates in relation to the Ilford property, copies were to be found in the claimant's disclosure. It seems to me, that those facts, are pointers in the direction that the defendant did not send an offer letter to the claimant providing the statutory information under section 193(7AA) of the Act.

15. The defendant also relies upon its standard practice, namely that as the offer was made by the LWF team, it could only have been a PRS offer accommodation because the LWF team did not offer temporary accommodation. Temporary accommodation would only have been offered by the Temporary Property team. Further that it was standard practice in the LWF team to send PRS offer letters, like the PRS offer letter for the Tottenham property, which was sent to the claimant on 25 August 2017. The claimant submits there is a presumption of regularity in relation to public authorities, which if it is applied, means that if it was standard practice to send such offer letters, it is to be presumed that one was sent. The claimant also relies upon records which show that the offer of the Ilford property was made pursuant to an agreement with the landlord where the landlord was paid an incentive to the landlord, as indicating it was a PRS offer. Finally that a letter from Mr Sharrock, the defendant's lettings negotiator, to housing benefit expressly confirmed that the Ilford offer was not Temporary Accommodation but Private Sector accommodation and should be treated as such for housing benefit purposes.

16. There is force in Ms Polimac's submission that the claimant's advisors also made the same assumption. When the Refugee Council wrote on behalf of the claimant to the defendant, in May 2017, after the landlord required possession of the Ilford property, it assumed that the accommodation at the Ilford property had been secured under section 193 of the Act. Ms Polimac also relied upon a letter from claimant's former solicitors, Osbornes, dated 18 July 2017, which stated that, in May 2016, the Claimant had accepted an offer of private sector rented property under s.193(7AA), and the claimant was making a Part 7 homelessness application within two years of acceptance of a private rented sector offer.

17. In my view the decisive evidence on this issue is to be found in the computer records, which Mr Johnson took me to. There is no reference in either set of computer records to indicate that the defendant sent a standard form offer letter for the Ilford property, giving notification in accordance with section 193(7AA) of the Act. The entry for 16 May 2016 reads: "client being rehoused by LWF 16/5/2016. Details to follow." There are no further entries until the following year, when on 7 April 2017, the landlord informed the defendant that it required the property back in order to sell it. More significantly, there is also an entry for 2 May 2017 which states: "App was assisted by LWF to secure property in May 2016. section193 duty was not discharged at the tme."

18. Taken with the fact that the claimant does not have in her possession a copy of any offer letter giving notification for the Ilford property, I have concluded that on this occasion an offer letter was not sent. Whilst I accept that the defendant's policy, in accordance with Mr Joseph's witness statement, would have been to send such a letter, and that both the Refugee Council and the claimant's solicitors were under the impression that the tenancy had been offered under section 193 (7AA) of the Act, those matters do not materially assist the defendant. The purpose of section 193 (7AA) and (7AB) of the Act is to provide specific criteria regarding the use of private rental sector accommodation for the the homeless. It is, therefore, a requirement that the prospective tenant receives notification of the matters contained in the section. If the prospective tenant does not do so, then there was non-compliance with a statutory obligation.

19. I accept Mr Johnson's submission that the offer of the Ilford property did not comply with statutory requirements of section 193 (7AA) and the duty under section 193(2) was not discharged in May 2015.

20. The second issue is whether the s.193 duty was discharged by the defendant's offer letter for the Tottenham property dated 25 August 2017.

21. Mr Johnson submits that the defendant did not satisfy itself that the Tottenham property was suitable accommodation, moreover, it did not comply with the requirements of the Homelessness (Suitability of Property) (England) Order 2012. The property was not suitable for the claimant and her daughter, principally because the property is in the vicinity of street prostitution and drug dealing, which was not suitable for a child or for a woman who was a survivor of human trafficking for sexual exploitation. He relies upon the fact that the defendant accepted as long ago as September 2018 that the appellant was homeless as evidence that the property was never suitable, as such it could not have been a valid PRS offer. He submits that the effect is that the original section 193(2) duty from 2015 has never been discharged and the defendant remains under a duty to secure suitable accommodation.

22. Mr Johnson raises other issues as to whether, in any event, the requirements of section 193 (7AA) and (7AB) of the Act had been satisfied, namely, enquiries into the landlord's fitness, and the provision of energy and safety certificates. He submits that there is no evidence that it satisfied itself that the landlord was a fit and proper person. He contends that the letter signed on behalf of the agents for the owners of the property was inadequate, and that the safety certificates post-dated the offer letter, indicating that proper checks had not been carried out.

23. On the primary issue, I find that that the Tottenham property was never suitable accommodation. It seems to me that any proper due diligence should have alerted the defendant to the unlawful sexual activity that was taking place in the communal gardens of the Tottenham property. Bearing in mind that the defendants should have been aware of the particular characteristics of the claimant and her daughter, the offer should never have been made. On the secondary issues, I prefer Ms Polimac's submissions. I note that the letter signed on behalf of the landlord contains a full statement above the signature, which expressly sets out the matters about which the defendant was required to be satisfied. The fact that new certificates were sent to the defendant shortly after the offer letter was sent on 25 August 2017 should not, in my view, be taken as implying that there were no certificates in force at the time the letter was sent, or that the defendant had not satisfied itself that such certificates were in existence.

24. I should add that Ms Polimac makes a similar submission to the one that she made in respect of the Ilford property, namely that when, in July 2018 the claimant approached the defendant, stating that the Tottenham property was unsuitable as a result of prostitution in the vicinity of the property, the correspondence from the Refugee Council acknowledged that the offer of the Tottenham property made on 25 August 2017 was in discharge of the section 193 duty. For the same reasons as set out above, I reject that the assumption by Refugee Council that the section 193 duty had been discharged precludes Mr Johnson maintaining, which I have accepted, that the Tottenham property was never suitable accommodation.

25. Accordingly, I accept Mr Johnson's submission that the offer of the Tottenham property did not comply with statutory requirements of section 193 (7AA) and (7AB), and the duty under section 193(2) was not discharged in August 2016.

26. Ms Polimac submits when the claimant approached the defendant in July 2018, a duty arose under section 189B of the Act, to take reasonable steps to help the applicant to secure a suitable property. In the present case the defendant submits that the duty under section 189B ended when the claimant refused the offer of the Kettering property and by virtue of section 193A the section 193 duty also came to an end.. I reject Ms Polimac's submission that the defendant can rely on section 193A(3) on the basis that a section 189B duty had arisen and come to an end.

27. I have already accepted Mr Johnson's submission that the original section 193(2) duty had never been discharged, and as such the "lesser" duty under section 189B(2) could not have arisen. In my view, section 189B(2), does not apply to the claimant because she is still owed the section 193 duty, following her original application in 2015. The application made in July 2018 was not a fresh application. By regulation 4 of the Homelessness Reduction Act 2017 (Commencement and Transitional and Savings Provisions) Regulations 2018/167, the amendments made do not apply in relation to an

application for assistance made under section 183 of the Housing Act 1996 before 3rd April 2018.

28. In my view, the section 193 duty, accepted on 20 April 2015, has never been validly discharged and continues, because neither the Ilford or Tottenham property were valid PRS offers within the meaning of section 193 (7AA) and (7AB) of the Act. Accordingly, the defendant acted unlawfully in breach of its statutory duty to secure suitable accommodation under section 193 of the Act. I ask that counsel draw up an order for submission to me for approval.