

**Neutral Citation No: [2022] NIKB 5**

**Ref: OHA11929**

*Judgment: approved by the court for handing down  
(subject to editorial corrections)\**

**ICOS No: 2021/029147/01**

**Delivered: 16/09/2022**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

---

**KING'S BENCH DIVISION  
(JUDICIAL REVIEW)**

---

**IN THE MATTER OF AN APPLICATION BY JR153 (No.2)  
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF A DECISION BY THE NORTHERN IRELAND  
HOUSING EXECUTIVE MADE ON 13 JANUARY 2021**

---

**Mr S McQuitty BL (instructed by Worthingtons Solicitors) for the Applicant  
Mr A Sands BL (instructed by the Housing Executive Legal Services) for the Proposed  
Respondent**

---

**O'HARA J**

***Judgment on application for leave to apply for Judicial Review***

[1] At its core this application for leave to apply for judicial review involves a challenge to a decision made by the Northern Ireland Housing Executive to refuse a preliminary inquiry for a Disabled Facilities Grant ("DFG"). The enquiry was made by the applicant on behalf of her daughter who is 22 years old and has severe and challenging disabilities which have been described as a "complex interaction of needs." It is important to note, however, that she also has some abilities and that with her family's support and encouragement she can live a life of some quality.

[2] The NIHE decision which is the subject of the challenge was made on 13 January 2021, that decision was to the effect that the applicant was not eligible for a DFG under the terms of the Housing (NI) Order 2003. The relevant property for the purposes of the application was in Castlewellan, Co Down.

[3] On the applicant's behalf there are also judicial review proceedings against the Southern Health and Social Care Trust which recommended in 2019 that a series of adaptations be made to the property. In that case it is contended, inter alia, that

by failing to make those adaptations or delaying in doing so the health trust was in breach of its obligations to her.

[4] It was in the course of progressing the Trust's recommendations that the application was made to NIHE for a DFG. The rejection of that application is what has prompted the present judicial review proceedings which have been anonymised to protect the personal details of the applicant.

[5] There has been a lack of certainty, to put it no higher, about whether the property is in fact the place where the applicant should live long term because there are issues about its suitability and adaptability. As such there is a question mark about whether this application for leave should be granted because even a "successful" outcome, whatever that might be, may be of no consequence.

[6] Mr Sands, for the Housing Executive, highlighted that the preliminary inquiry for the DFG had been rejected on two grounds:

- (i) That the applicant is not a tenant of the property, as the 2003 Order requires, but is only a licensee.
- (ii) That the accommodation does not fall within the definition of "separate dwelling" as required by Article 28(1) of the 2003 Order.

[7] Mr Sands then submitted that there is no point in arguing and deciding whether the Executive was correct on either or both points because following the approach set out in *ex parte Salem* and subsequent cases such as *Re Wright's Application* the circumstances are very fact specific and it cannot be said that they are likely to arise again in respect of the applicant or anyone else.

[8] It is to be noted that Mr Sands accepted that aspects of the applicant's legal arguments (though not the submission on Article 14 ECHR) are arguable for the purposes of the test at the leave stage. His focus was on the *Salem* test which is, to put it colloquially, that it is not worth arguing because it does not get anybody anywhere.

[9] While I recognise the force of that argument and accept that a ruling on the interpretation of the 2003 Order may have a limited impact, I do not agree with Mr Sands that the impact is likely to be so slight as he suggests. I also believe that the case can proceed and be usefully heard in a context which is not so narrow and fact specific as he suggests.

[10] I am persuaded by Mr McQuitty's submissions for the applicant that there may well be some real value in providing some guidance on the two points of tenancy and separate dwelling. Accordingly, leave to apply for judicial review is granted.