Neutral Citation Number: [2016] EWCA Civ 1052

Case No: B5/2014/0195

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM WILLESDEN COUNTY COURT
AND FAMILY COURT
Her Honour Judge Karp
2UB00871

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 November 2016

Before :

LADY JUSTICE ARDEN
LORD JUSTICE UNDERHILL
and
LORD JUSTICE BRIGGS

- -

Between :

ANTHONY HOLLEY & ANR	**Appellant**
- and -	
LONDON BOROUGH OF HILLINGDON	**Respondent**

- -
- -

Toby Vanhegan and Riccardo Calzavara (instructed by **Arkrights Solicitors**)
for the **Appellant**
Ranjit Bhose QC and Emma Dring (instructed by **London Borough of Hillingdon**)
for the **Respondent**

Hearing date : 12 October 2016

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Approved Judgment

Lord Justice Briggs:

1. This is an appeal from the order made on 2 January 2014 by HHJ Karp in the County Court at Willesden, for possession of a dwelling house owned by the respondent London Borough of Hillingdon known as 46 Westwood Close, London HA4 7RE. The possession order was made against the appellant Mr Anthony Holley and his brother Ashley Sinfield, at the end of the hearing of a preliminary issue, namely whether (assuming that the facts alleged by the appellant were correct) he had seriously arguable defences to the claim for possession under Articles 8 or 14, or a technical defence based upon the terms of the notice to quit, which had been served at the premises by post in June 2012.

2. It is common ground that Mr Holley was, in the rather antiquated private law jargon relevant to this case, a trespasser at the property at the time of the hearing. His grandmother Mrs Hudson (formerly Sinfield) had been a secure tenant of the property until her death on 28 March 2009, and her husband Mr Hudson had, pursuant to his statutory right to do so, become secure tenant by succession, until his death in May 2012. Although a fact in issue, the judge proceeded with the preliminary hearing on the basis that, as he alleged, the appellant had lived at the property continuously since his birth in March 1979, slightly less than 3 years after his grandmother Mrs Hudson originally became secure tenant there. Thus, although he was a member of Mr Hudson's family who had resided with him throughout the period of twelve months ending with his death, the appellant had no right of statutory succession since Mr Hudson was himself a successor: see sections 87 and 88 of the Housing Act 1985. A person in the appellant's position is sometimes (and indeed in this case) rather misleadingly described as a second successor. In reality they are, as I have said, trespassers, against whom the local authority landlord is, as a matter of the law of property, entitled to possession.

3. It is however also common ground that Article 8 was engaged in the appellant's case, because the property was his home. He was 34 years old by the time of the hearing, and had lived there all his life.

4. 46 Westwood Close is a three bedroom property with garage, suitable for the accommodation of a family of six. By the time of the hearing before the judge, its only occupants were the appellant and his brother who, it was said, had moved into the property to support him following Mr Hudson's death. The appellant needed that support because he had developed mental health problems, including anxiety, panic attacks and depression following his grandmother's death, resulting in him having been signed off work and being in need of (but not yet having received) the assistance of a grief counsellor.

5. As is required by Party VI of the Housing Act 1996, the respondent council had in place an allocation scheme for determining priorities and procedure in relation to the allocation of social housing accommodation. The allocation scheme in force at the time of its decision to give the appellant notice to quit in June 2012 (but which has since been superseded) contained the following express provision about applicants in the appellant's position as aspiring second successors:

> "6.1.3 Succession Tenancies:
> In limited circumstance cases the Council is required by law to award tenancies to dependents of previous tenants. This is called succession, and is defined by Section 87 of the Housing Act 1985, which states that a person is qualified to succeed if he or she occupies the property as his or her only or principal home at the time of the tenant's death and is either:
> 1. The tenant's spouse.
> 2. Another member of the tenant's family who has lived with the tenant for the twelve months ending with the tenants death. Family members include husband/wife, parents, grandparents, children, grandchildren, brothers, sisters, uncles, aunts, nephews and nieces. Step and half relatives are treated as full blood relatives.
>
> In line with statute, Hillingdon allows one succession for each secure tenancy. This means that if there has already been a succession to a property, no further succession will be allowed. The only exception to this is where the potential second successor is agreed to be vulnerable and meets the following criteria:
> 1. Have a clear housing need **and**
> 2. Be aged 65 yrs+ or 50 yrs+ with learning difficulties **and**
> 3. Have lived at the property for the last 10 years or as long as the property has been available."

Being only in his thirties at the relevant time, the appellant did not meet the second of the three criteria for potential second succession there set out. I will call it the age criterion.

6. The respondent had made it clear in evidence before the preliminary hearing that its decision to evict the appellant, rather than grant him a secure tenancy, had been because he had not qualified for a second succession under its relevant policy. The part of its allocation policy relating to succession had been provided to the appellant's solicitors, pursuant to their request, during correspondence between the parties in 2012.

7. Leaving aside the technical point in relation to the notice to quit, the judge's rejection of which has not been challenged on appeal, the two points taken at the preliminary hearing may be summarised as follows:

   i) The eviction of the appellant was a disproportionate interference, within the meaning of Article 8, with his right to respect for his home. This was based upon the fact that the appellant had lived in the property all his life, and upon his mental health difficulties.

   ii) That in deciding not to afford him a second succession, the respondent had without justification discriminated against him upon the grounds of his age. This was because he did not satisfy the age criterion in paragraph 6.1.3 of the respondent's allocation scheme, and that was why the respondent had decided to evict him.

8. The judge rejected both those defences as even seriously arguable. As to the Article 8 defence she said that she was constrained by the decision of this court in *Thurrock Borough Council v West* [2012] EWCA Civ 1435 to conclude that the length of a person's residence in their home was irrelevant. She rejected the Article 14 defence on grounds which have not been challenged on this appeal. Rather, an alternative public law challenge has been advanced, for which permission to appeal was given by Elias LJ at an oral renewal hearing on 13 November 2014, although permission to make the requisite amendments to the Appellant's Notice was not also given, and the question whether permission should now be given remained live at the hearing in this court. We concluded that it would be best to hear the public law part of the appeal on the ground permitted by Elias LJ *de bene esse*. Counsel's arguments upon the new ground have therefore been fully deployed. In outline, the new ground is that the respondent unlawfully fettered its discretion whether to grant the appellant a secure tenancy by a succession policy which contained no residual discretion or, if it did, by ignoring it.

Article 8

9. Article 8 provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The general principles which govern the application of Article 8 to a claim for possession by a local authority of property forming part of its social housing stock from a person with no other right to be there are well settled, by the twin decisions of the Supreme Court in *Manchester City Council v Pinnock* [2011] 2AC 104 and *Hounslow London Borough Council v Powell* [2011] 2AC 186.

10. The application of those principles to a claim for possession against a surviving member of the family of a deceased secure tenant by succession occupying the property (after notice to quit) as a trespasser are fully set out and explained by this court in *Thurrock Borough Council v West* [2012] EWCA Civ 1435; [2013] HLR 5, in the judgment of Etherton LJ, at paragraphs 22 to 31. The general principles set out at paragraphs 22 to 26 need no repetition. In outline, the local authority will usually be seeking eviction as a proportionate means of achieving a legitimate aim because it will thereby vindicate its own unencumbered property rights, and enable it to comply with its duties in relation to the distribution and management of scarce social housing stock.

11. It is however worth setting out in full the particular principles applicable to a case where the person from whom possession is sought is a member of the family of a deceased secure tenant by succession:

"27. In the present case, as Mr Kohli has submitted, there is a further important policy consideration on which the Council is entitled to rely. That is Parliament's decision under the 1985 Act to limit the persons and the occasions for automatic succession to a secure tenancy. As Brooke LJ said in *Wandsworth LBC v Michalak* [2002] EWCA Civ 271, [2003] 1 WLR 617, at [41]:

> "It appears to me that this is pre-eminently a field in which the courts should defer to the decisions taken by a democratically elected Parliament, which has determined the manner in which public resources should be allocated for local authority housing on preferential terms. Parliament decided to continue to adopt the Rent Act concept of "a member of the tenant's family" when identifying who might succeed to a secure tenancy, but to introduce a measure of legal certainty, a concept prized by Strasbourg, when explaining with precision the type of close relative who should be entitled to be the first (and only) successor to a secure tenancy."

28. In *R (on the application of Gangera) v Hounslow LBC* [2003] EWHC 794, [2003] HLR 68, Moses LJ elaborated on the policy underlying the restrictions on statutory succession as follows:

> "22. … The policy underlying the rules of succession contained within the 1985 Act, in the context of the legislative provisions relating to the management and allocation of local authority housing, is clear. As Dawn Eastmead, a divisional manager in the Directorate of Housing of the Office of the Deputy Prime Minister, points out in her witness statement, at the time of the introduction of the Housing Act 1980 the Minister observed that it was necessary to strike a balance between the needs of the tenant's family and the duty of a local housing authority to manage its housing stock in the interests of the locality and of those in greatest need (see para.13). The restriction on the rights to assign provide for some limitation to the duration of a secure tenancy so as to make available local authority housing in the interests of the needs of others (see para.20). Every secure tenant, whether sole or joint, is limited to one assignment or other transmission of the secure tenancy. The rule limiting succession to one transmission applies to all secure tenants equally. In *Wandsworth London Borough Council v Michalak* … Mance L.J. commented upon these provisions:
>
> > "The reality is that Parliament has, in the provisions of ss.87 and 113, considered and determined the extent to which those residing with a secure tenant should be

> entitled to succeed to the benefits of secure tenancy. Outside the categories of spouse and members of the tenant's family, as defined, others residing were not to succeed to any secure tenancy and Parliament necessarily contemplated that the dwelling house would become available once again to the relevant local authority for use in the ordinary way, as it should determine. That expectation is reinforced by the common law principle and statutory provisions relating to the making and suspension of possessions orders (in particular s.89 of the Housing Act 1980)." (See para.[63], my parenthesis).
>
> 23 It is plain that Parliament had to strike a balance between security of tenure and the wider need for systematic allocation of the local authority's housing resources in circumstances where those housing resources are not unlimited. The striking of such a balance is pre-eminently a matter of policy for the legislature. The court should respect the legislative judgment as to what is in the general interest unless that judgment was manifestly without reasonable foundation (see *Mellacher v Austria (1989) 12 EHRR 391* [45]; Lord Woolf C.J. in *Poplar Housing Association Ltd v Donoghue [2002] QB 48* at [69]). There is no basis for contending that the statutory scheme, which seeks to allocate public resources for the provision of local authority housing to those most in need, amounts to a disproportionate interference with a person's right to respect for his home. No such contention is made in the instant case. …"

12. In the *West* case, the defendant had been in occupation of the property for some four years by the time of the first instance hearing, and for the latter part of it had been joined by his partner and their infant son. Applying the relevant principles to those facts about the defendant and his family, Etherton LJ said this, at paragraph 33:

> "The fact that they have occupied the Property for some time is in itself irrelevant since Parliament has limited the number of successions to a secure tenancy however long a person's association with, and emotional ties to, a property, and that legislative policy does not infringe art.8."

13. In the present case, the judge dealt with the appellant's Article 8 defence, in an admirably concise judgment, as follows:

> "10. I have been greatly assisted by the helpful skeleton arguments of both parties' Counsel and their oral submissions. So far as the Article 8 defence is concerned, the Defence says that the proportionality defence is seriously arguable in this case because the Defendant has lived in the property all of his life and, in addition, suffers from very severe depression, anxiety and panic attacks for which he is currently receiving treatment and that this case can, therefore, be distinguished

> from the circumstances in *Thurrock v West* [2012] EWCA Civ 1435, which referred to a young family who had occupied the property only shortly before the tenant died.
>
> 11. The Claimants argue that there is nothing exceptional about these circumstances; that people suffering from mental illness are exactly the type of occupiers who commonly do occupy social housing and that the question of the length of residence was specifically addressed by Etherton LJ in this very same case, *Thurrock v West* commenting that the fact that they had occupied the property for some time is, in itself, irrelevant since Parliament has limited the number of successions to a secure tenancy, however long the person's association with and emotional ties to a property, and that legislative policy does not infringe Article 8.
>
> 12. I find that the Article 8 defence does not reach the threshold of seriously arguable for these reasons. It does come within very similar circumstances to those that have already been adjudicated upon in the case of *Thurrock v West*. The longer length of occupation in this case if a matter specifically considered in the earlier authority. The question of mental illness, sadly, for the Defendant concerned does not bring this case into a particular category that would enable the Article 8 defence to be argued as seriously arguable. And, for those reasons, I strike out the Article 8 defence."

14. Mr Vanhegan for the appellant submitted that the judge's analysis amounted to saying that length of occupation of a home could never, in the second succession context, be a relevant factor in the requisite Article 8 proportionality assessment, and that this was contrary both to the principled analysis in the twin Supreme Court cases of *Powell* and *Pinnock*, and to the importance which length of occupation had played in other reported Article 8 cases, both in this jurisdiction (for example *Kay v Lambeth LBC* [2006] UK HL10 and in the ECHR (for example *Ivanova & Cherkezov v Bulgaria* [2016] HLR 21 and *Vukusic v Croatia* (App. No: 69735/11). He submitted that all Etherton LJ had been saying in the quoted passage of his judgment in *West* was that length of residence was irrelevant to the compatibility with Article 8 of the English statutory provisions about succession to secure tenancies.

15. In my judgment Etherton LJ was saying rather more than Mr Vanhegan suggests, but he did not go so far as to hold that length of residence could never be part of an Article 8 proportionality assessment, even in second succession cases. I consider that the true analysis is as follows. First, a person seeking to rely on Article 8 will need to demonstrate a minimum length of residence in order to show that the property in question is their home, so that Article 8 is engaged. Secondly, the period of residence, however long, will not on its own be sufficient to found an Article 8 proportionality defence in the second succession context because, if it would, then it is hard to see how the English statutory prohibition of second succession could be compatible with the Convention.

16. Thirdly, length of residence may form part of an overall proportionality assessment, in the sense that all the circumstances of the case may need to be reviewed, and their effect considered in the aggregate. But fourthly, and precisely because Parliament has lawfully excluded second succession to members of a deceased secure tenant's family, length of residence is unlikely to be a weighty factor in striking the necessary proportionality balance. A long period of residence may therefore form part of the circumstances, viewed as a whole, but is, in itself, of little consequence.

17. It is not easy to ascertain whether the judge's analysis adopted any more complete or rigorous exclusion of the potential relevance of long residence than that which I have described, as flowing from the *West* case, by which we are bound. Only two factors were proffered as lying in the proportionality balance in the appellant's favour, namely his mental condition and his lifetime of residence at the property. The judge dealt with each, separately, and concluded that, in the aggregate, they did not give rise to a seriously arguable Article 8 defence.

18. If this part of the appeal turned solely upon the question whether some flaw could be discerned in the judge's reasoning, as Mr Vanhegan suggested that it should, then on a narrow balance I would have agreed with him that the appeal should be allowed. But the question for this court is whether the judge's decision was wrong: see CPR 52.11(3)(a). This was a decision about whether the appellant's Article 8 case was seriously arguable, based upon a review of documents and witness statements, but without cross examination, and on the footing that the facts alleged by the appellant were to be assumed to be true. An analysis of that kind can just as well be carried out in this court as at first instance.

19. I consider that the judge's decision on the Article 8 arguability question was plainly right. My reasons are as follows. First, as the judge herself said, the appellant's medical condition was not, on its own, a factor of anything like sufficient weight to render the respondent's decision to evict, as a means of vindicating its property rights and enabling it to perform its duties as a public housing authority, disproportionate. Secondly, the appellant's lifetime residence at the property was neither exceptional, nor of significant weight, viewed on its own. The secure tenancy of a substantial house like this might easily pass on a first succession from one generation to a second generation, and then terminate leaving one or more members of the third generation in occupation, having been there from birth. Multi-generational occupation of homes may not be typical, in the way that it was many years ago, but it is still by no means exceptional. Thirdly, no significant added weight in the proportionality balance is achieved by aggregating the appellant's medical condition with his long residence. The evidence did not show, for example, that the appellant's mental condition was likely to be gravely exacerbated if he were to move from the home in which he had been born to some other home, even if living in familiar surroundings may be supposed to have provided some comfort for him. Nor was the location of this particular property in any sense relevant in terms of making it easier for him to obtain requisite treatment. Finally therefore, this is on its face a case in which the balance remains so firmly tilted in favour of the weighty considerations which justify the respondent seeking eviction, against the much less weighty and unexceptional circumstances put forward by the appellant, that there is in my view no real prospect that a trial of this claim could lead to a successful Article 8 defence.

20. For those reasons I would dismiss this ground of appeal.

The Public Law Defence

21. There having been no formal amendment of the Appellant's Notice, this second ground of appeal is only to be found in the appellant's Advocate's Statement, deployed under CPR 52 CPD.16 at the oral renewal hearing before Elias LJ, in the following terms:

> "Hillingdon's claim for possession was vitiated by their failure to have considered whether Mr Holley's personal circumstances justified making an exception to their discretionary second succession policy and granting him the tenancy of the premises; and the Judge's disposal of the claim on the preliminary issue cannot stand because the above unlawfulness was a foundation in the Judge's reasons for holding that the defence was not seriously arguable."

22. As developed at the hearing before us, this ground constituted a two pronged attack. First, Mr Vanhegan submitted that the "second succession policy" was unlawful because it did not contain or, on its face, permit the exercise of any residual discretion. For that purpose he relied upon a series of authorities about fettering discretion, beginning with *R v Canterbury City Council ex parte Gillespie* (1987) 19 HLR 7, and ending with *R (H) v Ealing LBC* [2016] EWHC 841(Admin); [2016] HLR 20. Secondly he submitted that, even if there existed such a residual discretion, the respondent had failed to give it proper consideration in the appellant's case. Rather, it had concluded that the appellant's failure to satisfy the age criterion was the end of the matter, and that the judge had, wrongly, reached the same conclusion.

23. In addressing these submissions the starting point in my judgment is to recognise that the concept of a discretionary succession policy is a misnomer. The provisions in Part IV of the Housing Act 1985 which deal with succession to secure tenancies do not require, or for that matter permit, local authorities to formulate and apply discretionary policies for conferring rights of second succession on persons living in the house of a secure tenant who is already a successor, upon that tenant's death. There is, quite simply, no such entitlement. By contrast, Part VI of the Housing Act 1996 confers a wide discretion upon local authorities as to the allocation of social housing among persons applying for it, and requires that discretion to be exercised in accordance with an allocation scheme which it is required to formulate and publish.

24. A housing authority allocation scheme may make particular provision in relation to priority for members of the family of deceased secure tenants who do not have succession rights, but they are not required to do so. The respondent's 2011 allocation scheme did so, at section 6.1.3. Its more recent scheme, which came into force in June 2013, made no such express provision at all.

25. Thus the provision in section 6.1.3 of the respondent's 2011 scheme for persons without succession rights to be given exceptional consideration for social housing if they meet certain specified criteria is not a self-contained discretionary policy about succession, but a small part of a much larger allocation scheme. It is one of a number of items dealt with in section 6 under the general heading "Special Circumstances". Others include severe social hardship, overcrowding and unsatisfactory housing conditions.

26. Viewed as a whole, the 2011 allocation scheme did arguably contain a form of residual discretion to address exceptional cases, in section 8.4.3, which provided, so far as is relevant:

> "Direct allocations (lettings outside of the choice based lettings scheme) can only be authorised by the designated senior officer. Direct allocations may be made in the following circumstances:
>
> 1. If a nomination is required to enable best use of housing stock.
>
> …
>
> 4. A direct allocation in exceptional or emergency circumstances for effective management of social housing stock as determined by the designated senior officer in conjunction with Hillingdon Housing services or a Registered Provider"

On one view, the effective management of social housing stock is no more nor less than a summary of the whole purpose of the local authority's social housing function, so that sub-paragraph 4 contained a sufficient general discretion. Alternatively it might be said that this provision falls short of a full residual discretion because of its emphasis on effective management.

27. Mr Bhose QC's primary submission for the respondent was that the effect of the decision of the Supreme Court in *R (Ahmad) v Newham LBC* [2009] UKHL 14 was to do away with any requirement for a residual discretion to be included within a housing allocation scheme, regardless of the line of earlier and later authorities upon which Mr Vanhegan relied. I disagree. The allocation scheme under review in the *Ahmad* case plainly contained provision for the exercise of a residual discretion: see per Lord Neuberger at paragraph 34. That case was a challenge based on irrationality, rather than an unlawful fettering of discretion. The *Ahmad* case does not therefore provide a short answer to this part of the appeal, although it does require the court to think long and hard before finding that a local housing authority's allocation policy is unlawful. Resolution of the question whether paragraph 8.4.3 of the 2011 allocation policy conferred a sufficiently general residual discretion depends upon a deeper analysis of the relevant authorities than was undertaken during the hearing of this appeal. As will appear, I do not need to decide that question, because I consider that, even if it did not, the appeal must nonetheless fail on this public law ground.

28. Let it be assumed that, either because paragraph 8.4.3 was too narrow for the purpose or (which must be assumed to be true for the purposes of this preliminary issue about arguability) that the respondent did not in any event consciously consider whether to apply a residual exceptional discretion to the appellant's case. The question remains whether that nonetheless renders its decision to evict him unlawful. It is open to a public authority, when the lawfulness of its decision making process is challenged in this way, to seek to show that, even if its policies and process had complied with the relevant dictates of public law, it would inevitably have led to the same outcome for the complainant.

29. In this case, following the grant of permission to appeal on this second ground, the respondent served evidence to that effect, in the form of a witness statement from a Mr Rod Smith, a senior manager of the respondent with 29 years' experience and specific responsibility for decisions associated with succession to secure tenancies. His evidence graphically illustrated the acute shortage of social housing available for applicants within the borough. There were at the material time about 8,000 households on the housing register seeking accommodation but only 600 to 700 allocations were being made each year, and over 50% of those on the housing register would never be offered a secure tenancy no matter how long they waited. He drew attention to the fact that there was a particularly drastic shortage of three bedroom properties. Every one of the 2,693 three bedroom houses in the respondent's stock was occupied and there were in 2015 no less than 907 suitably large households in need of three bedroom properties on the waiting list.

30. Against that, he said that consideration of the appellant's application under a residual discretion for exceptional cases would demonstrate that the appellant came nowhere near qualifying for the exceptional allocation of a three bedroom house. At the time when the possession proceedings had been issued, there were 1,161 households waiting for three bedroom properties, of which 139 were homeless, 60 had disabilities and 395 were overcrowded. To have preferred the appellant, a single man, over those competing applicants would have undermined one of the fundamental principles of the respondent's allocation scheme, namely the prioritising of those in greatest need.

31. Mr Vanhegan had no answer to this formidable material. He submitted that his client should have the opportunity to challenge this further evidence. But the essence of it, in particular the material about the acute pressure for allocation of scarce three bedroom houses, had been deployed by the respondent's witness Miss Dodia prior to the first instance hearing, and it is hard to see how its central thrust could be realistically challenged. The acute predicament facing the respondent in the allocation of scarce social housing is a particular reflection of a national problem: see again per Lord Neuberger in the *Ahmad* case, at paragraph 62. I have already concluded, in addressing the Article 8 appeal, that there was nothing exceptional in the appellant's having lived in social accommodation as part of the family of a succession of secure tenants all his life, nor anything about his unfortunate mental condition which militated against him being required to live somewhere other than in this particular property. His case for allocation of this house, however much it may generate human sympathy, simply came nowhere near that degree of exceptionality that gave him a real rather than fanciful prospect of success under a residual discretion, however widely framed, as to allocation of public housing.

32. Mr Vanhegan sought at the last moment to introduce other elements to his public law challenge, including a complaint about due process and an alleged failure to comply with other provisions of the Equality Act 2010, for none of which his client had been given permission to appeal and which did not even appear in his skeleton argument. He also suggested that, in the alternative, the appellant should have been allocated a smaller property rather than given a secure tenancy of his existing home but again, this was not something which he has permission to pursue by way of appeal.

33. In my judgment therefore, the second ground of appeal for which the appellant has obtained permission should be dismissed. In the circumstances, no useful purpose would be served by a detailed analysis of the rights and wrongs of giving permission

now for the requisite amendment of the Appellant's Notice. The court has been enabled to deal with the substance of it without adjournment, or remission to a further hearing at first instance. Accordingly I would give permission, but dismiss the appeal on this ground as well.

Lord Justice Underhill:

34. I agree.

Lady Justice Arden:

35. I also agree.