

Housing Cases of Interest

Andrew Lane has put together the recent Housing cases of interest over the last 3 months.

Allocation

[R \(on the application of H & ORS\) v EALING LONDON BOROUGH COUNCIL \[2016\] EWHC 841 \(Admin\)](#)

The local authority's amendments to its allocation policy to reserve 20% of available lettings for "working households" and "model tenants" fell foul of ss19 and 149 of the Equality Act 2010, and was in breach of art.14 and s11 of the Children Act 2004

Council Tax

[ZAFAR v REDBRIDGE LONDON BOROUGH COUNCIL QBD \(Admin\) \(Dove J\) 03/02/2016](#)

The court dismissed a homeowner's appeal against a decision that she was liable for outstanding council tax, on the basis that the appeal was out of time and totally without merit.

Disrepair

[MEGAN LOUISE DODD \(WIDOW & EXECUTRIX OF THE ESTATE OF PAUL JAMES DODD, DECEASED\) v RAEARN ESTATES LTD & 5 ORS \[2016\] EWHC 262 \(QB\)](#)

A freeholder was not liable in negligence where a man had died after falling down a staircase in one of its buildings. Although the stairs were potentially dangerous as they were steep and had no handrail, that was not the test for a relevant defect that a landlord had a duty to repair under the Defective Premises Act 1972 s.4. An object had to be out of repair for that duty to arise, and the staircase itself was well constructed.

[ROBINA LAFFERTY v NEWARK & SHERWOOD DISTRICT COUNCIL \[2016\] EWHC 320 \(QB\)](#)

The Defective Premises Act 1972 s.4(4) did not create a form of strict liability. It extended the application of s.4(1) to relevant defects which were out with its scope, and was subject to the requirement of s.4(2) that a landlord knew or should have known of the defect.

[NILI STERNBAUM v BAL BINDER DHESI \[2016\] EWCA Civ 155](#)

In the context of a claim under the Defective Premises Act 1972 s.4, although a very steep stairway with no railings was certainly a hazard, the demised premises were not in disrepair. The landlord's obligation did not extend to improving the premises or putting them into a safe condition.

Homelessness

[R \(on the application of \(1\) RACHEL EDWARDS \(2\) VERNICA COLE \(3\) YASMIN SAEED \(4\) MARIAN NOWOROL\) v BIRMINGHAM CITY COUNCIL \[2016\] EWHC 173 \(Admin\)](#)

A local authority had not breached its duties under the Housing Act 1996 Pt VII in processing the homeless applications of four applicants, nor was there evidence of systemic failure in its homelessness procedures.



[ROLLE v LONDON BOROUGH OF TOWER HAMLETS \[2016\] EWCA Civ 229](#)

Permission to appeal for a second time, against a local authority's finding that it did not owe a mother and two children a full housing duty where they had become intentionally homeless as a result of her refusal of an offer of accommodation, was refused where no important point of principle or practice had been raised in respect of the correct test for determining her mental capacity to refuse the offer.

[NIEMA ABDUSEMED v LAMBETH LONDON BOROUGH COUNCIL QBD \(Admin\) \(Ouseley J\) 19/02/2016](#)

A local authority's refusal to provide an Eritrean national with accommodation pending review of her homelessness application was not irrational and unlawful. Even though she had been diagnosed with moderately severe to severe Post Traumatic Stress Disorder and had been sleeping in a Mosque at night and wandering the streets by day she was not street homeless.

[ERSUS v LONDON BOROUGH OF REDBRIDGE QBD \(Supperstone J\) 23/03/2016](#)

A judge had been entitled to make an order of no order for costs where an appeal under the Housing Act 1996 s.204 had become academic and been discontinued as it could not be said with certainty that there had been a causal connection between the bringing of the housing appeal and the local authority's subsequent offer of suitable accommodation.

Leasehold

[\(1\) JONATHAN PAUL STEVENS \(2\) AUDREY STEVENS v ALEX IBRAHIM ISMAIL \[2016\] UKUT 43 \(LC\)](#)

The Upper Tribunal (Lands Chamber) had jurisdiction under the Law of Property Act 1925 s.84(12) to modify covenants contained in the 999-year leases of two flats. More than 25 years of the term had elapsed when the application to modify was made, and a deed of variation made 18 years after the original lease did not necessitate the surrender and re-grant of that original lease.

[JOHN PATRICK MURPHY v LAMBETH LONDON BOROUGH COUNCIL Ch D \(Murray Rosen QC\) 19/02/2016](#)

A long lease, on its proper construction, demised only the ground floor of a flat and not the basement. The land register was rectified to reflect that, where the registered proprietor had not been in possession of the basement, and there were no exceptional circumstances justifying a refusal to amend the register.

[SIDEWALK PROPERTIES LTD v CHRISTOPHER MARK TWINN & ORS \[2015\] UKUT 122 \(LC\)](#)

The First-tier Tribunal had erred in holding that the costs recoverable by a landlord in granting new leases under the Leasehold Reform, Housing and Urban Development Act 1993 s.60 should be based on the tribunal's own assessment of an appropriate rate charged by an in-house solicitor. It should have held that in-house costs were to be determined on the same basis as those of an independent practitioner and should not have directed the filing of evidence as to overheads, which was both irrelevant to the task it was required to undertake and disproportionate to the costs it was required to assess.



Licensing

[NOTTINGHAM CITY COUNCIL v \(1\) DOMINIC PARR \(2\) TREVOR PARR ASSOCIATES LTD \[2016\] UKUT 71 \(LC\)](#)

It was lawful for the licence of a house in multiple occupation to restrict the use of a bedroom to a particular category of occupier, such as students.

Mobile Homes

[BRITANIACREST LTD v \(1\) EDWARD W BAMBOROUGH \(2\) M A BAMBOROUGH \[2016\] UKUT 144 \(LC\)](#)

When determining a mobile home pitch fee pursuant to the Mobile Homes Act 1983 s.4, the tribunal had a wide discretion to vary the fee to a reasonable level. The presumption in Sch.1 Pt I para.20 that the fee should not be increased by more than the increase in the retail prices index the previous year was rebuttable and a number of factors could justify a greater variation if the fee would otherwise not be reasonable.

Planning

[SMECH PROPERTIES LTD v \(1\) RUNNYMEDE BC \(2\) CREST NICHOLSON OPERATIONS LTD \(3\) CGNU LIFE ASSURANCE LTD \(Respondents\) \[2016\] EWCA Civ 42](#)

The court upheld a grant of planning permission for a mixed use development within the green belt. The planning committee had been incorrectly advised in relation to housing need, but the judge would have reached the same decision if she had been properly advised. There was great pressure of need for new housing and very limited options for meeting that need and the judge had been correct to conclude that there were very special circumstances which justified permission for development in the green belt.

[IN THE MATTER OF AN APPLICATION BY TONY O'HARE & PATRICK O'HARE \(AS PERSONAL REPRESENTATIVES OF THE ESTATE OF TERENCE O'HARE \(DECEASED\)\) FOR JUDICIAL REVIEW \[2016\] NIQB 20](#)

A planning authority's decision to grant planning permission for partial development of a social housing site was quashed where proper consideration had not been given to a planning policy that aimed to avoid fragmenting new communities. The importance of social housing and the fact that the policy should have been a material consideration outweighed any prejudice to the developer.

[WEST BERKSHIRE DISTRICT COUNCIL v \(1\) SECRETARY OF STATE FOR COMMUNITIES & LOCAL GOVERNMENT \(2\) HDD BURGFIELD COMMON LTD \[2016\] EWHC 267 \(Admin\)](#)

In allowing an appeal against the refusal of planning permission for a residential development, the planning inspector had rightly treated the core strategy's housing policies as out-of-date and incapable of providing an appropriate basis for calculating the required five-year housing supply, identified the housing need figure for himself, dealt with all matters required by the National Planning Policy Framework, and given proper reasons for his decision.



[SUFFOLK COASTAL DISTRICT COUNCIL \(Appellant\) v HOPKINS HOMES LTD \(Respondent\) & SECRETARY OF STATE FOR COMMUNITIES & LOCAL GOVERNMENT \(Interested Party\): RICHBOROUGH ESTATES PARTNERSHIPS LLP v \(1\) CHESHIRE EAST BOROUGH COUNCIL \(2\) SECRETARY OF STATE FOR COMMUNITIES & LOCAL GOVERNMENT \[2016\] EWCA Civ 168](#)

The meaning of “relevant policies for the supply of housing” in the National Planning Policy Framework para.49 should be given a wide interpretation. It was not confined to policies that provided positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites. The concept extended to plan policies whose effect was to influence the supply of housing land by restricting the locations where new housing might be developed.

Public Function

[R \(on the application of MACLEOD\) v PEABODY TRUST GOVERNORS \[2016\] EWHC 737 \(Admin\)](#)

A charitable housing association’s refusal to allow a mutual exchange of a tenant’s assured tenancy was not amenable to judicial review; the association had not been exercising a public function in refusing the transfer as it had purchased the relevant housing stock with private funds, the stock offered intermediate rent levels and was thus not pure social housing, and intermediate rents were not subject to the same level of statutory regulation as social housing in general.

[R \(on the application of ASLAMIE\) v LONDON & QUADRANT HOUSING TRUST QBD \(Admin\) \(Judge Curran QC\) 19/04/2016](#)

An application for permission to apply for judicial review of a housing trust’s refusal to consent to the exchange of tenancies between the claimant and another tenant could not be determined in circumstances where it had been suggested that the housing trust had placed undue pressure on the tenant, who decided to exchange with someone else as a result, and the tenant had brought to the court’s attention that the housing trust had made a mistake in a witness statement. There was insufficient evidence on the issue of undue pressure and so the matter was adjourned so that further evidence could be obtained.

Social Care

[M \(2\) A v ISLINGTON LONDON BOROUGH COUNCIL \[2016\] EWHC 332 \(Admin\)](#)

The Children Act 1989 s.27, which imposed a duty for local authorities to co-operate in relation to the provision of services for children in need, was aimed at co-operation between different authorities rather than different departments within a unitary authority. However, government guidance required the same degree of co-operation between departments in a unitary authority, meaning that the requirements of s.27 applied indirect.

[R \(on the application of ANTWA\) v LAMBETH CHILDREN’S SOCIAL SERVICES QBD \(Admin\) \(Holman J\) 10/03/2016](#)

The court did not extend an interim mandatory injunction requiring a local authority to provide accommodation to a mother and three children pending her judicial review claim. A needs assessment had concluded that the children’s father was trying to manipulate the local authority into providing publicly-funded accommodation by falsely claiming that he would not support his family. The court could not conclude at an interim stage that that assessment was wrong.



Utilities

[KIM JONES v SOUTHWARK LONDON BOROUGH COUNCIL \[2016\] EWHC 457 \(Ch\)](#)

The Water Resale Order 2006, made pursuant to the Water Industry Act 1991, applied to an arrangement whereby a local authority had charged its tenants for water and sewerage supplied by a water utilities company to unmetered properties occupied by local authority tenants. As the Order limited the amounts tenants could be charged, the amounts that the local authority had charged for the supply exceeded the maximum charge permissible under the Order.

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