

Housing cases of interest

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

Allocations

**R (on the application of GEORGIA WOOLFE) v ISLINGTON LONDON BOROUGH COUNCIL QBD (Admin)
(Holman J) 15/07/2016**

A local authority's operation of a points based threshold for bidding for social housing had not been unlawful and did not breach the Housing Act 1996 s.166A or the Children Act 2004 s.11. However, it had misapplied its policy when awarding points under its "New Generation" policy.

Children Act

**R (on the application of N) v GREENWICH LONDON BOROUGH COUNCIL QBD (Admin) (Andrew Thomas QC)
25/05/2016**

A local authority was ordered to provide interim accommodation to a seven-year-old child and his mother pending the hearing of his judicial review application of the decision that he was not a child in need under the Children Act 1989 s.17. He and his mother would be unable to obtain appropriate accommodation in the interim.

[R \(on the application of \(1\) C \(2\) T \(3\) M \(4\) U\) \(Appellant\) v SOUTHWARK LONDON BOROUGH COUNCIL \(Respondent\) & CORAM CHILDREN'S LEGAL CENTRE \(Intervener\) \[2016\] EWCA Civ 707](#)

A local authority had not followed a flawed policy or practice thereby fettering its discretion in its provision of accommodation and financial support to a family seeking assistance under the Children Act 1989 s.17.

Civil Procedure

[\(1\) IAN HANDLEY \(2\) SHEILA EVANS v LAKE JACKSON SOLICITORS \(A FIRM\) : VANDA LOPES v LONDON BOROUGH OF CROYDON : CHRISTIE OWEN & DAVIES LTD v \(1\) ISABELLE MICHELLE AWAN \(2\) SAFARAZ AWAN \[2016\] EWCA Civ 465](#)

The court determined the correct destination for appeals where there had been an appeal to the county court which had made a determination as to costs and the parties wished to appeal the costs order.

Disrepair

[EDWARDS v KUMARASAMY \[2016\] UKSC 40](#)

The repairing covenant implied into a subtenancy of a flat by the Landlord and Tenant Act 1985 s.11 did not impose, under s.11(1A), a liability on the headlessee to keep a paved area outside the building in repair, as it was not part of the exterior of the common parts of the building in which the headlessee had an interest.

Homelessness

[R \(on the application of S \(ALBANIA\)\) v WALTHAM FOREST LONDON BOROUGH COUNCIL \[2016\] EWHC 1245 \(Admin\)](#)

A local housing authority's failure to perform a "housing needs" assessment, as required by the Housing Act 1996 s.192(4), before deciding not to exercise its discretion to house an applicant who was not in priority need amounted to a failure to discharge its duties under s.192(2) and s.192(3). Judicial review was the appropriate form of challenge, rather than s.202 of the Act. There was no need to wait until the statutory review process or appeal procedure was completed.

[R \(ON THE APPLICATION OF ROGER PLANT\) V \(1\) SOMERSET COUNTY COUNCIL \(2\) TAUNTON DEANE BOROUGH COUNCIL \[2016\] EWHC 1245 \(Admin\)](#)

The court declined to set aside a default order requiring a local housing authority to discharge its housing duty to a homeless person. The housing authority could satisfy neither the requirements of CPR r.39.3 nor the three-stage test in *Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 W.L.R. 3926 and in any event had satisfied the order by making an offer of accommodation which it deemed suitable.

LOUNIS v NEWHAM LONDON BOROUGH COUNCIL QBD (Eady J) 22/06/2016

A judge had been entitled to refuse to extend time for a s204 appeal against a local authority's review of a housing decision where the appellant had not presented evidence of a good reason for his delay in lodging the appeal.

[R \(on the application of JENNIFER HOYTE\) v SOUTHWARK LONDON BOROUGH COUNCIL \[2016\] EWHC](#)

[1665 \(Admin\)](#)

The court quashed a local authority's refusal to consider a homeless woman's further application for priority housing where it had concluded that the facts of her case had not changed since its decision that she did not have a priority need. Given that the local authority in making its decision had placed significant weight on the views of the woman's GP concerning her mental health, and those views had since clearly changed, its conclusion that the new application was based on the same facts was irrational.

[HUDA v REDBRIDGE LONDON BOROUGH COUNCIL \[2016\] EWCA Civ 709](#)

In determining whether accommodation provided under the Housing Act 1996 s.190 could be regarded as "settled", all relevant facts had to be considered. No distinction could be drawn between those factors evident from the occupation agreement and factors that arose from outside the agreement.

Nuisance

EALING LONDON BOROUGH COUNCIL v CONNORS & ORS [2016] EWHC 1387 (QB)

An interim injunction prohibiting a family of travellers from setting up encampments on public land and highways within the applicant local authority's borough was granted where there was evidence that they had created a public nuisance.

Planning

[ST MODWEN DEVELOPMENTS LTD \(Claimant\) v \(1\) SECRETARY OF STATE FOR COMMUNITIES & LOCAL GOVERNMENT \(2\) EAST RIDING OF YORKSHIRE COUNCIL \(Defendants\) & SAVE OUR FERRIBY ACTION GROUP \(Interested Party\) \[2016\] EWHC 968 \(Admin\)](#)

National Planning Policy Framework para.47 required that sites for housing supply should be available, in a suitable location, achievable and have a realistic prospect of being developed, but there was no requirement for a site to have existing planning permission. The NPPF did not require housing need to be assessed always and only by reference to the area of the development control authority: an authority was entitled to assess housing need on the basis of its and a neighbouring authority's combined areas.

[R \(on the application of OXTED RESIDENTIAL LTD\) v TANDRIDGE DC \[2016\] EWCA Civ 414](#)

It was lawful for a local planning authority to adopt a development plan document and a community infrastructure levy charging schedule to support a core strategy prepared under a national planning policy for housing land supply that had been superseded by the National Planning Policy Framework on its publication in March 2012.

[SECRETARY OF STATE FOR COMMUNITIES & LOCAL GOVERNMENT v \(1\) WEST BERKSHIRE DISTRICT COUNCIL \(2\) READING BOROUGH COUNCIL \[2016\] EWCA Civ 441](#)

The Court of Appeal determined that the decision of the Department of Communities and Local Government, by way of written ministerial statement, to alter national policy in respect of planning obligations for affordable housing by introducing exemptions from the requirement to provide affordable housing for small sites, was lawful.

OLD HUNSTANTON PARISH COUNCIL v (1) SECRETARY OF STATE FOR COMMUNITIES & LOCAL GOVERNMENT (2) HASTOE HOUSING ASSOCIATION LTD (3) KINGS LYNN & WEST NORFOLK BOROUGH COUNCIL CA (Civ Div) (Laws LJ, Tomlinson LJ, Lewison LJ) 07/07/2016

The planning policy in a sparsely populated rural area was that local need for affordable housing could be met by the development of small rural exception sites that would not otherwise be available for residential development. "Local need" was not defined in the policy documents, but meant the needs of the rural settlement itself and those of any other small local rural communities, but not those of an adjacent larger town. To alleviate the housing need in the town by building in a rural area would be at odds with rural policy.

[SECRETARY OF STATE FOR COMMUNITIES & LOCAL GOVERNMENT v BDW TRADING LTD \(T/A DAVID WILSON HOMES \(CENTRAL, MERCIA & WEST MIDLANDS\)\) \[2016\] EWCA Civ 493](#)

When upholding the refusal of planning permission for a housing development, the planning inspector had adhered to her duty under the Planning and Compulsory Purchase Act 2004 s.38(6) to make the decision in accordance with the development plan unless material considerations indicated otherwise.

Possession

[CITY WEST HOUSING TRUST v LINDSEY MASSEY : MANCHESTER & DISTRICT HOUSING ASSOCIATION v VINCENT ROBERTS \[2016\] EWCA Civ 704](#)

The court provided guidance on the approach to be taken to the exercise of discretion by district judges when considering whether to make a suspended possession order.

Private Rented Sector

[McDONALD \(BY HER LITIGATION FRIEND DUNCAN J McDONALD\) v McDONALD & ORS \[2016\] UKSC 28](#)

When hearing a claim for possession by a private sector landlord against a residential occupier, the court was not entitled to consider the proportionality of eviction in the light of the Human Rights Act 1998 s.6(1) and the ECHR art.8(2).

Andy Lane
Cornerstone Barristers