



Neutral Citation Number: [2018] EWCA Civ 1846

Case No: B5/2017/3067

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM Portsmouth Combined Court Centre
Her Honour Judge Sullivan QC
D01WT243

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1st August 2018

Before :

LORD JUSTICE LEWISON
LORD JUSTICE DAVID RICHARDS
and
LORD JUSTICE COULSON

Between :

WENDY LOMAX	<u>Appellant</u>
- and -	
GOSPORT BOROUGH COUNCIL	<u>Respondent</u>
- and -	
EQUALITY AND HUMAN RIGHTS COMMISSION	<u>Intervener</u>

Mr Martin Hodgson (instructed by **South West London Law Centre**) for the **Appellant**
Mr Matthew Lewin (instructed by **Gosport Borough Council Legal Services Dept**) for the
Respondent
Mr Richard Drabble QC for the Intervener

Hearing date : 25 July 2018

Approved Judgment

Lord Justice Lewison:

Introduction

1. The issue on this appeal is whether Gosport BC correctly applied sections 175 and 177 of the Housing Act 1996 in concluding that it was reasonable for a severely disabled applicant for housing to continue to occupy her accommodation.
2. Ms Lomax is a former member of the RAF. She suffers from a number of both physical and mental problems. She is wheelchair bound and is confined to bed for large portions of the day. She requires 24-hour care, including intimate care which for the time being is provided by her former partner. But her former partner has decided to move on. Ms Lomax holds the current accommodation that she occupies under a tenancy from a housing association. It consists of a two bedroomed bungalow in sheltered accommodation which has been physically adapted to meet her needs.
3. However, the bungalow is in an isolated rural area in Dorset. In consequence she is extremely isolated, has no visitors and is medically unable to engage with her local community. There is no public transport and no voluntary transport with wheelchair access. So Ms Lomax cannot get out of the house. Ms Lomax' family lives in Gosport, some 70 miles away, and they would be able and willing to provide the support that she needs. Not unnaturally she wishes to move in order to be near them. With that in mind she applied to Gosport BC for assistance as a homeless person. The basis of the application was that although she was physically housed, it was not reasonable for her to continue to occupy her accommodation.
4. Gosport BC considered her application but refused it. She required a review of the decision, which was carried out by Mr Shane Galvin, a Senior Housing Options Officer. He decided that it was reasonable for Ms Lomax to continue to occupy her current accommodation; with the consequence that she was not homeless. HHJ Sullivan QC, sitting in the county court at Portsmouth, dismissed her appeal.

The basic legal framework

5. The key statutory provisions are these. Section 175 (1) of the Housing Act 1996 provides:

“(1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he—

(a) is entitled to occupy by virtue of an interest in it...”
6. Section 175 (3) qualifies this by saying:

“A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.”
7. Section 177 (2) provides:

“In determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation.”

8. If Ms Lomax is homeless it is highly likely that because of her disability she would have a priority need for accommodation as defined by section 189 (1) (c). In that event the council would be obliged to secure that “suitable accommodation” is available for her.

9. In other parts of the homelessness legislation councils are required to determine whether an applicant has been reasonable. One such judgment arises where an applicant has refused an offer of suitable accommodation. In *Slater v Lewisham LBC* [2006] EWCA Civ 394, [2006] H.L.R. 37 Ward LJ said of the approach to reasonableness in that situation at [34]:

“In judging whether it was unreasonable to refuse such an offer, the decision-maker must have regard to all the personal characteristics of the applicant, her needs, her hopes and her fears and then taking account of those individual aspects, the subjective factors, ask whether it is reasonable, an objective test, for the applicant to accept. The test is whether a right-thinking local housing authority would conclude that it was reasonable that *this applicant* should have accepted the offer of *this* accommodation.” (Emphasis in original)

10. This test appears to me to have been approved by the Supreme Court in *Poshteh v Kensington and Chelsea RLBC* [2017] UKSC 36, [2017] AC 624 at [5]. In my judgment the same approach should be applied in determining whether it is reasonable for a particular applicant to continue to occupy her current accommodation.
11. It is also pertinent to recall that in deciding whether accommodation is suitable, evaluating the accommodation is not merely a question of size and physical arrangement. The location of the accommodation is also a key factor. In *R (Sacupima) v Newham LBC* [2001] 1 WLR 563, 575 (approved by the Supreme Court in *Nzolameso v Westminster CC* [2015] UKSC 22, [2015] PTSR 549) Latham LJ put it this way:

“It seems to me that, if it be right that the relevant question is whether the relevant accommodation is suitable for the particular homeless person and his or her family, it is inevitable that the location of that accommodation may be relevant to an assessment of its suitability.”

12. In relation to suitability of offered accommodation the position is confirmed by legislation, in that article 2 of the Homelessness (Suitability of Accommodation) (England) Order 2012 states that in assessing suitability “the local housing authority must take into account the location of the accommodation”. If this is a relevant consideration for assessing the suitability of offered accommodation, it seems to me

that it must be equally relevant in assessing the suitability of current accommodation; or the reasonableness of continuing to occupy it.

13. For the purposes of this appeal it is also necessary to consider certain provisions of the Equality Act 2010. Section 6 (1) provides:

“(1) A person (P) has a disability if—

- (a) P has a physical or mental impairment, and
- (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.”

14. Section 19 provides, so far as material:

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

15. Section 149 provides, so far as material:

“(1) A public authority must, in the exercise of its functions, have due regard to the need to—

- (a) ...;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) ...
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected

characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) ...

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.”

16. Disability is a relevant protected characteristic for both section 19 and section 149.

The review

17. The reviewing officer had before him a number of letters from medical practitioners and others who had been involved in Ms Lomax' care. He did not take issue with any of that evidence; and said that it was clear to him that Ms Lomax had many medical problems and that she was disabled as a result. There were three letters from Ms Lomax' GP. In the first of these the GP said:

“... I think it is essential to Wendy's mental wellbeing that she moves to the Gosport area as soon as possible. Wendy has family in this area who will be able to provide her with essential support which cannot be provided in her current location.”

18. In the second he repeated that and went on to say:

“Wendy is currently very isolated from her family due to the distances and I am noticing a decline in her mental health.”

19. In the third he confirmed that Ms Lomax suffered from depression for which she was taking medication. He considered that Ms Lomax' depression “was being triggered by her isolation in her current housing.” The best treatment, he considered, was to “address the cause rather than psychiatric advice on medicating the effect.” He concluded that Ms Lomax was “affected on a daily basis by her depression”.

20. The RAF Association also wrote in support of her application. They said:

“I have noticed a decline in her mental state such that she is more depressed and also demonstrating exhausting signs of anxiety.

Wendy’s current domestic situation is a grave cause for concern and is emotionally and psychologically stressful and unhealthy....

Over-riding this is Wendy’s sense of helplessness, frustration and sense of failure in being unable to get to see her father during what might be his last years or months and to receive support from her family and hence the urgent need for Wendy to be rehoused in Gosport. The tension this causes has led to several episodes of depression and is furthermore damaging Wendy’s mental health.”

21. They added that her domestic situation was impacting on the management of her disabilities, making an already daily difficult routine even harder and exacerbating the physical pain.

22. In dealing with this body of evidence the reviewing officer concluded:

“I do attach a significant amount of weight and credibility to the support provided by your doctors. The medical opinion is clear that your health would likely improve if you lived in Gosport. I do accept that you would benefit from a move to Gosport.”

23. In addition to the medical evidence the reviewing officer also considered letters from those involved in Ms Lomax’ care plan. The occupational therapist at Dorset CC stated that once Ms Lomax’ ex partner moves away:

“Ms Lomax will therefore be living alone in a very rural area where she doesn’t have a social network and where she will not have the support of her family to help supplement any care package input. Practically this will not be a sustainable situation and the departure of the close friend is likely to have a significant impact on Mr Lomax’ emotional and mental well-being. Due to these very specific circumstances, a move to be near family is a high need in our view.” (Emphasis in original)

24. Commenting on this material the reviewing officer stated:

“The information provided by social services supports the view that I readily accept: that you would benefit from a move to the Gosport area. It also provides some insight as to what it is about the property that is affecting your health. I have been mindful of this information when considering the impact the property has on your health.”

25. In addition to this body of material, the housing association wrote in support of Ms Lomax' application. They said:

“Ms Lomax needs the support from her family to reduce the risk of isolation as she is practically housebound, without this support her mental state would deteriorate rapidly.”

26. The reviewing officer said that this did “reinforce the view that your health would improve if you were to move.” He went on to say:

“The combination of all the above supporting evidence is unequivocal that you would benefit from being less isolated from your family and I fully accept this conclusion. This is significant but only one factor to consider though when considering whether it is reasonable for you to remain in your current occupation.”

27. The reviewing officer next turned to the physical aspects of the accommodation and concluded that “your property is perfectly suited to your complex physical needs”. He also noted that Ms Lomax had strong security of tenure; and that the rent was affordable.

28. What seems to have tipped the balance was his assessment of the general circumstances in relation to housing prevailing in the Gosport area. The essence of what he said on that topic was this:

“I have considered the housing situation in Gosport in general, and the prevalent negative imbalance between supply and demand of housing. There are many people living in housing that is not ideal for their needs in the Gosport area. I provide some data around the Council's housing register by way of example and in order to provide some context to this statement, but households seeking accommodation in the private sector also face similar barriers to them obtaining ideal accommodation.

There are currently 639 households registered for housing that better suits their needs. 259 of those households require a 1 bedroom property like you do. 221 of the households on the waiting list are assessed as needing to move because their current accommodation is having a medical or social impact on them....

This goes to show that the number of people, the vast majority of whom live in the Gosport area, who live in accommodation that is not ideal for them. The imbalance between supply and demand means that the consequent wait for accommodation is, although not ideal, common in the Gosport area, and it is against this context that it might be reasonable to expect a person to continue to occupy their current property even when not ideal....

The general circumstances in relation to housing prevailing in the Gosport area are such that accommodation is relatively scarce, and I attach a significant amount of weight to this in deciding as to the reasonableness of your continued occupation of your current property.”

29. The reviewing officer then moved on to consider the Equality Act 2010 and the public sector equality duty (“the PSED”). He was satisfied that Ms Lomax had a disability, and that she was disabled to a significant extent. He acknowledged that her occupation was “affected by your disability and that there is an impact on your health that comes from remaining in your current property”. As part of that he had:

“... considered the physical elements of your disability and that your property is suited to your physical needs, and I have also considered the relationship between your limited mobility and the consequent difficulties you have with engaging in the community and accessing the support of your family. I have also considered that, although telephone and other forms of distant contact might be the norm for many people, as a person with specific mobility and care needs this form of contact is likely not as valuable to you as face to face contact and support from family would be.”

30. He then referred to the PSED and said:

“I have considered each of the subsections of section 149 of the Equalities Act, including the provision that the Act might involve more favourable treatment to some applicants, but I have reached the decision that your accommodation is reasonable to occupy by having due regard to all of the above sub-headed factors. I am satisfied that your disability and the impact it has on your continued occupation of your property are two of the factors that must be considered in determining the reasonableness of you continuing to occupy your property, and I am also satisfied that I have considered these factors.”

31. He expressed his ultimate conclusion as follows:

“I have dealt with the medical and social information you have put forward in some detail above. I have attached a significant amount of weight to this information, but the large amount of text in this letter dedicated to this area is more representative of the volume of information rather than any *primacy* of significance. The conclusion I draw from this information is that your current accommodation, and in particular the location of that property, is having a substantial impact on your health and wellbeing, and that you would benefit from a move to Gosport.

I have considered this factor, though, against the two other major considerations of the physical suitability of the property

and the prevailing housing situation in the Gosport area. As I have already concluded, your property is perfectly suited to your complex physical needs and the existence of similar properties is relatively scarce. I have already concluded that the imbalance between supply and demand in the Gosport area results in many households living in accommodation that is not ideal for them whilst they seek alternative accommodation.

I have considered your medical and social needs to move to a different property in due course ... but have weighted this need against the ideal physical suitability of your current property, the housing situation in the Gosport area ... the affordability and adequate size of your property, and the fact that you have strong security of tenure – all of which lead me to conclusions which support the decision that it is reasonable for you to remain in your current accommodation. The combination of all these factors combined strike me as weightier together than the medical and social information that you have provided.”

32. Accordingly, he decided that Ms Lomax was not homeless.

The appeal

33. Since this is a second appeal our focus must be on the reviewing officer’s decision rather than on the judge’s judgment. But I should preface my discussion of that decision with some remarks about what seem to me to be errors in the judge’s approach. Having referred to parts of section 149 she said at [8]:

“Subsection (7) lists the relevant protected characteristics, one of which is disability but, I mark, not illness.”

34. I find this cryptic sentence hard to understand. The definition of “disability” in section 6 does not distinguish between physical impairment or mental impairment. I see no reason why an illness cannot amount to an impairment. Section 6 focusses on whether the result of a physical or mental impairment is such as to have a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities. If an illness has such a result, that would amount to a disability. The judge appears to have carried her thought through to [33] where she said:

“... one was looking here at a disability which was, in essence dealt with by the physical needs that the appellant had which were completely provided for by the accommodation in which she was living. Her social desire to move to Gosport, whereas fully understandable, is not as such a disability.”

35. This observation overlooks the medical evidence that not only was her isolation exacerbating Ms Lomax’ mental condition, but that even the provision of physical support for her in her current location was not sustainable in the long term; but would be capable of being provided by her family were she to move to Gosport. All counsel agreed, in my judgment correctly, that this part of the judge’s judgment was wrong.

36. However, as I have said our focus must be on the review decision itself rather than the judge's judgment. The principles upon which an appeal court acts in cases of this kind are authoritatively stated by the House of Lords in *Runa Begum v Tower Hamlets LBC* [2003] UKHL 5, [2003] 2 AC 430. Lord Bingham said at [7]:

“Thus the court may not only quash the authority's decision under section 204(3) if it is held to be vitiated by legal misdirection or procedural impropriety or unfairness or bias or irrationality or bad faith but also if there is no evidence to support factual findings made or they are plainly untenable or ... if the decision-maker is shown to have misunderstood or been ignorant of an established and relevant fact. In the present context I would expect the county court judge to be alert to any indication that an applicant's case might not have been resolved by the authority in a fair, objective and even-handed way, conscious of the authority's role as decision-maker and of the immense importance of its decision to an applicant.”

37. In this connection it is for the appellant to show that the reviewing officer has made an appealable error, rather than for the local authority to show that he has not. In reading a review decision letter the court must take what has been described as a benevolent approach. It should not take too technical view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision: *Rother DC v Freeman-Roach* [2018] EWCA Civ 368, [2018] HLR 22; applying *Holmes-Moorhouse v Richmond Upon Thames LBC* [2009] UKHL 7, [2009] 1 WLR 413.

38. What tipped the balance for the reviewing officer was his evaluation of the housing situation in Gosport. That was a factor to which he had regard by virtue of section 177 (2). In *Noh v Hammersmith and Fulham LBC* [2001] EWCA Civ 905, [2002] HLR 54 this court considered whether it would have been reasonable for a Somali woman who was mentally ill to continue to occupy accommodation in Newham in circumstances in which she wished to live closer to her sister in Hammersmith. In the course of her judgment at [42] Arden LJ approved a passage from the judgment of Taylor LJ in the earlier case of *R v London Borough of Newham ex parte Tower Hamlets* (1991) 23 HLR 62 at 80–81 in which he said:

“The provision in section [177 (2)] that regard may be had to ‘the regarding the general circumstances prevailing’ is in my view primarily intended to allow an authority to take into consideration any shortage in its housing stock, the size of its waiting list, existing priorities and other problems bearing upon its ability to absorb and accommodate another family unit. The section is framed so as to permit those considerations to bear not upon the duty to have but upon the issue whether the applicant was reasonable in leaving his former accommodation. Yet, when he made his decision to leave, he is unlikely to have known ‘the general circumstances prevailing’ in the area to which he subsequently applied to be housed. Whether this is a satisfactory approach has been called into question before but the statute remains in that form.”

39. Arden LJ added at [43]:

“Miss Roberts' submission, with which I agree, is that the point being made, which is an important and useful point, is that the local authority can look beyond the authority's stock of housing to other factors including the ability to absorb and accommodate another family unit.”

40. In *R (Bariise) v Brent LBC* (1998) 31 HLR 50, 58 Millett LJ said that the question under section 177 (2) was whether the applicant's circumstances “took her case out of the ordinary” or “out of the norm”.

41. Mr Lewin, who made excellent submissions for Gosport with skill and moderation, accepted that the approach to section 177 (2) set out in those cases required some modification where the PSED was engaged. In *Hotak v Southwark LBC* [2015] UKSC 30, [2016] AC 811 Lord Neuberger discussed the PSED in the context of vulnerability under the homelessness legislation, and concluded at [78]:

“It is therefore appropriate to emphasise that the equality duty, in the context of an exercise such as a s 202 review, does require the reviewing officer to focus very sharply on (i) whether the Applicant is under a disability (or has another relevant protected characteristic), (ii) the extent of such disability, (iii) the likely effect of the disability, when taken together with any other features, on the Applicant if and when homeless, and (iv) whether the Applicant is as a result “vulnerable”.”

42. The same theme was taken up by this court in *Haque v Hackney LBC* [2017] EWCA Civ 4, [2017] PTSR 769 which concerned the question whether offered accommodation was “suitable”. At [43] Briggs LJ set out a structured approach which a reviewing officer was required to follow in such cases:

“(i) A recognition that Mr Haque suffered from a physical or mental impairment having a substantial and long term adverse effect on his ability to carry out normal day to day activities; i.e. that he was disabled within the meaning of EA s. 6, and therefore had a protected characteristic.

(ii) A focus upon the specific aspects of his impairments, to the extent relevant to the suitability of Room 315 as accommodation for him.

(iii) A focus upon the consequences of his impairments, both in terms of the disadvantages which he might suffer in using Room 315 as his accommodation, by comparison with persons without those impairments (see s. 149(3)(a)).

(iv) A focus upon his particular needs in relation to accommodation arising from those impairments, by comparison with the needs of persons without such impairments, and the

extent to which Room 315 met those particular needs: see s. 149(3)(b) and (4).

(v) A recognition that Mr Haque's particular needs arising from those impairments might require him to be treated more favourably in terms of the provision of accommodation than other persons not suffering from disability or other protected characteristics: see s. 149(6).

(vi) A review of the suitability of Room 315 as accommodation for Mr Haque which paid due regard to those matters.”

43. In the light of these authorities Mr Lewin proposed the following structure as applied to this case:
- i) A sharp focus on whether Ms Lomax was disabled.
 - ii) A sharp focus on the extent of her disabilities.
 - iii) A sharp focus on the likely effect of the disabilities, when taken together with any other features, on Ms Lomax for as long as she continued to occupy the property.
 - iv) A sharp focus on Ms Lomax' particular needs in relation to accommodation which arise from her disabilities and the extent to which her current accommodation meets those needs.
 - v) A comparison between Ms Lomax' accommodation needs and the accommodation needs of people without her particular disabilities.
 - vi) A recognition that when considering whether it was reasonable for her to continue to occupy her property Ms Lomax might need to be treated more favourably than others without her disabilities.
44. Mr Lewin stressed that the PSED was not a duty to achieve a result, but a duty to have regard to certain matters; and that provided that the decision maker had had regard to them, the weight to be given to them was a matter for him: *Hotak* at [74] to [75].
45. In broad terms I accept Mr Lewin's submission. However, the PSED applies at all stages of the decision making process, and is not to be compartmentalised. As Mr Drabble QC, for the Equalities and Human Rights Commission, submitted, in performing a comparative exercise between Ms Lomax' particular needs and disabilities on the one hand, and general housing conditions in Gosport on the other, there is a serious danger that the sharp focus becomes blunted. Although he did not go so far as to say that section 177 (2) was irrelevant in such a case, he stressed that any consideration of general housing conditions must be astute to identify the appropriate comparators, and must take account of the real differences between Ms Lomax' housing needs and the needs of others without her particular disabilities.
46. Mr Hodgson, for Ms Lomax, says that the reviewing officer took a view which was in part too broad and in part too narrow. It was too broad because he looked at the

generality of persons on the council's housing list. Even where he tried to separate out those who needed to move because their current accommodation was having a medical or social impact on them, he failed to home in on the severity of Ms Lomax' disability and the exceptional impact that living in her current accommodation was having on her health. It was highly unlikely that many (if any) of those on the housing list had disabilities as severe as those that afflicted Ms Lomax. The reviewing officer also failed to take into account Ms Lomax' inability to mitigate the impact on her of continuing to occupy her current accommodation as compared with others on the housing list.

47. It was too narrow because the reviewing officer looked only at the council's own housing stock and did not look at what might be available from other providers of social housing, or in the private sector. I reject the last part of this submission. The review decision said that the reviewing officer had considered the housing situation in Gosport "in general". The statistics from the Council's housing list were given "by way of example"; and the reviewing officer also stated that households seeking accommodation in the private sector were finding similar barriers.
48. The first part of the submission is bound up with consideration of Ms Lomax' disabilities. In essence Mr Hodgson, supported by Mr Drabble QC, submits that to compare Ms Lomax with the generality of persons on the council's housing list applies a generalised provision, criterion or practice (a "PCP") which does not take account of her particular disabilities, and fails to comply with the PSED. To equate undifferentiated medical and social impact with the documented impact on Ms Lomax of remaining in her current accommodation puts her at a disadvantage compared with the generality of people on the council's housing list. She is less able to cope with her accommodation than others, particularly others who have no more than a social need to move. It thus amounts to indirect discrimination against her. The point is reinforced by the council's PSED.
49. Mr Lewin, for Gosport, said in his skeleton argument that there was no evidence to suggest that Ms Lomax was in any worse position than the 221 households on the council's waiting list who were all "in the same unfortunate boat". In the course of his oral submissions, however, Mr Lewin accepted that his proposition was too baldly stated. Although he did not quite say so, it seems to me that he tacitly accepted that if that had been the reviewing officer's conclusion, it would not have been a lawful one. However, his submission was that the reviewing officer had carried out his task in the structured manner that he commended.
50. I agree with Mr Hodgson that a generalised reference to the situation of people on the council's housing list, who may or may not have disabilities, let alone disabilities as severe as Ms Lomax', does not have the required sharp focus on Ms Lomax' particular disabilities and the consequences for her of remaining in her current accommodation; and the particular reasons why continuing to occupy her current accommodation would continue to damage her mental health (and in due course her physical health). The reviewing officer says no more than that the accommodation occupied by those households "is having a medical or social impact on them". A social impact is not itself a disability. Nor did the reviewing officer comment on the severity of that medical or social impact.

51. As Mr Drabble submitted, sections 149 (3) (b) and (4) require a local authority to have regard to the duty to take steps to meet the different needs of a disabled person as compared to those who are not disabled. Moreover, those steps may involve treating a disabled person more favourably than a person who is not disabled. The comparative exercise that the reviewing officer carried out did not, in my judgment, comply with these duties. Nor did the reviewing officer ever ask himself the question whether Ms Lomax' situation was one which was out of the ordinary or out of the norm. These were significant errors which led the reviewing officer to conclude that he should give "considerable weight" to the general circumstances in relation to housing in the Gosport area. Had he properly applied the PSED in his comparative exercise he would probably have reached a very different conclusion.
52. Contrary to Mr Lewin's submission I do not consider that the review decision is saved by the reviewing officer's subsequent discussion of the PSED. In the first place, that discussion was conducted against the background that the reviewing officer had already concluded that he should attach a significant amount of weight to general housing conditions in Gosport. Second, although he acknowledged that there was "an impact on your health" from remaining in the current property he overlooked or downplayed the highly material and unchallenged evidence that her mental health was being positively damaged by remaining where she was; and the medical opinion that an *immediate* move was required. This was compounded by his subsequent statement that he acknowledged a medical and social need to move "in due course".
53. In the course of his review, the reviewing officer stated his opinion that "your property is perfectly suited to your complex physical needs". In so stating, I consider that the reviewing officer failed to take into account a highly relevant consideration, namely the location of the property. The reviewing officer appears to me to have overlooked the fact that the location of the property was the *cause* of her mental disability, namely her depression. In addition, there was overwhelming evidence that to remain in this property in this particular location was actually contributing substantially to a further deterioration in Ms Lomax' mental condition; and that physical support would not be sustainable if she continued to reside there.
54. In his final conclusion where the reviewing officer balanced the various considerations, the two major factors that he took into account in deciding that it was reasonable for Ms Lomax to remain in her accommodation were the "physical suitability of the property" and "the prevailing housing situation in Gosport". As to the former, it was only suitable if its location was ignored. As to the latter, the reviewing officer repeated his statement that there were "many households living in accommodation that is not ideal for them". Although Mr Lewin submitted the contrary, I think it inescapable that the reviewing officer did regard Ms Lomax and the other households as being "in the same unfortunate boat". For the reasons I have given, I consider that that evaluation was erroneous.
55. I would allow the appeal.

Lord Justice David Richards:

56. I agree.

Lord Justice Coulson:

57. I agree that, for the reasons set out by Lewison LJ, this appeal should be allowed. Mr Lewin's helpful structure (outlined by my Lord at paragraph [43] above) identified, amongst other things, the need for the reviewing officer to undertake a comparison between Ms Lomax' accommodation needs and the accommodation needs of people without her disabilities. In my view, that comparison is missing from the reviewing officer's evaluation.