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Minott v Cambridge City Council

[2022] EWCA Civ 159

Court of Appeal

Underhill, Lewison, Macur LLJ

18 February 2022

The Court of Appeal has held that when a housing authority – having made a determination in respect of a homelessness application which brings their duty to an end – receives what purports to be a subsequent application, their inquiry falls into two separate stages: first, whether it is an application at all, the answer to which will only be no if it is based on precisely the same facts as an earlier application (disregarding fanciful allegations and trivial facts); and secondly, if it is an application, whether it is well-founded, which will require a housing authority to carry out the inquiries required by s.184, Housing Act 1996. In the context of a local connection referral pursuant to s.198(A1), Housing Act 1996, lapse of time which has a consequence (passing the six-month residency threshold for the purposes of the Local Authority Agreement, para.4.3(i)) is a new fact which is neither trivial nor fanciful.

Toby Vanhegan and Stephanie Lovegrove of 4-5 Gray's Inn Square appeared for the appellant.

Facts

Mr Minott left the district of Sandwell and applied to Cambridge City Council ("Cambridge") as homeless on 26 March 2019. On that day Cambridge provided him with temporary accommodation pursuant to s.188(1), Housing Act 1996. Having made inquiries, Cambridge decided that Mr Minott had no local connection with Cambridge but did have a local connection with Sandwell MBC. Accordingly, Cambridge referred his application to Sandwell under s.198(A1). On 9 August 2019 Sandwell accepted the referral. Mr Minott asked for a review of that decision and for temporary accommodation to be provided pending the outcome under s.188(3). Cambridge refused to exercise their discretion under s.188(3) and terminated Mr Minott's licence with effect from 2 September 2019. Mr Minott refused to vacate the property and remained living there. Cambridge made their review decision on 25 September 2019 and upheld the decision to refer Mr Minott's application to Sandwell stating that "you started to reside in Cambridge on 26 March 2019 when the Council provided you with interim accommodation and you have not accrued six months residency in this area." On the following day (26 September 2019) six months elapsed since Mr Minott's initial application to Cambridge. Mr Minott chose not to appeal against the review decision and rather reapplied to Cambridge as homeless on 17 October 2019 citing the fact that he had now lived there for six months and therefore had a local connection. Cambridge refused to accept this purported further application because "the submission did not provide new information" because Mr Minott did not have a local connection as his temporary accommodation had ended from 2 September 2019.

High Court

Mr Minott applied for judicial review of Cambridge's refusal to accept the application. That claim was dismissed by HHJ Lickley QC [2021] EWHC 211 (Admin) (at [44]-[45]) *inter alia* on grounds that (i) other than the passage of time nothing had changed, (ii) Mr Minott did not have a local connection with Cambridge and, (iii) in the circumstances of the case the simple passing of time and the unlawful occupation of the accommodation did not amount to a new fact. The judge went on to hold that the new application was wholly fanciful (i.e. unrealistic) because Mr Minott had refused to leave the temporary accommodation which was tantamount to a manipulation of the homeless statutory regime and any person in similar circumstances without a local connection who was dissatisfied with a referral decision would be able to frustrate the referral system by refusing to leave until such time as he had resided for six months in one area. The judge accordingly found that Cambridge had not acted irrationally in refusing to accept a fresh application.

Court of Appeal

The Court of Appeal allowed Mr Minott's appeal with all three judges giving concurring judgments. It reiterated the approach in *Fahia* i.e., the only case in which a housing authority can refuse to entertain what purports to be a subsequent application is where there is "no application". That would be the position where it is based on "exactly the same facts" as the previous application or is "identical with" it.

It further observed that Neuberger LJ in *Rikha Begum* had confirmed that *Fahia* rejected a test of "material change of circumstances" and had dismissed the appeal on that basis. The guidance which followed regarding the authority's ability to reject a purported fresh application having decided (without investigation) that the new facts were trivial or fanciful was therefore *obiter*. On this issued, Lewison LJ held (at [75]) that "whether a fact is or is not trivial is perhaps open to debate; but a fact cannot be regarded as trivial merely because it could not affect the outcome of the second application". Macur LJ was clear (at [23]) that Pill LJ's observation in *Rikha Begum* that an authority could make some non-statutory inquiries to ascertain if a new fact was trivial had no precedential value.

Lewison LJ went on to hold (at [76]) that "[…] when the housing authority receives what purports to be a subsequent application, their inquiry falls into two quite separate stages:
i) Stage 1: it is an application at all? The answer will only be no if it is based on precisely the same facts as an earlier application (disregarding fanciful allegations and trivial facts);
ii) Stage 2: if it is an application, is it well-founded? That will require the housing authority to carry out the inquiries required by section 184. If an application passes stage 1, there is no available short cut." He continued (at [79]) that to reject a purported application as no application at all deprives an applicant of that valuable procedure. Since the whole object of Part 7 of the Act is to protect the homeless, there is every reason to apply the strict test laid down by *Fahia* and *Rikha Begum*.

On whether lapse of time amounted to a new fact, Lewison LJ held (at [83]) that what matters most is not the lapse of time in itself, but what its alleged consequences are. He gave the examples of children turning 16 falling into the category of priority need or turning 10 for the purposes of rendering a house overcrowded. Cambridge submitted that the criterion of six months' normal residence ought not be viewed in the same way, because that was a working definition agreed between local authorities which had no statutory force. The Court of Appeal rejected this submission because, albeit a working definition, it was of widespread application and endorsed by the Homelessness Code of Guidance to which authorities must have regard under s.182, Housing Act 1996.

He went on to provide examples of cases where local authorities had been found wrongly to have refused to accept subsequent applications and noted that this pattern reinforced the correctness of Lord Brown-Wilkinson's prediction in *Fahia* that cases in which a housing authority would be entitled to refuse to entertain a subsequent application would be confined to "very special cases".

The Court of Appeal concluded that Mr Minott's application was wrongly rejected. Having decided on review that the reason he did not have a local connection was because he had not accrued six months' residence in Cambridge, Cambridge could not refuse to take a subsequent application after that six-month threshold had been met. The new asserted fact was not fanciful because it was based on Cambridge's own finding in its review decision and it was not trivial because the alleged consequence of the lapse of time was that, having failed to satisfy the working definition of "normal residence", Mr Minott now satisfied it: [96].

On the issue of whether unlawful residence was capable of being normal residence for the purposes of establishing a local connection, the Court of Appeal declined to express a view though observed that whilst the quality of Mr Minott's residence may or may not be relevant to the second stage of the process, it was not relevant to the first stage (i.e., whether an application should be taken): [96]. Underhill LJ went so far as to say, "I can see no reason why the fact that an applicant's residence is in some sense unlawful necessarily means that they cannot be "normally resident" for the purpose of [s.]199(1)(a) of the 1996 Act."