

Neutral Citation No: [2020] NIQB 21

Ref: HUM11216

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 28/02/2020

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN’S BENCH DIVISION (JUDICIAL REVIEW)
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**IN THE MATTER OF AN APPLICATION BY JR103
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**
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HUMPHREYS J

INTRODUCTION

[1] This is an application for leave to apply for judicial review of a decision of the Northern Ireland Housing Executive (“the NIHE”) dated 30 August 2019 whereby the NIHE declined to accept the Applicant’s application under the SPED scheme. I am grateful to both Counsel for the Applicant, Mr. McGowan BL, and for the proposed Respondent, Mr. Sands BL, for the economy and accuracy of their submissions.

[2] SPED is an acronym for the scheme for the Purchase of Evacuated Dwellings and is made under Article 29 of the Housing (NI) Order 1988 (“the 1988 Order”). This statutory provision requires the NIHE to submit to the Department for Communities a scheme to make provision for the acquisition by agreement of houses owned by persons who, in consequence of acts of violence, threats to commit such acts or other intimidation, are unable or unwilling to occupy those houses.

[3] The existing iteration of the scheme is dated 2014. There are two eligibility criteria:

- (1) The house must be owner-occupied and must be the Applicant’s only or principal home;
- (2) There must be evidence (substantiated by the PSNI) that it is unsafe for the applicant or a member of his/her household residing with him/her to continue to live in the house, because that person has been directly or

specifically attacked or intimidated and as a result is at risk of serious injury or death.

[4] The Applicant brought previous judicial review proceedings in relation to previous SPED scheme applications and these resolved on the basis she would submit a fresh application for consideration by the NIHE. This was done in July 2019. In her affidavit evidence the Applicant describes how she purchased a property in North Belfast in September 2007. She and her husband, now deceased, also owned a property in Crawfordsburn but this was not suitable for her husband's needs. The Applicant states that she intended to move into the property on 31 July 2015 but in the days following events occurred which rendered the property uninhabitable from her perspective. The Applicant then tried to sell the house before making her first application under the SPED scheme on 6 March 2017.

THE IMPUGNED DECISION

[5] The impugned decision in the instant case was communicated to the Applicant by letter dated 30 August 2019. In it, the decision maker states that the application does not satisfy Criterion 2.1(i), i.e. the requirement that the property be owner-occupied and be the Applicant's principal or only home. The decision maker has carefully considered the evidence submitted by the Applicant, both in the application at hand and in the previous judicial review proceedings, and compiled a time line of events on that basis. He reaches the following conclusions:

- (1) The documents provided dated prior to 31 July 2015 would not be sufficient to evidence owner occupation or that the property was the Applicant's principal home;
- (2) The Applicant's principal home prior to 31 July 2015 was the Crawfordsburn property;
- (3) The NIHE accepted it was the Applicant's stated intention to move into the property as her principal home at 31.7.15 and that the property was vacated on 3.8.15 following an arson attack;
- (4) The NIHE did not accept that the property was the Applicant's principal home at the date of first application as the Applicant was not living at the property for a substantial period prior to the submission of her first SPED application (6 March 2017);
- (5) The NIHE also did not accept that the property was the Applicant's principal home at the date of the instant application in July 2019.

THE TEST FOR LEAVE

[6] I remind myself at this stage that the Applicant need only establish an arguable case which has a reasonable prospect of success (*Omagh DC v Minister for Health, Nicholson LJ*).

THE GROUNDS FOR JUDICIAL REVIEW

[7] The grounds for judicial review advanced in the Order 53 Statement can be summarised:

- (1) Illegality based on the proposed Respondent's misdirection as to the proper interpretation and application of the SPAD scheme;
- (2) Breach of the Applicant's Convention Rights;
- (3) Procedural Unfairness;
- (4) Irrationality; and
- (5) Breach of statutory duty.

[8] I have concluded that the Applicant has established an arguable case in relation to (1), (3) and (5), i.e. paragraphs 5 (i) (a) to (c); 5 (iv) and 5 (vii) of the Order 53 Statement.

[9] There is an arguable case that the NIHE has misinterpreted the statutory scheme by considering the operative date for the application of Criterion 2.1(i) as being the date of the application. One must recall that this is a scheme relating to evacuated dwellings and therefore, as a matter of course, the Applicant is unlikely to be occupying the property at the date of the application. Indeed, it may well be that by the time an application is made the Applicant will have established a new 'principal home'. It is arguable therefore that the decision maker in this case misapplied the scheme by failing to analyse the operative date as being the date when it became unsafe for the Applicant to live in the house by reason of the intimidation

[10] No arguable case has been made out in relation to the breach of the Convention rights to be found in Article 2, Article 8 or Article 1 of the First Protocol. The NIHE has not caused or contributed to any risk to life of the Applicant nor to any interference with her private and family life or her property. The NIHE is operating a scheme which serves to compensate those who have been deprived of the enjoyment of their property by others in particular circumstances.

[11] An arguable case has been made out in relation to procedural unfairness insofar as it is alleged the NIHE took into account evidence on the issue of

occupation and principal residence without affording an opportunity to the Applicant to comment on same.

[12] I am not persuaded that any arguable case of *Wednesbury* irrationality has been made out. The decision is clearly one which falls within the bounds of reasonableness.

[13] There is an arguable case that the interpretation of the scheme by the NIHE serves to frustrate the statutory purpose of Article 29 of the 1988 Order and therefore I grant leave on this ground also.

DELAY

[14] It is incumbent on an Applicant to commence proceedings for judicial review within 3 months of the date when the grounds for the application first arose unless the court considers there is good reason for extending the period. In this case, proceedings ought to have been commenced by 30 November 2019; they were not filed until 19 December 2019. However, I have considered the affidavit evidence from Mr. Pierce of KRW Law who explains how confusion arose in relation to the grant of the legal aid to the Applicant, this being an application processed under the new LAMS scheme. Mr. Sands, for the proposed Respondent, helpfully conceded that the delay has not caused any prejudice to either his client or good administration generally. I also consider that the application of the SPED scheme is important to the public generally. In light of the principles set down by the Court of Appeal in *Laverty v PSNI* [2015] NICA 75, I consider that there is good reason to extend the time herein.

[15] For these reasons, I grant leave on the grounds identified. I will reserve the issue of costs and hear counsel as to the directions for the litigation.