Judicial review right way to challenge refusal of interim accommodation pending final review decision (Davis v Watford Borough Council)

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Local Government analysis: The Court of Appeal has confirmed that the County Court does not have jurisdiction to hear an appeal against a decision to refuse interim/temporary accommodation pending a final decision by a local authority on review of a housing decision. A claim for judicial review is the appropriate way to challenge such a decision (as it also is if temporary housing is refused pending the first housing decision being made before the review.) The County Court only obtains jurisdiction once a final decision on review is made (or if the review decision is not made within time.) Written by Adam Heppinstall, barrister, Henderson Chambers.

Davis v Watford Borough Council [2018] EWCA Civ 529

What are the practical implications of this case?

There are several striking things about this case:

- it took Watford BC from 29 August 2014 to 17 November 2015 to decide the claimant's (C) application for housing
- that decision was appealed to the County Court on 8 December 2015, but that appeal had not been listed as of March 2018
- Watford BC refused temporary accommodation pending review/appeal in October 2015, the claim for judicial review against that decision resulted in an emergency order for temporary accommodation from the Administrative Court within a few days and the case was heard and permission refused within days during November 2015

It is clear from this judgment that:

- local authorities must proceed to make decisions, at first instance and on review within the statutory time limit, and
- whilst they are doing so, they ought consider carefully providing interim accommodation, otherwise they may find themselves, based on this judgment, on receipt of orders of the Administrative Court (including for payment of the costs of obtaining such orders) requiring them to do so

One could point out that Mr Davis could have appealed the failure of the local authority to make the review decision within time frame prescribed which would have invoked the jurisdiction of the County Court to order temporary accommodation in the meantime (section 204 A(2)(c) Housing Act 1996, (HA 1996)), but then would the County Court have heard and determined such an application with the alacrity of the Administrative Court in October/November 2015?

What was the background?

Mr Davis applied for housing to Watford BC on 29 August 2014. The council found him, on 8 December 2014, not to be in priority need. Mr Davis then sought a review of that decision and was given an interim "minded to" decision that Watford BC intended to uphold its decision that he was not in priority need on 31 August 2015 (ie over a year after the application). In the meantime, he was housed in temporary accommodation.

Before the "minded to" review decision was made final, Mr Davis appealed the original decision (of 8 December 2014) to the County Court and made a request for interim accommodation pending appeal, which was refused and the temporary accommodation provision came to an end on 29 October 2015.

Mr Davies sought judicial review of that refusal to provide interim accommodation and, on 3 November 2015, Wilkie J ordered that the accommodation continue in the meantime. Watford BC applied to discharge this order. That application came before Mitting J on 5 November 2015—where Watford BC submitted that only the County Court could consider an application for accommodation pending appeal. Mr Davis submitted, that the County Court's jurisdiction was limited to an appeal from a decision on review, and Watford BC had yet to issue the review decision. Mitting J decided that the proper venue was the County Court and refused permission for the judicial review.

Mr Davis then commenced an appeal in the County Court which Watford BC compromised by making an offer of accommodation pending appeal. Ultimately Watford BC issued its final decision on the review, on 17 November 2015,

which was promptly appealed to the County Court on 8 December 2015. As at the date of this Court of Appeal hearing on whether Judicial review was the appropriate remedy, the County Court appeal had still not been listed, something which Davis LJ described as “regrettable”.

What did the court decide?

The court decided that Mitting J was wrong and Mr Davis was right to have brought judicial review proceedings in the High Court.

Section 204A was added to HA 1996 in order to prevent judicial review claims for interim accommodation pending an appeal from a review decision to the County Court. That much, Davis LJ thought, was clear. However, given that HA 1996 s 204A only grants such a right of appeal from either a failure to conduct the review within the statutory time limit or from a review decision, it could not cover the present situation where the local authority had not yet made a review decision. In those circumstances, a right to claim judicial review must arise.

Interestingly, the court also stated that judicial review was also the right avenue if the local authority refused interim accommodation pending an initial decision on priority need (see the other examples Davis LJ gives where judicial review is still available at para. 41 of the judgment). It appears that Mitting J was trying hard to strain the meaning and effect of HA 1996 s 204A so as to insulate the Administrative Court from appeals that he believed ought to be in the County Court. Whilst that decision reflects government policy (to transfer these types of cases to the County Court away from the Administrative Court), this is not what Parliament had achieved on this occasion. Davis LJ was not too concerned about this because he hoped that:

‘…a housing authority may often be prepared, pragmatically, to offer interim accommodation…it is surely not altogether unreasonable…to expect housing authorities ordinarily to notify their decision on review in accordance with the time limit which has been prescribed by the Regulations’ (para. 47).

Case details

- Court: Court of Appeal, Civil Division
- Judge: Davis LJ, Sir Ernest Ryder (P) and Sales LJ
- Date of judgment: 20 March 2018

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