IN THE SOUTHEND COUNTY COURT

HHJ MOLONEY QC

Between:

KATHLEEN SLATTERY Claim No 1BQ 00503

JOANNE SHERIDAN Claim No 1BQ 00504

MICHAEL SLATTERY Claim No 1BQ 00505

Appellants

And

BASILDON BOROUGH COUNCIL

Respondents

Alex Offer, instructed by Lester Morrill (incorporating Davies Gore Lomax), for the Appellants

Galina Ward, instructed by Basildon Borough Council, for the Respondent

JUDGMENT

(Handed down at Norwich, 21 December 2012)

A. General Considerations

1. Introduction

1.1 This judgment relates to three linked appeals on points of law, brought under s. 204 Housing Act 1996 against the review decisions of the Basildon Borough Council as to the suitability of its offers of accommodation to homeless people. The common factor is that in each case the appellants and their families are members of the Irish Traveller community and former residents of the well-known Dale Farm caravan site, who are unintentionally homeless, and are no longer residents of the unauthorised Dale Farm site as a result of the Council's decision to close that site and evict the former residents, including these appellants. The Council accepts in each case that it is under a statutory duty to offer suitable alternative accommodation to the appellants and their families. In each case it has offered alternative accommodation, not in the form of a pitch on a lawful caravan site or travellers' site as the appellants wish, but in a conventional council house or flat which is in other respects broadly suitable for the families' housing needs. In each case the appellants regard the offered accommodation as unsuitable for them, on a variety of grounds but in particular on the basis of medical evidence as to the adverse mental and/or physical consequences to them or a member of their family if obliged to live in "bricks and mortar"

(as opposed to some form of caravan or mobile home). In each case the appellants applied to the Council under s. 202 of the Act for a review of the decision to offer such accommodation, and in each case that review took place but the original decision was upheld, leading to the present appeals.

1.2 In many respects these appeals and this judgment should be viewed as an annex or sequel to a previous set of Dale Farm s. 204 appeals, which led to the Court of Appeal's decision on 12 March 2012 in Sheridan and others v. Basildon Borough Council [2012] EWCA Civ 335. I have considered the lead judgment of Patten LJ in that case closely. I have also had the great benefit of having the same counsel before me who appeared in Sheridan. In that case, the appeals were unsuccessful, and Ms Ward for the Council understandably contends that the issues before me are effectively identical, and so should the result be. Mr Offer for the appellants accepts that some of his present arguments and grounds of appeal are covered by Sheridan and cannot be accepted by me in this court, though he has properly included them with a view, no doubt, to continuing his clients' campaign at the next level if need be. But he emphasises, rightly, that although many of the applicable legal principles will be the same in the two cases, each s. 202 review is an individual, fact-sensitive matter. His present clients are different people from the Sheridan appellants and from each other, and each has a different case on the facts (especially as to the medical evidence and the Council's responses to it). He has also learned a few things from the Sheridan decision; some of his legal submissions before me are rather different from those there advanced, and may therefore not be determined against him by its precedent.

1.3 It therefore appears to me, as I suggested to counsel at the start of the appeal hearing, that the most efficient way for me to proceed is first to define which issues are plainly determined against the appellants by Sheridan, so that I need deal with them no further, and then to go on to consider the remaining issues on a case-by case basis, approaching them where appropriate in the manner indicated by Sheridan, but without any obligation to reach a similar conclusion if the evidence here differs and points me elsewhere.

2. Wider Obligations towards Travellers Generally

2.1 The appellants have helpfully summarised their cases in their Composite Grounds of Appeal, lettered (a)-(h). Of these eight grounds, the latter six are concerned, directly or indirectly, not with the particular needs of the individual appellants but with the Council's alleged strategic failures in respect of the general provision of travellers' sites within or near its area. They concern:

- the alleged lack of an available site within the Council's area;

b. Ought the Council to have considered the purchase of alternative land?

This question has to be approached on two levels. In Sheridan, and in the earlier case of Lee v. Rhondda BC [2008] EWCA Civ 1013 on which the CA in Sheridan placed reliance, there was no convincing medical evidence that the move to "bricks and mortar" would cause actual mental illness to the particular travellers in question (as opposed to real problems of a cultural and social nature). In that context, Patten LJ rejected the submission that the council should have acquired land for the appellants' caravans (para. 58 of Sheridan). In like circumstances I should no doubt reach the same conclusion.

But it depends on the medical evidence in the particular case, and Patten LJ recognised (Sheridan para. 49) that there might be exceptional cases "*where the degree of impairment to the physical or mental wellbeing of the applicant consequent on their being housed in the accommodation will be so serious that nothing can justify it being treated as suitable*". In such a case, and bearing in mind the absolute nature of the Council's statutory duty to offer suitable accommodation to the homeless, there might be a wider obligation on the Council than merely to consider presently available sites; see Lee (supra) at para.17, cited in Sheridan at para.39. But this will depend on the circumstances of the individual case.

2.5 Subject to that point, it appears to me that the live issues on these appeals, i.e. those not plainly covered by Sheridan, arise under Composite Grounds (a) and (b), namely:

a. that the offers of "suitable accommodation" fell below the Wednesbury minimum line, in relation to the needs of each particular appellant and their family; and/or:

b. that those decisions were contrary to Article 8 ECHR.

On both of those grounds, the answer turns primarily on the medical evidence and the Council's response to it in the review, in each individual case.

3. Psychiatric Harm; Distinctions from Sheridan

3.1 The Council maintains that similar medical evidence was relied on by the appellants in Sheridan, to no avail, and that the same result should follow here. The present appellants respond that in Sheridan that evidence was directed to materially different issues, and that it failed on those issues. Specifically, in Sheridan the medical problems relied on were held not to flow solely from the move to "bricks and mortar" but from several other related factors, including:

a. the process of eviction itself; and

b. the loss of family and social support derived from the breakup of the Dale Farm community.

3.2 These arguments were addressed by Patten LJ at paras 50 and 51 of his judgment. Essentially, the question was one of causation.

"The risk of depression...is the consequence not of the offers of accommodation which have been made but of the applicants' removal from Dale Farm. It is clear from Dr Slater's report that what Mr Sheridan [who was separated from his wife but still dependent on her] *will lose is the close support of his wife and family which he depends on... The same would apply even if the offer...had been of a separate caravan pitch some distance away from his wife. The physical separation of Mr and Mrs Sheridan is the inevitable result of their removal from Dale Farm...coupled with their decision not to seek accommodation together as a single family unit."*

It was for this reason that he stated, at the beginning of para 50, that in Sheridan the question of whether the risk of psychiatric harm was sufficient to make the offers of accommodation unsuitable did not arise in a "stark way".

3.3 In the present case, the appellants contend that that question does arise in a stark way, and is therefore not determined against them by Sheridan. The offers of housing do not split up immediate families, so that part of the causal mechanism is absent; but (they assert) their clear medical evidence is that the simple fact of having to live in "bricks and mortar" will of itself be sufficient to bring about dire medical consequences. This raises two main issues for me to consider:

a. does their medical evidence raise such a case? and, if so:

b. does the Council's approach to that evidence on review disclose any error of law?

4. The Law

4.1 The starting point on any s. 204 appeal is for this Court to remind itself that it is not itself exercising the housing function of the local authority, or even considering whether it agrees with the decision the Council has reached. It is for the appellant in each case to show that the decision, or the manner in which it was arrived at, was not merely questionable on its merits, but actually involved an error of law. Traditionally this is put in terms of the Wednesbury test, that it was a decision which no reasonable local authority could have reached. It also now requires consideration of whether the local authority's decision infringed the appellant's human rights, which will involve the Court's not only scrutinising whether the decision was within the broad limits of the local authority's discretion but also

(though cautiously) forming its own view of whether the particular decision complied with the Convention; see Codona v. Mid-Bedfordshire DC [2004] EWCA Civ. 925 at para.58, per Auld LJ.

4.2 So far as the suitability of offered accommodation is concerned, the following principles of law are clear:

a. "suitability" is specific to the needs of the particular applicant (including the needs of members of her family who will be living with her);

b. there is a Wednesbury minimum level of suitability in each case, below which the accommodation offered must not fall;

c. it is the absolute duty of the authority to offer suitable accommodation; it follows that though scarcity of resources and level of local demand are relevant to the decision whether particular accommodation is suitable above the minimum, those factors cannot justify a failure to meet the minimum at all;

d. though it would be going too far to say that any real risk of physical or mental harm consequent on occupying the allocated accommodation would render it unsuitable, there will be some *"exceptional cases where the degree of impairment to the physical or mental wellbeing of the applicant consequent on their being housed in the accommodation will be so serious that nothing can justify it being treated as suitable"* (Sheridan at para.49, referring to Omar (1991) 23 HLR 446);

e. it is the duty of a local authority to make inquiries with a view to establishing the needs of homeless persons in respect of accommodation (s.184(1) of the Act) though of course the local authority has a wide discretion, reviewable on Wednesbury principles, as to what those inquiries should be and how their findings are to be applied.

4.3 Applying those principles to the issues in the present case, it appears to me that it was the legal duty of the Council, on being presented with a s.202 review application which raised *prima facie* medical grounds for the unsuitability of the offered accommodation, to consider and decide whether it needed to make further inquiries, specifically the obtaining of further medical evidence and to the level of risk and likely extent of harm and how it might be obviated, before completing its review. In arriving at that preliminary decision, it would have to consider in turn whether, without such medical evidence, its panel could properly decide the questions before it, in particular the Omar question whether the degree of harm likely to follow from occupying the offered housing was so great that such an offer must fall below the Wednesbury minimum.

4.4 The answer to those questions would not necessarily always, or even often, be that further medical evidence was necessary. For example, the review panel would not

necessarily need medical expertise to decide whether the threatened harm would flow from the eviction as opposed to the move to bricks and mortar; that is an exercise in analysing the applicant's medical evidence as to causation, not questioning its medical accuracy. Even some apparently medical questions, such as whether resulting clinical depression could adequately be managed under the NHS, might well be proper ones for a panel of experienced housing officers to consider. But, at least in theory, there could be cases in which the nature of the medical evidence, and in particular the gravity of the possible consequences, was such that no reasonable local authority could choose to persist in its original decision without making further inquiries.

4.5 There is no evidence here that the Council's review panel did consciously address the question whether it should obtain its own medical evidence in any of the three cases. But, rather than decide whether that omission alone renders the resulting decisions Wednesbury unreasonable, it is preferable for me to examine the decisions that were actually made, in order to see whether the Council did have reasonable grounds for reaching its decision without such evidence, or whether its absence had a fatal effect on the decision made.

5. The Council's Reviews

5.1 In each case the Council's s.202 review was conducted by a panel of two members, Mrs Last and Mrs Ayres, which considered the applicant's written submissions and the evidence of Ms Heine, and the medical reports summarised below. In each case the panel's conclusion to uphold the initial offer was stated by letter, dated 13 July 2011 (Mr Slattery) and 15 July 2011 (Mrs Sheridan and Mrs Slattery). Insofar as the review letters dealt with the general strategic issues of availability of caravan sites and so forth they were, understandably, in very similar terms; but I have already indicated that I consider that those issues have been excluded by Sheridan and are not open for me to consider. The live issue before me in each case is whether the review panel fell into error of law in its approach to the circumstances of the individual applicant, particularly as to the medical/psychological case advanced.

5.2 Mrs Last is the Review and Performance Officer in BBC's Housing Choice Department, and Mrs Ayres is the Rehousing Manager. Mrs Last gave oral evidence before me. Cross-examination focused on the way in which, as described below, the panel felt able in each case to reach a decision contrary to the opinion and recommendations of the applicant's medical adviser, without itself having any medical expertise or seeking its own medical advice before reaching its conclusions. Mrs Last accepted that neither she nor Mrs Ayres had medical expertise. She did however have considerable practical experience of dealing with the housing problems of mentally ill people, and as a result was familiar with the range of mental health treatments available to local residents via the NHS (a point made in each

review letter as an answer to the medical case). But it became clear that her understanding of the medical terms used in the reports was limited; for example, she was not aware of the medical meaning of the word "chronic" (making the common error of thinking it means serious rather than long-lasting), she did not view claustrophobia as a mental illness, and she had never heard of the ICD classification. In respect of each medical report her position was that she "accepted" it in the sense of not challenging the accuracy of its diagnosis, but did nevertheless feel able to assess and reject its prognosis as to the likely medical consequences of accepting the offered housing, for the reasons given in the decision letter. As already stated, in no case does the panel appear to have given active consideration to obtaining a second opinion.

B. The Individual Cases

6. Kathleen Slattery

6.1 This appellant (K) relied on the medical report dated 5 July 2010 of Dr Mark Slater, an experienced NHS consultant psychiatrist approved under s.12 of the MHA, and who had treated over 30 Travellers.

6.2 In summary, it states as follows. She had begun experiencing moderate depression and mild post-traumatic stress disorder following a serious incident in 2008 in Wolverhampton (where she then lived) when two younger members of her family were badly beaten by a local gang. The threat of eviction was worsening both those conditions. If she was actually evicted, they would worsen still further. If the eviction was associated with removal of her support, it was highly likely that she would be completely unable to cope, to the point where she might require hospital admission. The central part of the report for present purpose is para. 18.22:

"If K were forced to accept the accommodation she has been offered by the Council it is highly likely that she would become more depressed and anxious, and her post-traumatic stress disorder symptoms would worsen. In fact, as the prospect of moving in became more immediate, her anxiety would reach such a pitch that she would probably be unable to enter the property at all. In the event that she was able to move in, it is highly likely that her distress would steadily increase until it became so intense that she would leave the property and ask to be taken in by another traveller."

(It is however noteworthy that Dr Slater does not specifically link these conclusions to an aversion on K's part to "bricks and mortar". His account of her interview indicates that she had a strong fear of being upstairs, but that her primary concern was being away from her friends and people she knew.)

6.3 The key passage of the decision letter is:

"The panel notes that none of this [i.e. Dr Slater's account of her existing conditions] *is related to the prospect of your having to live in bricks and mortar accommodation. Dr Slater talks largely of the effects of the eviction from Dale Farm upon you; however, it has been agreed by the Courts that the eviction will take place and a move to alternative accommodation is inevitable. Should you feel that your mental state deteriorates at any time in the future you should seek medical input from your GP which might include a referral to the mental health services."*

6.4 The review panel's main reason for rejecting Dr Slater's report was that it linked the adverse consequences of the move to the eviction rather than to "bricks and mortar". This was half right; he linked them to the move, not the eviction, but more to the effects of separation from friends and family than to "bricks and mortar" itself. After the review decision in this case, the CA judgment in Sheridan endorsed a similar analysis at para.51; it was the separation, not the "bricks and mortar", which would cause the problem, and it was not Wednesbury unreasonable to assume that NHS services could deal with it. It appears to me that, with allowance for the considerable breadth of the panel's permissible discretion, it was not unreasonable for them, faced with this report and the causal mechanisms it outlined, to choose to deal with the review without further medical evidence, and to reach the conclusion they did.

6.5 I have also considered, applying an "intense focus" to the particular rights in issue, whether Mrs Slattery's Article 6 and 8 rights were infringed, but conclude that they were not; in reaching this decision I take into account the points above made, and also the qualified nature of the Article 8 right, the local authority's entitlement under Article 8 to take into account "economic" factors in reaching its decisions, and the fact that the accommodation offered was admittedly suitable in other respects.

7. Joanne Sheridan

7.1 This appellant lives with and needs to be housed with her immediate family, comprising her 3 children (aged 7 to 14), her elderly parents-in-law and their daughter. The medical case on her behalf focuses on the condition of her father-in-law James Sheridan (J), now aged 77. He has been examined by Professor Skinner, a consultant clinical psychologist at an NHS hospital in Bradford and teacher at Leeds University, with expertise in transcultural psychiatry.

7.2 Prof Skinner's report, prepared before the eviction, described how J suffered from various physical conditions including hypertension and diabetes, and possible ischaemic

attacks ("mini-strokes"). He was also in a state of severe mental distress, which Prof Skinner attributed to PTSD brought on by fear of eviction. (Following Sheridan, that alone would not be enough to render "bricks and mortar" unsuitable.)

However, Prof Skinner continues as follows:

"The settlement of Travellers in "bricks and mortar" housing is associated with an increased risk of psychiatric morbidity, including depression, suicide, anxiety and nightmares...In view of [J's] current mental state and its likely prognosis, there is in my view a high risk that if he were to be settled into a house of the sort offered by BBC his mental state would deteriorate and his condition would remain chronic. There is a noted higher risk of mortality associated with moving elderly people into new accommodation, especially so for those with cognitive impairments. I take the common sense view that in [J's] case, taking account of the much greater than average psychological stress he would experience from a move into a house, and his high blood pressure, such a move might well kill him. The Court may wish to obtain a more expert opinion of this risk from a specialist in geriatric medicine."

(Of course, being a psychologist not a psychiatrist, Prof Skinner is not himself a doctor of medicine.)

7.3 The key passage in the decision letter is:

"The review panel note that Professor Skinner's report mainly focuses on the impact of the eviction upon James Sheridan; however the issue is not that of eviction but whether James Sheridan would suffer psychiatric harm if forced to live in bricks and mortar type accommodation. The panel note that here is no history of psychiatric illness and that James Sheridan is not receiving any treatment for mental illness. We would suggest that should James Sheridan feel that his mental health is deteriorating, he should contact his GP for medical input which might include a referral to the mental health services."

7.4 Here my conclusion is that the panel did fall into error of law. Prof Skinner's report clearly stated that there was a risk of physical harm, perhaps death, to Mr Sheridan as a consequence, not of the eviction but of the move to bricks and mortar. And he expressly suggested that "the Court" (obviously meaning the review panel) might wish to obtain a geriatrician's report. There is no evidence that that clear advice from an experienced clinical professional was given any consideration at all; and the resulting report concentrated on psychiatric harm, not physical, and blurred the important distinction between effects of the eviction and of the move.

7.5 The panel's failure to understand or apply Prof Skinner's report confirms my clear view that it needed further medical evidence and that it was Wednesbury unreasonable (and

inconsistent with the family's human rights) to reach a decision without obtaining any further medical evidence as Prof Skinner had himself recommended.

8. Michael Slattery

8.1 Mr Michael Slattery (M) is now 65 and lives with his daughter Ann Rosina Slattery, age 29, and her young child. Mr Slattery was examined by Dr I. Christie, a consultant psychiatrist, who was not able to see Ann but was shown her medical notes.

8.2 In his report dated 6 January 2011, Dr Christie described M as having Type 2 diabetes, some impairment of memory and concentration, a past episode of clinical depression, and (most significantly) claustrophobia, ICD 10, F40.2.

M was *"totally culturally averse to any consideration of living in bricks and mortar accommodation".* He was at risk of further depression if not offered accommodation on a Travellers' site.

Ann's notes showed that she suffered from serious depression, chronic for at least 5 years, and Dr Christie, somewhat surprisingly, felt able to reach a similar conclusion in respect of her, though he had never examined her.

8.3 The key passage of the decision letter is:

"The review panel have considered Dr Christie's report and note the absence of any formal diagnosis of mental illness...We note that he did not actually meet with [Ann Rosina] *and therefore believe there is nothing to support the comments that her mental health would become worse if she moved into bricks and mortar type accommodation. In any event if her condition did worsen Ann Rosina could seek further medical input as could you if you felt your mental health was deteriorating."*

8.4 The panel was clearly mistaken in not realising that claustrophobia is a mental illness, and in ignoring Dr Christie's statement that Mr Slattery would be at risk of depression if moved to "bricks and mortar". But Dr Christie's report was not a very thorough one and made no convincing medical, as opposed to cultural, case for inferring that such a result would follow from the move. His credibility was further dented by his readiness to reach the same conclusions in respect of a person whom he had never met.

8.5 My conclusion is that Dr Christie's report did not raise a *prima facie* case of such a nature as to require the Council to obtain evidence in answer. It was not unreasonable for the panel to conclude (in effect) that such depression as might follow from the move would not reach Omar levels, and could be dealt with via the NHS. The review panel's decision was

well within the limits both of Wednesbury reasonableness and of respect for the family's private and family life under Article 8.

9. Conclusions

9.1 For the above reasons the appeals of Kathleen Slattery and Michael Slattery are dismissed.

9.2 The appeal of Joanne Sheridan is allowed, and the matter remitted to the Council to hold a further review before a different panel, confined to the issues of the medical consequences of the move for Mr Michael Sheridan, whether they render the offered accommodation unsuitable, and whether any "bricks and mortar" accommodation would be suitable for him. It is for the Council and Mrs Sheridan to choose how to proceed, but I invite them to consider, as a first step, the appointment of a single joint expert geriatrician to examine and report on Mr Sheridan's present condition, two years having elapsed since the previous medical report.

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