

Real Estate  
Case Law Update  
Rosling King LLP



## Background

The Kuehns had recently bought a flat on a long lease at the Victory Place estate. The estate is managed by Victory Place Management Company Limited (“VPMC”), whose members are the lessees, who in turn elect its board of directors.

The Kuehns wished to keep their dog at the Property which was prohibited by the Lease without the written consent of VPMC. The Kuehns’ request was refused by VPMC. It became clear that VPMC was operating a strict ‘no pets’ policy on the basis that this was the majority view of the lessees. They informed the Kuehns in their refusal “there is no need to justify this decision on an individual case basis”. They would only consider special circumstances such as a requirement for a guide dog. The Kuehns did not evidence any special circumstance.

At first instance, the Judge found for VPMC stating the members justifiably did not want dogs on the estate because of reasonable concerns about them barking, chewing or defecating in public areas. They were also willing to allow dogs in special circumstances but the Kuehns’ request was based upon nothing more than love of their dog. The Kuehns appealed.

## Argument

The Kuehns’ main point of appeal was that VPMC had not complied with its implied obligation to deal reasonably with the Kuehns’ request. They argued that VPMC’s view from the outset had been that it was entitled to reject the request without considering its merits. They argued that the ‘no pets’ policy was an inflexible rule predetermining the outcome of all applications.

VPMC said the adoption of a policy did not itself equate to an unreasonable decision making process. The policy of no dogs except in exceptional circumstances was a reasonable approach to take and was a legitimate predisposition to a particular point of view. At no point did the Kuehns evidence an exceptional circumstance to change the point of view.

## Relevant Authorities

### 1. Wednesbury Principle

In the key decision of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 the Wednesbury principle established the obligation to take into account only relevant considerations while ignoring irrelevant ones in order to preclude an irrational conclusion. Otherwise there would be risk of a tyranny by majority. There must not be an illegitimate predetermination to reach a particular decision.

The contracting party who is charged with making decisions which affect the rights of both parties to a contract has a clear conflict of interest. The Court has therefore sought to ensure that such contractual powers are not abused. They have done so by implying a term as to the manner in which such powers may be exercised, a term which may vary according to the terms of the contract and the context in which the decision making power is given.

## 2. Bovis Principle

*In Bovis Homes Limited v New Forest District Council* it was found unlawful for a decision making body to predetermine the outcome of a matter by the adoption of an inflexible policy and closing its mind to the consideration and weighing of relevant factors. The very process of democratic decision making is evaded. Additionally where a view has been predetermined, the reasons given may support that view without being the true reasons. The decision making process will not have proceeded from reasoning to decision, but in the reverse order.

### Decision

The Judge dismissed the appeal.

The Judge found that the policy of denying requests save in special circumstances was not unreasonable or irrational. The board were carrying out the wishes of the majority in making clear it would enforce a 'no pets' policy. It was reasonable therefore for the board to take into account the views of the majority when considering the request by the Kuehns.

Secondly the Judge found that on at least two occasions the VPMC board made it clear they would consider special circumstances if presented to them. It could not be said therefore that the board had not reached a final irreversible decision from the outset. If the Kuehns demonstrated a particular circumstance then there was every chance the board would have adopted a different approach.

It was also noted the appeal was somewhat academic, since, even if the Kuehns had been successful, the board would likely reach the same decision again, even after following a proper process.

### Comment

The case serves as a useful reminder for landlords and tenants on how the Courts will look to determine lease disputes. Landlords need to take proper care on due process even if they have a predisposition as to their ultimate decision which is a reasonable one. Prospective tenants need to ensure they have fully read and understood the terms of the Lease and considered how a landlord or management company is likely to rule on a certain issue before purchasing a property.

For further information, please contact [Ann Ebberson](#) or the Partner with whom you usually deal.