Neutral Citation Number: [2020] EWCA Civ 1522

Case No: B5/2019/0293

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON
His Honour Judge Lamb QC
Claim No. E40CL109

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/11/2020

Before:

LORD JUSTICE FLAUX
LORD JUSTICE NEWEY
and
LORD JUSTICE BAKER

- -

Between:

LONDON BOROUGH OF BROMLEY	**Appellant**
- and -	
CELISA BRODERICK	**Respondent**

- -
- -

Mr Jon Holbrook (instructed by **Legal Services, London Borough of Bromley**) for the **Appellant**
Mr Edward J. Fitzpatrick and Miss Sophie Caseley (instructed by **Deton Solicitors**) for the **Respondent**

Hearing date: 22 October 2020

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be Monday 16 November 2020 at 10:30am

Lord Justice Newey:

1. This appeal concerns the implications of the refusal by the respondent, Miss Celisa Broderick, of an offer of accommodation made by the appellant, the London Borough of Bromley ("the Council"). The Council notified Miss Broderick that it regarded the duty which it had owed her under section 193 of the Housing Act 1996 ("the 1996 Act") as having ceased as a result of the refusal. His Honour Judge Lamb QC allowed an appeal by Miss Broderick, but the Council now challenges Judge Lamb's decision in this Court.

Basic facts

2. In 2017, Miss Broderick returned to Bromley from Leicester, in which she had lived for a number of years, fleeing domestic abuse. In the latter part of the year, she and her son, who were then aged respectively 29 and four, were living in a refuge run by Bromley and Croydon Women's Aid.

3. On 4 December 2017, the Council wrote to inform Miss Broderick that she was considered to be unintentionally homeless, eligible for assistance and in priority need and that the Council therefore had a duty to ensure that accommodation was available for her occupation until a settled housing solution was found. In other words, the Council accepted that it owed what has been termed the "main homelessness duty" under section 193(2) of the 1996 Act. However, the Council's letter went on to note that its duty to Miss Broderick would end if she refused an offer of suitable accommodation.

4. On 19 December 2017, the Council offered Miss Broderick temporary accommodation at 186A Richmond Road, Gillingham, Kent. The letter warned Miss Broderick that, if she refused the offer, the Council would have discharged its duty to re-house her and that no further offers of any sort would be made. Having explained that Miss Broderick was entitled to request a review of the suitability of the accommodation, the Council said this:

> "We would strongly advise you to move in to the property … , even if you intend to request a review of suitability. This will ensure that you still have somewhere to live if you are unsuccessful with your review.
>
> If you refuse to move into the property and your review request is unsuccessful, you will be left in a very difficult position as the Council would no longer provide you with any accommodation at all.
>
> If you do move in and request a review, and your review request is successful, we will make you another offer."

5. 186A Richmond Road is a two-bedroom maisonette managed by Mears Housing Group. Gillingham, in which it is situated, is some 30 miles from Bromley. There is a frequent train service between the two, with a journey time of about 35 minutes. The property was being refurbished as at 19 December 2017, but it was to be ready for occupation by 12 January 2018.

6. On 3 January 2018, Miss Broderick emailed Miss Esha Pisani, the relevant housing allocations officer, expressing concern about the distance between 186A Richmond Road and her and her son's support networks. She explained that she suffered from anxiety and depression and had a hearing impairment. She said, too, that her former partner had moved to London, "making it even more important why I should be within a reasonable distance of some kind of support network". She asked that, if she had to be sent out of Bromley, housing be found for her in Bexley, where her sister lived.

7. Miss Pisani emailed back at 11.56 am that she nonetheless considered 186A Richmond Road to be suitable accommodation. She observed that Miss Broderick could transfer to a hospital closer to 186A Richmond Road and that her son was not at critical school age. She gave Miss Broderick until 4 pm that afternoon to arrange to view the property.

8. At 12.27 pm the next day, Miss Broderick was given a revised deadline, of 3 pm that day. Miss Broderick was also advised by telephone that it was in her interests to accept the property and she could do so as well as requesting a review.

9. On 10 January 2018, Bromley and Croydon Women's Aid sent Miss Pisani an email in these terms:

> "Celisa is quite distressed at the thought of moving to Gillingham. I have explained that Bromley have no Housing stock etc, Celisa does understand this and this is not a refusal of the property, however I just wanted to ask could you consider maybe looking in the Erith/Dartford area before she signs up to the Gillingham property?"

On 15 January, Citizens Advice Bromley wrote to the Council on Miss Broderick's behalf asking that the Council withdraw its existing offer and provide Miss Broderick with accommodation "in close proximity to her family members in Bromley, Bexley and Croydon".

10. On 26 January 2018, Miss Pisani gave Miss Broderick a final deadline to arrange to move into 186A Richmond Road by 5 pm on 29 January. Miss Pisani said in her email that the Council would not be able to keep the property open to Miss Broderick as it was ready to let and that, if she failed to move in, the Council would consider ceasing its duty under section 193 of the 1996 Act.

11. On 29 January 2018, however, Miss Broderick told the Council that she would not be accepting its offer. Her mother confirmed the position in an email, saying:

> "Celisa will not be accepting property. She is depressed as it is and further she's away from her family she will sink into further depression. She has said and confirmed she can not cope being so far away with her son. As stated I am also concerned for her emotional wellbeing."

It appears that, up to this point, Miss Broderick had continued to live within the borough, seemingly at the refuge run by Bromley and Croydon Women's Aid.

12. On 7 February 2018, the Council told Miss Broderick in a letter that its duty towards her had ceased. It said in the letter:

> "In view of the above, for the purposes of subsection (5) of section 193 of the Housing Act 1996, as amended by the Homelessness Act 2002, as a result of your refusal, the duty to re-house you as a homeless person has ended. No further offers will be made to you and you will need to make your own arrangements."

The author expressed the view that it would have been reasonable to make arrangements for Miss Broderick's son to start at school in the Gillingham area in September, that Miss Broderick could have transferred to a local hospital to obtain care for her hearing impairment, that Miss Broderick's sister would still have had reasonable access to her and that Miss Broderick would have had good links to Bromley via public transport.

13. On 16 February 2018, Citizens Advice Bromley wrote on Miss Broderick's behalf requesting a review of the Council's discharge of duty decision. There followed, on 1 March, a letter from Deton Solicitors, whom Miss Broderick had instructed.

14. On 6 April 2018, the reviewing officer, Mrs Kristine Ross, notified Miss Broderick that she was satisfied that 186A Richmond Road was a suitable offer and, accordingly, that the Council's duty to her had come to an end. Mrs Ross explained in the decision letter that, in carrying out her review, she had taken into account, among other things, the representations from Citizens Advice Bromley and Deton Solicitors and "Enquiries made with the Council's allocations team as to what temporary accommodation units were available on 19 December 2017". She also referred to a telephone conversation which she had had with Miss Broderick. Having noted that "the substantive matter in contention … is not the accommodation itself in terms of size, layout, cost or condition, but rather its location and in particular its distance from the Bromley Borough" and cited both the "Homelessness Code of Guidance" and the Homelessness (Suitability of Accommodation) (England) Order 2012, Mrs Ross said this:

> "Whilst having full regard to the legislative framework it must be acknowledged that there is a social housing crisis in the district of Bromley. By way of illustration, as of today's date 3550 households are registered for housing within the authority's allocations scheme, with average waiting times for two bedroom properties being between 3.5 and 4 years. In addition the authority has some 1,300 households living in some form of temporary accommodation. The Council's most current temporary accommodation advice literature states that the majority of temporary accommodation is located outside of the Borough.
>
> At the date that the local authority was required to offer you temporary accommodation, there were no self-contained long term units of accommodation available within the Borough of Bromley which could have been offered to you which is why

> you and a number of other households, on that same day, were offered accommodation in Kent. As of 19 December 2017 when Bromley Council were required to offer you accommodation it had the following properties available to allocate as temporary accommodation.
>
> 1. A three bedroom house in Kitchener Road in Medway
> 2. A single room in Bower Terrace in Maidstone
> 3. A two bedroom house in Wingfield Road in Gravesham
> 4. 186a Richmond Road in Gillingham
>
> Clearly the first two properties were unsuitable for your needs, one being too large, the other being too small. Although it is accepted that Gravesham is nearer to the Bromley Borough, this property was offered to the local authority at a rent level which could not have been covered in its entirety by your Housing Benefit award. As such over a 12 month period the local authority would have been required to pay an additional £7,500 from its General Fund to the accommodation provider. This, as you will appreciate, would have been both an unnecessary and inappropriate use of public funds.
>
> The housing stock constraints above are a highly relevant factor in assessing the suitability of the offer of temporary accommodation at 186a Richmond Road. Indeed it is my view that as of 19 December 2017 there was simply no other accommodation available to the Council which could have been offered to you. It is of note that the Council's policy for the allocation of temporary accommodation states clearly that where there is no availability either in the Borough or close to it, households will be offered accommodation further away from Bromley. In the circumstances I am satisfied that the authority complied with the terms of this policy when it offered you 186a Richmond Road."

Mrs Ross proceeded to discuss reasons which had been given for 186A Richmond Road being too far from Bromley before saying:

> "It is not doubted that you rely on your family. It is also not doubted that you derive a great deal of comfort and reassurance from having them nearby. This stated I cannot see how your circumstances differ substantially from those of any other person who is settled in a particular area from which they do not want to move. It is my view that although you have others around you, on whom you rely, I do not consider that you are dependent upon their help and support, in the sense that you cannot do without it.

> Moving house to a new area is an extremely stressful life event, even for those who have made a decision to do so. It is recognised in your case that a move to Gillingham was far from your choice. In an ideal world the local authority would have been in a position to offer you accommodation within or nearer to its own Borough, regrettably this was not possible. In the end though the local authority was required to offer you suitable accommodation and not that which was ideal. It is my opinion that there is nothing about your circumstances, taking into account the provisions of the Equality Act 2010, to lead me to a conclusion that you should have been prioritised above other households for accommodation within the Borough. Having considered your case carefully I can see no reason why you should not have been treated in line with the authority's temporary accommodation allocations policy."

15. Miss Broderick appealed to the County Court pursuant to section 204 of the 1996 Act. In the course of the County Court proceedings, the Council disclosed to Miss Broderick a spreadsheet which one of its housing allocations officers, a Mr Michael Manlow, had supplied to Mrs Ross during her review in response to a request from her for information about what other properties were available on 19 December 2017. The request had been forwarded to Mr Manlow with the comment "we need to know of any other 2 beds, or 1 beds, or studios, available from 12.12.17 until the date of placement = 19.12.17". The only properties shown on the spreadsheet against "19/12/2017" were those in Medway, Maidstone and Gravesham to which Mrs Ross referred in her decision letter. The email which accompanied the spreadsheet included this comment from Mr Manlow:

> "Client's TA request is attached. Looks as though she was offered 186A Richmond road (LTTA Mears) because she was fleeing violence from Leicester, did not work, and child did not attend school. She had no immediate need to stay within the borough and we have to fill these Mears voids."

16. The matter came before Judge Lamb QC, sitting in the County Court at Central London, on 8 October 2018. As I have already mentioned, he allowed the appeal. His order provided for both the "discharge of duty decision" of 7 February 2018 and the "review decision" of 6 April 2018 to be quashed.

17. The Judge explained in his judgment that he was allowing the appeal on grounds 1 and 2, which were that the Council "was wrong to conclude that, for the purposes of the Housing Act 1996 s.208, it was not reasonably practicable to secure accommodation for [Miss Broderick] in the London Borough of Bromley" and that the Council "was wrong to find that the accommodation offered to [Miss Broderick] was suitable". The Judge's essential reasoning can be seen from the following passages from his judgment:

> "26. There would seem to have been a bit of temporal leeway with [Miss Broderick] and the offer of 186a. As [Miss Broderick's] objections were articulated and as the [Council] received pleas from third parties why could not the [Council]

> have looked at the position again in relation to properties remaining or becoming available on or after 20th December? This point was not addressed, answered or evidenced in the Review Letter, as it should have been.
>
> 27. And there were other gaps in Miss Ross' reasoning, Review Letter paragraph:
>
> …
>
> 32 Second sentence '…it is my view that as of 19 December 2017 there was simply no other accommodation available to the Council which could have been offered to you.' But what about availability over the following day(s)? [Miss Broderick] could not move into 186a, the accommodation was not habitable …."

18. The Judge went on to say that he rejected the Council's submission that it "was entitled not to consider making any further offers" and that he thought the following argument well-founded:

> "It is clear that when making the offer, the [Council] took a restrictive approach to their consideration of availability of accommodation in-borough. The offer was made on 19 December 2017 and the offer was refused on 29 January 2018. No reasons have been provided as to why further inquiries were not made into availability of accommodation after the date of the 'offer' letter, and [Miss Broderick's] refusal on 29 January 2018."

The legal framework

19. Homelessness is the subject of Part VII of the 1996 Act, which comprises sections 175-218. Section 193 imposes on local housing authorities a duty to secure that accommodation is provided for homeless people with priority needs. It provided as follows during the relevant period:

> "(1) This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he became homeless intentionally.
>
> (2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.
>
> (3) The authority are subject to the duty under this section until it ceases by virtue of any of the following provisions of this section.
>
> …

> (5) The local housing authority shall cease to be subject to the duty under this section if—
>
> (a) the applicant, having been informed by the authority of the possible consequence of refusal or acceptance and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for the applicant,
>
> (b) that offer of accommodation is not an offer of accommodation under Part 6 or a private rented sector offer, and
>
> (c) the authority notify the applicant that they regard themselves as ceasing to be subject to the duty under this section…."

20. By section 206 of the 1996 Act, a local housing authority may discharge its housing functions under Part VII only in the following ways:

> "(a) by securing that suitable accommodation provided by them is available,
>
> (b) by securing that he obtains suitable accommodation from some other person, or
>
> (c) by giving him such advice and assistance as will secure that suitable accommodation is available from some other person."

21. Section 208 of the 1996 Act stipulates that, "[s]o far as reasonably practicable", a local housing authority shall in discharging its housing functions under Part VII, "secure that accommodation is available for the occupation of the applicant in their district".

22. Section 210 of the 1996 Act empowers the Secretary of State to specify by order matters to be taken into account or disregarded in determining whether accommodation is suitable for a person. The Homelessness (Suitability of Accommodation) (England) Order 2012/2601 ("the 2012 Order"), made pursuant to that provision, provides as follows in article 2:

> "In determining whether accommodation is suitable for a person, the local housing authority must take into account the location of the accommodation, including—
>
> (a) where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority;
>
> (b) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the person's household;

> (c) the proximity and accessibility of the accommodation to medical facilities and other support which—
>
> (i) are currently used by or provided to the person or members of the person's household; and
>
> (ii) are essential to the well-being of the person or members of the person's household; and
>
> (d) the proximity and accessibility of the accommodation to local services, amenities and transport."

23. Section 182 of the 1996 Act requires local housing authorities to have regard to guidance issued by the Secretary of State. The "Homelessness Code of Guidance for Local Authorities" ("the 2006 Code"), issued by the Secretary of State in 2006, said this about the significance of location in paragraph 17.41:

> "The location of the accommodation will be relevant to suitability and the suitability of the location for all the members of the household will have to be considered. Where, for example, applicants are in paid employment account will need to be taken of their need to reach their normal workplace from the accommodation secured. The Secretary of State recommends that local authorities take into account the need to minimise disruption to the education of young people, particularly at critical points in time such as close to taking GCSE examinations. Housing authorities should avoid placing applicants in isolated accommodation away from public transport, shops and other facilities, and, wherever possible, secure accommodation that is as close as possible to where they were previously living, so they can retain established links with schools, doctors, social workers and other key services and support essential to the well-being of the household."

24. In 2012, the Secretary of State issued "Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012" ("the 2012 Supplementary Guidance"). This included the following:

> "48. Where it is not possible to secure accommodation within district and an authority has secured accommodation outside their district, the authority is required to take into account the distance of that accommodation from the district of the authority. Where accommodation which is otherwise suitable and affordable is available nearer to the authority's district than the accommodation which it has secured, the accommodation which it has secured is not likely to be suitable unless the authority has a justifiable reason or the applicant has specified a preference.

> 49. Generally, where possible, authorities should try to secure accommodation that is as close as possible to where an applicant was previously living. Securing accommodation for an applicant in a different location can cause difficulties for some applicants. Local authorities are required to take into account the significance of any disruption with specific regard to employment, caring responsibilities or education of the applicant or members of their household. Where possible the authority should seek to retain established links with schools, doctors, social workers and other key services and support."

25. Baroness Hale summarised the resulting law in these terms in *Nzolameso v Westminster City Council* [2015] UKSC 22, [2015] PTSR 549, at paragraph 19:

> "The effect, therefore, is that local authorities have a statutory duty to accommodate within their area so far as this is reasonably practicable. 'Reasonably practicability' imports a stronger duty than simply being reasonable. But if it is not reasonably practicable to accommodate 'in borough', they must generally, and where possible, try to place the household as close as possible to where they were previously living. There will be some cases where this does not apply, for example where there are clear benefits in placing the applicant outside the district, because of domestic violence or to break links with negative influences within the district, and others where the applicant does not mind where she goes or actively wants to move out of the area. The combined effect of the 2012 Order and the Supplementary Guidance changes, and was meant to change, the legal landscape as it was when previous cases dealing with an 'out of borough' placement policy, such as *R (Yumsak) v Enfield London Borough Council* [2003] HLR 1, and *R (Calgin) v Enfield London Borough Council* [2006] 1 All ER 112, were decided."

26. In a similar vein, in *Waltham Forest London Borough Council v Saleh* [2019] EWCA Civ 1944, [2020] PTSR 621, Patten LJ, having cited the 2006 Code, the 2012 Order, the 2012 Supplementary Guidance and also the more recent "Homelessness Code of Guidance for Local Authorities" issued by the Secretary of State in 2018 ("the 2018 Code"), said in paragraph 24:

> "It is apparent both from art.2 of the 2012 Order and from [17.46]–[17.48] of the 2018 Code that where the local housing authority proposes to allocate accommodation outside its district in order to perform its s.193(2) duty, it must have regard both to the distance of the accommodation from the district and the effect on the links of members of the applicant's household with schools and other services when assessing suitability. It seems to me that this will necessarily bring into focus as a relevant consideration the issue of whether other suitable accommodation may at the time of the decision be available either within or closer to the authority's district and

> whether the existence of such accommodation means that the other accommodation is in those circumstances to be regarded as unsuitable even if, in the absence of other suitable accommodation, it could be said to meet the needs of the applicant and his or her family."

27. In *Alibkhiet v Brent LBC* [2018] EWCA Civ 2742, [2019] HLR 15, Lewison LJ observed at paragraph 75 that "suitability of accommodation" is a different question from "impugning an authority's decision to discharge its full housing duty at a particular time". He continued:

> "I would accept that in some cases considerations of timescale are relevant considerations. If, for example, a housing authority is aware that a development is approaching completion and that it will provide affordable housing, that may well be relevant to the question whether it should discharge its housing duty immediately, or whether it should wait until the development is complete. However, in this case the shortage of housing in Westminster is the constant backcloth against which all housing decisions are currently made. That is clear not only from the review decision, but also from the key principles of the placement policy. If a housing authority decides to discharge its full housing duty by making a private rented sector offer, I do not consider that it must wait in the Micawberish hope that 'something will turn up'. It follows, in my judgment, that Westminster discharged its duty by inquiring what suitable accommodation was available at the time at which it made its offer."

28. Section 202 of the 1996 Act confers on an applicant a right to request a review of various decisions of local housing authorities. During the relevant period, such decisions included "any decision of a local housing authority as to what duty (if any) is owed to him under sections 190 to 193 and 195 and 196 (duties to persons found to be homeless or threatened with homelessness)" (section 202(1)(b)) and "any decision of a local housing authority as to the suitability of accommodation offered to him in discharge of their duty under any of the provisions mentioned in paragraph (b) or (e)" (section 202(1)(f)). Section 202(1A) made it clear that a person offered accommodation as mentioned in section 193(5) could request a review of its suitability whether or not he had accepted the offer.

29. "[W]here the authority has already decided that accommodation offered was suitable, and that the duty owed under s.193 had therefore already been discharged, the question the reviewer must address is whether, on the facts as they are known to be at the date of the review, the accommodation previously offered would now be considered suitable" (*Osseily v Westminster City Council* [2007] EWCA Civ 1108, [2008] HLR 18, at paragraph 13). What that means is that a reviewer "is entitled to have regard to facts discovered since the original decision, but they must have been facts that would have existed and did exist at the time of the original decision": "what they should be examining is the facts that existed as of [the date of the original decision], albeit they may discover what facts existed as at that date, between the date

of that original decision and the date of the review" (*Omar v Westminster City Council* [2008] EWCA Civ 421, [2008] HLR 36, at paragraphs 30 and 32).

30. There are other situations in which a reviewing officer should have regard to facts that have come into existence since the original decision was taken. That can be seen from, for example, the decision of the House of Lords in *Mohamed v Hammersmith and Fulham London Borough Council* [2001] UKHL 57, [2002] 1 AC 547 and, more recently, that of the Court of Appeal in *Waltham Forest London Borough Council v Saleh*. In the latter case, an individual who had accepted accommodation offered by a local housing authority asked to be re-housed and, after the authority had said that it considered that the accommodation remained suitable, requested a review. The Court identified the principal issue on the appeal as "whether the need for the housing authority to investigate whether other suitable accommodation exists closer to or within its own district applies not only to the authority when it makes the original housing decision but also to the officer who conducts the review of suitability under s.202(1)" (paragraph 31). It concluded in paragraph 39 that, "consistently with these authorities" (i.e. *Mohamed v Hammersmith and Fulham London Borough Council* and cases following it), "we should treat the obligation of the Council to review its decision to secure accommodation for Mr Saleh at 179 Little Ilford Lane as requiring it to reconsider that decision in the light of all material circumstances at the date of review including the availability of suitable accommodation either within or closer to its district and the school which his daughter attends".

31. In *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413, in a passage endorsed by the Supreme Court in *Poshteh v Kensington and Chelsea Royal London Borough Council* [2017] UKSC 36, [2017] AC 624, Lord Neuberger said this about review decisions at paragraph 50:

> "… [A] benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical a view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision. That is not to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions."

On the other hand, "It must be clear from the decision that proper consideration has been given to the relevant matters required by the Act and the Code" (*Nzolameso v Westminster City Council*, at paragraph 32).

32. A further point is that the matters that a review decision must address will be shaped to an extent by what has been raised in the course of the review. This can be seen from *Alibkhiet v Brent LBC*. It had there been argued that it was not clear from a review decision relating to a Ms Adam why the local housing authority had decided to make an offer of stable accommodation at the particular time that it did (see paragraph 87). Lewison LJ responded:

> "88. The answer to [counsel's] first point is that the question he now posits was not squarely raised during the course of the review. The focus of the representations in support of the

> review was on suitability; not on impugning the timing of the decision to make the offer. The closest that Ms Adam's solicitors came to raising it was to say:
>
> > '[Westminster] has failed to explain why a move from the available temporary accommodation to the current accommodation was justified when taking into account the children's best interest.'
>
> 89. But this was in the context of the children's needs; and the review decision dealt with that at length. As Lord Brown made clear in [*South Buckinghamshire DC v Porter* [2004] UKHL 33, [2004] 1 WLR 1953], reasons need only address the main issues. In my judgment the reviewing officer was simply not required to explain why [the housing authority] had chosen to make the offer when it did."

33. By section 204 of the 1996 Act, a person dissatisfied with a review decision may appeal to the County Court on "any point of law arising from the decision or, as the case may be, the original decision". "Although the county court's jurisdiction is appellate, it is in substance the same as that of the High Court in judicial review" (*Runa Begum v Tower Hamlets London Borough Council* [2003] 2AC 430, at paragraph 7).

34. I should add that neither *Alibkhiet v Brent LBC* nor *Waltham Forest London Borough Council v Saleh*, both of which featured prominently in the argument before us, had been decided by the date of Judge Lamb QC's decision in this case.

The parties' positions in brief outline

35. Mr Jon Holbrook, who appeared for the Council, stressed the terms of section 193(5) of the 1996 Act. Section 193(5), he said, allows a housing authority to bring a duty under section 193 to an end if it has made the person in question "an offer of accommodation which the authority are satisfied is suitable for the applicant", the authority has informed the applicant "of the possible consequence of refusal or acceptance and of the right to request a review of the suitability of the accommodation", the applicant has nonetheless refused the offer, and the authority has notified the applicant that it regards itself as ceasing to be subject to the section 193 duty. In this case, there was never any doubt that the Council gave Miss Broderick the requisite information, that Miss Broderick refused the offer of 186A Richmond Road or that the Council notified Miss Broderick that it regarded its duty towards her as ended. The only issue for the reviewing officer or the Judge was as to the suitability of 186A Richmond Road, and that fell to be assessed as at the date it was offered to Miss Broderick. The Judge decided against the Council on the basis that it was relevant to consider the availability of other properties between the date of the offer (19 December 2017) and that of the refusal (29 January 2018), but there was no obligation to make (or to consider making) additional offers. It is not the law, Mr Holbrook argued, that an authority can be required to make further offers of accommodation when it relies on section 193(5) to establish that the particular offer it has already made is a staging post that may cause its duty to the applicant to cease.

36. Mr Holbrook noted that in *Alibkhiet v Brent LBC* there had been reference to the possibility of impugning a housing authority's decision to discharge its housing duty at a particular time. Here, Mr Holbrook said, the Judge did not find, and it had not been argued, that the Council had acted outside its broad discretion in deciding to make an offer to Miss Broderick on 19 December 2017 rather than at some other time. Nor are or were there any facts which could sustain such a contention.

37. For his part, Mr Edward J. Fitzpatrick, who appeared for Miss Broderick with Miss Sophie Caseley, did not suggest that any more suitable accommodation was available to be offered on 19 December 2017 itself. He said, however, that the Judge had been right to consider that in this case there was "temporal leeway". What the Council ought to have done was put Miss Broderick in the mix for a few days (say, up to five) after offering her 186A Richmond Road. That followed from the duty recognised in *Nzolameso v Westminster City Council* to try to place a household, if not in-district, then at least as close as possible to where they were previously living. In looking at the position simply on the date of the offer, viz. 19 December, the Council had not adopted a fair approach.

Analysis

38. Where a local housing authority makes an offer of accommodation, at least three distinct questions can, as it seems to me, potentially arise: first, whether the accommodation offered is suitable; secondly, whether the authority ought to have made an offer (or otherwise performed its housing duty) on a different date; thirdly, whether the authority ought to revisit the suitability of the accommodation at a later stage.

39. Taking the last of these first, accommodation that was once suitable can stop being so as a result of changing circumstances. As Patten LJ noted in *Waltham Forest London Borough Council v Saleh* at paragraph 17(3), "accommodation which was, when provided, suitable may cease to be suitable depending on the changing needs and circumstances of the household and the duration of their intended period of occupation". There is, moreover, "a continuing duty on the part of the housing authority to keep the suitability of accommodation under review", as Patten LJ observed in *Saleh* at paragraph 32. In that regard, the 2018 Code explains in paragraph 17.8:

> "Housing authorities have a continuing obligation to keep the suitability of accommodation under review, and to respond to any relevant change in circumstances which may affect suitability, until such time as the accommodation duty is brought to an end."

40. The *Saleh* case illustrates the point that a person who has accepted an offer of accommodation can ask for its suitability to be reassessed where something has changed. In *Saleh*, the housing authority accepted that the accommodation in which Mr Saleh and his family were living had become too small after his mother had come to live with them (see paragraph 4). The question in the litigation was whether the alternative accommodation which the authority then provided was suitable.

41. Where accommodation has become unsuitable, that will generally be because, as in *Saleh*, there has been a change in the circumstances of the person being housed. However, it is possible to conceive of an exceptional case in which accommodation might become unsuitable as a result of change in the availability of alternatives. As I understood him, Mr Holbrook was inclined to accept that, in the doubtless unlikely event of a glut of properties suddenly becoming available within a housing authority's district, it could be incumbent on the authority to make new offers to persons who were being housed outside the district.

42. Moving on to the second of the three questions (whether the authority ought to have made an offer, or otherwise performed its housing duty, on a different date), Lewison LJ, as I have already mentioned, distinguished between "suitability of accommodation" and "impugning an authority's decision to discharge its full housing duty at a particular time" in *Alibkhiet v Brent LBC*. Lewison LJ went on to say that, were an authority to be aware that a development that would provide affordable housing was approaching completion, that "may well be relevant to the question whether it should discharge its housing duty immediately, or whether it should wait until the development is complete". I would think, however, that it would be relatively rare for an authority's decision to make an offer on a particular date rather than to delay to be susceptible to successful challenge, especially where, as was the case in *Alibkhiet*, a "shortage of housing … is the constant backcloth against which all housing decisions are … made". In a more normal case, it will not be possible to say that the authority has acted outside its discretion.

43. Turning to the first question (whether the accommodation offered is suitable), that, it seems to me, falls to be answered by reference to the circumstances at a specific point. While the second and third questions may require examination of changes over time, suitability is to be determined as at a particular time. Where an applicant has accepted an offer and asked for a review, the focus will be on the position when the review decision is made, in accordance with *Mohamed v Hammersmith and Fulham London Borough* and the cases following it. That, however, will not be so where an applicant has refused an offer of accommodation and the housing authority has deemed its duty to the applicant to have come to an end in consequence. In such a case, it makes sense to me that suitability should be determined on the basis of the position at the date the offer was made.

44. Mr Fitzpatrick, as I have said, argued that Miss Broderick should have been put in the mix for a number of days. An offer's suitability would, on the basis of his submissions, be assessed over a period of, say, four or five days. However, the 1996 Act does not in terms require suitability to be assessed in this way. Moreover, any such approach would be impractical. Suppose, for example, that on Day 1 an authority has four applicants and four properties available to it, but that the properties are all outside its district (as was the position in the present case on 19 December 2017). The authority should not, presumably, finally allocate any of the properties that day in case better properties materialised over the next days. If the pattern repeated itself over the next three days, by Day 4 there would be 16 applicants and 16 properties. If, though, at least four of the later applicants had stronger claims to be close to the district than the first four, it would seem that the authority still should not offer anything to any of the first four, lest that prejudice the applicants with greater needs. If, after all, the authority gave the Day 1 applicants the best of the properties that had

become available by Day 4, a more deserving candidate would have cause to complain if the properties appearing in the following days were further from the district and he were therefore offered something worse than the Day 1 applicants had received. A process such as Mr Fitzpatrick advocated could thus be expected both to create problems for authorities and to result in properties standing empty, to the disadvantage of the homeless. While a particular applicant might obtain accommodation in or closer to the district, applicants generally would suffer.

45. Parliament is unlikely to have intended an interpretation giving rise to such consequences. In *Osseily v Westminster City Council*, Laws LJ referred at paragraph 11 to the "intolerable burden" which the appellant's argument would impose on local authorities "whose housing stock … is extremely hard pressed to meet demand" when rejecting the contention. In a similar vein, in *Alibkhiet v Brent LBC* Lewison LJ observed at paragraph 38 that a court "must be wary about imposing onerous duties on housing authorities struggling to cope with the number of applications they receive from the homeless, in the context of a severe housing shortage and overstretched financial and staffing resources". In *Waltham Forest London Borough Council v Saleh*, Patten LJ at paragraph 33 expressed "some sympathy with the argument that the burden on local housing authorities should not be unnecessarily increased".

46. The upshot is that I cannot accept Mr Fitzpatrick's contentions. It seems to me that, where the issue is whether a housing authority's duty has come to an end because the applicant refused an offer of suitable accommodation, suitability should be determined by reference to the position at the date the offer was made.

47. On that footing, there can be no basis for disputing that the Council's offer of 186A Richmond Road was suitable for Miss Broderick. The reasons which Mrs Ross gave in the review decision for regarding the accommodation as suitable are compelling. There is no question of Mrs Ross having overlooked the importance of location. To the contrary, she identified 186A Richmond Road's location as the "substantive matter in contention" and cited the 2006 Code and the 2012 Order. Moreover, she addressed in detail both the accommodation that was available to the Council on the day it made its offer and Miss Broderick's reasons for wishing to be closer to Bromley.

48. It is fair to say that the review decision did not address the second of the three questions I identified earlier, viz. whether the Council ought to have made an offer, or otherwise performed its housing duty, on a different date. It did not need to do so, however. Citizens Advice Bromley and Deton Solicitors had taken issue with 186A Richmond Road's *suitability*. Thus, Citizens Advice Bromley had asked that the Council "give further consideration as to whether the offer of temporary accommodation in Gillingham, Kent was suitable for Ms Broderick and her young son", and Deton Solicitors had said that Miss Broderick "qualifies for … review of suitability due to the unsuitability of the location of the property offered to her". No argument was developed to the effect that the Council had not been entitled to decide to make an offer on the day it did so. On top of that, it seems to me that any such argument would have been doomed to fail. In the present case, as in *Alibkhiet v Brent LBC*, "the shortage of housing … is the constant backcloth against which all housing decisions are currently made", the Council did not need to "wait in the Micawberish hope that 'something will turn up'" and the Council "discharged its duty by inquiring

what suitable accommodation was available at the time at which it made its offer" (to use words of Lewison LJ).

49. Neither was it necessary for the review decision to address the possibility of 186A Richmond Road's suitability being revisited after the 19 December 2017 offer. It was not suggested to Mrs Ross that there had been a relevant change of circumstance.

50. In the course of the hearing before us, there was some debate as to the significance of Mr Manlow's reference, in the email quoted in paragraph 15 above, to "hav[ing] to fill these Mears voids". Since Judge Lamb QC did not mention these words in his judgment and no respondent's notice was filed seeking to uphold his decision on the strength of them, they cannot be important to this appeal. In any case, though, I do not think it right to see them as sinister. Not only was Mr Manlow not the housing allocations officer responsible for the offer that was made to Miss Broderick, but Mr Holbrook explained the words as a reflection of a difficult reality in which housing is in short supply and the Council needs to act fast if it is to secure Mears accommodation which might otherwise be snapped up by another authority.

Conclusion

51. I would allow the appeal.

52. Before leaving this case, I would stress that someone dissatisfied with an offer of accommodation made by a housing authority would generally be well-advised to accept it and request a review of its suitability rather than to refuse it.

Lord Justice Baker:

53. I agree.

Lord Justice Flaux:

54. I also agree.