

R. v. London Borough of Wandsworth, ex parte Lindsay

Queen's Bench Division

Simon Brown J.

February 11, 1986

Introduction

Under the Housing (Homeless Persons) Act 1977 (now the Housing Act 1985, Part III, see *Encyclopedia*, paras. 1-0117 *et seq.*), if a local authority are satisfied that the applicant is homeless, in priority need, not homeless intentionally and that his local connection does not lie elsewhere, their duty towards him is "to secure that accommodation becomes available for his occupation" (section 4(5) of the 1977 Act, now section 65(2) of the 1985 Act, see *Encyclopedia*, paras. 1-0157-1-0159).

In *Parr v. Wyre Borough Council* (1982) 2 H.L.R. 71 the Court of Appeal held that in order to constitute a discharge of the duty under section 4(5) any offer must be "appropriate" or suitable accommodation having regard, *inter alia*, to the size of the applicant's family. It was also held that an applicant must be given an opportunity and sufficient details to consider an offer.

Parr was considered in the recent, and influential, decision of the House of Lords in *R. v. London Borough of Hillingdon, ex parte Puhlhofer* [1986] A.C. 484; (1986) 18 H.L.R. 158. On its facts, *Puhlhofer* concerned the question of what constitutes "accommodation" for the purposes of section 1 of the 1977 Act (now section 58 of the 1985 Act, *Encyclopedia* paras. 1-0117-1-0122) and, strictly speaking, the *ratio* of that case is concerned with that question alone. Nonetheless, the House of Lords considered accommodation under section 4(5) of the 1977 Act (now section 65(2) of the 1985 Act) and held that as Parliament had not used such words as "appropriate" or "reasonable" in relation to accommodation under either section, no such words should be implied by the courts.

The present case reflects the decision in *Puhlhofer*, and also considers the impact of that decision on the second limb of the decision in *Parr* that an applicant must be given an adequate opportunity to consider an offer.

Facts

The applicant was a single parent with a daughter born in November 1982. In July 1984, she became homeless. She applied to the respondent authority under the Housing (Homeless Persons) Act 1977. The respondent authority was satisfied that the applicant was homeless, that she had a priority need and was not satisfied that she had become homeless intentionally. On January 14, 1985, the respondent accordingly offered the

applicant accommodation consisting of a two-bedroomed maisonette on the eighth and ninth floors of a tower block in purported discharge of its duty under section 4(5) of the 1977 Act to secure that accommodation became available for her occupation. The accommodation had previously been inspected by the respondent and it had been recognised that it required redecoration for which a £200 allowance was to be made.

When the applicant inspected the accommodation on January 15, 1985, she was shocked and distressed by its condition. She was most concerned by the danger which she perceived the premises posed to her young daughter. The applicant complained to the respondent and they inspected the premises again on January 17. As a result, the respondent informed the applicant that they would carry out certain works to the premises and explained that although the decorations were poor, it was felt that the offer of a £200 decoration allowance was adequate to provide for redecoration. The applicant continued to be very upset.

On January 23, the respondent wrote to the applicant stating that the premises had been inspected and found to be fit for letting and confirming the proposed redecoration allowance and the works that they proposed to carry out. They stated that they were unable to accept the applicant's reasons for refusing the accommodation and that the offer would only be kept open until January 28, 1985.

On January 29, 1985, the applicant consulted solicitors who wrote at length to the respondent on February 8, stating that the applicant had turned down the offer and setting out the applicant's objections. The applicant sought judicial review challenging the sufficiency of the offer as a proper discharge of the respondent's duty under section 4(5) of the 1977 Act, alternatively on the ground that she was not given an adequate opportunity to consider the offer.

Held (dismissing the application)

(1) It was no longer the law, as had been held by the Court of Appeal in *Parr v. Wyre Borough Council* (1982) 2 H.L.R. 71, that in order to discharge the duty under section 4(5), the accommodation offered must be appropriate; following the decision in *R. v. London Borough of Hillingdon, ex parte Puhlhofer* [1986] A.C. 484, (1986) 18 H.L.R. 158, H.L., accommodation within the meaning of the Act, for the purposes of whatever section, need only be premises properly so describable even if in certain respects they were unfit, inadequate or otherwise unsuitable.

(2) The respondent's duty to ensure that accommodation became available to the applicant carried with it the requirement that the accommodation remained available to be accepted by the applicant for a reasonable time; in determining whether the accommodation did remain available to be accepted for a reasonable time, regard should be had to all the circumstances, including the terms in which the applicant refuses any offer; however, it was not permissible to have regard to the unsuitability of the accommodation in determining this question; the court could only intervene on the basis that the time allowed was manifestly absurd or perversely inadequate, which was not the case here.

A. *McAllister* for the applicant, instructed by Messrs. Alan Edwards & Co., London.

R. *Noble* for the respondent, instructed by S. G. Smith, Borough Solicitor, London.

SIMON BROWN J.: The applicant is an unmarried young mother on the eve of her 20th birthday. She has a daughter Bianca, born on November 8, 1982, and a baby son, born on October 21, 1985. On July 1, 1984, there was a row between the applicant and her younger sister at their mother's home at No. 67 Badric Court, as a result of which it became impossible for the applicant and Bianca to continue to live there. She moved overnight to a friend and on July 2 she attended at the respondent authority's Homeless Persons Unit and was immediately provided with bed and breakfast accommodation.

On July 4 she was interviewed by the respondent's Housing Officer, Miss Carter, with a view to the authority providing accommodation for her under the Housing (Homeless Persons) Act 1977. From time to time during that month the temporary accommodation which was provided for her was changed. Finally, on September 28, 1984, in pursuance of the council's duty under section 3(4) of the Act, temporary accommodation was provided by way of a licensed flatlet at Nightingale Square in Balham.

It was speedily accepted that the applicant became entitled to rehousing under the Act. The authority were satisfied that she was homeless, that she had a priority need and were not satisfied that she became homeless intentionally so as to disqualify her from a right to be rehoused. The authority thereby recognised that they were under the duty specified by section 4(5) of the Act, namely a duty "to secure that accommodation becomes available for his" (I interpolate, the applicant's) "accommodation." As to the performance of that duty, section 6(1) provides that it may be performed, *inter alia*, by making available accommodation held by the authority under Part V of the Housing Act 1957. Amongst the accommodation so held by this authority was No. 31 Sporle Court, SW11, a two-bedroomed maisonette on the eighth and ninth floor of a tower block. That accommodation had fallen vacant on November 26, 1984. It was inspected by a technical assistant in the respondent's housing department, a Mr. Brown, on January 8, 1985 and it was recognised that it required redecoration as to which a £200 allowance was to be made.

On January 14, 1985, that maisonette was offered to the applicant by way of purported discharge by the authority of their duty under section 4(5) of the Act. On that date they wrote to her in these terms:

"Permanent accommodation, of which details are attached, is now being made available to you under section 4(5) of the Act. The council, having thereby complied with its duty under section 6 of the Act, is now terminating your licence to occupy your temporary accommodation as per the attached notice of termination of licence."

There was enclosed a notice terminating the licence at Nightingale Square with effect from January 28; two weeks thereafter.

No doubt immediately on receipt of that letter (certainly on about January 15) the applicant inspected that maisonette. In her affidavit she describes her reaction thus: "I was very shocked and distressed when I saw it. I stood there crying, not really believing that this was what the authority was

offering me. . . . What distressed me most of all was the danger the premises posed to my two-year-old daughter." She explained that by reference particularly to the balcony.

She called in at the respondent's housing department and complained about the premises and the suitability of the offer of accommodation there. On January 17, Miss Carter, together with another officer of the respondent's, a Mr. Oberg, visited the premises themselves. As to that visit the respondents accept that the decorations were poor, but explain how they offered a £200 decoration allowance which they contend would have been adequate to provide for redecoration and they told the applicant that they would also carry out certain specific works, in particular, to repair deficiencies in the floor tiling and to clean the accumulation of pigeon droppings around the balcony. Photographs exhibited in the applicant's evidence indicate that this had reached troubling proportions by that time.

Shortly after their return to the Town Hall, the applicant, having herself made a second visit to the maisonette, came in again, this time with relations and, although the points about a redecoration allowance, repairs and cleaning were explained to her, she was clearly desperately upset and left the housing unit shouting and crying. On January 22, she contacted the Battersea Citizens Advice Bureau and they too made contact with Miss Carter. On January 23, a Wednesday, Miss Carter wrote to the applicant saying that the property had been inspected and found to be fit for letting. She confirmed the allowance that was to be made and the work that the authority would undertake themselves. She continued:

"Your reasons have been carefully considered but I must advise you that they cannot be accepted for refusing the property. I am therefore arranging for this offer to be kept open until Monday January 28 for your reconsideration. Failure to sign for the tenancy at . . . the housing office by Monday January 28 will leave the council no alternative but to terminate your licence to occupy your temporary accommodation and seek possession of your Unit through the Courts. By making this offer of permanent accommodation available to you the Council has discharged its duty under section 6 of the . . . Act. This means that if you represent yourself as homeless in the future the council would have no further duty to assist you under the above Act. Please consider your position very carefully in the light of the above."

It recommended that if she were in any doubt as to her rights then she should take independent advice from a solicitor or someone else.

On January 24 (no doubt having just received that letter) the applicant returned to the Town Hall, together with the health visitor. She was again obviously in a disturbed state. She was threatening to kill herself and her daughter, how serious a threat is unclear on the evidence. She was shouting her complaints. She eventually became abusive and threatening to Miss Carter also. The visit was ended. The respondents, that same day, wrote two letters to her: one requiring her not to call again in person in the light of her conduct that day; and a second from Miss Carter herself, advising her to approach her doctor and request a medical if she felt that the offer was affecting her health.

On January 29, the applicant saw a solicitor. Purely as a matter of history, on February 5 Mr. Brown, the respondents' technical assistant, revisited the premises. He found that by this time they had been vandalised. The locks were accordingly changed and arrangements were made to rem-

edy the damage. On February 8, the applicant's solicitors wrote at considerable length to the authority. They said: "As you are aware, our client has turned down this offer, and your letter to her of January 23 addresses itself to certain of her objections. However, to ensure that these objections are quite clear to you, they are as follows." There then followed five numbered paragraphs complaining of various aspects of the accommodation. The balcony was then referred to as being "clearly extremely dangerous for a two-year-old child." The letter finally said: "We must, therefore, request that an appropriate offer of accommodation be made to our client as soon as possible. Would you please let us know whether the premises have been re-allocated yet and whether arrangements can be made for us to carry out our own inspection."

That letter was, in fact, passed by Miss Carter to the legal department for reply and it is a matter of some regret that it attracted no substantive response until very much later, namely in about mid-April. By then the premises in question had long since been let, in fact on March 4, 1985 to a family who themselves had a three-year-old child.

Possession proceedings were commenced against the applicant in regard to the temporary accommodation at Nightingale Square. A possession order was made on May 15, but on June 26 that was suspended pending the outcome of this judicial review application. The application as drafted was in essentially two parts: first, and substantially foremost, the applicant sought to challenge the sufficiency of the offer as a proper discharge of the respondent authority's statutory duty under section 4(5). It was contended that it did not constitute the offer of appropriate or suitable accommodation. Secondly, and as a subsidiary ground of challenge, it was contended that the applicant was not given an adequate opportunity to consider the offer.

In the light of the recent decision of the House of Lords in *Puhlhofer (A. P.) and Another (A. P.) v. London Borough of Hillingdon* February 6, 1986), the applicant has had to concede that her first basis of attack cannot succeed. Although hitherto it has been accepted, in particular following the Court of Appeal decision in *Parr v. Wyre Borough Council* (1982) 2 H.L.R. 71, that in order properly to discharge the duty under section 4(5) the accommodation offered must be appropriate, *Puhlhofer* makes plain that that is not so. On the contrary accommodation within the meaning of the Act, whether for the purposes of section 1, section 4 or section 17 (and there may well be other relevant sections) need only be premises properly so describable even if in certain respects they are unfit, inadequate or otherwise unsuitable.

I turn to the other ground of challenge.

Mr. Noble, on behalf of the respondents, accepts the housing authority's duty under section 4(5) "to secure that accommodation becomes available" necessarily implies and carries with it the requirement that it remains available to be accepted by the applicant for a reasonable time. Mr. Noble contends, however, that what is to be regarded as a reasonable time must depend on all the circumstances and, not least, the applicant's reaction to the offer, including the terms in which the applicant refuses any offer. The more absolute the rejection, the more clearly would the authority be entitled not to leave the matter open for the applicant's continuing consideration.

Some support for that approach is, to my mind, to be found in the judg-

ments of the Court of Appeal in *Parr's* case. The case continues to be of relevance since it has been overruled only on the point as to the appropriateness of the accommodation offered and not upon the separate question which was also considered in the Court of Appeal as to the applicant's entitlement to be given a proper opportunity of considering the offer, both by being told sufficient details about the premises and by being given time to take a decision. In this case, of course, there can be no question but that the applicant was fully informed as to the details; indeed, she inspected the premises herself on at least two occasions.

In his judgment, Eveleigh L.J. said:

"[The council] say that the case should be treated as though they had fulfilled that duty" (I interpolate that the method of fulfilment in that case was under the provisions of section 6(1)(b) of the Act) "and he had obtained it" (namely the accommodation) "because he wrongly refused. That to my mind becomes the vital question in the case. Did he wrongly refuse? Did he refuse in an absolute sense, or was he asking for a reconsideration of their attitude by the council?"

Now if one poses that question in the context of the instant case there can be little doubt as to how it falls to be answered. In paragraph 14 of the applicant's grounds it is said that the applicant found the premises quite unacceptable and quite unsuitable for a two-year-old child. As I have already related, she was acutely concerned as to the danger which she believed they posed to her young daughter. That attitude was, to my mind, underlined by the terms of her solicitor's letter of February 8. Not only did that letter refer to the premises, in particular the balcony, as being "clearly extremely dangerous," but there was nothing in it which could possibly be interpreted as a request to prolong the deadline and no suggestion that the inspection which the solicitors were seeking an opportunity to carry out was required in any way to enable the applicant to reconsider the offer. The entire emphasis of the letter, indeed its sole thrust, was as to the unsuitability of the premises and the inspection was clearly sought so that the applicant's case in that regard could be strengthened. The very phrase "please let us know when the premises have been re-allocated" to my mind indicates quite clearly that the solicitors were not opposed to re-allocation. Their interest in that matter related solely to the possibility of inspecting.

Miss McAllister, who has argued this case with conspicuous ability, if she will allow me to say so, asserts that I should have regard to the unsuitability of the premises as part of the overall circumstances in which to determine how long a period of time the offer should have been kept open. That seems to me a difficult argument. If I am not now permitted to have regard to the unsuitability of the premises for the purposes of considering whether they were properly offered, then it is in my judgment quite impossible by reference to some spectrum of suitability, to decide how long a period the applicant should have been given to take the decision.

In determining this application, I must have regard not merely to the substantive point of law determined in *Puhlhofer*, but also to the powerful terms in which this court is enjoined in this area of the law not to usurp the function of the authority as the fact-finding body. I could only intervene here on the footing that the authority failed to leave open their offer for long enough to constitute a reasonable time so as to amount to a proper discharge of their section 4(5) duty if I concluded that the time in fact

allowed was manifestly absurdly or perversely inadequate. With the best will in the world, the case here comes nowhere near the point at which I could properly arrive at that conclusion.

In the result, this challenge fails and the application must be dismissed.