Case No: B4/2010/0816

Neutral Citation Number: [2010] EWCA Civ 1278
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM WILLESDEN COUNTY COURT
HIS HONOUR JUDGE McDOWALL
9WI03980

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 November 2010

Before :

LORD JUSTICE CARNWATH
LORD JUSTICE RIMER
and
LORD JUSTICE MUNBY

- -

Between :

INPARASA VILVARASA	**Appellant**
- and -	
LONDON BOROUGH OF HARROW	**Respondent**

- -

(Transcript of the Handed Down Judgment of
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- -

Mr Iain Colville (instructed by Saul Marine & Co) for the Appellant
Ms Emma Godfrey (instructed by London Borough of Harrow) for the Respondent

Hearing date : 8 November 2010

- -

Judgment

Lord Justice Munby :

1. This is an appeal against the dismissal by His Honour Judge McDowall, sitting in the Willesden County Court, of the appeal by Mr Inparasa Vilvarasa from a decision of the London Borough of Harrow that its duty under the Housing Act 1996 (as amended) to secure that accommodation was available for him and his family had ceased by virtue of section 193(5) of the Act.

2. In my judgment Judge McDowall was right to dismiss the appeal, essentially for the reasons he gave in his judgment of 19 March 2010. Mr Vilvarasa's further appeal to this court must accordingly be dismissed.

The statutory framework

3. So far as is material for present purposes the statutory setting is to be found in sections 193(1)-(3):

> "(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 …, 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."

4. As section 193(3) indicates, there is a variety of circumstances in which the local authority's duty may cease; a general description can be found in the judgment of May LJ in *Griffiths v St Helens Metropolitan Borough Council* [2006] EWCA Civ 160, [2006] 1 WLR 2233, at para [34]. For present purposes I need refer to only three.

5. The first, which for convenience I shall refer to as 'a subsection (5) case', is set out in section 193(5):

> "The local housing authority shall cease to be subject to the duty under this section if the applicant, having been informed by the authority of the possible consequence of refusal and of his right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for him and the authority notify him that they regard themselves as having discharged their duty under this section."

6. The second, which for convenience I shall refer to as 'a subsection (7) case', is set out in sections 193(7), (7A) and (7F)(a):

> "(7) The local housing authority shall also cease to be subject to the duty under this section if the applicant, having

been informed of the possible consequence of refusal and of his right to request a review of the suitability of the accommodation, refuses a final offer of accommodation under Part 6.

(7A) An offer of accommodation under Part 6 is a final offer for the purposes of subsection (7) if it is made in writing and states that it is a final offer for the purposes of subsection (7).

(7F) The local housing authority shall not –

(a) make a final offer of accommodation under Part 6 for the purposes of subsection (7) … unless they are satisfied that the accommodation is suitable for the applicant and that it is reasonable for him to accept the offer."

7. The third, which for convenience I shall refer to as 'a subsection (7B) case', is set out in sections 193(7B), (7C), (7D), (7E) and (7F)(b):

"(7B) … the authority shall also cease to be subject to the duty under this section if the applicant accepts a qualifying offer of an assured shorthold tenancy which is made by a private landlord in relation to any accommodation which is, or may become, available for the applicant's occupation.

(7C) … the applicant is free to reject a qualifying offer without affecting the duty owed to him under this section by the authority.

(7D) For the purposes of subsection (7B) an offer of an assured shorthold tenancy is a qualifying offer if –

(a) it is made, with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the authority's duty under this section to an end;

(b) the tenancy being offered is a fixed term tenancy (within the meaning of Part 1 of the Housing Act 1988 (c 50)); and

(c) it is accompanied by a statement in writing which states the term of the tenancy being offered and explains in ordinary language that –

(i) there is no obligation to accept the offer, but

(ii) if the offer is accepted the local housing authority will cease to be subject to the duty under this section in relation to the applicant.

(7E) An acceptance of a qualifying offer is only effective for the purposes of subsection (7B) if the applicant signs a statement acknowledging that he has understood the statement mentioned in subsection (7D).

(7F) The local housing authority shall not –

… (b) approve an offer of an assured shorthold tenancy for the purposes of subsection (7B) … unless they are satisfied that the accommodation is suitable for the applicant and that it is reasonable for him to accept the offer."

8. It may be of assistance at this point to note certain features of this statutory scheme. First, there are significant differences in the information and explanations that have to be supplied to the applicant. In a subsection (5) case the relevant information is that set out in subsection (5). In a subsection (7) case the relevant information is that set out in subsections (7) and (7A). In a subsection (7B) case the relevant information is that set out in subsection (7D)(c). Second, there are differences in the formal requirements. In a subsection (7) case and likewise in a subsection (7B) case some of the necessary information is required to be given "in writing": see subsections (7A) and (7D)(c). There is no requirement that anything be in writing in a subsection (5) case. Third, there is an important difference between the criteria applicable in relation to the offered accommodation. In a subsection (5) case the relevant criterion is that the property is "suitable". In a subsection (7), as also in a subsection (7B) case, the property must be "suitable" and it must be "reasonable" for the applicant to accept it.

The facts

9. On 9 June 2009 the local authority wrote to Mr Vilvarasa accepting that he was homeless, eligible for assistance, had a priority need, had not become homeless intentionally and had a local connection with Harrow. The local authority accordingly accepted that it had a duty to secure that accommodation was available for him. The conditions set out in section 193(1) thereby being met, the local authority, as it accepted, thus became subject to the duty under section 193(2).

10. On 19 July 2009 the local authority wrote again to Mr Vilvarasa. So far as material for present purposes the letter read as follows:

"I wish to advise you that you are being offered unfurnished temporary accommodation which should be available shortly. This accommodation will be let to you as an Assured Shorthold Tenancy (AST). This offer of accommodation discharges the Councils duty to you under S 193 of the Housing Act 1996 – Part VII, as amended by the Homelessness Act 2002, to secure that accommodation is available for your occupation.

This duty will end if you cease to be eligible for assistance, become intentionally homeless from the accommodation made available for your occupation, accept an offer of accommodation through the Councils Allocation Scheme (Locata), accept an offer of an assured tenancy from a private

> landlord, cease to occupy the accommodation as your only or principal home, refuse a final offer of accommodation under Part 6 or accept a qualifying offer of an AST made by a private landlord.
>
> …
>
> I regret that because of a chronic shortage, only one suitable offer of accommodation can be made. If you decide not to accept this offer, please let [name] in the Housing Provision Team know immediately. Your reasons for refusal will then be considered. If the council decides that this offer of accommodation is suitable, the offer will have discharged the Councils housing duty to you. You can request a review of this decision and you can still choose to move into the accommodation whilst the review is decided. If the review decision is that the accommodation is unsuitable, you will be found alternative temporary accommodation as soon as possible. If you decide not to move in then this property will be allocated to another homeless family and if the review decision is that the property is suitable and therefore that it discharges the Councils housing duty, you will be required to make your own arrangements for alternative accommodation."

11. It is quite clear that this letter was drafted with subsection (5) in mind. It referred to the accommodation as "temporary". It identified the relevant criterion as being whether the accommodation was "suitable". And the language of the final paragraph I have set out was plainly drafted by reference to subsection (5) and not by reference to the very different language of subsections (7A) and (7B)(c). But it is to be noted that the letter did not identify any specific property as being offered.

12. On 19 August 2009 the local authority contacted Mr Vilvarasa by telephone and offered him accommodation at 6B Welbeck Road. There is no contemporaneous record of this telephone conversation and the evidence which was before Judge McDowall (witness statements by Mr Vilvarasa and by an officer of the local authority) provides no further detail of what was said.

13. The same day Mr Vilvarasa visited the property. There was then a meeting between Mr Vilvarasa and the local authority's assistant housing assessment manager, Mr Sinclair. Again, there is no contemporaneous record of this meeting, but it is referred to in the letter which Mr Sinclair wrote the next day (20 August 2009) to Mr Vilvarasa:

> "I refer to our interview yesterday regarding the above. Mr R who was acting as an interpreter for you and [name] from our Housing Provision Team were also in attendance. You advised me that you do not want to accept this offer of accommodation for the following reason:

> The property is a first floor flat and you say that you cannot manage the stairs, particularly if you have to carry anything heavy because of your knee and arm problems.
>
> Your reason for refusing has now been carefully considered."

Mr Sinclair then proceeded to deal with the matter in some detail before continuing:

> "For all of these reasons the council has decided that the stairs in the property offered would not make it unsuitable.
>
> The property offered is a 2 bedroom flat. This accommodation would provide suitable sleeping and living space under housing law for you and your wife and your two children, two sons aged 4 years and 3 months.
>
> For all the reasons above, the property at 6B Welbeck Road, Harrow is considered to be suitable and reasonable for you and your family to accept and as such it discharges the council's duty to secure suitable accommodation for you.
>
> You have the right to request a review of this decision. If you wish to do so, you must make your request within 21 days of the date you were notified of this Council's decision. If you decide to request a review please let me know your decision on the following options: -
>
> 1 While the review enquiries are being carried out you move into 6B Welbeck Road. If the review decision is upheld, that the accommodation offered is suitable, no further offers will be made to you. If the review decision is quashed you will be made a further offer of accommodation, either temporary or permanent.
>
> 2 You do not move into 6B Welbeck Road, while the review enquiries are being carried out and it will be re-allocated to another homeless family. We will commence proceedings to evict you from your current accommodation and you will have to make your own housing arrangements. If the review decision is upheld, that the accommodation offered is suitable, the Council will have discharged its legal housing duty to you. If the decision is quashed a further offer of accommodation will be made to you, either temporary or permanent.
>
> Please let [name] (tel. …) know your final decision by 2.00pm today, 20 August 2009. If you do not, I will understand this to mean that you have finally decided not to accept the offer of accommodation and the Council will discharge its legal housing duty to you. This means that you will have to find your own accommodation, …"

14. Again, and subject to only one point, it is clear that this letter was drafted with subsection (5) in mind. The language of the final paragraphs I have set out was plainly drafted by reference to subsection (5) and not by reference to the very different language of subsections (7A) and (7B)(c). But the qualification I have mentioned is important; indeed it is the sheet anchor of Mr Colville's argument: the letter said that the local authority considered the property "to be suitable *and reasonable* for you and your family to accept" (emphasis added). The additional words "and reasonable" are, of course, irrelevant in a subsection (5) case.

15. The same day (20 August 2009) Mr Vilvarasa wrote to the local authority requesting "a review of the decision that the … property is considered suitable and reasonable for me and my family" and stating that he had decided not to move into the property while the review was carried out. He added that he was consulting a solicitor. The local authority replied the same day:

> "I am writing to you following my letter of today, 20 August 2009 and your letter dated 20 August in reply, in which you confirmed that you have finally decided not to accept the offer of accommodation at 6B Welbeck Road, West Harrow. I have explained to you both verbally yesterday and in my letter, the consequences of not accepting this offer of accommodation. The offer of the property has therefore now been withdrawn from you and the property will be offered to another applicant. Please take this letter as confirmation that the council has now discharged its housing duty to you under The Housing Act 1996 Part VII as amended by the Homelessness Act 2002."

16. The review then proceeded. I need not go into the details. On 21 September 2009 the local authority's review officer wrote to Mr Vilvarasa. After setting out matters in some detail she said:

> "For all the reasons above, the property at 6B Welbeck Road, Harrow is considered to be suitable and reasonable for you and your family to accept and as such it discharges the council's duty to secure suitable accommodation for you."

She then described the sequence of events which had led to the local authority's decision and the course of her own investigations and continued:

> "You did make your decision to refuse the accommodation with full knowledge of the consequences of your actions. The choices available to you were explained in some detail. Unfortunately we were not able to meet your aspiration due to the acute shortage of available accommodation. There is a chronic shortage of social housing within this borough. 6B Weldon [sic] Road is affordable as housing benefits will pay your rent in full. It is physically accessible to you for all the reasons given above. It would have had the legal right to occupy by virtue of holding an assured shorthold tenancy. The accommodation is in good condition. It has 2 bedrooms with a separate living room, kitchen and bathroom and is therefore

large enough to accommodate you, your wife and 2 children. I am also satisfied that had you taken up occupation you would not have suffered violence or threats of violence, which are likely to be carried out.

In light of the above, I could find no basis on which to overturn the decision that the Council has discharged its duty to you as a homeless person (S 193 of the Housing Act 1996 as amended by the Homelessness Act 2002)."

17. The same points can be made about this letter as about the earlier decision letter of 20 August 2009. Again, and subject only to the same one point, it is clear that this letter was drafted with subsection (5) in mind. There is nothing in the language of the final paragraphs I have set out which even begins to suggest that this was being treated as anything other than a subsection (5) case. But the letter again said that the local authority considered the property "to be suitable *and reasonable* for you and your family to accept".

The proceedings

18. Appeal lies from the decision of the local authority on review to the County Court. Mr Vilvarasa exercised his right of appeal. He took a number of points before His Honour Judge McDowall, including some which are no longer pursued. He failed on all points. On 19 March 2010 Judge McDowall gave judgment dismissing the appeal. On 8 April 2010 Mr Vilvarasa filed a notice of appeal to this court identifying the two points which he seeks to pursue. On 30 June 2010 Mummery LJ gave him permission to appeal. The appeal came on before us on 8 November 2010. At the end of the hearing we reserved our decision. We now give judgment explaining why the appeal must be dismissed.

The grounds of appeal

19. Mr Iain Colville on behalf of Mr Vilvarasa identifies what he submits were two errors by the judge. First, he says that Judge McDowall erred in finding that the letter sent on 19 July 2009 satisfied the requirements of section 193(5). Second, he says that Judge McDowall erred in holding that the test adopted by the local authority – what he says was the test applicable to a subsection (7B) case – did not determine the nature and effect of the offer made by the local authority. Moreover, he says, the judge erred in holding that the use of the wrong test made no difference to the lawfulness of the local authority's decision and erred, as he puts it, in conflating the tests under sections 193(5) and 193(7F).

20. I shall deal with each of these in turn.

The first issue

21. Mr Colville asserts that proper compliance with section 193(5) requires that the information required to be given must be given – the applicant must be "informed" of the relevant matters – at the date when the accommodation is offered and not (as here) on some earlier date. Parliament's intention, he submits, was that the applicant must

be notified of the relevant matters at the same time as the property is offered, so that what he calls an informed decision can be made. I do not agree.

22. Mr Colville accepted in terms that the only thing wrong with the letter of 19 July 2009 was that it did not identify the accommodation in question; he accepted that, had it done so, it would have been an offer in accordance with subsection (5). He accepted that if during the telephone conversation on 19 August 2009 there had been express reference back to the letter of 19 July 2009 there would be no difficulty. But he points out, correctly on the evidence we have, that there was no such reference back and in effect submits that this makes all the difference. He asked rhetorically for how long a local authority could go on relying on a letter such as the letter of 19 July 2009: Weeks? Months? Years?

23. The answer, in my judgment, is that it is essentially a matter of fact and degree. If a very long period elapsed, with much intervening correspondence, it may be that Mr Colville's point would hold good. But that is not this case. Here, the property was identified precisely one month after the letter was written, and nothing had happened in the interim.

24. Moreover, throughout the entire process, starting with the letter of 19 July 2009 and continuing through until the final letter of 21 September 2009, the local authority was consistent in drafting its letters and explaining its stance by reference to section 193(5), and section 193(5) alone. From beginning to end it is quite clear that the local authority's decision-makers saw this as being a subsection (5) case and nothing else. Apart from the inclusion of the words "and reasonable" in the letters of 20 August 2009 and 21 September 2009 there was nothing to suggest that this might be a subsection (7B) case; and even giving full weight to those words there is nothing which even begins to suggest that anybody in the local authority ever saw this as being a subsection (7B) case, let alone ever said anything to Mr Vilvarasa to suggest that it might be. On the contrary, Mr Vilvarasa was consistently told and reminded that the offer was being made on terms which meant (even if it was not put to him in so many words) that this was a subsection (5) case. There is no evidential basis for any assertion – not that the assertion is in fact made – that Mr Vilvarasa did not understand the terms on which the accommodation was being offered or that in refusing it he was under any misapprehension as to the consequences.

25. There was in my judgment proper compliance by the local authority with section 193(5) when it made the offer of accommodation to Mr Vilvarasa which in the event he refused.

26. Mr Colville, as we have seen, submits that the notification required by section 193(5) must be made (and I quote expressions he used in the course of his oral submissions) "when" or "at the same time as" or "coupled with" the offer of a specific and identified property. In support of this contention he took us to what May LJ had said in *Griffiths v St Helens Metropolitan Borough Council* [2006] EWCA Civ 160, [2006] 1 WLR 2233, at para [42], and to the same judge's observations (now as President of the Queen's Bench Division) in *Ali v Birmingham City Council* [2009] EWCA Civ 1279 at paras [10], [39]. I do not, of course, dispute any of this, but none of it assists Mr Colville at all. On the contrary, not merely is there nothing in the language of section 193(5) or in the authorities to support his contention, the language if anything points in the opposite direction, for the relevant temporal link is defined in section

193(5) by the use of the words "having been informed … of the possible consequences of refusal … refuses". So the statutory requirement is merely that the required information must have been supplied by the time the applicant refuses. There is in fact nothing in the statute to require the relevant information to have been given by the time the offer is made.

27. In my judgment there is nothing in this ground of appeal.

The second issue

28. There are various propositions wrapped up in Mr Colville's submissions on the second issue which it is convenient to consider separately.

29. In the first place, Mr Colville submits that Judge McDowall erred in holding that the test adopted by the local authority in its decision letters – what he says was the test applicable to a subsection (7B) case – did not determine the nature and effect of the offer made by the local authority. This, with respect to Mr Colville, is a hopeless argument. In a case such as this the nature of the offer must be determined at the time it is made; I do not understand how its nature can be determined by subsequent events, let alone how the offer, if made, as here, in accordance with section 193(5), can by the local authority's subsequent unilateral actions be retrospectively transformed into an offer in accordance with section 193(7B). The offer in this case was, to repeat, an offer made in accordance with section 193(5) and Judge McDowall was correct to proceed on that basis.

30. Mr Colville's real point is that the local authority misdirected itself and erred in law in treating reasonableness as a relevant factor when in truth it was irrelevant, and that this error vitiates its decision. The judge, he says, erred in holding that the use of the wrong test made no difference to the lawfulness of the local authority's decision and erred in conflating the tests under sections 193(5) and 193(7F). The local authority, he says, applied the test applicable to a subsection (7B) case. Accordingly, he submits, the only reasonable conclusion is that the local authority was treating this as a subsection (7B) case, with the corollary that Mr Vilvarasa was entitled to refuse without thereby discharging the local authority from its duty to accommodate him. I do not agree.

31. The latter point I have dealt with already. There is simply no basis for saying that the local authority ever treated this as a subsection (7B) case or for asserting that anything the local authority ever said to Mr Vilvarasa could have been construed as having that effect. It is quite clear on the facts, in my judgment, that the local authority was (correctly) treating this as a subsection (5) case but that it (incorrectly) referred in places to the test applicable to a subsection (7B) case. Does this matter? In my judgment it does not.

32. The point at issue can be formulated as follows: assuming that the letter of 19 July 2009 was a valid offer in accordance with subsection (5), was the letter of 20 August 2009 a valid decision in accordance with subsection (5) and was the letter of 21 September 2009 correct in upholding the earlier decision? In my judgment the answer to that question can only be Yes.

33. The local authority found that the property was "suitable" for Mr Vilvarasa and his family, a decision which is no longer challenged on the facts. That, it might be thought is really the end of the matter. That finding sufficed to determine the matter in accordance with section 193(5). What does it matter if the local authority went on – irrelevantly and superfluously – to find in addition that it was reasonable for Mr Vilvarasa and his family to accept the property? How, it might be said, can that additional, if irrelevant, finding affect, let alone vitiate, the quite separate and, on its own sufficient, finding that the property was suitable?

34. Mr Colville's riposte is to point to the very recent decision of this court in *Ravichandran v London Borough of Lewisham* [2010] EWCA Civ 755 and, in particular, to paras [21], [25], [27] and [35(2)], in support of the contention that "suitability" in the context of a subsection (7B) case is not the same as "suitability" in the context of a subsection (5) case. What is "suitable" as long-term accommodation may not necessarily be suitable for temporary accommodation. So, he submits, the fact that the local authority was here adopting the text applicable to a subsection (7B) case does not carry with it the assumption that it was using the word "suitable" in the sense appropriate in a subsection (5) case.

35. The argument is ingenious, but I cannot accept it.

36. In the first place, *Ravichandran* was a case in which, as Ms Godfrey pointed out, the local authority had made explicitly clear throughout, and by express reference to the relevant section in the Act, that it was treating the case as a subsection (7) case. It had, as she put it, nailed its colours to the mast. The local authority failed in its endeavour to bring the case within subsection (7) and then sought to argue that it could nonetheless rely on subsection (5). The Circuit Judge held that it could. This court disagreed (para [25]). The contrast with the present case could hardly be greater. Here, to repeat, the local authority has throughout said, and still says, that this is a subsection (5) case. It has not, and does not, seek to change tack as the local authority tried to do in *Ravichandran*.

37. More to the point, the premise which underlies Mr Colville's submission – namely that the local authority was here addressing itself to the question of suitability in the subsection (7B) sense and not in the subsection (5) sense – is, in my judgment, wholly lacking in substance. The fact is that the local authority was treating this as a subsection (5) case and focusing upon whether the requirements of subsection (5) were met. It was not treating this as a subsection (7B) case – that thought had never occurred to anybody – so it seems to me completely unrealistic to think that it was nonetheless addressing itself to suitability as if this was a subsection (7B) case. On the contrary, it was, quite obviously, addressing itself to suitability on the footing that this was a subsection (5) case. *Ravichandran* does not assist Mr Colville. Judge McDowall was right in his conclusion and for the reasons he gave.

38. Ms Godfrey reminded us of what Lord Neuberger of Abbotsbury said in another Housing Act case, *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413, at para [51]:

> "as the present case shows, a decision can often survive despite the existence of an error in the reasoning advanced to support it. For example, sometimes the error is irrelevant to the

> outcome; sometimes it is too trivial (objectively, or in the eyes of the decision-maker) to affect the outcome; sometimes it is obvious from the rest of the reasoning, read as a whole, that the decision would have been the same notwithstanding the error; sometimes, there is more than one reason for the conclusion, and the error only undermines one of the reasons; sometimes, the decision is the only one which could rationally have been reached. In all such cases, the error should not (save, perhaps, in wholly exceptional circumstances) justify the decision being quashed."

There are, of course, many other statements to the same effect.

39. In my judgment this is precisely the kind of case in which Lord Neuberger's approach is particularly apposite. The blunt truth is that, in the final analysis, Mr Vilvarasa is seeking to take advantage of a minor slip by a local authority in circumstances where it is idle to imagine that this slip could possibly have affected either the substance or the fairness of its decision.

40. In my judgment, the second ground of appeal also fails. Accordingly the appeal must be dismissed.

Lord Justice Rimer :

41. I agree

Lord Justice Carnwath :

42. I also agree.