Hilary Term
[2013] UKSC 10
On appeal from: [2011] EWCA Civ 463

JUDGMENT

Sharif (FC) (Respondent) *v* The London Borough of Camden (Appellant)

before

Lord Hope, Deputy President
Lord Walker
Lady Hale
Lord Kerr
Lord Carnwath

JUDGMENT GIVEN ON

20 February 2013

Heard on 17 January 2013

Appellant	*Respondent*
Andrew Arden QC Iain Colville (Instructed by London Borough of Camden Legal Services)	Nathalie Lieven QC Martin Hodgson (Instructed by Edwards Duthie)

LORD CARNWATH (with whom Lord Walker agrees)

1. This appeal raises a short point under Part VII of the Housing Act 1996. The 1996 Act contains a set of provisions dealing with the obligations for housing authorities to those found to be homeless or threatened with homelessness. They were originally enacted in the Housing (Homeless Persons) Act 1977. Although there have been significant amendments, the general structure of the provisions has remained largely unaltered, as has the underlying principle that a home is somewhere which can accommodate a family together.

2. Thus in *Din (Taj) v Wandsworth London Borough Council* [1983] AC 657, Lord Fraser said:

> "One of the main purposes of that Act was to secure that, when accommodation is provided for homeless persons by the housing authority, it should be made available for all the members of his family together and to end the practice which had previously been common under which adult members of a homeless family were accommodated in a hostels while children were taken into care and the family thus split up . . . " (p 668 D-G)

3. That principle is clearly established in the first two sections. "Homelessness" is defined by section 175(1) as follows:

> "(1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he –
>
> (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of court,
>
> (b) has an express or implied licence to occupy, or
>
> (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession

(2) . . .

(3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy."

By section 176:

"Accommodation shall be regarded as available for a person's occupation only if it is available for occupation by him together with –

(a) any other person who normally resides with him as a member of his family, or

(b) any other person who might reasonably be expected to reside with him.

References in this Part to securing that accommodation is available for a person's occupation shall be construed accordingly."

4. Thus what I shall call the "extended" meaning of "available for his occupation", as defined by section 176, runs through the whole of Part VII of the 1996 Act. It is relevant not only in establishing whether a person is homeless under section 175, but also for setting the authority's duty towards him if so found, including both their interim duty to provide accommodation pending a decision (section 188(1)), and (as in the present case) their final duty to someone found to be in a priority need and not intentionally homeless (section 193(2)).

5. By contrast, no specific standard of "accommodation" has been laid down by Parliament. As Lord Brightman said in *R v Hillingdon LBC ex p. Puhlhofer* [1986] AC 484, discussing the 1977 Act:

"In this situation, Parliament plainly, and wisely, placed no qualifying adjective before the word 'accommodation' in section 1 or section 4 of the Act, and none is to be implied. The word 'appropriate' or 'reasonable' is not to be imported. Nor is accommodation not accommodation because it might in certain circumstances be unfit for habitation for the purposes of Part II of the

> Housing Act 1957 or might involve overcrowding within the meaning of Part IV. Those particular statutory criteria are not to be imported into the Homeless Persons Act for any purpose. What is properly to be regarded as accommodation is a question of fact to be decided by the local authority. There are no rules. Clearly some places in which a person might choose or be constrained to live could not properly be regarded as accommodation at all . . . What the local authority have to consider, in reaching a decision whether a person is homeless for the purposes of the Act, is whether he has what can properly be described as accommodation within the ordinary meaning of that word in the English language." (p 517 E-G)

He added that, while the statutory definition of "overcrowding" had no relevance, overcrowding was not necessarily a factor to be disregarded altogether:

> "…accommodation must, by definition, be capable of accommodating. If, therefore, a place is properly capable of being regarded as accommodation from an objective standpoint, but is so small a space that it is incapable of accommodating the applicant together with other persons who normally reside with him as members of his family, then on the facts of such a case the applicant would be homeless because he would have no accommodation in any relevant sense". (pp 517 H – 518 A)

6. Some of Lord Brightman's assumptions about the intentions of Parliament seem to have been falsified shortly afterwards. Section 14 of the Housing and Planning Act 1986 introduced a requirement to disregard accommodation which it is not "reasonable for him to continue to occupy" (see now section 175(3) of the 1996 Act, quoted above). It also introduced a requirement that accommodation provided by the authority should be "suitable" (see now section 206(1) of the 1996 Act). In determining "suitability" the authority were required to "have regard to" the statutory provisions covering housing standards (see now section 210 of the 1996 Act). To that extent it mitigated the apparent harshness of the test laid down by the House of Lords in *Puhlhofer*. However it did not alter the definition of "accommodation" as such, nor detract from the authority of what Lord Brightman said about that word taken on its own.

7. The issue in this case, in short, is to what extent (if at all) the extended meaning of the expression "available for his occupation" in the 1996 Act implies a requirement that the family be accommodated not only together, but in a single unit of accommodation.

Factual background

8. The facts are sufficiently summarised in the agreed statement of facts and issues:

> "On 3 June 2004, the Appellants, the London Borough of Camden ('the Council') accepted a full duty to secure that suitable accommodation was available for occupation by the Respondent, Ms Sharif, under s.193(2), Housing Act 1996. The Council accepted that Ms Sharif's father, Mr Sharif-Ali, a man in his 60s with some health problems, and her sister, Zainab Sharif (aged 14), lived with Ms Sharif and were therefore part of her household. Accordingly Ms Sharif's father and sister are entitled to be accommodated with Ms Sharif under the said housing duty.
>
> Ms Sharif and her household were initially accommodated by the Council in hostel accommodation but, in 2004, they were accommodated – also under s.193(2) – at 83 Lopen Road, London N18 1PT (a 3 bedroom house) under a private sector leasing scheme.
>
> On 6 November 2009, still by way of accommodation under s. 193(2), the Council asked Ms Sharif and the household to move to two units (nos. 125 and 132) on the same floor of Englands Lane Residence, London NW3, a hostel used by the Council to accommodate homeless applicants. Each unit comprised a single bed-sitting room with cooking facilities, plus bathroom/w.c. The two units were separated by a few yards. No. 125 can accommodate two single people; No. 132 is suitable for one. It was envisaged that Ms Sharif and her sister would sleep in No. 125 and their father in No. 132."

9. Ms Sharif refused the offer as unsuitable, because it comprised two separate units; due to her father's medical condition they needed to be able to live as a family in the same unit. On 23 December 2009 the council confirmed that the offer was considered suitable, although not an "ideal living arrangement", and that accordingly their housing obligation to her had come to an end (see section 193(5) of the 1996 Act). Ms Sharif requested a review of the decision on suitability, again mainly on the grounds of her father's ill health and the need to provide care for him. It does not seem to have been suggested that lack of communal facilities as such was an issue. On 16 February 2010 the council upheld their decision. The review decision contained a detailed consideration of the facts, including the medical advice received by the Council, which in some respects differed from

assertions made on behalf of Ms Sharif. In particular, the reviewing officer was not persuaded that the distance between the two units was a significant problem:

> "I am not persuaded that your client would experience any significant difficulties in attending her father in a separate flat which your client agrees herself was only a few yards away. Walking from one flat to another and cleaning on her father's behalf when necessary would not in my view have been any more challenging than cleaning a three-bedroom house and walking up and down the stairs in the house. I am therefore not persuaded that the accommodation offered to your client was unsuitable as it would be more onerous caring for her sister and father in two separate flats."

At this stage the sole issue was that of suitability; it was not suggested that accommodation in two units was as a matter of law incapable of satisfying the statutory requirement.

10. Ms Sharif appealed to the London Central County Court on various points of law (both procedural and substantive), as she was entitled to do by virtue of section 204 of the 1996 Act. The present issue was raised for the first time by an amendment to the original grounds of appeal in the following terms:

> "On a proper construction of section 176 Housing Act 1996 it is not lawful for the authority to purport to discharge its duty to secure accommodation for the appellant under Part VII of the Housing Act by providing separate accommodation for her father being a person who normally resides with her as part of her family."

11. The appeal was dismissed on 24 June 2010 by HH Judge Mitchell. He took note in particular of a judgment of Scott Baker J in *R v Ealing London Borough Council ex parte Surdonja* [1999] 1 ALL ER 566. In that case the family were housed in two hostels approximately a mile apart. Noting that the council were obliged to provide accommodation available not only for the claimant but also for his family, the judge had said:

> "In my judgment the obligation is not discharged by providing split accommodation in separate dwellings. It is the policy of the law that families should be kept together; they should be able to live together as a unit. I can well see that the obligation could be discharged by, for example, separate rooms in the same hotel, but not I think in two entirely separate hostels up to a mile apart." (p 571).

HH Judge Mitchell saw this as indicating Scott Baker J's view that the obligation could be fulfilled by offering split accommodation within the same building. He saw that as consistent with the statutory language which required the provision of "suitable accommodation", not necessarily accommodation suitable from the perspective of the claimant.

12. That decision was reversed by the Court of Appeal (Jacob, Wilson and Etherton LJJ) [2011] PTSR 1695. Etherton LJ, who had granted permission to appeal, also gave the only substantive judgment. His essential reasoning is encapsulated in the following passage:

> "17 The accommodation offered by Camden to the applicant comprised two self-contained flats, on the same floor of the building, but a short distance apart, one of which was offered for occupation by the applicant and her sister and the other by her father. *On any ordinary use of language, that was not the provision of accommodation which the applicant and her father were to occupy 'together with' one another. They would be living close by each other, but separate from one another.* No one could reasonably describe them, in such circumstances, as living 'together with' one another. That ordinary meaning of the legislative language is reflected in the wording of section 176(a) which refers to a 'person who normally resides with' the applicant. It seems reasonable to suppose that concepts of occupation by the applicant 'together with' another, and residence of the applicant 'with' that other, were intended by Parliament to have a similar meaning. *It cannot be said, on any ordinary use of language, that persons living in separate self-contained flats, however close, and not sharing any communal area, are residing together.*" (emphasis added)

13. He considered and rejected a number of submissions made on behalf of the council, which it is unnecessary to repeat in detail. In relation to the judgment in *Surdonja*, Etherton LJ commented, in para 36, that the reference to "separate rooms in the same hotel" was quite different from occupation of "separate self-contained residential units with no sharing of any living areas." He added:

> "38. I recognise, without hesitation, the enormous difficulties faced by housing authorities in attempting to discharge their housing duties, including those under Part VII of the 1996 Act. Their shortage of housing stock and limited resources and the scale of the problem of homelessness are well known to be acute. It is obvious that anything which constrains the ability of the authorities to exercise discretion in the management and application of those

> limited resources and stock will increase the practical difficulties in discharging their duties. The policy underlying the provisions of Part VII is, however, a matter for Parliament to determine. That policy is to be ascertained in the usual way by a proper interpretation of the statutory language. It is well established and common ground that the policy underlying section 176 of the 1996 Act is to keep families together. *The natural meaning of the language used in section 176 is that the policy is to be achieved by the provision of accommodation in which the applicant can reside 'together with' those members of the applicant's family who normally reside with the applicant, and not by the provision of two or more separate self-contained units of accommodation without any sharing of communal living areas.* To strain the clear language of section 176 in order to enable housing authorities to have greater latitude in the management of their limited resources, by reducing the issue solely to one of suitability in the authority's view (subject to *Wednesbury* principles), would be wrong in principle, as a judicial modification of Parliament's policy." (para 38)

The issues in the appeal

14. Mr Arden QC for the council submits that Etherton LJ's construction of the statute went beyond what the words justified and would impose an unwarranted burden on the authority. He accepted that one of the social purposes behind the statute was to ensure that families could be kept together. However, that did not necessarily mean in one unit. The correct question to ask was whether the accommodation, even if not in a single unit, was "sufficiently proximate" to fulfil that social purpose. In other words, could the family be described as living "together" even if accommodated in what was technically more than one unit of accommodation? That interpretation was consistent with the history of the legislation and in particular the judgment of Lord Brightman in *Puhlhofer*. The council was particularly concerned at the suggestion that the statutory requirement could only be satisfied by the provision of "communal living areas". Such a requirement would be novel to housing law generally, and there was no proper basis for importing it into this Part of the Act.

15. Mr Arden referred also to the decision of the House of Lords in *Uratemp Ventures Ltd v Collins* [2002] AC 301, relating to the definition of "a dwelling-house let as a separate dwelling" in section 1 of the Housing Act 1988. It was there held that a single room, even without cooking facilities could constitute a "dwelling-house" as defined in the 1988 Act. Lord Millett said:

> "In both ordinary and literary usage, residential accommodation is 'a dwelling' if it is the occupier's home… But his home is not the less his home because he does not cook there but prefers to eat out or bring in ready-cooked meals." (para 31).

By analogy, he submitted, neither the word "accommodation" nor the expression "living together" can in themselves be read as containing any implication as to the nature of the facilities to be provided.

16. For the respondent, Ms Lieven QC supports the judgment of the Court of Appeal. She accepts that Etherton LJ may have gone too far in suggesting that there need to be "communal living areas". However she supports his essential reasoning, based on the ordinary use of language. The accommodation must be available for "living together". That implies there must at least be somewhere in the accommodation where living together can take place. The test is objective rather than subjective. It is an issue of law on which, at least where the primary facts are not in issue, the court is able to substitute its view for that of the authority. The layout must be such as to facilitate normal family life for those within the scope of the section. That will normally imply a single unit of accommodation, but she accepts that it may be possible to accommodate a family in two rooms in a hostel, provided there is a space where some degree of shared family life can take place, even if that is limited to some shared cooking facilities.

Discussion

17. This is a short point which does not permit of much elaboration. Etherton LJ relied on what he considered to be the ordinary meaning of the statutory language. In my respectful view, the ordinary meaning does not support that interpretation. The word "accommodation" in itself is neutral. It is not in its ordinary sense to be equated with "unit of accommodation". It is no abuse of language to speak of a family being "accommodated" in two adjoining flats. The limitation, if any, must therefore be found in the words "available for occupation… together with" the other members of his family. The statutory test will be satisfied by a single unit of accommodation in which a family can live together. But it may also be satisfied by two units of accommodation if they are so located that they enable the family to live "together" in practical terms. In the end, as Mr Arden submits, this comes down to an issue of fact, or of factual judgment, for the authority. Short of irrationality it is unlikely to raise any issue of law for the court.

18. This legal issue had not been addressed in terms by the Review Officer, because it had not been raised in that form. However, it is reasonably clear how it would have been answered, since the issue of suitability was clearly treated as

including the needs of the family as a unit. The main obstacle to family living which had been raised was the problem of caring for the father in a separate unit. That was considered and discounted by the officer. He thought the two flats were sufficiently close for the problem of communication to be no greater than in a house on two levels. Ms Lieven's submissions seem like an echo of those of counsel for the unsuccessful appellant in *Puhlhofer*, who submitted that:

> "in order to constitute accommodation the premises must be such as to enable the family unit to reside and carry on the ordinary operations of daily life there . . ." (p 505B).

Any such qualification was rejected by the House. That remains the position, save to the extent that it is implicit in the requirements of "suitability" or reasonableness, introduced in 1986. But those points are not, or are no longer, in issue in the present case.

19. Further, Ms Lieven's interpretation would produce surprising results. It is to be remembered that the statutory definition of overcrowding is not relevant to the definition of accommodation available for occupation, although it is now relevant to "suitability". Under the *Puhlhofer* test, a family might be properly accommodated within a single unit even though seriously overcrowded by normal standards. But on Ms Leiven's submission, the authority would not have been able to improve its position by offering it an additional unit next door. It also has to be remembered that the same definition applies to the temporary accommodation to be provided while a decision is made on the merits of the claim. It would be odd and potentially onerous if, even while the authority were simply considering the merits of the claimant's position, they were unable to house the family in two adjoining units even on a temporary basis.

20. Furthermore, if as seems to be accepted, the observations of Scott Baker J in *Surdonja* were correct, it is hard to see why two rooms on different floors of a hotel or hostel would satisfy the council's duty, but two adjacent flats would not. The presence of locked doors between adjacent flats also cannot be critical as rooms in a hotel or hostel would normally have their own lock. As to Ms Lieven's suggestion that shared cooking facilities might be sufficient, I accept that the observations of Lord Millett in *Uratemp* (quoted above) may not be of much relevance to what is needed to accommodate a family living together, as opposed to a single person. In this case there were cooking facilities in both flats. In practice no doubt they would be shared, particularly if as was suggested the father had limited ability safely to cook for himself. It would be very odd if removal of a cooker from one flat, so as to leave no option but shared use, would convert what would otherwise be inadequate provision of accommodation into a valid discharge of the authority's duties.

21. Of the other cases to which we were referred, I would mention only one: *Langford Property Co Ltd v Goldrich* [1949] 1 KB 511. The issue under the Rent Acts was whether two self-contained flats let together could constitute "a separate dwelling-house". The facts were described in the judgment of Somervell LJ. The premises consisted of two flats in a single block, which had previously been separately let. They were on the same floor but not next to each other. The tenant had taken these two flats "as a home for himself and some relatives . . . his father, mother and a married sister". He made no structural alterations (p 521). It was held that they could be treated as constituting together "a dwelling-house". The Lord Justice said:

> "In my opinion if the facts justify such a finding, two flats or, indeed, so far as I can see, two houses, could be let as a separate dwelling-house within the meaning of the definition. What happened here was that the tenant wished to accommodate in his home these relatives to whom I have referred, and he wanted more accommodation than could be found or conveniently found in one flat. He therefore took the two flats and made those two flats his home. [Counsel] suggested at one time that there might be some absurdity, if, say, a man took under a single lease (which does not seem very probable) two flats in widely separated districts; but that case can be dealt with when it arises." (p 517)

22. Care is always needed in drawing parallels between definitions in different statutory codes. However I find this passage helpful in relation to the ordinary use of language in a closely analogous context. Somervell LJ saw no difficulty in describing the two flats as "accommodation", in which the family were able to make their "home". He distinguished the position where the flats are in "widely separated districts". This approach is very similar to that of Scott Baker J in the passage I have cited.

23. Submissions were made to us, on the one hand, as to the serious problems authorities would face in meeting their statutory duties, if the Court of Appeal's judgment were upheld; and, on the other, as to the risks of allowing authorities too free a hand in the way in which they can accommodate families. I find it unnecessary to comment in detail on either aspect. Although the problems of housing authorities, particularly in urban areas, are well known, there is no specific evidence to support a submission that this particular requirement would pose unacceptable problems. Mr Arden rightly accepted that, if the law was as the Court of Appeal said it was, the authority will have to comply. In relation to the second point, I would emphasise the narrowness of the present decision. It does not give authorities a free hand. It is still a fundamental objective of the Act to ensure that families can "live together" in the true sense. Accommodation, whether in one unit or two, is not "suitable" unless it enables that objective to be achieved.

24. I would therefore allow the appeal and restore the judge's order.

LORD HOPE

25. I too would allow the appeal for the reasons given by Lord Carnwath.

26. We are all agreed that the test which section 176 of the Housing Act 1996 lays down will be satisfied by a single unit of accommodation in which a family can live together. The question is whether the words "available for occupation by him together with" the other persons referred to can only be so satisfied. Do they permit the local authority to accommodate the family in more than one unit of accommodation, so long as it can be said that the units are close enough for them to live together? The words "resides with" and "reside with" that follow the phrase I have just quoted serve to emphasise that the accommodation that the test refers to must be such as to enable them all to live together as a family. But the test does not go further than that. It does not say that it can only be met by the provision of a single unit. Parliament has plainly and wisely, if I may adopt Lord Brightman's phrase in *R v Hillingdon LBC, Ex p Puhlhofer* [1986] AC 484 at 517, refrained from inserting any qualifying words of that kind.

27. In this situation the question whether the test has been met must be a question for the local authority. There are, nevertheless, two yardsticks that can be applied. The first is what must be taken to be the ordinary meaning of the words that the test uses. The second is the practical one, which follows on the first. Can it be said, in a practical sense, that all the members of the family are living *together*, although more than one unit is required to accommodate them? The provision of separate units is not, of course, ideal. Some measure of inconvenience is bound to result if a single unit cannot be found. But Parliament has recognised, by refraining from laying down strict rules, that the situations that may confront the local authority will vary from case to case and that it would be unreasonable to prescribe one solution that must be adopted in all cases.

28. The test is not there to be exploited. It must be applied reasonably and proportionately. So long as that is done, the aim of the test will have been satisfied.

LADY HALE

29. I agree that this appeal should be allowed, for the reasons given by Lord Carnwath. I understand that this will seem very harsh to a family who had been

housed since 2004 in a three bed-roomed house under a private sector leasing scheme and were then expected to accept much less spacious accommodation. But the suitability of that accommodation is no longer in issue. The only issue is whether it is available for Ms Sharif to occupy "together with" her father and her younger sister.

30. If one accepts that it is open to a local authority to accommodate members of a family in separate rooms in the same hostel or hotel, sharing cooking and/or bathroom facilities with others, then one must accept that it is possible to accommodate them in separate small flats like these, provided that the flats are close enough together to enable them to eat and share time together as a family. There are passages in the judgment of Etherton LJ which appear to suggest that members of a family are only accommodated together if they have some shared communal living space, in the sense of a shared living room. That would, of course, be ideal. And, as was pointed out in *Birmingham City Council v Ali; Moran v Manchester City Council* [2009] UKSC 36, [2009] 1 WLR 1506, what is suitable for a family to occupy in the short term may not be suitable for them to occupy for a longer period. But we are not concerned with suitability here. To require some communal living space is to impose a standard which is too high to expect local authorities to meet across the whole range of statutory provisions to which the "together with" criterion applies, including the interim duty in section 188 of the 1996 Act. Many of the hotels and hostels currently used to accommodate homeless people do not have a communal living room. It is not surprising, therefore, that Mr Arden, on behalf of the local authority, was particularly concerned about this aspect of the Court of Appeal's judgment. No doubt many of us would wish that there were a much larger supply of affordable housing to enable homeless families to be accommodated in the way which we would ideally wish them to be accommodated. But there is not and the law does not require local authorities to meet a minimum standard which in practice it would be impossible for many of them to provide.

LORD KERR (dissenting)

31. A home is where a family lives together. The family unit may comprise many generations or it may consist of merely two people. But at its heart and foundation lies the family home where its members share experiences and live their lives together. This is why the notion of providing accommodation for a family to live as a single unit, not dispersed or living apart, occupies such a central place in the homelessness legislation of the last century.

32. The Housing Act 1996 imposes a duty to provide accommodation which is available to be occupied by one person together with members of his or her family.

The legislation clearly contemplates that the accommodation should be provided to an individual. But it is also intended that the accommodation provided to that person should be capable of housing all the members of that person's family together. That idea is buttressed by the requirement in section 176 of *joint occupation.* Accommodation is only to be regarded as available for occupation if it is available for occupation by the person to whom it is provided *together with* any person who normally resides with him as a member of his family.

33. There is nothing in the legislation which suggests or implies that the statutory duty will be fulfilled by providing accommodation which, taken in combination with other accommodation, is capable of housing together all the members of the family. Nor does the legislation authorise the provision of different units of accommodation which a family, if well disposed to do so, can use on different occasions for shared family activities. If living together as a family is to mean anything, it must mean living as a distinct entity in a single unit of accommodation.

34. Ms Lieven QC was right to submit that the language of section 176 calls for focus on the accommodation, not on the use to which a particular family might put it. The accommodation must be of a character that will allow all members of the family to live together within it. She was also right that section 176 imposes an objective requirement, namely, that the accommodation is, as a matter of fact, capable of occupation by the members of the family together. Togetherness in this context connotes a combination of people into a condition of unity. There must be a single unit of accommodation to provide for that condition.

35. The appellant suggested that the local authority may exercise a judgment as to whether a series of units are suitable to permit members of the same family to live in a condition of sufficient proximity so that they can function as a family unit. (One may observe, as an aside, that sufficient proximity is quite different as a concept, and may be diametrically different in practice, from living together.) The appellant advanced this argument by seeking to assimilate the duty under section 176 with other Part 7 duties. This is misconceived. Ms Lieven was again right in her submission that other Part 7 duties, where they involve an element of discretion, are expressly provided with that facility in the language of the Act. The duty under section 176 is quite different. It is an obligation to provide accommodation, the physical dimensions of which are sufficient to allow it to be occupied by the person to whom it is made available together with the members of his or her family. Some limited judgment may be exercised by the local authority in discharging that duty but that judgment is geared to the essentially factual exercise of deciding if the accommodation meets those physical requirements.

36. It has been said that Etherton LJ went too far in suggesting that a feature of the accommodation, to meet the requirements of section 176, had to be the provision of a communal space where family activities could be enjoyed and shared. I rather think that Etherton LJ, in his reference to a communal space, was emphasising the lack of such a feature as an indication of the incapacity of the accommodation offered to meet the statutory requirements rather than identifying it as an invariably indispensable requirement. In any event, this does not affect the principal issue. This is that there should be physical accommodation capable of being occupied as a single unit by the person for whom it is provided together with the members of his or her family. It is of course desirable that such a unit should have a communal space where family activities could be enjoyed but I do not consider that this is something which the statute affirmatively requires.

37. Much was made by the appellant of the considerable constraints that would be placed on local authorities if they were required to house families in single units and were not afforded the opportunity to exercise judgment as to their accommodation in different units. No evidence was provided to support these (to my mind, at least) somewhat unlikely claims. No suggestion was made that any local authority had accommodated families in this way on any widespread basis in the past. Notably, there is nothing in the Code of Guidance: *Homelessness Code of Guidance for Local Authorities* (2006) which recommends the practice.

38. But if the opportunity is available to house families in different living units, there is every reason to suppose that local authorities, with the pressures that are placed on them to meet housing need, will, perfectly understandably, seek to exploit that opportunity to the fullest extent. There is therefore a real risk that one of the principal purposes of the legislation (that of bringing and keeping families together) will be, if not undermined, at least put under considerable strain.

39. I would dismiss the appeal.