Case Name: *Nottingham City Council v Parr & Anor* 2018 UKSC 51 (10 October 2018)

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Commentary: This is not a planning court judgment but is of interest.

The Supreme Court upheld the Court of Appeal's judgment and held that the power to impose conditions under sections 64 and 67 of the Housing Act 2004, in order to make an HMO suitable for a particular number of households or persons, can be used so as to limit the class of persons for whom the HMO is suitable (in this case, students).

Nottingham City Council had refused to licence certain rooms within properties for sleeping accommodation because they did not meet the Council's minimum space standards. The First Tier tribunal found that the rooms were adequate as study/bedrooms where cohesive living is envisaged and that they were suitable for "student or similar cohesive occupation". The Tribunal imposed a condition that occupation be restricted to a student in full time education residing in the dwelling for a maximum period of ten months in a year. The appeal to the Upper Tribunal that such a condition was unlawful was dismissed. The Court of Appeal considered that the power to impose conditions under section 64 and 67 of the Housing Act permitted a condition defined by reference to the general characteristics and activities of an occupier. A restriction of occupation to "occupation by students" was a restriction on "occupation by persons".

Lord Lloyd-Jones said at para 25: "I should observe at this point that it is clear that Nottingham in bringing this appeal and the Secretary of State in intervening have clearly been motivated by a wish to ensure that HMOs provide acceptable living conditions, to protect the vulnerable or potentially vulnerable groups that tend to occupy HMOs and to avoid an interpretation of the legislation as a result of which lower standards are to be considered appropriate for particular groups such as students. That is commendable. However, I consider that their concern is unfounded. The imposition of conditions such as those imposed by the Tribunals and the Court of Appeal in the present case do not have that effect. It is entirely appropriate, when considering the suitability of accommodation in an HMO for a particular purpose, to have regard to the mode of occupation. If the house is to be occupied by a group living together "cohesively", each having his or her own bedroom but sharing other facilities including a kitchen/diner and a living room, the availability of those additional facilities is a material consideration. In these circumstances the mode of occupation means that the shared facilities will benefit all the occupants and, as a result, this may compensate for a bedroom which is slightly smaller than the recommended minimum. By contrast, where occupants of an HMO each live independently of all others, sharing only bathroom, toilet and kitchen facilities, any communal living space made available will not benefit the occupants in the same way because of their different living arrangements.

26. It seems to me to be entirely appropriate, therefore, that in considering the suitability of accommodation in an HMO regard should be had to the proposed mode of occupation. Furthermore, in appropriate cases effect may be given to such considerations by the

imposition of conditions in the licence. This is not inconsistent with the statutory scheme."

The Supreme Court varied the condition to remove the restriction on occupation to 10 months of the year but otherwise dismissed the appeal.

Case summary prepared by Town Legal LLP