



10 October 2018

PRESS SUMMARY

Nottingham City Council (Appellant) v Parr and another (Respondents) [2018] UKSC 51
On appeal from [2017] EWCA Civ 188

JUSTICES: Lady Hale (President), Lord Wilson, Lord Carnwath, Lady Black, Lord Lloyd-Jones

BACKGROUND TO THE APPEAL

Nottingham City Council, the appellant, is the licensing authority for houses in multiple occupation (“HMOs”) in its area under Part 2 of the Housing Act 2004 (“2004 Act”). This appeal concerns two HMOs, 44, Rothesay Avenue and 50, Bute Avenue which are owned by the second respondent, Trevor Parr Associates Ltd. The first respondent, Dominic Parr, is the managing director of the second respondent and the manager of the two HMOs.

The 2004 Act requires HMOs to be licensed by the local housing authority. The local housing authority can grant the application under section 64 of the 2004 Act if it is satisfied that, among other requirements, “the house is reasonably suitable for occupation by not more than the maximum number of households or persons [specified in the application or decided by the authority] or that it can be made so suitable by the imposition of conditions under section 67 [of the 2004 Act]”. The appellant issued guidance on the operation of the licensing system, which provides that the minimum space provision in the case of bedrooms in single occupation in HMOs is eight square metres, although a degree of flexibility is sometimes possible if other features are present.

44, Rothesay Avenue and 50, Bute Avenue are both used for letting to students and each has an attic bedroom with an area of useable living space below eight square metres. In each case, the appellant granted an HMO licence which imposed a condition prohibiting the use of the attic bedroom for sleeping.

The respondents appealed to the First-tier Tribunal against the imposition of the conditions. The First-tier Tribunal at separate hearings deleted the conditions imposed by the appellant. In the case of 44, Rothesay Avenue it substituted a condition that the attic bedroom may only be used for sleeping accommodation by a full-time student who resides in the bedroom for a maximum of ten months in each year. The appellant appealed both decisions to the Upper Tribunal, which dismissed the appeals and also directed that the substituted condition be included in the HMO licence for 50, Bute Avenue. The appellant then appealed to the Court of Appeal, which upheld the decision of the Upper Tribunal and included further conditions in both HMO licences that the communal space be kept available for communal living only and that no bedrooms be let to persons other than full-time students.

The appellant appealed to the Supreme Court contending that the power to impose conditions under sections 64 and 67 of the 2004 Act cannot be used to limit the class of persons for whom the HMO is suitable, and that the conditions imposed by the First-tier Tribunal, Upper Tribunal and the Court of Appeal are irrational and unenforceable.

JUDGMENT

The Supreme Court unanimously dismisses the appeal, subject to varying the conditions to delete the requirement of occupation for a maximum of ten months in each year. Lord Lloyd-Jones gives the sole judgment with which the other Justices agree.

REASONS FOR THE JUDGMENT

Section 64(3)(a) of the 2004 Act indicates that the purpose of the imposition of conditions is to make a house reasonably suitable for occupation by not more than the maximum number of households or persons specified in the application or decided by the housing authority. Section 67(1)(a) provides that a licence may include such conditions as the local housing authority considers appropriate for regulating all or any of “the management, use and occupation of the house concerned”, and section 67(2) sets out a non-exhaustive list of permitted conditions including “conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it” [18].

These words in their natural meaning are sufficiently wide to include the conditions imposed by the Tribunals and the Court of Appeal [18]. Such a reading is also consistent with the object and purpose of the 2004 Act. Elsewhere in Part 2 of the 2004 Act, the manner of occupation and characteristics of occupants are considered relevant in contexts connected with HMOs and housing standards generally [20]. The guidance in respect of the 2004 Act also supports the view that the manner of occupation of a room and the type of occupant may have a bearing on the suitability of a particular room for a particular use [23]. The Court does not consider that the conditions in issue introduce an exception for a category of persons or a defined set of circumstances [24]. Furthermore, they do not permit occupation at a lower standard [25].

It is therefore appropriate to have regard to the proposed mode of occupation in considering the suitability of accommodation in an HMO [26]. In particular, account should be taken of the proposed mode of occupation where it is likely to influence the quality of the accommodation made available to the occupant. However, this does not permit the application of lower standards than would otherwise be applicable [26]. Thus, the power to impose conditions under sections 64 and 67 of the 2004 Act can be used to limit the class of persons for whom the HMO is suitable [27].

The Court agrees with the Court of Appeal that the conditions imposed by the Tribunals were deficient in that they failed to require any part of the HMO to be available for communal living and did not require the bedrooms other than the attic bedrooms to be let to students. That deficiency was, however, cured by the further conditions introduced by the Court of Appeal [33]. The condition limiting the occupation to persons engaged in full-time education is rational [35] and enforceable [37]. The Court considers, however, that the requirement limiting occupation to ten months in each year is irrational [36].

Therefore, subject to the deletion of the requirement of occupation for a maximum of ten months in each year, the conditions imposed by the Tribunals and the Court of Appeal in each case, considered cumulatively, were entirely lawful. Accordingly, the Supreme Court varies the conditions to delete the requirement of occupation for a maximum of ten months in each year but otherwise dismisses the appeal [38].

References in square brackets are to paragraphs in the judgment.

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>