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# Appeal Decision

Site visit made on 30 August 2023

**by A Veevers BA(Hons) DipBCon MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 October 2023**

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**Appeal Ref: APP/M2372/W/23/3319205**

**5 Moorcroft, Lower Darwen, Lancashire BB3 0RY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Raece Sulaman-Butt, Gryffin House Limited against the decision of Blackburn with Darwen Borough Council.
  - The application Ref 10/22/0739, dated 23 July 2022, was refused by notice dated 19 January 2023.
  - The development proposed is change of use from residential house to Class C2 residential institution.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have taken the description of development from the application form. Although different to that on the decision notice, no confirmation that a change was agreed has been provided.
3. It is clear from the evidence before me that, during the determination process, the proposal was revised to accommodate up to 4 families, rather than the original 5 families. This was set out in the appellant's amended 'Supporting Statement' dated 27 October 2022 and was subsequently publicised and determined by the Council on that basis. This amendment is also reflected in the Council's decision and is the basis upon which I determine this appeal.
4. Both main parties and other interested parties refer to a rear double and single storey extension and front porch which was recently granted planning permission at the appeal property<sup>1</sup>. At my site visit, I observed that a part two storey and part single storey rear extension had been constructed. While I note the extension to the property, for the avoidance of doubt, I have assessed the appeal solely on the change of use applied for, as reflected in the description of development in the banner heading above.

## Main Issues

5. The main issues are:
  - The effect of the proposed development on the character of the area;
  - The effect of the proposed development on the living conditions of neighbouring residential occupiers, with particular regard to noise and disturbance; and,

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<sup>1</sup> LPA Ref:10/21/1200

- Whether the proposal would accord with local policy relating to the effect on public service provision in the area.

## **Reasons**

### *Character*

6. The appeal property comprises a detached, two storey dwelling located within a relatively short cul-de-sac of other detached properties in a wider predominantly residential neighbourhood. There is an intimate relationship between the dwellings and their occupants by reason of the small number of dwellings and their, albeit detached, form and layout. Their open frontages onto a narrow carriageway and the narrow gaps between dwellings all contribute to that relationship and to the character of the area.
7. The appellant sets out that proposed development would provide a facility to assess parenting skills and capabilities for up to 4 families residing at the property at any one time, each for an approximate 12 week duration. The Council advise this would be a minimum length of stay as placements would generally be longer and could be up to 26 weeks or more. Families would be placed on a statutory referral basis and would be Ofsted regulated. 'Family' would be defined as one mother and a baby or very young child, other than in exceptional circumstances when there may be a requirement for two parents and one child. When operating at full capacity, the property would house 8 people, although exceptionally this could increase to 10. There could also be times where there would be fewer or even no residents.
8. The facility would offer an in-depth parenting assessment observed and supported by professionals as a family unit with the outcome of giving parents the best opportunity for demonstrating that they can provide for their child's needs. Families would be permitted to have approved visitors at agreed times. The application form states that there would be 10 members of staff deployed to the property over 3 shifts in 24 hours, 7 days a week, although no specific details of the shift pattern have been provided. On the basis of the information presented, there would therefore be the potential for 13 people to occupy the property at any one time.
9. In addition, there would also be visiting health care professionals, social workers and other professionals, including Ofsted inspectors. Although limited information has been provided about the frequency of these visits, given the particular needs of the families proposed in this case, it would be likely that such visits would be frequent. Moreover, although the site is in a relatively accessible location, given the nature of the proposed use including the need for 24-hour care with shift patterns, it would be highly likely that staff and professional visitors would travel to the site by car, which would lead to frequent vehicle movements.
10. The issue before me relates to the characteristics of the proposed use of the appeal property and how this would affect the character of the residential street. A family occupying the 5 bedroom property and other similar properties on the street could generate considerable activity in the form of comings and goings for deliveries, work, school, leisure and shopping at various times of the day. Similarly, the use of dwellings on the street for up to six persons living together as a household could generate considerable activity. However, the comings and goings associated with supporting 4 vulnerable families in one

property as set out above would be of noticeably greater intensity than that associated with either the existing single dwelling or other dwellings on the street, even if some occupants of these dwelling receive care.

11. This would occur by virtue of increased activity at the property, including those of a more commercial nature generated by frequent professional visits to up to 4 families as well as staff shift changeovers. In the context of Moorcroft, including the proximity between dwellings and from the evidence provided, that they are generally occupied as single dwellings, any significant increase in activity or noise at any one of the properties would be noticeable within this residential area. Having regard to the number of families to be accommodated in the property, the proposed use would generate a marked increase in the concentration of activity at the appeal site. Such intensification as a consequence of the proposed use would result in a harmful change in character to the area.
12. Accordingly, the proposal would conflict with Policy 8 of the Blackburn with Darwen Local Plan Part 2 Site Allocations and Development Management Policies 2015 (BwDDMP) which, amongst other things, seeks that development makes a positive contribution to the overall physical, social, environmental and economic character of the area.

#### *Living Conditions*

13. Regardless of the detached nature of the property, due to the limited distance between side elevations and lack of substantial boundary enclosures or vegetation between dwelling frontages, the increased level of activity that would accompany the proposal would be particularly noticeable to occupiers of the neighbouring properties, No.3 and No.7 Moorcroft (No.3 and No.7).
14. There is a large ground floor window on the front elevation of No.7 close to the boundary with the appeal site (No.5). There are also several ground and first floor windows along its gable elevation that face the appeal site. No.3 is positioned slightly forward of No.5. The front door and 4 small windows are located on the gable elevation and face towards the frontage of No.5. Although a driveway belonging to No.3 separates this property from No.5, there is no dividing boundary treatment other than a narrow strip of grass. No.3 also includes a ground floor bay window and first floor window on its front elevation close to No.5.
15. Given the number of proposed occupants, the number of staff and 3 shift changeover pattern, the number and frequency of professional and other visitors, a significant amount of pedestrian and traffic movements would be associated with the proposal.
16. There would be demonstrably more vehicular movements associated with the proposed C2 use than by a typical family occupying the 5 bedroom dwelling. Even if the occupiers of the property as a single dwelling had 4 cars that could be parked on the frontage, in a typical 24 hour period, the routine staffing alone in the proposed use could result in up to 20 vehicular movements at various times of the day and evening. Even if not all those staff used vehicles to get to and from the property there would still be vehicle movements associated with health visitors, social workers and other professionals and visitors to the property.

17. Different people would be coming and going to and from the property at different times. In view of the number of babies and young children that could be resident within the property at any one time, it is likely that visits may also extend into unsociable hours. Such activity would be significantly above what could reasonably be expected, even for a family dwelling of this size.
18. The windows of the neighbouring properties Nos.3 and 7 are close to the parking area at the front of the appeal property. This intimate relationship means that the comings and goings of staff on early morning and evening shifts, including at weekends, as well as support visitors to the property, passing close to these windows would be extremely noticeable and cause noise and disturbance to the occupants of those properties.
19. I have had regard to the possibility that staff and visitors could be recruited locally or could get public transport, car share or walk to the appeal site. Nevertheless, this is unlikely to significantly reduce the numbers of staff or visitors accessing the site by vehicle due to the rigorous recruitment process which could only be taken from a limited pool of people in the nearby area. In any event there is no mechanism before me to control such a scenario.
20. For the reasons set out above, I conclude that the proposed use would result in unacceptable harm to the living conditions of neighbouring residential occupiers at Nos.3 and 7, with particular regard to noise and disturbance. There would be conflict with the development plan, and in particular with Policy 8 of the BwDDMP which seeks to ensure that, development secures a satisfactory level of amenity and safety for surrounding uses with reference to, amongst other things, noise or nuisance. It would also conflict with paragraph 130 (f) of the National Planning Policy Framework (the Framework) which seeks to ensure a high standard of amenity for existing and future users.

*Effect on public services*

21. Policy 47 of the BwDDMP sets out how development will be managed to support a strategic approach to commissioning new services and facilities, manage demand for support services so as to ensure that appropriate levels of service to existing users within the borough can be maintained and to assist in improving the borough's overall offer and perceptions of its offer by reducing levels of crime, anti-social behaviour and the perceived threat of these. Even if this policy has not been tested at appeal, nor specifically referred to in the Inspectors Report to the BwDDMP, this does not infer that the policy is not robust or in accord with the Framework. The policy aligns with Section 8 of the Framework to achieve healthy, inclusive and safe places.
22. I have not been provided with a copy of the Council's Market Position Statement referred to in the supporting text to Policy 47. The appellant suggests that it uses 2013/14 data and has provided an excerpt within their appeal submission. This indicates that the Council would not be averse to supporting some care service provision through the private or voluntary sectors where added value is obtained across a wide range of social, economic and environmental issues. I note that the Council's Children's Services Strategic Commissioning department (CSSC) monitor demand and provision of parent and children residential and supported accommodation. They contend that there is no demand for the proposal in the borough.

23. Policy 47 states that development that provides accommodation for users of publicly-provided support services, including but not limited to mental health services, substance misuse treatment and adult social care, will only be permitted where it is demonstrated that 3 criteria can be met. The first criterion (2i) relates to demonstration of a need for the development arising from the requirements of people ordinarily resident in Blackburn with Darwen (BwD) or BwD residents currently receiving service outside the area.
24. Both parties have provided relatively up-to-date information regarding the number of residential parent assessment placements that took place by the Council from 1 April 2019 to 31 July 2023. From this information, it is known that the number of placements increased from 2021 onwards, to 11 in 21/22 and 13 in 22/23 and that all but 1 placement in each of these years was placed outside the borough. This information demonstrates that there is a need to accommodate at least 13 placements each year, if not more, should the rising trajectory continue. However, some of these placements may only be required for up to 12 weeks and as such one unit of accommodation could be used multiple times in a year. As such, 13 placements does not necessarily equate to a requirement for 13 units of accommodation.
25. Moreover, as evidenced in the submitted tables, not all of these placements would be needed in the borough. I recognise the frustrations of the appellant in this regard, as specific reasons for the out of borough placements referred to in the tables, have not been provided for confidentiality reasons. Nevertheless, CSSC confirm that they could be due to, amongst other things, court orders, safety and access to specialist services. Even in the years 1 April 2019 to 31 March 2021 there were placements outside the borough.
26. To complicate matters, any suitable vacant units of accommodation in BwD could be used by referrals from outside the borough. This would in effect mean that there could be no places available for a family normally residing in BwD that was in need of a residential parent assessment placement in the borough if all the accommodation was occupied, whether by residents of the borough or from elsewhere. This could also be a reason why placements originating in the borough are placed outside the area.
27. On the above basis, the evidence indicates that there is likely to be demand for approximately 13 placements each year, although this number could rise or fall. Furthermore, not every placement would be required to be in BwD for various reasons and residents living outside the borough could be offered placements in BwD.
28. In terms of supply, from the information presented, there are two facilities that currently cater for residential parenting assessment in BwD, Maryvale and Pheonix Family Care (PFC). There are 5 bedrooms in PFC which is an Ofsted registered family assessment unit. The information before me suggests that one family per year has been placed by the Council in PFC over the last 2 years. The Council advise the reasons why more families have not been placed in PFC include that vacancies are not always available when needed for BwD families as places have been filled by families placed by other Councils or that BwD families have to be placed outside the borough.
29. With regards Maryvale, I have not been provided with information regarding the number of families it could accommodate or how many parent assessment placements there have been over the last few years. The Council advise it is a

bespoke housing provision awarded following a tendering process, which provides support for vulnerable young parents who are ordinarily resident in BwD. The appellant suggests that Maryvale is a unit providing support for young parents and their babies facing homelessness with longer stays than 12 weeks and therefore does not provide the same parenting assessment service as the appeal proposal. Nevertheless, the evidence presented indicates that parenting assessments are carried out at Maryvale and that referrals to Maryvale are only accepted from BwD residents.

30. I note that the costs of a placement to the Council would remain the same whether the placement is within or outside the borough and that the proposal would not reduce the costs incurred by the Council, nor would it result in no cases being referred to facilities outside the borough, even if there was a large supply of suitable accommodation available within the borough.
31. On the basis of the evidence before me and given the many factors that influence residential parenting assessment placements with particular regard to supply and demand, which fluctuates considerably and is also subject to specific social care needs, I cannot be certain that a genuine need for the proposal has been demonstrated.
32. I recognise that the appeal proposal would provide additional supported accommodation for residents of BwD that required a placement when none was available at Maryvale or PFC, particularly if this was a pre-requisite of a suitably worded condition or a legal agreement, although I note no legal agreement has been submitted with this appeal. However, the specific reasons why families were placed outside the borough is unknown to me. Moreover, I have not been provided with a vacancy rate or frequency of vacancies, if any, for the existing provision. Therefore, I cannot be certain that there is a lack of suitable provision within BwD and consequently it has not been robustly demonstrated that there is a need for the proposal.
33. I have no doubt that the appellant would be able to provide the necessary care to residents of the proposed use. However, insufficient evidence has been presented to demonstrate that there is a need arising for the proposed development from the requirements of people ordinarily residing in the borough or service users currently receiving care outside of the area at the current time. The proposal would therefore conflict with criterion (2)(i) of the BwDDMP.
34. The second criterion of Policy 47 (2ii) requires that the nature and scale of the facility is in line with the Council's commissioning strategies, such that resources are likely to be available to refer individuals to the facility and it can be reasonably expected that people already ordinarily resident in BwD or BwD service users currently receiving service outside the authority area will be the principal users of the facility. I have been referred to the case of *Panayi v SSE & London Borough of Hackney* [1985] 50 P.& C.R. 109 in this regard, which confirms that the off-site effects of a material change in land use could include, amongst other things, welfare services.
35. Even if the capacity of a Council to deliver public services were considered to be harmed, I have limited information regarding the Council's commissioning strategies or resources before me or why a suitably worded condition or planning obligation would not prevent placements from outside the borough

taking place, even if the decision whether or not to accept a family was at the discretion of the Registered Manager.

36. Both parties refer to Planning Advice Notes<sup>2</sup> and a Local Strategic Assessment for Specialist Housing Types – Annual Housing and Care Statement of Needs, June 2022, although I note both parties agree this assessment is silent on the type of accommodation proposed in this appeal. While the above documents can be used to provide further guidance for development on particular issues and are capable of being a material consideration in planning decisions, they are not part of the development plan and, from the evidence presented to me, it is not clear whether any have been subject to relevant consultation. I have therefore attached limited weight to the piecemeal information I have been given with regard to their content.
37. While I have found that a need for the proposal has not been demonstrated, in the absence of clear and robust information regarding the Council's commissioning strategies, I am unable to conclude that the proposal would not meet criterion (2ii).
38. The third criterion of Policy 47 (2iii) states that development should not lead to an increase in the level of demand for any publicly-provided support service, to an extent that it is likely to result in a deterioration of the level of service available to existing users.
39. Care from the private sector is not unusual and the evidence suggests that, when required, the Council would support such for residential parent assessment placements. However, CSSC advise that as the need is already met by the existing facilities, residents would be from outside the area. They would require a specific team of professionals to support them which would lead to increased pressures and demands on the borough's health services. I recognise public service provision across the country is stretched and that the borough is one of the most deprived areas, ranking 9<sup>th</sup> out of 317 local authorities in the English Indices of Multiple Deprivation 2019.
40. However, the matter of any safeguarding issues arising and continuing education and healthcare provision, in view of the size of the appeal property, would be limited. Furthermore, because placements from within the borough are frequently placed in other areas, and conversely, the receiving authority covers the cost of safeguarding and other services, this removes some of the financial burden of those residents residing in the borough.
41. There is therefore a balance to be struck between retaining all the borough's residents that require a placement in BwD and receiving residents from elsewhere to fill the available places in the borough, which would be in Pheonix Family Care if Maryvale only takes residents from the borough. I am unable to conclude that criterion (2iii) would not be met in the absence of clear and convincing details of cost or which services would have undue strain put upon them and how, be it due to staff, resources or for other reasons, there would be insufficient capacity for the proposal or that it would put a strain on such services for existing residents.

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<sup>2</sup> Blackburn with Darwen Children's Residential and Supported Accommodation – Planning Advice Note December 2020 and Blackburn with Darwen Residential and Supported Accommodation – Planning Advice Note January 2021.

42. While insufficient evidence has been presented to demonstrate that criteria (2ii) and (2iii) would not be met, the proposed would not meet an identified need as set out in criterion (2i) of Policy 47.
43. Accordingly, the proposal would not accord with local policy relating to the effect on public service provision in the area. It would conflict with Policy 47 of the BwDDMP which seeks, amongst other things, to ensure that development likely to cater or provide accommodation for users of publicly-provided support services will only be permitted where it is demonstrated that there is a need for the development arising from the requirements of people already ordinarily resident in Blackburn with Darwen or of Blackburn with Darwen service users currently receiving service outside the authority area.

### **Other Matters**

44. As the proposal is required for children, I have also considered the impact of dismissing the appeal and the best interests of the children in the context of Article 3(1) of the United Nations Convention on the Rights of the Child and the rights of a child in relation to Article 8 of the European Convention on Human Rights (ECHR), as enshrined in UK law by the Human Rights Act 1998.
45. I acknowledge that the proposal would enable children to reside as part of a family and receive the required care and support. Nevertheless, whilst the proposal would offer some benefits for such children, these do not outweigh the harm to the character of the area and living conditions of neighbouring occupants. Moreover, a need for the proposed development has not been demonstrated. Article 8 of the ECHR is a qualified right and, in this case, the interference with it would be proportionate on the basis of the information before me, in order to protect the public with regard to the concerns over the need for the proposal, the character of the area and living conditions of neighbouring occupants.
46. The proposed change of use to C2 use would be occupied by vulnerable people. I have therefore had regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. The proposal would support vulnerable young families with protected characteristics for the purposes of the PSED. It would provide an opportunity for such persons to demonstrate parenting skills to enable a family to stay together and in terms of eliminating discrimination, advancing equality or opportunity for those persons and fostering good relations between them and others. However, the harm caused by the proposed development as set out above, would significantly and demonstrably outweigh its benefit and that it would be proportionately unacceptable for those reasons.
47. My attention has been drawn to an appeal decision<sup>3</sup> that has not been provided within the appeal documentation. I note that this case was in Thanet and the decision was made prior to the Framework. With limited details, I am unable to make a robust comparison between that case and the appeal before me. In any event every case turns on its own facts and cases concerning uses of this type pull in different directions. Therefore, I have determined this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.

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<sup>3</sup> Appeal Ref: APP/Z2260/A/05/1176509

48. I have considered all other matters raised by interested people, including, but not limited to parking, traffic, outdoor space, access to services, refuse, drainage, privacy, anti-social behaviour and safety. However, as I have found the development to be unacceptable for the reasons given, it is not necessary for me to reach a conclusion on these matters.

49. Concerns relating to covenants are matters beyond the scope of this appeal.

### **Conclusion**

50. The proposed development would provide a valuable service in the community by providing temporary assessment accommodation for vulnerable families in an accessible urban location. There would be benefits to the local economy through employment opportunities for local people. I find however that these benefits are outweighed by the adverse impacts that would arise from granting planning permission, by reason of a lack of a need for the service and unacceptable harm being caused to the character of the area and to the living conditions of neighbouring occupiers.

51. The proposal would conflict with the development plan, when taken as a whole, and there are no material considerations, including the approach of the Framework, which would indicate a decision other than in accordance with it. The appeal should therefore be dismissed.

*A Veevers*

INSPECTOR