



Appeal Decision

Hearing held on 16 July 2024

Site visit made on 16 July 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2024

Appeal Ref: APP/J2373/C/23/3325930

19 Warren Drive, Blackpool FY5 3HB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Matthew Bond for MDB Property Company Ltd against an enforcement notice issued by Blackpool Borough Council.
 - The notice was issued on 12 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property from a dwellinghouse (Use Class C3) to a residential children's home for one young person, with 2:1 24/7 support.
 - The requirements of the notice are to cease using the property as a residential children's home (Use Class C2).
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - 1) The insertion of (*Use Class C2*) after the word *support* in section three of the enforcement notice – the breach of planning control alleged.
 - 2) The deletion of three months and the substitution of six months as the time for compliance in section six of the enforcement notice.
2. Subject to the correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Enforcement Notice

3. The allegation refers to a residential children's home for one young person and the requirement is to cease the use as a residential children's home (Use Class C2¹). At the Hearing, the Council explained that the omission of reference to class C2 in the allegation was an error. The parties agreed that this error could be corrected without injustice.

The appeal on ground (b)

4. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not

¹ The Town and Country Planning Use Classes Order 1987 as amended (UCO)

occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the balance of probabilities.

5. There was discussion at the Hearing about the age of the current resident, specifically that they have turned 18 since the enforcement notice was issued and are therefore no longer a child. However, the question is whether the breach had occurred by the date of issue of the enforcement notice. If the alleged use had occurred, an appeal on ground (b) cannot succeed simply on the basis that the use had ceased.
6. There is no dispute that the lawful use of the property is as a class C3 dwellinghouse. The appellant's case is that the use falls within class C3(b). In order to form a *household* for the purposes of class C3(b), the persons who live together need not be related as family members. However, Article 2 of the UCO indicates that, for the purposes of the Order, *care* means personal care for people in need of such care, and in class C2 also includes the personal care of children.
7. The appellant agreed that prior to and at the date the enforcement notice was issued, the residents had all been under the age of 18 and therefore children.
8. It was held in *North Devon DC v FSS & Southern Childcare Ltd* (QBD 30.1.03 Collins J) that Article 2 restricts the personal care of children to class C2 only. Children cannot form a household without the presence of a caregiver and a children's care home may not fall within class C3 unless a caregiver is a resident.
9. Whilst the two carers sleep over during their shifts there is a difference between *residing* in a property and sleeping over as part of a duty of work. Since the property is not the carers main residence, they would not form a household with the child for whose care they are employed.
10. I therefore find that on the balance of probabilities the use of the property does not fall within class C3(b). It provides residential accommodation and care for one child, with carers who work for the appellant's company and sleep over during their shifts but who do not use the property as their main residence, a use which falls within class C2.
11. The appellant has failed to demonstrate that the use alleged in the notice, as corrected, has not occurred. The appeal on ground (b) must fail.

The appeal on ground (c)

12. In this appeal, the onus is upon the appellant to show that, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control.
13. The appellant's case on this ground is that even if the use falls within class C2, it is not materially different from the lawful class C3 use.
14. 19 Warren Drive is a modest end of terrace three-bedroom dwelling in a distinctly residential area, which was previously occupied by a family with three children.
15. At the time the notice was issued, the home was occupied by a 17-year-old who attends college in Manchester, cared for by two adults who work 24-hour rota shifts. The Care Quality Commission certificate of registration states that

- the regulated activity is accommodation for persons who require nursing or personal care.
16. The young person in the home requires 2:1 care, and as the Council stated, it is reasonable to infer that the more intensive supervision a child requires, the more complex their emotional or behavioural difficulties will be to necessitate such a placement.
 17. Representations from the neighbour at 17 Warren Drive set out that since the use began, they have been met with anti-social behaviour, regular police units at the property and noise including shouting, screaming and objects being thrown/broken. They also stated that they witnessed an incident with two young people on the roof. It is evident from the Council's submissions that they have also received similar complaints, including about regular police and ambulance attendance at the property.
 18. The appellant did not dispute that there was an incident with one young person on the roof and that music is sometimes played loudly. They also acknowledged there have been occasional visits by ambulance services and the police, some of the latter they stated are related to resident/s being a victim of crime or for public relation purposes with the resident.
 19. Whilst there is dispute regarding the nature and seriousness of any noise and disturbance, it is evident that incidents have occurred and caused significant levels of disturbance and stress to the occupiers of 17 Warren Drive.
 20. In the witness statement of Lee Ridgley, dated October 2023, it is stated that concerns raised by neighbours were in respect of a young person, who has moved to a home best suited to meet his needs and since that time anti-social behaviour has drastically reduced to non-existent. Further, that no issues or concerns have been presented over the last nine months. In this respect the Council acknowledged that they only received two complaints last year, but considered the number is lower than previous years because third parties were awaiting the outcome of the appeal, which seems a plausible explanation.
 21. I acknowledge that occupation of the property as a dwellinghouse by a typical household could generate activity and associated noise and disturbance and note comments about the neighbour. However, the somewhat transient nature of occupancy, combined with the complex needs of resident/s has more likely than not, resulted in a higher incidence of noise and disturbance, than would be expected if a typical residential household occupied the property. The reference to police and ambulance services making visits to see resident/s also suggests the nature of the use is not that of a typical residential household.
 22. The appellant explained that some staff walk or take public transport to work, and that there are no more than two cars parked at the property per day. However, whilst they acknowledged that there are visits from health workers for example, the extent of visits to the property by other professionals is not quantified.
 23. It seems likely that the comings and goings associated with staff handovers, visits by managers and additional planned, ad-hoc or emergency visits has had a material effect on the character of the use, demonstrated in part by complaints to the Council about parking issues.

24. The Council stated that Blackpool is a hugely deprived Local Authority area, which out of 317 Local Authority areas, was ranked the most deprived nationwide in terms of average rank, average score, and local concentration by the 2019 Indices of Multiple Deprivation. Furthermore, in terms of deprivation particularly affecting children, Blackpool ranked second in the list, and in respect of crime and education rank it as eighth and ninth, respectively. Blackpool is the most deprived authority area for health and employment, and as such, suffers from acute social problems which the Council stated they are working hard to address through their planning and wider regeneration strategy.
25. Policy DM3 of Blackpool Local Plan Part 2: Site Allocations and Development Management Policies Adopted February 2023 (Local Plan Part 2) recognises the need for supported accommodation falling under class C2 where, amongst other criteria, there is a demonstrable need for the accommodation in Blackpool and it is targeted at meeting the needs of local residents.
26. The explanatory text states that the abundance of large inexpensive property in Blackpool has encouraged an increased number of such properties accommodating adults and children with specialist needs from other local authority areas and this is having significant financial implications for the Council and other service providers.
27. The Council explained that when a child moves into a local authority area, the safeguarding responsibility for the child lies with the authority they move to. Once a child is resident in an area, the costs of mainstream education and healthcare provision fall to the agencies responsible for that area.
28. Whether property prices or labour costs are the driving factor, it is evident from the relatively recently adopted Policy DM3 and the Council's submissions, that Blackpool is an attractive place to establish such homes and these homes are often occupied by children from other local authority areas.
29. It is also evident that the needs of the residents of such homes, including the current occupier, are often complex. Indeed, in submissions the appellant stated that the young person has a troubled background and receives high levels of one-to-one care.
30. I acknowledge that the appellant's company has in house provision for mental health care and the resident attends college in Manchester. However, the use has had an impact on other service providers, including the police and ambulance services, services which it seems probable are already strained given the undisputed high levels of deprivation experienced in the borough.
31. Having regard to the above, it is my view that there are significant changes to the character of the property and its immediate surroundings, arising from the use, which have significant, adverse planning consequences. As a result, the change of use represents a material change of use requiring planning permission. The development is not development that is permitted by any development order and there is no record of planning permission having been granted for it. The appeal on ground (c) therefore fails.

The appeal on ground (a) and the deemed planning application

32. The main issues are (i) whether there is a demonstrable need for the accommodation in Blackpool and, if so, whether the accommodation is targeted

at meeting the needs of local residents; and (ii) the effect of the use on the living conditions of neighbouring occupiers with particular regard to noise and disturbance.

Need

33. As already set out above, Policy DM3 of the Local Plan Part 2 recognises the need for supported accommodation falling under class C2 where, amongst other criteria, there is a demonstrable need for the accommodation in Blackpool and it is targeted at meeting the needs of local residents and supported by the relevant commissioning managers where appropriate.
34. This is consistent with The National Planning Policy Framework (the Framework) which sets out that within the context of establishing need, the size, type, and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies.
35. In broad terms the appellant's case is that operators of such homes, would not continue to expand and re-invest profits into such homes if there was not a need both locally and nationally, as the start-up and operating costs are significant. However, they have provided no substantive evidence of a demonstrable need for the accommodation in Blackpool.
36. Whilst I acknowledge that the Council had previously approached the appellant regarding referrals, the last time in around 2022, the Council's position as of 2023 was that the accommodation was not meeting a local need and there was sufficient provision in the market.
37. At the Hearing, the Council provided an update from the relevant commissioning manager who confirmed that there was currently no need for any additional homes. Despite the appellants misgivings, they would be best placed to know the level of local need.
38. Moreover, the supporting text to the policy sets out that it is the developers responsibility to provide evidence of local need and early consultation with the Council's Adult or Children's Services Department (or any other relevant authority) is required.
39. The Council clarified that whilst there are around 31 Blackpool children accommodated in other local authority areas, this does not constitute a local need as they would only seek to relocate children if their placement is not working.
40. In the absence of a demonstrable need for the accommodation in Blackpool, the development is contrary to Policy DM3 of the Local Plan Part 2.

Living conditions

41. Number 19 is a modest end of terrace property and there is an intimate relationship between the dwellings in the terrace and occupiers by reason of the terrace form. Considering that intimate relationship, any significant increase in activity or noise at any of the properties in the terrace, would in my view be particularly noticeable.
42. At the Hearing, the appellant explained that there is a settling in period for residents, and that can result in problematic behaviour at first, which may also explain why complaints reduce. However, the Council stated that in 2014 it was

found that more than half of such residential placements last less than three months, only 8% last more than two years and around a third of children had experienced six or more previous placements.

43. In his 2016 review, Sir Martin Narey noted that the children who live in residential care are inevitably the most challenging children, and that their experiences, including those of abuse, neglect, and poor parenting, are reflected in a propensity for problematic behaviour.
44. Whilst the appellant has undertaken measures to minimise disruption including installing door closers, and clearly strives to ensure there is minimal disturbance to neighbours, they have not been completely successful.
45. Even with the best intentions, given the proximity to neighbours, I consider it highly likely that neighbouring occupiers would experience unacceptable noise and disturbance caused by the complex needs of residents and the comings and goings necessary to effectively ensure the safety and wellbeing of residents.
46. During the appeal process the appellant submitted a management plan, which sets out how the home generally operates. However, I have identified harm in respect of noise and disturbance, based on the current operation. In any case, this would not overcome the harm in respect of the lack of demonstrable need.
47. The appellant stated that in the event the appeal was unsuccessful they would employ a live-in carer, as they consider that such a use would fall within class C3(b).
48. However, even if that did constitute a C3(b) use, a live-in carer would be more likely to occupy the property as a home, such that they would have a greater concern about causing noise and disturbance and be more inclined to respect the surrounding area and neighbours. The alleged fallback would therefore be less harmful in terms of noise and disturbance and is consequently a matter of limited weight.
49. For the reasons given, I conclude that the nature of the use, at such proximity to neighbouring dwellings is materially harmful to the living conditions of neighbouring occupiers with regard to noise and disturbance. The development is therefore contrary to Policy DM3 of the Local Plan Part 2 which requires that the scale and intensity of the use would not have a harmful effect on the amenities of the occupiers of adjacent properties. It also conflicts with the aims of the Framework which seeks a high standard of amenity for existing and future users.

Other matters

50. Submissions regarding the Council's ability to operate in house services and about the employment background of the councillor who coordinated complaints to the Council, have little bearing on my assessment.
51. The Council referred to Policies CS7 and CS12 of the Blackpool Local Plan Part 1: Core Strategy (2012 – 2027) Adopted January 2016, however I find no conflict with those policies.
52. I have had due regard to the Public Sector Equality Duty (PSED), and I recognise that the current resident may have to move. However, given that the

planning system operates in the wider public interest which has legitimate aims of upholding the purposes of planning policies, while taking this into account, the proportionate response and that supported by the development plan is that the appeal should be dismissed.

Conclusion on ground (a) and the deemed planning application

53. The appellant's business is a local business, with its focus on the wider local area of the Fylde Coast, and there are modest social and economic benefits associated with the creation of local employment opportunities.
54. However, these benefits cannot outweigh the harm in respect of the lack of a demonstrable need and the living conditions of neighbouring occupiers. Consequently, the development does not accord with Policy DM3 of the Local Plan Part 2 and is contrary to the development plan when taken as a whole.
55. In this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.
56. For the reasons given, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

The appeal on ground (f)

57. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the use to cease, the purpose is to remedy the breach of planning control.
58. The appellant's case is that the requirements should be varied to require a live-in carer to be provided (the fallback). However, if such a use did fall within class C3(b), such a requirement would be akin to a positive requirement to return the property to its lawful use as a dwellinghouse, which would be excessive.
59. It is not excessive, in order to remedy the breach of planning control, to require the use to cease and no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

The appeal on ground (g)

60. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant requested a period of 12 months on the basis that a new placement would have to be found for the resident and staff redeployed.
61. The appellant has provided no substantive evidence regarding the availability of other homes or employment opportunities. There was discussion at the Hearing regarding whether the breach identified in the notice, is ongoing, since the resident is now 18.
62. Taking all of this into account I consider the period should be extended to six months. This would be a proportionate response to the breach of planning control. The appeal on ground (g) succeeds to this extent.

Conclusion

63. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Felicity Thompson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Matthew Bond	Appellant
Mr Nicholas Kingsley-Smith	Kingsley Smith Solicitors LLP

FOR THE LOCAL PLANNING AUTHORITY:

Nicola Rigby	Planning Enforcement Manager
Susan Parker	Head of Development Management