



Appeal Decision

Site visit made on 21 November 2024

by **M J Francis BA (Hons) MA MSc MCIfA**

an Inspector appointed by the Secretary of State

Decision date: 24th December 2024

Appeal Ref: APP/A2335/W/24/3346740

5 Ousby Avenue, Morecambe, Lancashire LA3 3DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Andy Boardman of Alcedo Care against the decision of Lancaster City Council.
 - The application Ref is 24/00153/VCN.
 - The application sought planning permission for change of use of dwelling (C3) to a residential care home for children (C2) without complying with a condition attached to planning permission Ref 23/00479/CU, dated 14 June 2023.
 - The condition in dispute is No 4 which states that:
The residential institution hereby permitted shall only be occupied by the following:
A child or young person (under 18 years of age) who has been living in Lancaster District for 3 or more years (other than an existing care home);
A child or young person (under 18 years of age) with a local connection to Lancaster District (such as immediate family members or a long-term carer who have been living in Lancaster District for 3 or more years (but excluding an existing care home));
A child or young person (under 18 years of age) with a local connection to North Lancashire (Wyre and Fylde) (such as immediate family members or a long-term carer who have been living in North Lancashire for 3 or more years (but excluding an existing care home));
A child or young person (under 18 years of age) with a local connection to another district within Lancashire (such as immediate family members or a long-term carer who have been living in Lancashire for 3 or more years but excluding an existing care home).
 - The reason given for the condition is: *To ensure that there is a local need for the residential institution.*
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Decision

1. The appeal is allowed and planning permission is granted for change of use of dwelling (C3) to a residential care home for children (C2) in accordance with the application Ref 24/00153/VCN, without compliance with condition 4 attached to planning permission Ref 23/00479/CU, dated 14 June 2023 and subject to the conditions set out in the Schedule attached to this decision.

Preliminary Matters

2. Whilst a revised version of the National Planning Policy Framework (the Framework) was published in December 2024, the principles relevant to this decision remain the same. Therefore, it has not been necessary to request observations from the main parties upon any implications of the revised Framework's publication.

Background and Main Issue

3. Planning permission was granted in 2023 for the change of use of a dwelling (C3) to a residential care home for children (C2). Condition 4 of that permission restricted the occupation of the home to a child or young person that had a connection to Lancaster, or Lancashire, and excluded residents of existing care homes.
4. The application sought to amend condition 4, removing the references to existing care home, plus an additional criterion, that if there is a vacancy for a period of 30 days, a young person outside the district could be considered for the home. The proposed changes are:
5. *The residential institution hereby permitted shall only be occupied by the following:*
 - *A child or young person (under 18 years of age) who has been living in Lancaster District for 3 or more years; or*
 - *A child or young person (under 18 years of age) with a local connection to Lancaster District (such as immediate family members or a long-term carer who have been living in Lancaster District for 3 or more years; or*
 - *A child or young person (under 18 years of age) with a local connection to North Lancashire (Wyre and Fylde) (such as immediate family members or a long-term carer who have been living in North Lancashire for 3 or more years);*
 - *A child or young person (under 18 years of age) with a local connection to another district within Lancashire (such as immediate family members or a long-term carer who have been living in Lancashire for 3 or more years); or*
 - *If no suitable child or young person can be placed in the residential institution who meets the criteria set out above for a period of 30 consecutive days, then a child or young person may take up occupancy in the residential institution from any district outside of the designated district/areas outlined above.*
6. Therefore, the main issue is whether the disputed condition is necessary, having regard to whether it would continue to support residential accommodation for young persons where there is a proven need.

Reasons

7. The appeal site is a semi-detached house, with a large garden to the rear, in a residential area. It operates as a care home for two young persons. Upstairs, I saw that there were two bedrooms for occupation by a child or young person, as well as a bedroom for a staff member, and another small bedroom with a single bed.
8. Policy DM8 of the Lancaster District Local Plan 2011-2031, 2020, (LP) states that proposals for accommodation for vulnerable groups will be supported subject to the proposal meeting a number of criteria. This includes at xv, that priority is normally given to vulnerable people who have a local connection to Lancaster district over and above households that are otherwise the responsibility of or are owed assistance by another Local Authority; and xvi, all proposals have the full support of the relevant Commissioning Manager (LCCM) in writing for the relevant vulnerable group and the plans align to Commissioning Plans.

9. Lancashire County Council is reputed to have more Ofsted registered children's homes than any other local authority in England. Whilst there is limited substantiated evidence, the LCCM states around 70% of young persons that are housed in children's homes, are from outside Lancashire. Moreover, they have many children from Lancashire living outside the county because no local homes have been identified, although they also state that there are four times as many places for children than are required.
10. Notwithstanding this, there is a shortage of good quality accommodation, particularly two-bedroom homes, for people in care. I saw that the appeal site provided a comfortable home with a garden. Although the Council said that it was occupied by two children from Lancashire, there was only one young person in residence at the time that I visited. Therefore, despite the LCCM suggesting that there would be no problem finding children from the Lancashire area to fill the care home, there was a vacancy when I visited; although there is no evidence of the length of time that the accommodation has been vacant. Without two persons occupying the home, there are concerns that the home would not be commercially viable.
11. Consequently, to retain a two-bedroom, quality house, which is an identified gap in provision, some flexibility is required. Whilst the proposed changes to the condition would continue to prioritise young people from the Lancaster and Lancashire area, in line with Policy DM8, it would not exclude young people who have been in care homes. Moreover, if there is a vacancy, and no young person is occupying the premises for 30 days, and there is no one suitable locally, it would allow young people from other areas to be considered.
12. Therefore, despite the lack of support from the LCCM to modify the condition, amending it would provide a more sustainable business and ensure that, this type of accommodation, which is in short supply, would be available for those young people that need it. Consequently, for these reasons, I conclude that amending the condition would continue to support residential accommodation for young persons where there is a proven need. It would accord with Policy DM8 as set out above.

Other Matters

13. I have had regard to Article 8(1) of the European Convention on Human Rights, as enshrined in the Human Rights Act 1998, that everyone has the right to respect for their private and family life and their home. Where Article 8(1) rights are those of children, as in this case, they must also be seen in the context of Article 3(1) of the United Nations Convention on the Rights of the Child. Children's best interests are thus a primary consideration and no other consideration, is intrinsically more important. In any case, I am allowing the appeal. My decision is a proportionate and legitimate response to the requirements of the Act and those of the plan led system.
14. Third parties have objected to the principle of changing the house to a children's home. However, the proposal is to amend the condition only. This is the basis on which I have determined the appeal.

Conditions

15. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed

on earlier permissions that continue to have effect. I shall therefore reimpose all those that I consider remain relevant.

16. As the development has been implemented, condition 1 that required commencement within 3 years is no longer necessary. Condition 2 which lists the approved plans and documents remains necessary and relevant, as does condition 3 which limits the occupation of the care home to two young persons.
17. Condition 4 is the condition subject to this appeal and has been amended as discussed earlier.

Conclusion

18. For the reasons given above, I conclude that the appeal is allowed.

M J Francis

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
Drg. No. TQRQM23089151425577 (Location plan)
Drg No. FW/JL/0186-2A (Proposed floor plans)
- 2) No more than two young persons, aged 18 years or under, shall be in receipt of care by the residential institute hereby approved at any one time.
- 3) The residential institution hereby permitted shall only be occupied by the following:
 - A child or young person (under 18 years of age) who has been living in Lancaster District for 3 or more years; or
 - A child or young person (under 18 years of age) with a local connection to Lancaster District (such as immediate family members or a long-term carer who has been living in Lancaster District for 3 or more years; or
 - A child or young person (under 18 years of age) with a local connection to North Lancashire (Wyre and Fylde) (such as immediate family members or a long-term care who have been living in North Lancashire for 3 or more years); or
 - A child or young person (under 18 years of age) with a local connection to another district within Lancashire (such as immediate family members or a long-term care who have been living in North Lancashire for 3 or more years); or
 - If no suitable child or young person can be placed in the residential institution who meets the criteria set out above for a period of 30 consecutive days, then a child or young person may take up occupancy in the residential institution from any district outside of the designated district/areas outlined above.

End of conditions