



Appeal Decision

Site visit made on 21 January 2025

by **H Marriott MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24th February 2025

Appeal Ref: APP/M4320/W/24/3353177

50 Elm Road, Seaforth, Sefton L21 1BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Vivek Srivastava of The Care Advantage Supported Living Ltd. against the decision of Sefton Metropolitan Borough Council.
 - The application Ref is DC/2024/01164.
 - The development is change of use of existing C3 dwelling to use of property as a children's care home (within Class C2) for a maximum of 2 children of between 7 and 17 years old.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. From the evidence before me and from what I saw on my site visit, the appeal site is already in use as a children's care home, with at least one child currently living there. The description of development confirms that no internal or structural changes are proposed. Accordingly, I have determined the appeal against the details on which the Council made its decision.
3. The Council's decision refers to the character of the area. It is clear from the Officer's report that the Council's concerns relate to the living conditions of existing residents. I have defined my main issues on this basis.
4. A revised National Planning Policy Framework (the Framework) was published on 12 December 2024. In this instance, the issues most relevant to the appeal are unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by this.
5. In determining this appeal I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. From the evidence, my decision has the potential to affect persons with one or more protected characteristic having regard to the PSED. Similarly, my decision may affect the enjoyment of the home of the occupier(s) of the appeal site. I have, therefore had regard to human rights of the individual(s) under Article 8 of the Human Rights Act 1998 (HRA98).

Main Issues

6. The main issues are:

- the effect of the development on the living conditions of nearby occupiers, with particular regard to noise and disturbance;
- whether the site is a suitable location for children in care having regard to the risk and the fear of crime and disorder in the area; and
- if any harm would occur, whether this is outweighed by the benefits of the development to the child/children residing in the care home.

Reasons

Noise and disturbance

7. The front elevation of 50 Elm Road (No 50) comprises a two-storey, mid-terrace dwelling, although its rear elevation is three-storey. It has a front and rear garden and backs onto dwellings along Cecil Road. The surrounding area is residential and there is no dispute between the main parties that No 50 is located in a Primarily Residential Area (PRA) as defined by Policy HC3 of A Local Plan for Sefton (2017) (LP).
8. The care home would accommodate a maximum of two children with a 24-hour staff presence by non-resident carers. The carers would rotate in accordance with a shift pattern. Visitors would include attendance by a manager on weekdays, monthly visitors by a social worker and other less regular visits including by education professionals.
9. The appellant indicates that there would normally be up to three staff on site at any one time. Notwithstanding this, there would be more staff numbers present on site during changeover times or when others visit. Even though these changeovers would likely take place in an evening between 7pm - 9pm, they would take place indoors and would be short in duration. Whilst these changeovers may take place regularly, a material increase in noise levels or disturbance beyond those experienced by typical visitors to a dwellinghouse would be unlikely. There would be comings and goings associated with the children accessing local services and facilities, however such activities are not unusual in residential areas.
10. The evidence suggests that children residing in the home may have challenging behaviour and / or have learning disabilities. Numbers 48 and 52 share party walls with No 50. Given that the appeal site is already in use, interested parties suggest that noise can be heard through internal walls in neighbouring bedrooms throughout the night, including noise from staff and children which can often take place for prolonged periods of time and can interrupt sleep. This could result in significant adverse impacts on the health and the quality of life of neighbouring occupiers.
11. Moreover, use as a Class C2¹ residential institution would likely generate a higher turnover of residents with wide ranging and differing needs and behaviours over the lifetime of its use compared to a typical Class C3 dwellinghouse. Even though two children could be less than the number of children that could reside at No 50 as a

¹ Town and Country Planning (Use Classes) Order 1987.

dwellinghouse, given the complexity of the residents needs and the undisputed experiences of neighbouring occupiers, I cannot be certain that the nature of the use would not lead to higher levels of noise and disturbance, than might usually be experienced through the use of No 50 as a settled family home.

12. The appellant's Management Plan includes a Management Statement for the Control of Noise and Good Neighbour Policy which sets out various measures intended to minimise levels of noise and disturbance. This includes controls put in place to limit any noise disturbance including behaviour management. Whilst staff are fully trained and capable of managing instances when excessive noisy behaviour does occur, this does not fully address my concerns with regards to the potential for harmful levels of noise when these instances may first occur or cannot be avoided, including any noise that neighbours suggest can be heard through internal walls.
13. Furthermore, the Council's environmental health team raised concerns regarding the potential harmful noise effects of the proposal and suggested that a specialist acoustic report is required. In the absence of an acoustic report, it is not known whether the existing sound insulation is already acceptable or whether further sound proofing measures are required, and if so whether they are achievable. On this basis and given the experiences of neighbours, the imposition of a condition requiring a scheme of sound insulation would not be reasonable and would not provide me with sufficiency certainty that any potential harmful noise effects could be appropriately mitigated.
14. I conclude it has not been demonstrated that the site would not result in an unacceptable harmful effect on the living conditions of nearby occupiers, with particular regard to noise and disturbance. In this regard, the Council's decision refers to Policy HC3 of the LP which as a locational policy, requires non-residential development in PRAs to not have an unacceptable impact on the living conditions of neighbouring properties to not cause harm to the character of the residential area. As a children's care home is a form of residential development, I do not find this policy relevant to the appeal proposal.
15. Nevertheless, this does not make the appeal proposal acceptable. In this regard, the development would be contrary to Paragraphs 135 and 198 of the Framework which requires decisions to create places with a high standard of amenity and to ensure that new development is appropriate for its location taking into account the likely effects on living conditions. In particular, new development should mitigate and reduce to a minimum, potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life.

Crime and disorder

16. Interested parties have raised concerns regarding the fear of crime and the potential for children residing at the care home to be targeted or to contribute towards crime and disorder in the area.
17. Paragraph 96 of the Framework states, amongst other matters, that decisions should aim to achieve healthy, inclusive and safe places which are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion. Paragraph 135 of the Framework requires the creation of places that are safe, inclusive and accessible and which promote health

and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

18. The comments from Merseyside Police (MP) suggest that the area around Elm Road is a high crime beat area and that external influences could present safeguarding issues for vulnerable children, and a potential draw for criminality could result. This in turn could adversely affect nearby occupiers. MP do not raise the possibility of the children themselves being the perpetrators of crime.
19. In this case, the evidence indicates there would be 24-hour supervision at the care home with all staff trained in child safeguarding practices with regular security audits. Each child's specific needs and potential risks would be assessed upon arrival to ensure that any security adjustments, such as personalised care plans, are implemented to address individual vulnerabilities.
20. There is also no firm evidence that occurrences of anti-social behaviour and crime, which are ultimately a matter for the relevant authorities in specific instances, would be attributed to occupants of the care home. While children in care may be vulnerable and susceptible to being the victims of crime, I have not been provided with any evidence which indicates that this would directly result from them residing at the No 50 providing that the care home is effectively managed.
21. The apprehension of the local residents is not supported by any objective evidence. Without evidence to demonstrate that the use, in the manner proposed, would result in an increase in anti-social behaviour or criminal activity, which would contribute to the area becoming unsafe for the public, or increase opportunities for crime and fear of crime, a dismissal on this ground would not be justified.
22. I conclude that in the absence of compelling evidence to the contrary, it has not been demonstrated that the site is not a suitable location for children in care having regard to the risk and the fear of crime and disorder in the area. In this regard it would comply with Policies EQ1 and EQ2 of the LP insofar as they require development to maximise opportunities to improve quality of life and to enhance the quality of the areas rather than preserving or reproducing negative aspects of the existing environment.
23. Whilst the Council have specifically referred to Policy EQ1(d) of the LP in its decision, this policy is not directly relevant to the appeal proposal as this relates to designing public areas.

Benefits to a child or children

24. The appellant has referred to various sources relating to the need for children's care homes within their statement. They suggest that Sefton has been identified as an area in need of significant improvements in children's social care, including gaps in service provision for vulnerable children. They further suggest that the development could provide more localised and stable care for children. The Council suggest that their children's services department have not expressed support for the development and they are committed to focussing on ensuring children grow up in family settings with a preference for fostering as opposed to care homes. On this basis, I have no substantive evidence before me to suggest that there is a critical need for the development or that there are currently no alternative options available for children in care.

25. Even so, the development provides residential care to a child/children who are in need of care who may also have a disability. Consequently, there is a potential for there to be an adverse impact upon individuals with one or more protected characteristics if the appeal is dismissed. The PSED and HRA98 do not necessarily override other considerations. Whether or not the harm identified is outweighed by the benefits of the development to the child/children residing in the care home is a factor which needs to be weighed in the planning balance.

Other Matters

26. Planning permission for a 7-person House in Multiple Occupation (HMO) was approved by the Council on 16 February 2022. The appellant suggests that this use would result in a more intensified use than the appeal proposal. However, there is nothing to suggest that there would be a significant probability that this use would be implemented should this appeal be dismissed. Even if it was, the characteristics of a HMO differs from that of a children's care home and this does not justify the harm to neighbouring living conditions I have identified.
27. The appellant suggests that planning permission for the proposal may not be required. However, this has not been confirmed through the submission of a lawful development certificate and I am obliged to determine the appeal before me which seeks planning permission.
28. Even if the development does not result in any harmful effects in relation to traffic generation or pressure on schools, healthcare, infrastructure or property values, this would not justify the harm I have identified in relation to neighbouring living conditions.

Planning Balance

29. Age and disability are relevant protected characteristics to which the PSED applies. For the reasons set out above, I find that it has not been demonstrated that the development would not result in harm to the living conditions of nearby occupiers, with regards to noise and disturbance. I have carefully considered the reasons for the care home. I have had due regard to the PSED and found that the development could provide the opportunity to advance its aims by meeting the needs of the child/children residing in the care home. Dismissing the appeal could also interfere with rights of the residents(s) to enjoyment of their home as set out in the HRA98.
30. However, these are qualified rights, and any interference may be justified where it is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality. The dismissal of the appeal is a proportionate and necessary approach to the legitimate aim of achieving development with a high standard of amenity as outlined in the Framework.

Conclusion

31. On the evidence before me, I find no conflict with the development plan. However, the policies of the Framework are material considerations which indicate that the appeal should be decided other than in accordance with the development plan. For the reasons given above the appeal should be dismissed.

H Marriott

INSPECTOR