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## Appeal Decision

Site visit made on 14 January 2025

by **N Duff BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4<sup>th</sup> March 2025

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**Appeal Ref: APP/P4225/W/24/3351956**

**Higher Ashworth Farm, Meadow Head Lane, Rochdale OL11 5UL**

- 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 E Smethurst of Trinity Care & Education Services Ltd against the decision of Rochdale Metropolitan Borough Council.
  - The application Ref is 23/01192/VRCON.
  - The application sought planning permission for change of use from dwelling (use class C3a) to residential care (use class C2) for up to two children without complying with a condition attached to planning permission Ref 22/00796/FUL, dated 25 November 2022.
  - The condition in dispute is No. 4 which states that: The care home hereby approved shall not accommodate more than two children at any time.
  - The reason given for the condition is: In the interests of neighbour amenity and highway safety and in accordance with Policies T2 and DM1 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The proposed variation to the condition seeks to change the number of children to be accommodated at the home from two to four. The original description of development includes a limit of up to two children. Therefore, given that this is an application under Section 73 of the Town and Country Planning Act 1990 (s73) I have consulted the main parties on the implications of the Finney<sup>1</sup> judgment on the proposal. Comments have been received by both main parties and I have taken them into account when arriving at my decision.

### Main Issue

3. The main issue of the appeal is the effect varying the condition would have on the description of development/operative part of the permission.

### Reasons

4. The appeal proposes to vary condition 4 to state that the care home shall not accommodate more than four children at any one time. This would increase the number of children to be accommodated at the site from two to four.

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<sup>1</sup> John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (Uk) Limited [2019] EWCA Civ 1868

5. Having regard to Finney the courts established that an application under s73 may not be used to obtain a permission that would require a variation to the terms of the operative part of the planning permission, which includes, the description of the development for which the original permission was granted.
6. The restriction on the number of children is set out in the description of development for the original planning permission which is 'change of use from dwelling (use class C3a) to residential care (use class C2) for up to two children'.
7. The appellant has stated that the operative part of the original planning permission relates to the use of the property as a residential care home rather than the specific number of children accommodated. In addition, the appellant has stated that if the number of children to be accommodated were integral to the permission, rather than being controlled by condition, the Council would not have determined the application under s73, and that the description of development remains the change of use to a residential care home.
8. Notwithstanding the comments received and the fact that the application was determined by the Council, I find that to alter the number of children from two to four through the variation of condition 4 would effectively mean that the development would no longer operate within the limits of the original planning permission and would intensify the use of the site. Therefore, amending condition 4 would result in a conflict between it and the description of development and operative part of the permission.
9. Therefore, having regard to the principles established by Finney, the amendment proposed goes beyond the powers under s73 and cannot be determined through s73 and would require a fresh planning permission.
10. For the reasons mentioned the appeal must therefore be dismissed and I am not required to consider further the matters in dispute between the parties.

### **Conclusion**

11. For the reasons given above the appeal should be dismissed.

*N Duff*  
INSPECTOR