



## Appeal Decision

Site Visit made on 19 January 2021

**by Graham Wraight BA(Hons) MSc MRTPI**

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

**Decision date: 8 February 2021**

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**Appeal Ref: APP/J2373/W/20/3259559**

**37 Hodder Avenue, Blackpool, FY1 6NS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr Kris Johnson (Creative Living Care Limited) against the decision of Blackpool Borough Council.
  - The application Ref 20/0287, dated 25 May 2020, was approved on 6 August 2020 and planning permission was granted subject to conditions.
  - The development permitted is the use of premises as a residential care home for one young person aged 11 - 17 (Use Class C2).
  - The condition in dispute is No 1 which states that: The use hereby approved shall cease to operate no later than 1 year from the date of this permission.
  - The reason given for the condition is: The proposal would result in an undue concentration of such uses in the local area but meets an urgent need during the exceptional circumstances arising from the covid19 crisis. A temporary permission is therefore appropriate to meet this need but in order for the Local Planning Authority to retain long-term control over the use of the site and because the use proposed would not be approved on a permanent basis in accordance with Policy BH24 of the Blackpool Local Plan Part 1: Core Strategy 2012-2027 and Blackpool Local Plan 2001-2016.
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. An application for costs was made by Mr Kris Johnson (Creative Living Care Limited) against Blackpool Borough Council. This application is the subject of a separate Decision.

### Background and Main Issue

3. A temporary planning permission has been granted to change the use of the property from a dwelling to a residential care home in use class C2. The period for which the use has been permitted is one year from the date on which the decision was issued, with the Council's reason for imposing the condition relating to permission only being granted due to the exceptional circumstances arising from the Covid-19 Pandemic.
4. The appellant seeks to remove the planning condition which places the temporary restriction on the use, and therefore the main issue is whether the permanent use of the dwelling as a residential care home would comply with the relevant provisions of the policies of the development plan, specifically with reference to Saved Policy BH24 of the Blackpool Local Plan 2016 (LP), and consequently whether Condition 1 is reasonable and necessary.

## Reasons

5. Saved Policy BH24 of the LP states that no community residential uses meeting specialist needs will be permitted within 400 metres of existing properties meeting similar needs. The text of this policy explains that this is in order to protect the character and amenities of residential areas and avoid any undue concentration of C2 or other community residential uses.
6. The Council has provided evidence that there is a property meeting similar needs in the locality, which depending on which measurement is used, falls within 400m of the appeal property or just beyond 400m. The policy and its associated wording do not set out whether the 400m distance should be taken as a radius (as the crow flies), which is the Council's position, or whether it should be measured by the distance it takes to walk on foot between the two sites in question, which is the position that the appellant takes. Both parties have put forward an argument in support of their respective positions.
7. On this matter, I find the Council's argument more persuasive. It sets out a clear framework for measuring how close together the properties are that can be applied in any circumstance and crucially it provides certainty for any party who is seeking to establish whether there would or would not be a compliance with Saved Policy BH24. The appellant's approach is much more open to interpretation as there may be different ways in which one could walk between the properties. It may be that one walking route would be less than 400m and one more than 400m, which fails to provide adequate certainty.
8. The appellant advances a scenario where there may be a physical barrier, such as a railway line, between the two properties which means that although they would be within 400m of each other as the crow flies, they would be much further apart to walk between. Such a scenario or similar scenarios could feasibly occur, but they would not be the norm and it therefore provides little justification that the use of the measurement that the appellant suggests should be adopted in preference to the radius approach.
9. The appellant also makes reference to the standard approach to measuring distances being taken via the walking route. However, whilst this is an often-used measurement with regard to distances to, for example, services and facilities, for the reasons I have outlined such an approach would not provide adequate certainty when it comes to the application of Saved Policy BH24. Whilst Saved Policy BH24 does not specify how many children can occupy a specific dwelling, it is nonetheless clear that its key requirement is that similar uses should be more than 400m apart.
10. The removal of the planning condition would allow the permanent retention of a development which is contrary to Saved Policy BH24 of the LP, which seeks to ensure that there is not an over concentration of similar uses permitted within areas.
11. In conclusion, the imposition of the condition was therefore both reasonable and necessary. Furthermore, the condition is also enforceable, relevant to planning, relevant to the development permitted and precise, meaning that it meets all of the tests set out in paragraph 55 of the National Planning Policy Framework.

## **Other Matters**

12. I acknowledge that my decision will mean that the property would no longer benefit from the planning permission which has been granted once the temporary period has expired and that the temporary nature of the use is likely to cause barriers to Ofsted placing a child at the property in the meantime. I also note that there is support from Children, Adult and Family Services for the application and that the Council itself has not raised any concerns relating to the impact of the development on the living conditions of nearby residents, the character and appearance of the area or with respect to its impact on the public highway and parking.
13. Nonetheless, the Council's approach to this case has been pragmatic and reasonable, in that it has allowed for an unauthorised use that had already commenced to continue during the Covid-19 pandemic for a period of time that allows the appellant to make alternative arrangements. Whilst reference is made to a shortage of children's care facilities in the borough and to the appellant's credentials in delivering good quality services for local children, there is nothing before me to suggest that the necessary accommodation cannot be provided in alternative premises where there would not be a conflict with the development plan.
14. The appellant suggests in their final comments that the use may not require planning permission. However, this is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the appellant to apply to have the matters determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.

## **Conclusion**

15. The development does not accord with Saved Policy BH24 of the LP. There are no material considerations which justify the removal of Condition 1 and the subsequent conflict with the development plan that would arise. Therefore, the appeal should be dismissed.

*Graham Wraight*

INSPECTOR