PARK SQUARE
BARRISTERS

Anna Wilkinson Successfully Defends Tribunal Appeal on behalf of CQC

Anna Wilkinson has successfully defended a Tribunal Appeal on behalf of the Care Quality Commission.
Action For Care, the appellant company provide residential care for individuals who have a learning disability with additional complex needs including autism, challenging behaviour, epilepsy and communication difficulties. Their registration provides that they must only accommodate a maximum of 6 service users at the site located at The Orchard, Garmancarr Lane, Wistow, Selby, YO8 3UW. This is one of 8 premises registered by the Appellant.

This appeal concerned a decision by CQC to refuse the Appellant's application to vary the conditions of its registration to increase the maximum number of service users from 6 to 8. For the purposes of the proposal, The Orchard was divided into 2 areas: the main house and a bungalow (converted from a double garage) situated in the garden at the rear of the main house. It was proposed that the bungalow would be used as a separate purpose built accommodation for a service user who could not reside with others and that a spare bedroom in the main house could also be used for an additional service user.

The tribunal upheld CQC's decision to refuse the Appellant's application to increase the number of service users from 6-8 after a four day tribunal hearing.

The panel found that increasing the numbers from 6 to 8 and building a Bungalow in the garden was very likely to have some sort of negative impact on the 6 existing residents which needed to be acknowledged by a service provider, identified and risk assessed. In addition by reference to regulation 9 this assessment must be undertaken along with meaningful consultation with existing residents. The panel found that they could not be satisfied that regulation 9 of the Health and Social Care Act 2008 (Regulated activities) Regulations 2014, in respect of person centred care, could be met if the variation of registration was approved.

The panel found in respect of “the bungalow” that the Appellant had failed to prove on the balance of probabilities that it is suitable for the needs of the type of service user for whom the Appellant provides accommodation or that it is appropriately located for the purpose for which it is planned to be used.

In light of all the evidence (including their findings that the proposed service would not meet the national policy and guidance) the tribunal concluded that the proposed care home would not meet the standards required under Regulations 9 & 15 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 in that the care provided would not be adequately person-centred and that the premises would not be suitable and or suitably located.

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