



Appeal Decision

Site visit made on 13 September 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19TH SEPTEMBER 2023

Appeal Ref: APP/K0235/X/22/3295973

10 Hollies Walk, Wootton, Bedfordshire MK43 9LB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Havilah Asset Holding Limited against the decision of Bedford Borough Council.
 - The application Ref 22/00030/LDP, dated 9 January 2022, was refused by notice dated 22 February 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the use of the property as a private dwellinghouse for use class C3(b) for up to a group of four adults living together as a single household within non-residential staff to supervise the residents on a 24-hour shift system.
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Decision

1. The appeal is dismissed.

Main Issue

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed use are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether or not it has been demonstrated that use of 10 Hollies Walk, Wootton, Bedfordshire, MK43 9LB for up to a group of four adults living together as a single household with non-residential staff to supervise the residents on a 24 hour shift system would fall within use class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) and would not amount to development requiring planning permission.

Reasons

4. The appeal property is a detached four-bedroom single storey property and falls within a predominantly residential area. There is no dispute between the parties that it was originally used as a dwellinghouse under class C3 (a) of the UCO. The dispute between the main parties relates to whether the proposed use of the property would fall within class C3 (dwellinghouses) of the UCO and

specifically C3(b), i.e. *'use as a dwellinghouse (whether or not as a sole or main residence) by not more than six residents living together as a single household where care is provided for residents'*, or whether the proposal falls within Class C2 (residential institution) of the UCO, i.e. *'use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwellinghouses))'*.

5. It is proposed that the property would be occupied by four adults under the age of 65 sharing communal areas such as dining/living areas, bathrooms and outside amenity spaces. The appellant says that the occupiers of the property would be able to carry out most daily domestic activities, but nonetheless would *'require support in terms of day to day living etc to enable them to live independently and to improve their quality of life'*. The appellant also states that non-residential staff *'would supervise the residents on a 24-hour shift system'*. Reference is made to a shift pattern at the appeal property of 12 hours for full time staff and 5-8 hours for part time staff. The Council's officer report states that in an email from the applicant, dated 14 February 2022, the *'shift system allows one full time and one part time member of staff on the site at any one time'*.
6. At final comments stage, the appellant has sought to provide additional clarity in terms of the application. Reference is made to *'most of'* the staffing hours allocated to support access to *'community resources and activities of choice'* and that *'at any time during the day, it is likely to have just one or two service users with a member of staff on the premises'*. There is a lack of precision in terms of how staff would actually support or care for residents in the property, although it is stated in the appellant's planning statement that *'the residents are adults with learning difficulties some of whom may be within the autism spectrum.....who require support in terms of day to day living etc to enable them to live independently and to improve their quality of life'*. In the appellant's statement of case, it also states that *'as well as care staff there will be a manager, who will attend, on a regular basis'*.
7. In this case, non-residential staff would not live in the appeal property. The evidence indicates that they would offer support, care and assistance to occupiers of the dwellinghouse. Shift patterns are proposed and hence there would be a turnover of different support staff from one day to another. As a matter of fact and degree, I find that as the carers would not be full time residents, they would not form part of a single household. The issue is, therefore, whether those that would receive care or support for learning and other difficulties would themselves constitute a single household.
8. In respect of the above, the appellant states that *'residents will take responsibility for everyday household tasks including cooking, cleaning and shopping, with assistance from carers where required. Eating and shopping, and social outings will typically be undertaken communally. Residents do not typically require personal care and will be able to shower / bath and use the toilet on their own'*. Use of the word *'typical'* above suggests to me that at least some of the residents may need assistance from members of staff in respect of cooking, cleaning and/or shopping and/or in respect of personal care on occasion. Given the 24-hour shift system, it is reasonable that I take the view that the assistance, care and support is likely to be more regular than not in terms of the group of residents as a whole.

9. Given the above, and, as a matter of fact and degree, I find that the proposal would not therefore involve a proper functioning of a single household. Based on the facts before me, I find that the degree of care and support that would overall be needed for individual residents, over a 24-hour shift period, is such that the proposed use could not reasonably be construed as being one that would involve a single household. In this regard, I conclude that the proposed use would not fall within Use Class C3(b) of the UCO. Instead, I find that the proposal would amount to a use falling within Use Class C2 of the UCO. Consequently, the proposal would amount to a material change of use from Use Class C3(a) to Use Class C2 for which planning permission would be required.
10. It is noteworthy that when the proposal was submitted it was based on having two kitchens. While the appellant says that the 'annex' kitchen has now been removed from the property, it is nonetheless necessary that I determine the appeal based on what was proposed when the LDC application was made. This is a matter which adds to my conclusion that the proposal would not be conducive to the use of the property by residents as a single household. Indeed, the layout as proposed when the LDC application was made (as shown in the appellant's Planning Statement) would have facilitated independent resident cooking activity within the property. This is not, however, a determinative matter in respect of the consideration of this appeal. In other words, even if I were to consider the proposal based on the removal of the kitchen annex it would not alter my conclusion above.

Conclusion

11. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the property as a private dwellinghouse for use class C3(b) for up to a group of four adults living together as a single household with non-residential staff to supervise the residents on a 24-hour shift system was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D Hartley

INSPECTOR