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# Appeal Decision

by **H Davies MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 27 June 2024**

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**Appeal Ref: APP/Y0435/X/23/3332075**

**38 Pigott Drive, Shenley Church End, Milton Keynes MK5 6BY**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development.
  - The appeal is made by Ms Gazalla Safdar against the decision of Milton Keynes Council.
  - The application ref 23/01236/CLUP, dated 30 May 2023, was refused by notice dated 27 July 2023.
  - The application was made under section 192(1)(a) of the Act.
  - The use for which a certificate of lawful use or development is sought is the proposed use of a dwelling house for short term rentals.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The application sought a certificate of lawful use or development (LDC) for a proposed use. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. The planning merits of the proposed use are not relevant to this appeal and the date for ascertaining whether the proposed use would be lawful is the date of the LDC application. If the appellant wishes to have the planning merits of the proposal considered, a full planning application would need to be submitted.
3. Due to the type of application and the circumstances and facts to be considered under the appeal, a site visit was not necessary and was not carried out as part of the appeal process.<sup>1</sup> The information needed was included with the application and appeal documents and a decision has been reached on this basis.
4. The application form stated that the proposal was *'to make the property an Airbnb property/holiday home, to be managed by an Airbnb manager. Nothing will change physically other than the occupancy. We intend to let the property out as many times annually as demand/law will allow. The whole house will be let out, so this will no longer remain a residential dwelling'*. In the decision notice, the Council referred to the proposed change of use of the *'existing dwelling (Class C3) to be used as a holiday home for short term rentals'*. For clarity, I have used the term *'proposed use of a dwelling house for short term rentals'* as this can encompass Airbnb and holiday home use.

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<sup>1</sup> The Certificate of lawful use or development appeals: Procedural Guide – England, updated January 2024, states that "A site visit won't be needed for every appeal. It is for the Inspector to decide whether to conduct one."

## Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC for the proposed use was well founded.

## Reasons

6. 38 Pigott Drive is a detached, 4 bedroom dwelling in a residential area. The application sought to establish that use of the appeal site for short term rentals would be lawful. It is common ground that the current lawful use of the site is as a single dwelling. This falls under use class C3 Dwellinghouses, of the Town and Country Planning (Use Classes) Order 1987 (as amended). Use class C3 encompasses use by a single person or family (referred to as a single household<sup>2</sup>) or, where the household is comprised of a group of unrelated people, not more than 6 residents living together as a single household.
7. Section 55 of the Act defines 'development' and this includes the making of any 'material change in the use' of any building or other land. Therefore, for a change of use to be development, it needs to be a material change. The meaning of 'use' is provided in s336(1) of the Act, but the concept of a 'material change of use' is not defined in statute. As established by case law, the basic approach is that for a material change of use to have occurred, there must be some significant difference in the character of the activities, from what has gone on previously. The assessment is a matter of fact and degree, for the decision maker to determine on the available evidence.
8. Information submitted with the application specified that the site would be let out on a whole property basis, as a single booking at any one time, as often as demand would allow. In information to support the application, the appellant specified that they had *'set up a total of 7 bedrooms, which can occupy a maximum of 14 people for one booking, but we expect it to mostly be a lot less people than this per booking'*. They also specified that *'we expect the tenants to often be contractors who have been sent out to near Milton Keynes for work, and these people will likely have stays for 2 weeks or longer at a time'*.
9. Not all bedrooms may always be occupied at any one time, or not occupied by 2 people. However, the application specified up to 14 people. Conditions to restrict occupancy cannot be added to an LDC, so the proposed maximum occupancy is the basis for assessment.
10. I have not been provided with substantive evidence which would allow me to conclude that when in short term rental use, the occupants would be living together as a single household. Even if they were, the proposed use by up to 14 people, significantly exceeds the number of 6 unrelated residents living together as a single household. Therefore, the proposed use of the site would not fall within use class C3.
11. Changes from use class C3 Dwellinghouses can be made to use class C4 Houses in Multiple Occupation (HMO – for use by not more than 6 residents), under permitted development rights<sup>3</sup>. The use proposed in this case is not a HMO and the proposed occupancy exceeds 6, so this permitted development right does not apply. A change of use from C3 to any other use class, would require planning permission.

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<sup>2</sup> Where 'single household' is in accordance with Section 258 of The Housing Act 2004.

<sup>3</sup> Granted by Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

12. Use of the site as a residence for potentially up to 14 people would inevitably result in more activity than would generally be associated with a single dwelling, even one occupied by a large family. There would be more comings and goings, more vehicle movements and parking, more general disturbance and more waste generation. This would constitute a significant difference in the character of the activities from what would be expected for a C3 dwellinghouse. Therefore, the proposed change of use would be a material change of use, classifying as development, and requiring planning permission.
13. Consequently, as a matter of fact and degree, on the evidence presented to me, the proposed use of the dwelling at 38 Pigott Drive for short term rentals would constitute a material change of use. This material change of use is development for which planning permission would be required. Planning permission has not been granted. Consequently, the proposed use would not be lawful.

### **Other Matters**

14. At the appeal stage, the appellant claimed that no room that was not already used as a bedroom would be converted to a bedroom. No information has been provided to substantiate this and the Council decision was made on the basis of the information submitted with the application, which clearly stated a total of 7 bedrooms for up to 14 people were to be set up.
15. I acknowledge that there may be other properties in the area rented out through 'AirBnB'. I do not have information on the planning status of any of these properties or the exact scale and nature of their use. The fact that other properties may be being used for short term rentals does not make the appeal proposal lawful.

### **Conclusion**

16. I conclude that on the balance of probability, taking the evidence as a whole, the appellant has not demonstrated that the proposed use would have been lawful if instituted or begun on the date the application was made. For the reasons given, the Council's refusal to grant an LDC for the proposed use of a dwelling house for short term rentals was well-founded and the appeal fails. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*H Davies*

INSPECTOR