



Appeal Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2024

Appeal Ref: APP/Y0435/X/24/3339162

10 Primrose Lane, Broughton, Milton Keynes MK10 7AX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Shade Arise against the decision of Milton Keynes Council.
 - The application ref 23/02714/CLUP, dated 29 November 2023, was refused by notice dated 15 January 2024.
 - 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 described as *'Certificate of Lawfulness for the Change of Use Class C3 (dwelling house) to a Class C3 (b) dwelling for Three children living together as a single household where care is provided for residents by 2 carers at once, working 12 hour shift pattern'*.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of the proposal in the header above is taken from the application form, in the section headed 'Grounds for Application'. A supporting planning statement describes the proposal as: 'Certificate of Lawfulness for the Change of Use Class C3 (dwelling house) to a Class C3 (b) dwelling up to 6 residents living together as a single household where care is provided for residents by 2-3 carers at once, staff will be working 12-hour shifts 8 am to 8 pm and 8 pm to 8 am'. The statement goes on to explain that the home would be for children. It appears that the 6 'residents' would include the carers. The appeal form describes the proposal as 'certificate of Lawfulness for the change of use Class C3 to a Class C3 (b)'.
3. The descriptions above are made on the premise that the use proposed falls within Class C3 (C3(b) being part of the C3 use class). However, the very question of whether the particular use described by the appellant falls within Class C3 is one of the key disputed matters in this appeal. Similarly, the question of whether the use would involve people living together as a single household is also disputed. Consequently, notwithstanding the way the appellant describes the proposal, I have considered these matters in determining the appeal.
4. It appears to me from the appellant's various statements that there would be a maximum of 3 children at the property and normally 2 carers, but that 3 carers would sometimes be present, during shift changes for example.

Main Issue

5. The main issue is whether the Council's decision to refuse to issue a certificate was well-founded. This turns on:
 - i) Whether the proposed use falls within Use Class C3; and
 - ii) If the proposed use does not fall within Class C3, whether it would be materially different to the established lawful use of the property at the time of the application.
6. In considering these matters, the burden of proof falls on the appellant and the standard of proof is the balance of probability.

Reasons

Whether the use falls within Class C3

7. The (a), (b) and (c) elements of Class C3 are all part of the same use class, and so changes between them are not development¹. Since it is common ground that the existing use is as a dwellinghouse falling within Class C3, the proposed use would be lawful if it can be shown that it would also be a C3 use.
8. The appellant says that the proposed use falls within C3(b), which is use as a dwellinghouse by 'not more than six residents living together as a single household where care is provided for residents'. From this wording it is clear that a qualifying use must involve residents living together 'as a single household'.
9. The appellant describes the proposal in the following terms:

'The service will be used to support no more than Three Children up to Age 16 living together as a single household where care is provided for residents. One Visitor will be on planned appointments only. These will be either a child's social worker or other professionals supporting the child/young people or relatives. These will be timed appointments in the house or outside the premises. On average professional visitors, appointments can be once or twice a month as most therapeutic appointments staff will take a child to the appointment outside the premises'.

And

'Three children would reside at the property full time with 2 carers present in the day with 2 alternating shift patterns working on 12-hour shifts 8 am to 8 pm and 8 pm to 8 am'.
10. In *North Devon DC v FSS & Southern Childcare Ltd [2003] JPL 1191*, the High Court held that the definition of 'care' in Article 2 of the Use Classes Order restricts the personal care of children to class C2 only². Article 2 states that: "*care*" means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment. The specific linking of care for

¹ See s55(2)(f) of the Act and Article 3(1A) of the Use Classes Order.

² Although Class C3 was constructed slightly differently at that time, the point remains relevant to the class in its current form.

children with Class C2 appears, by implication, to exclude it from the other classes, including C3.

11. Moreover, the judgement went on to decide that children cannot form a household without the presence of a carer, since they need to be looked after. To form part of a household, the carers would need to be resident. The carers in this case would not be resident but would work on a shift pattern, with some caring for the children during the day and some sleeping at the property overnight. It is clear from *North Devon* that carers operating on this basis would not form part of a household. Consequently, the proposed use does not involve residents living together as a single household and cannot, therefore, fall within C3(b). There is no claim that it is development described in any other part of Class C3.
12. From the information before me, it appears that the nature of the use and the care to be provided is sufficiently similar to *North Devon* for the same principles to apply. As with *North Devon*, the obvious conclusion arising from my finding that the use does not fall within Class C3 is that it falls within Class C2, which includes, 'Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses))'.

Whether the proposed use is materially different

13. Given my conclusion that the proposed use does not fall within the C3 use class, it is necessary to consider the materiality of the change of use proposed. This requires a comparison between the character of the proposed use and that of the existing lawful use of the property (at the time of the application).
14. The Government's Planning Practice Guidance provides advice relating to LDCs. It advises that the applicant is responsible for providing sufficient information to support an application. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.
15. It is clear from the submitted information in this case that no external alterations are proposed. It is also clear that the proposed use would involve people living at the property and, to that extent, it has something in common with a C3 dwellinghouse use. The appellant says that the long shifts would limit the movements arising from shift changes, and suggests that visits by various professionals would be comparable with the visits of family members in other circumstances. Consequently, it is argued that what is proposed would be comparable with what would be expected in the case of a 'typical C3 use', a view shared by the Council.
16. However, the comparison to be made is not between some notional dwellinghouse and the proposed use, but rather between the actual existing use and the proposed use. The appellant suggests that this 5-bedroomed family house might have been occupied by a large family with children and working parents, with all that implies in terms of noise, activity levels and transport movements. However, the application does not show that it was actually used in that way, and it might equally have been occupied by a single person. The information provided does not enable me to properly compare the 'before' and 'after' situations. I am not, for example, able to compare likely

traffic movements generated by the proposed use with those of the existing one (at the time of the application). It seems to me that the character of the proposed use could be materially different to the character of the existing use of the property if that existing use is less intensive than the 'dynamic household' scenario described by the appellant. It has not been shown, therefore, that the change of use is not a material one.

17. The appellant says that a precedent has been set by the Council in approving 'two similar planning applications'. However, the question of whether a material change of use would take place is highly fact-sensitive, and the information before me does not show why the cases are comparable. Without further explanation, it is not evident to me that there is any inconsistency.
18. For these reasons I find that it has not been demonstrated, on the balance of probability, that the character of the proposed use would not be materially different to that of the existing lawful use of the property. Accordingly, it is not evident that the proposed use would have been lawful on the date the application was made.

Conclusion

19. I conclude that the Council's refusal to grant a certificate of lawful use or development 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 and dismiss the appeal.

Peter Willows

INSPECTOR