



Appeal Decision

No site visit made

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2025

Appeal Ref: APP/Y0435/X/24/3351075

17 Frithwood Crescent, Kents Hill, Milton Keynes MK7 6HQ

- 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 Mr Dozie Akudinobi against the decision of Milton Keynes Council.
- The application ref 24/01231/CLUP, dated 3 June 2024, was refused by notice dated 23 July 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 a change of use from Class C3(a) to C3(b)

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Preliminary Matters

2. An application under s192(1)(a) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) seeks to establish whether the proposed use would be lawful if instigated or begun at the time of the application. For the purposes of this LDC application, I will consider the development as described in the application form and thus whether the proposed use would fall within the use Class C3 of The Town and Country Planning (Use Classes) Order 1987 (UCO) as amended.
3. Changes of use within Class C3 are not considered development under the meaning of the 1990 Act¹. Class C3 includes C3(a) a single person or by people to be regarded as forming a single household; and C3(b) not more than six residents living together as a single household where care is provided for residents.
4. During the appeal process the appellant has submitted additional information in respect to the residential status of its staff members (carers) at the appeal site. The appellant submits that *"This will be a 24-hour care with two permanent resident staff members on each shift."* The information provides a degree of clarity to the operational requirements of the carers, which is an essential component in the determination of this LDC.
5. I have given due consideration to the guidance in the 'Procedural Guide: Planning Appeals - England' (2024), and the 'Wheatcroft Principles' referred to in the guidance², which addressed the matter of additional information being submitted at appeal, along with other case law³ in deciding whether to accept the additional information. In my view, the proposal is still the same as the scheme that was

¹ Section 55(2)(f)

² Bernard Wheatcroft Ltd v SSE and Another (1982) 43 P. & C.R. 233.

³ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

considered by the Council, and the additional information merely aids clarity on the proposal, thus the appeal process has not been used to evolve the scheme in accordance with the procedural guidance⁴.

6. Consequently, I am satisfied that the revision does not alter the proposed development to an extent that anyone involved in the appeal would be prejudiced or impacted should I accept the additional information. Furthermore, the Council have also had the opportunity to consider and indeed comment on the additional information, and thus has not been prejudiced.

Main Issue

7. The main issue, therefore, is whether the Council's refusal to grant a LDC was well founded. This turns on whether the proposal is a material change of use from the lawful use as a single dwellinghouse falling within Class C3 of the UCO. In considering these matters, the burden of proof falls on the appellant and the standard of proof is the balance of probability.

Reasons

8. The appeal site is a two storey four bedroom detached dwelling located at Frithwood Crescent in the residential area of Kents Hill in Milton Keynes. There is no dispute between the parties that the site is currently in Use Class C3(a) as a private dwellinghouse.
9. The appellant highlights that the proposal is for the house to be used as a children's home in Use Class C3(b) for three young people (aged 8 -17 years old) with 24 hours adult supervision provided by two permanent carers. Both parties draw my attention to case law⁵ where a LDC was sought for use as a dwellinghouse providing care for up to two children living together as a single household with care provided by up to two non-resident staff. In the *North Devon* case, it was held that, while both Classes C2 and C3(b) referred to care, the definition of care in Article 2 of the UCO restricted the personal care of children to Class C2. In this appeal the appellant is not applying for a C2 use, rather seeking to establish that the proposed use C3(b) would not constitute a material change of use.
10. In the context of Class C3(b), children needed to be looked after and could not on their own be regarded in the true sense as a household, without the presence of a carer. Carers who provided 24 hour care but were not resident could not be regarded as living together in a household. The appellant considers that the property will operate as a single household with the number of residents not exceeding five, and all communal spaces shared, with the carers and children cooking and eating together. The appellant further indicates that the property will be the main or sole residence, and the occupants would engage in educational and recreational activities within the home. The appellant further highlights that the carers would permanently reside at the property to provide 24 hour care, operating a flexible shift pattern between themselves. The appellant provides an example of one carer doing the school run in the morning, with the other carer undertaking the afternoon school pick up, like a two parent family operation.

⁴ Section 16 of the Procedural Guide: Planning Appeals - England (2024)

⁵ *North Devon District Council v First Secretary of State and Southern Childcare Ltd* [2003] EWHC 157 (Admin); [2003] JPL 1191

11. Information on the care required would have been beneficial in this case. For example, would the care required be generally lower level, like personal care in the form of emotional and practical support; or are higher levels of care required, which may include specialist medical, behavioural or psychiatric care. Also, further details of carers shift patterns, levels of cover for periods of leave, and provisions during periods of illness/absence etc could have further clarified matters. Nevertheless, case law⁶ directs, that in the absence of independent evidence, there is no good reason to reject the appellant's evidence, that the carers would stay at the property with the children on a full time basis, and thus could be deemed as living together as a household.
12. As such, based on the evidence before me it is sufficient to show that, the proposed change of use from C3(a) to C3(b) would be permitted within Class C3 of the UCO. Thus, would not constitute development as defined by s55 of the 1990 Act. Of course, should this not be the case, allowing this appeal does not fetter the Council from using its enforcement powers to address any potential breach of planning control in the future.

Other Matters

13. Both parties have drawn my attention to several appeal decisions which the parties consider to be relevant to this current appeal. Whilst I would acknowledge there may be some similarities in those LDC decisions, I have not been presented with the full details of these cases. Class C3(b) was introduced as part of the Use Classes (Amendment) Order 2010, coming into effect in April 2010 and some of these decisions pre-date these, thus would lessen the weight I would attach them.
14. Nevertheless, a grant of a LDC is dependent on the appellant demonstrating, on the balance of probability, that the proposed use or development would be lawful. Therefore, the proposal before me is considered on the individual facts of the case and its compliance or otherwise with the provisions of the 1990 Act and UCO.

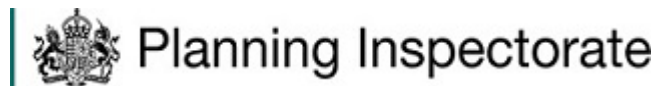
Conclusion

15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawfulness was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Robert Naylor

INSPECTOR

⁶ Gabbitts v SSE & Newham LBC [1985] JPL 630



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 3 June 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has demonstrated their case on the balance of probabilities that the proposal would not constitute development as defined by section 55 of the 1990 Act, as amended.

Signed

Robert Naylor

Inspector

Date: 12 May 2025

Reference: APP/Y0435/X/24/3351075

First Schedule

The change of use from Class C3(a) to C3(b)

Second Schedule

17 Frithwood Crescent, Kents Hill, Milton Keynes MK7 6HQ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in this decision dated: 12 May 2025

by Robert Naylor BSc (Hons) MPhil MRTPI

Land at: 17 Frithwood Crescent, Milton Keynes MK7 6HQ

Reference: APP/Y0435/X/24/3351075

Scale: NOT TO BE SCALED

