



Appeal Decision

Site visit made on 7 July 2025

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 August 2025

Appeal Ref: APP/K0235/X/23/3330329

24 Marsh Lane, Milton Ernest, Bedford MK44 1RB

- 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 Symbiosis Care LTD against the decision of Bedford Borough Council.
 - The application ref 23/00228/LDE, dated 12 January 2023, was refused by notice dated 4 August 2023.
 - 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 change of use of single family dwelling C3(a) into supported living accommodation for 1 person C3(b).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs is made by Symbiosis Care Ltd against Bedford Borough Council in relation to the appeal. This application is the subject of a separate Decision.

Preliminary Matters

3. The LDC application was made under section 192 of the Town and Country Planning Act 1990 (the Act). However, the Council determined the application on the basis that it was made under section 191 of the Act as the appeal property was already occupied as supported living accommodation for one person. In addition to this, the appellant's evidence in support of the LDC application makes reference to the property being occupied by two residents, not one.
4. Notwithstanding the above, the basis on which the LDC application was made is that the proposed use is lawful due to planning permission not being required for it. Moreover, whether it is considered on the basis of it being occupied by one resident or two residents this has no material effect on the consideration of the proposal as they would both fall within the same use. Class C3(b) of Part C of Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the UCO) is for "not more than six residents living together as a single household where care is provided for residents".
5. Therefore, I have considered the appeal on the basis that a certificate is sought under section 192(1)(a) of the Act for the change of use of a single family dwelling C3(a) to supported living accommodation for 2 persons C3(b). I do not find that any parties would be prejudiced by my consideration of the appeal on this basis.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded. This will turn on whether the proposed use as supported living accommodation for two persons would fall within Class C3 of Part C of Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the UCO) and, if not, whether the use proposed would be a material change of use.

Reasons

7. An application under s192(1)(a) of the Act seeks to establish whether any proposed use of buildings or other land would be lawful. In an application for an LDC, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful if instituted or begun at the time of the application.
8. Section 55(1) of the 1990 Act provides the meaning of development, which includes the making of any material change in the use of any buildings or other land. In accordance with the provisions of section 55(2)(f), in the case of buildings or other land which are used for a purpose of any class specified in the UCO, the use of the buildings or other land for any other purpose of the same class shall not be taken to involve the development of the land. A use is lawful under the provisions of section 191(2)(a) of the 1990 Act if no enforcement action may be taken in respect of it whether because it did not involve development or require planning permission or because the time for enforcement action has expired.
9. There is no dispute the existing lawful use of the appeal property is use Class C3(a). The UCO defines Class C3(b) as use as a dwellinghouse by:- "not more than six residents living together as a single household where care is provided for residents". The UCO defines "care" as meaning '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'. Whilst the proposal would not provide accommodation for children nor provide medical care and treatment for its residents, this does not preclude it from being a Class C2 use.
10. The appellant contends that the residents would be a single household and therefore the property would fall within Class C3(b). The proposal is for the use of the dwelling to provide accommodation for up to two adults. However, there is limited evidence as to the particular circumstances of the residents and their need for supported living accommodation. There would be two members of staff present 24 hours a day, 7 days a week with staff operating in 12-hour shift patterns. Staff would not reside at the property. The staff would monitor and support the residents with day-to-day tasks such as cooking, cleaning, washing and assist with any medical and/or benefits related appointments.
11. The Council consider that the residents would not occupy the property as a single household and therefore it would not be a Class C3(b) use. They argue it would instead operate as a residential institute providing care to people who would occupy the property under Class C2 of Part C, Schedule 1 of the UCO and that this would be materially different in character to the existing lawful Class C3 use of the property. The UCO defines Class C2 as "use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3. Dwellinghouses, used as sole or main residences)".

12. My attention has been drawn to the High Court judgements of *North Devon District Council v FSS & Southern Childcare Ltd* [2003] EWHC 157 (Admin); [2003] JPL 1191 and *R (oao Crawley BC) v FSS & the Evesleigh Group* [2004] EWHC 160 (Admin). *North Devon* determined that children cannot form a household without the presence of a resident caregiver. However, *Crawley* confirmed that *North Devon* is not to be read as laying down a principle that those who suffer from disability and may need care in the community can never constitute a household for the purposes of Class C3 and that if the carers are not resident, it is necessary to focus on those in occupation and ask whether they form a single household as a matter of fact and degree.
13. In the appeal before me, the caregivers would not reside at the appeal property and there is no evidence that it would be their primary form of residence. Therefore, they cannot form part of a single household within the property. Nevertheless, that is not to say the residents themselves would not form a single household.
14. Although there would be communal facilities, there is little evidence to indicate how the residents would interact with each other and share these facilities. For example, would they cook meals together or sit together and socialise? Whilst the type of care provided would be limited, it would require two members of staff to be on hand 24 hours a day. This level of care suggests the residents would be unable to live independently or manage a household on their own, as they would likely be incapable of performing the everyday tasks necessary for maintaining and living in a dwelling. Accordingly, I do not find that the residents would form a single household for the purposes of Class C3(b).
15. The appellant argues that the single household would be created by the sharing of facilities and therefore would be akin to a single household under Class C3(c). However, the facilities provided by the property is only one element of assessing whether a single household would be created. It is also important to consider how the occupants would engage and interact with each other. However, there is no evidence of this.
16. I find therefore on the evidence before me, it has not been demonstrated, on the balance of probabilities, the residents would form a single household. Therefore, the proposed use would not fall under Class C3(b) and would likely be a Class C2 use. I shall now address whether the change of use from a Class C3(b) to a Class C2 use would amount to a material change of use and therefore be development requiring planning permission.
17. To establish whether a material change of use has occurred, a comparison between the actual use and the previous use needs to be made, as opposed to considering a hypothetical range of activities. 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.
18. There would be a regular exchange of staff each day, both morning and night. This would likely involve up to four staff and their associated cars in attendance at the property during the crossover of the shifts. There would also be outings into the community. However, it is not clear whether these outings would involve staff accompanying the residents or how many residents would be on the outing. In

addition, there could also be frequent visitors for each of the residents, likely to comprise family and/or friends. Moreover, there would be regular visits from healthcare professionals including social workers for each of the residents. Given the appeal property is a two-bedroom dwelling, its lawful use as a C3 dwelling would likely have very limited comings and goings in comparison to the proposed use. Therefore, the increased level of comings and goings to and from the property by various groups of people would amount to a significant change to the character of the activities associated with the lawful use of the two-bedroom property as a C3 dwelling. Consequently, it would result in a material change of use.

19. It is also argued that the use would generate less movements than if the property was in use as a house in multiple occupation (HMO). However, the property is not in use as an HMO and therefore such a comparison cannot be made. Moreover, when considering whether there would be a material change of use, the question is not whether there would be a greater impact, but whether there would be a significant change in the character of the activities.
20. I find therefore, based on the evidence before me, on the balance of probabilities, , it has not been demonstrated that the proposed use would not result in a material change of use of the property from a Class C3(b) use to a Class C2 use if instituted or begun at the time of the LDC application.

Other Matters

21. The appellant refers me to an LDC application¹ relating to a similar development to the appeal proposal before me for which the Council granted a certificate. I also note planning permission reference 21/00490/COU. Whilst this was a planning application, and therefore was considered under a different regime, the accompanying report attached to the decision clearly states the use would not be Class C2 or sui generis and therefore by implication would be Class C3(b), as per the description of the development on the decision notice.
22. Whilst there are apparent similarities between these two cases and the appeal before me, I must determine the appeal on its own merits. Whilst I acknowledge that similar proposals must be considered in a similar manner, legislation must be correctly applied.

Conclusion

23. For the reasons given above, on the evidence now available, the Council's refusal to grant a certificate of lawful use or development was well-founded and the appeal should fail. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

A Walker

INSPECTOR

¹ Council ref: 22/01295/LDP