



Appeal Decision

Site visit made on 24 June 2026

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th July 2026

Appeal Ref: APP/Y0435/X/25/3364039

1 Whitehaven Close, Broughton, Milton Keynes MK10 7AF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Lawrence Adebisi against the decision of Milton Keynes Council.
 - The application ref PLN/2025/0279, dated 10 February 2025, was refused by the Council by notice dated 07 April 2025.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use and development for which a certificate of lawful use or development is sought is described on the application form as: Use of an existing class C3 dwelling as a children's care home for 1 resident.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. In considering the appeal I was aware of potentially relevant caselaw which had not been referred to by the parties, namely the *Waltham Forest* judgement¹. Given that I intended to refer to the judgment within my decision I wrote to the parties to enable them to submit any comments on it to avoid any injustice. Both parties replied and I have taken those responses into account in reaching my decision.

Reasons

3. An application for a Certificate of Lawfulness for a Proposed Use or Development (CLOPUD) is not an application for planning permission. As such my decision makes no comment on the planning merits of the development. The main issue is whether the Council's decision to refuse the application was well-founded based on the facts of the case and any relevant judicial authority. The onus rests with an appellant to make their case, on the balance of probability.
4. The proposed use is a children's care home which would be occupied by a single child, between the ages of 5 and 17, who would reside at the property under the care of at least 2 adults at all times. The adults themselves would be carers who would not permanently live at the premises as their main place of residence but would come and go on a shift basis.
5. The key issue in dispute is whether that would amount to a material change of use from the present use of the property. It is worth setting out a number of points on which there appears to be agreement between the parties. The first is that the

¹ Waltham Forest LBC v SSTLG&R & Tully [2002] EWCA Civ 330.

proposed use would fall within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) which is defined as use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwelling houses)).

6. In line with the *North Devon* judgment a child or children is/are not capable of forming a household of themselves and where carers do not reside at the premises as their main place of residence the use will fall within Class C2 as opposed to being a dwellinghouse within Class C3.
7. Section 57 of the Town and Country Planning Act 1990 (the Act) sets out that planning permission is required for the development of land. The material change of use of buildings is defined as development under s55(1) of the Act. However, the fact that a use may fall within a different class of the UCO does not automatically mean that a change in use from one to the other, Class C3 to C2 in this case, would be a material change or that it would constitute development.
8. Whether there would, in fact, be a material change of use requires an assessment of the definable character of the existing and proposed uses. None of the above appears to be in dispute. However, the Council contend that insufficient information has been provided in relation to the existing use of the property to be able to assess whether the proposed change would be materially different.
9. Whilst they agree that the existing use is a dwellinghouse, which could accommodate 7 or more residents, the Council contend that evidence of actual use, as opposed to theoretical use, needs to be provided against which the proposed change can be assessed. The appellant's position is that the provision of such information is unnecessary and that what needs to be assessed is whether the use would be materially different from "the spectrum of intensity of C3 usage one might otherwise expect at the appeal property". In other words, the theoretical range of occupancy which may fall within that Class.
10. That point of dispute is a matter that has been considered by the Courts in the *Waltham Forest* judgment referred to above. The appellant contends that the judgment is not relevant to the present appeal because the *Waltham Forest* case involved a change from a materially less intense C3 use to another, more intense, use in a single step. He refutes any suggestion that one child being cared for by 2 carers could be regarded as a more intense use than "reasonable" usage of a 5 bedroom dwelling. He does not seek to rely upon the maximum notional usage of how many people could have occupied the dwelling but on what he considers to be a reasonable proposition of 3 to 4 people living in the dwelling.
11. However, I am not satisfied that is a correct interpretation of the judgment. In that case, the proposal was for 6 persons recovering from mental ill health who would live together as a single household with an element of care. The existing use was described as a "C3" use but no information was provided as to the actual number of people who lived within that dwellinghouse. The Inspector proceeded on the basis that it would have been lawful for a large family to occupy the dwellinghouse and he used that as the basis of his conclusion that the use by 6 patients plus a carer would not result in a material change of use.
12. The Court of Appeal held that he was wrong to proceed on that basis. What the judgment clearly identifies is that one needs to consider how the property actually has been used, as opposed to how it may be used theoretically. Whilst the

judgment acknowledges that the notional level of use may be of relevance if considering a fall-back position when determining a planning application; *“the interposition of a notionally permitted use between the existing use and the use applied for is a complication not relevant to the exercise under section 192”*.

13. The appellant contends that the judgment is not relevant because the case involved a change from a materially less intense C3 use to another, more intense, use in a single step. However, that is not a correct interpretation in my view. It was not a given that the residents living with a carer would have resulted in a more intense use than the dwelling within Class C3. The Inspector effectively had to consider the difference between the two. The key point of the judgment is that the Inspector used a notional level of occupancy as the starting point against which the proposed use was then compared. The judgment very clearly sets out that the starting point should have been the actual use of the dwellinghouse prior to the proposed change, not a notional use or level of occupation.
14. The same principle applies in this instance. Contrary to the appellant's assertion the judgment is clearly relevant to the present appeal. What I am being asked to determine is whether there would be a material change of use between the existing use within Class C3 and the proposed use. However, no information is before me in terms of who lived at the property or its pattern of occupation at the time of the application. The suggestion that I should make an assumption based on what the appellant considers would be a “reasonable” level of occupancy for a 5 bedroom house goes directly against the thrust of established caselaw.
15. If, for example, the property was occupied by a single resident that would form the basis of the assessment. It is not unknown for single occupants to live in larger houses, perhaps when children or family members have flown the nest. If the level of use was at the low end of the spectrum then the difference between that and the proposed use, with carers coming and going, school visits, other visits and appointments may well be different and could be materially so.
16. In addition to the lack of information in respect of the existing use, little information is provided about the proposed occupant other than it would be a child who would require “at least” 2 adults in attendance at any one time. That does indicate a high level of care and it is not clear whether that would manifest in other regular visits or appointments. There is a paucity of information and that makes it very difficult to make any definitive conclusion as to the nature of the use would be different to the existing occupation as a dwellinghouse.
17. However, more fundamentally, the absence of any information as to the existing use is fatal to the appellant's case, having regard to established caselaw. In the absence of such information I agree with the Council that it is not possible to fully assess whether the proposed change would amount to a material change of use. Bearing in mind that the onus rests with the appellant to demonstrate his case, on the balance of probability, that hurdle has not been met.
18. Therefore, I shall dismiss the appeal and refuse to grant a CLOPUD in the terms sought.

Chris Preston

INSPECTOR