



Appeal Decision

Site visit made on 26 August 2026

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date 02 September 2026

Appeal Ref: APP/B0230/X/25/3373698

33 Dale Road, Luton, LU1 1LJ

- 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 Genaron Invest against the decision of Luton Borough Council.
 - The application ref 25/00449/LAWP, dated 23 April 2025, was refused by notice dated 30 July 2025.
 - 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 from a dwellinghouse (Class C3) to a residential institution for two children in care (Class C2).
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs has been made by Genaron Invest against Luton Borough Council. That application is the subject of a separate 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 two children, who would reside at the property and be cared for predominantly by a team of 3 staff who would not permanently live at the premises as their main place of residence but would come and go on a shift basis, switching over on a 48 to 72 hour pattern. A manager would also be present 5 days a week but would not live at the property.
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 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. What is in dispute is the precise nature of the existing use of the property and whether difference between that and what is proposed would change the nature of the use to a material degree.
9. Without having a full understanding of the existing lawful use it is difficult if not impossible to make such an assessment because that is the benchmark against which the proposed use must be assessed. When dealing with cases such as this, the Courts have held that the actual use of the property, as opposed to a notional use, must be the starting point. In this case, the appellant contends that the existing use is a dwellinghouse within Class C3 of the UCO, with three bedrooms, a living room, kitchen and bathroom.
10. However, beyond that general description of the layout no information is provided as to who had occupied the premises, the number of occupants or what the relationship was between them. In other words, there is no information as to the precise nature of the existing use. As such, it is difficult to ascertain whether the use did fall within Class C3 as suggested by the appellants. Even if it did there is no information as to the actual level of occupation. Was it a single person living alone or a large family?
11. Moreover, a layout plan was submitted with the application which depicted 5 bedrooms, four of which had their own bathroom and all of which appeared to contain sinks which may be indicative of kitchenette style facilities in each room. The plan also depicted what appeared to be a communal living area and communal kitchen on the ground floor.
12. There was some confusion as to the status of the plan and whether it was an existing or proposed layout. The planning statement submitted with the application described the property as a three-bedroomed mid-terraced property. However, at my accompanied site visit, I was able to observe that the existing layout is that shown on the plan. Each of the five bedrooms had a lock on the door and the rooms had their own bathroom and kitchen cupboards for storage. When combined with the communal spaces on the ground floor the layout is highly typical of a house in multiple occupation falling within Use Class C4 of the UCO, as opposed to a dwellinghouse within Use Class C3. Judging by the condition of the property and age of various doors and fixtures it would appear to have been laid out in that manner for some time and almost certainly prior to the application being made.

13. I also understand that a more recent application for a CLOPUD for a use as a care home for children has been submitted to the Council on the basis that the existing use falls within Class C4. That is a matter for the Council to determine. However, in respect of the present appeal it seems highly unlikely that the existing use of the property was in Class C3 at the time the application was made, as suggested by the appellant. Rather, the layout indicates it was likely to have been in use as a HMO and that there were five bedrooms and not three, as suggested.
14. That calls the whole of the appellant's case into question because the arguments are based on whether it would have been lawful to change from a use within Class C3 to the care home within Class C2. Clearly, the fact that there are five bedrooms and not three, as suggested by the appellant has potential implications for the number of occupants. Were each of the five bedrooms single occupancy or double occupancy? How many people occupied the property overall?
15. As noted above, the onus rests with an appellant to make their case and for the reasons given the case is ambiguous and filled with uncertainty as to the nature of the existing use. Without answers to such questions I cannot make any rationale conclusion as to whether the proposed use would be materially different to the existing use. The appellant's case in that respect is not made out.
16. It follows that I cannot conclude, on the balance of probability, that the proposed use would be lawful. The Council's refusal to grant a certificate of lawful use or development was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Chris Preston

INSPECTOR