



Appeal Decision

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 22 October 2026

Appeal Ref: APP/K0235/X/25/3361350

35 Hurst Grove, Bedford, MK40 4DN

- 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 Rahman against the decision of Bedford Borough Council.
 - The application ref 24/00677/LDE, dated 28 March 2024, was refused by notice dated 20 January 2025.
 - The application was made under section 191(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 building from Use Class C3 to Use Class C4
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the issues in dispute have been capable of determination on the basis of the parties' submitted documentary evidence, it has not been necessary to undertake a site visit.
3. A lawful development certificate (LDC) is not a planning permission (PP). Its purpose is to allow landowners and others to ascertain whether specific uses, operations or other activities are or would be lawful and therefore immune from enforcement action. The determination of an LDC depends entirely on factual evidence and the interpretation of planning law, rather than planning policies or planning merits. Hence, for example, any amenity impacts on neighbouring properties, or the fact that the appeal site is within the countryside, are immaterial to whether or not an LDC is issued.
4. The onus is on the appellant to demonstrate, on the balance of probabilities, that the proposed development would be lawful. If there is no contradictory evidence from others to make their case less than probable, there is no reason to dismiss the appeal, provided that the appellant's evidence alone is sufficiently precise and unambiguous.

Main Issue

5. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

6. On 5 March 2024, prior to the LDC application being submitted to the Council, planning permission was granted on appeal (Ref: APP/K0235/W/23/3323853) for the "*change of use from a single dwelling (C3) to an HMO (C4)*", subject to

planning conditions. However, in the absence of evidence to demonstrate compliance with those conditions, I am unable to conclude that the permission was lawfully implemented.

7. Instead, the appeal before me is advanced on the basis that the change of use to a C4 HMO¹ had already lawfully occurred several years earlier through the exercise of permitted development (PD) rights within Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Notably, Class L grants planning permission for development consisting of a change of use of a building from a use falling within Use Class C3 (dwellinghouses) to a use falling within Use Class C4.
8. The above PD rights were removed by an Article 4 Direction made by the Council on 22 November 2020. Therefore, for the C4 use to be lawful by virtue of PD rights the use must have commenced before this date. Although the original LDC application stated that the use commenced on 5 January 2021, the appellant submits that this date was included in error.
9. A Tenancy Agreement (TA) for the appeal site has been submitted covering the period from 1 June 2020 to 31 May 2023, between a previous owner (Rashid Ahmed of YMARR HOMES LTD) and a tenant (REACTIVE8 THE NATION CIC). The TA identifies the appeal property as being let as an HMO within the meaning of the Housing Act 2004. It states that the property is comprised of 6 individual units, however, it does not specify or identify the individuals who would occupy the units or set out the pattern of occupation. Although clause 4.1.13 states that these individuals were to be specified in clauses 1.1.2 and 1.1.3, this information is not available within the TA. Accordingly, although the TA demonstrates that six individual units were available to let, it does not unambiguously establish that the appeal property was occupied by no more than 6 people within Use Class C4 during this period.
10. An HMO licence was issued for the appeal property on 4 August 2020, for a period of five years with a commencement date of 1 June 2020. Whilst the licence demonstrates that the property was authorised for use as an HMO, it does not conclusively establish that the property was in fact being occupied as an HMO at the relevant time. The licence also does not identify any occupiers or provide evidence of the pattern of occupation at the property. Moreover, it states that the property could be occupied by up to 11 persons, but occupation by more than 6 persons would not fall within Use Class C4. Accordingly, the HMO licence does not represent precise and unambiguous evidence that a material change of use to Use Class C4 had occurred before 22 November 2020.
11. The Council have referred to the appellant's response to a Planning Contravention Notice (PCN), submitted in July 2020, stating that the property was occupied by 8 people on 1 June 2020 and by 10 people on 22 July 2020. The appellant has not disputed the accuracy of this recorded response. Significantly, occupation by more than 6 residents would not fall within Use Class C4. I have also had regard to a PCN response dated 17 December 2020 which states that the property was occupied by only two persons. References to a 'single house' within this PCN are irrelevant as they do not relate to the number of occupiers.

¹ A use falling within Use Class C4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (Use of a dwellinghouse by not more than six residents)

12. A further PCN response dated 10 October 2022, states the property comprised 6 bedrooms, 6 bathrooms and one kitchen. However, it also states the use as a HMO commenced on 13 June 2022, which is after the date of the 2020 Article 4 Direction. A sworn statutory declaration provided by Mr Rashid Ahmed states that when he sold the property to the appellant around 2021, it was occupied as an HMO used by 6 persons at that time. However, that also post-dates the Article 4 Direction.
13. Taken together, these documents present an inconsistent picture of occupation and provide limited clarity as to the lawful planning use of the property. Rather, the evidence points either to occupation levels exceeding those permitted within Class C4, thereby amounting to a sui generis use, or occupation levels insufficient to demonstrate the continuous Class C4 use claimed by the appellant.
14. Overall, the appellant's evidence is not sufficiently precise and unambiguous and is contradicted by the Council's evidence. This remains the case regardless of whether the Council took planning enforcement action. On the balance of probabilities, I find that the evidence does not establish that the property was in lawful use within Use Class C4 prior to the Article 4 Direction taking effect. Hence, it could not be carried out lawfully as permitted development.

Conclusion

15. For these reasons I conclude that the Council's refusal to grant a LDC in respect of the change of use of building from Use Class C3 to Use Class C4 was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

S Lo

INSPECTOR