



Appeal Decision

Site visit made on 12 March 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 20th March 2025

APP/Z4310/X/24/3350573

108 Grant Avenue, Liverpool L15 5AZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a refusal by Liverpool City Council to grant a certificate of lawful use or development.
- The appeal was made by B & P Properties.
- The application, reference 24LE/0069, was dated 12 January 2024. It was refused by a notice dated 27 March 2024.
- The Application for a Certificate of Existing Lawful Development for a House of Multiple Occupation for 3 - 6 persons (Use Class C4) was made under section 191(1)(a) of the Act in respect of the property at No. 108 Grant Avenue, Liverpool L15 5AZ.

Summary of decision: The appeal is allowed and a certificate of lawful use is issued in the terms set out below in the Formal Decision.

Appeal property and application

1. The appeal property, No. 108 Grant Avenue, Liverpool, is a small 2 storey mid-terrace house in a residential road of similar properties.
2. The application, made by B & P Properties, was that the dwelling at No. 108 had been in constant use as a House of Multiple Occupation, (small HMO), for 3 - 6 persons (Use Class C4 - The Town and Country Planning (Use Classes) Order 1987) since at least 14 May 2014.

Considerations

3. The Town and Country Planning (Use Classes) (Amendment)(England) Order 2010 introduced a new Use Class (houses in multiple occupation, Use Class C4) - Article 2(4). It covered use of a dwellinghouse as a house in multiple occupation as defined in s.254 of the Housing Act 2004. A dwelling that falls within Use Class C4 is a small shared house occupied by between 3 and 6 unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom. From 1 October 2010 a change of use from a dwelling (C3) use to use as a House in Multiple Occupation (HMO) (C4) does not require planning permission.
4. However, a Liverpool City Council Article 4 Direction came into force on 17 June 2021 in the area covering the application site address, removing permitted development rights for conversion from a Use Class C3 dwellinghouse to a Use Class C4 small HMO. Dwellings that were lawful 3 – 6 person HMOs before 17 June 2021 would not be caught by the Direction.
5. S.191(1) of the Act provides that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; they may make an application for the purpose to the Local Planning Authority. Where that application is refused or

deemed to have been refused and an appeal made, the burden of proof to show that the decision was not well founded lies with the appellant.

6. That background means the Appellants needed to show that a change of use of No. 108 Grant Avenue Road from a C3 dwelling to use as a C4 HMO had taken place and had become lawful by 17 June 2021, the date of coming into effect of the Article 4 Direction and had continued without reversion to a single residential dwelling or other change of use up to the date of the s.191 application, 12 January 2024.
7. The Applicants said No. 108 Grant Avenue had been in use as a 3 – 6 person HMO for a period more than 10 years prior to the LDC application. They provided a list of tenancy agreements. The Council said that whilst the agreements dated 1 October 2019 to 1 September 2026 covered the date the Article 4 came into force in June 2021 and beyond the specified date, no tenant details or numbers were provided. The title register, HMO License letter and floor plans did not provide evidence of occupancy or use. The information on the application form was not supported by any corroborating evidence. It was simply an assertion in the absence of any evidence.
8. I agree with the Council that the Applicants' failure to provide full details of tenancy agreements weakens their case. Some of that deficiency may have arisen because of the limited detail available following the passing of the control of the letting operation at No. 108 to Serco, a major public services provider. But there seems little doubt that at least in the period 1 October 2010 when a change of use from a dwelling (C3) use to use as a House in Multiple Occupation (HMO) (C4) did not require planning permission and 17 June 2021, when the City Council Article 4 Direction came into force, No. 108 Grant Avenue was in use as a small HMO, a C4 use. That use would have become lawful in that period before 17 June 2021. The C4 use would have persisted beyond 17 June 2021, having not being caught by the Article 4 Direction as the evidence shows that Serco continued to look after the letting of the property as a small HMO accommodating asylum seekers.
9. There was no evidence that the C4 use had been supplanted by a reversion to a single dwelling use in the period up to the date of the application. The HMO use also appears to have been confirmed by Councillor Richard Kemp in his letter dated 31 March 2024.

Conclusion

10. I consider the evidence of a lawful use of No. 108 Grant Avenue as a House of Multiple Occupation for 3-6 persons (Use Class C4) sufficient for me to issue a certificate of lawfulness. The evidence provided satisfies the provisions of Section 191(2)(a) read with Section 171B(3) of the Act.

FORMAL DECISION

11. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the use of No. 108 Grant Avenue, Liverpool L15 5AZ as a house in multiple occupation for 3 to 6 persons, (Use Class C4), was not well founded and that the appeal should succeed. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as is a plan submitted with the application.

John Whalley INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 (as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 12 January 2024 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, was lawful within the meaning of section 191(1)(a) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use of the property from a C3 dwelling use to a lawful C4 HMO use was permitted by the General Permitted Development Order Amendment from October 2010.

John Whalley

INSPECTOR

Date: 20th March 2025

Reference: APP/Z4310/X/24/3350573

First Schedule

Use of the property as a House of Multiple Occupation for 3-6 persons, (Use Class C4).

Second Schedule

No. 108 Grant Avenue, Liverpool L15 5AZ.

IMPORTANT NOTES OVERLEAF
NOTES

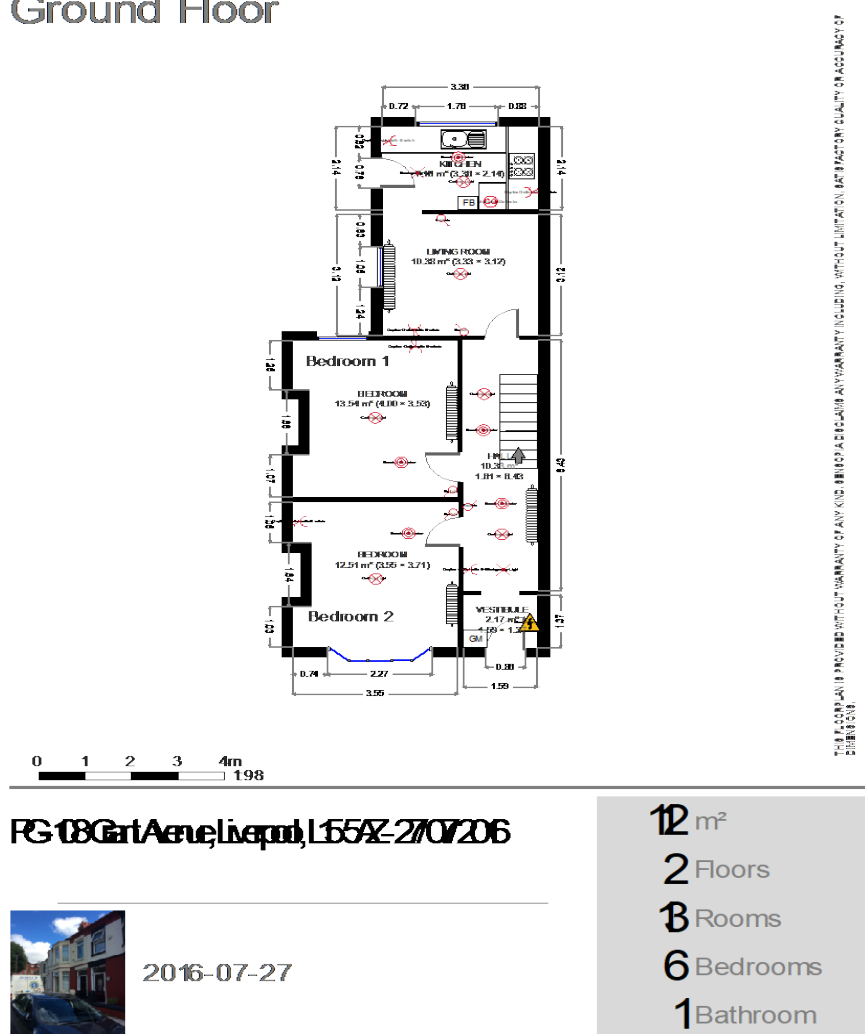
1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development described in the First Schedule and specified in the Second Schedule was lawful on the certified date and thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 191(6) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Lawful Development Certificate Plan

Appeal reference: APP/Z4310/X/24/3350573 Date: 20th March 2025

No. 108 Grant Avenue, Liverpool L15 5AZ

Ground Floor



Ground floor only shown – No scale

Plan attached to the Lawful Development Certificate

John Whalley

INSPECTOR