

Appeal Decision

Site visit made on 14 November 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 19th November 2025

APP/Z4310/X/25/3362716

38 Hawarden Avenue, Liverpool L17 2AL

- 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 Mrs Nusrat Jahan Soneya.
- The application was dated 30 December 2024 and validated on 12 February 2025 under reference 25LE/0332. It was refused by a notice issued on 5 March 2025.
- The Application for a Certificate of Existing Lawful Development for a House in Multiple Occupation for 3 - 6 persons (Use Class C4 – Town and Country (Use Classes) Order 1987 as amended), was made under section 191(1)(a) of the Act in respect of the property at No. 38 Hawarden Avenue, Liverpool L17 2AL.

Summary of decision: The appeal is dismissed.

Appeal property and application

1. The appeal property, No. 38 Hawarden Avenue, is a double fronted two-storey mid-terrace residential property in a long row of similar houses in the Toxteth Park and Avenues Conservation Area, Liverpool.
2. Application plans show the internal layout having a living room, a dining room, a kitchen and 2 bedrooms on the ground floor with 4 bedrooms, a bathroom and a separate shower room on the first floor.
3. The Applicant, Mrs Nusrat Jahan Soneya, said that No. 38 Hawarden Avenue was lawfully used as a 6 person (Class C4) House in Multiple Occupation (HMO) as its use had been changed from a C3 dwelling to a 3 – 6 person HMO before the Article 4 Direction precluding the permitted change of such use came into force.

Background

4. 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.
5. The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 came into force on 6 April 2010. It 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. An Order amendment, (No. 2, SI 2010/2134), meant that 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. However, the appeal property, No. 38 Hawarden Avenue is within an area covered by an Article 4 Direction which removed permitted development rights for changes of use from Class C3 (dwellinghouse) to Class C4 (small HMO). The Direction came into force on 17 June 2021. From that date, any material change of use from C3 to C4, or any use inconsistent with a continuously lawful C4 use, requires express planning permission. Dwellings that were lawful 3 – 6 person HMOs before 17 June 2021 would not be caught by the Direction. Mrs Soneya needed to show that the C4 use had become operational, and the property occupied as a lawful HMO, prior to the Article 4 direction coming into force and that the C4 use continued without a material change of use to the date of the LDC application, 30 December 2024.

6. The Council drew up a timeline of their view of the use of No. 38:

1 Aug 2020 – 30 June 2021: Let to 6 persons, (Class C4 use under permitted development).

1 July 2021 – 30 June 2022: Let to 7 persons, (a material change of use to a sui generis use).

1 July 2022 – 30 June 2023: Let to 6 persons, (followed an unauthorised change, meaning continuity was broken).

July 2023 – August 2024: No tenancy details provided.

Sept – Dec 2024: Let to 5 individuals, (Class C4 use resumed).

Considerations

7. The Appellant's case, based upon the Council's refusal to issue an LDC, sought to answer 3 questions:

a) was the appeal property in a C4 use prior to the Article 4 Direction coming into effect on 21 June 2021? (17 June – the Council).

b) having earlier refusing a CLEUD for Sui Generis Large HMO, did the property revert to the dormant lawful C4 use following completion of renovation/refurbishment work in September 2024?

c) did adding 1 additional tenant to a small, (6 person or less), C4 HMO amount to a material change of use?

8. I deal with those questions, whilst swapping the order of b) and c).

9. Question a) - In my view, the Council's timeline shows acceptance that No. 38 Hawarden Avenue was lawfully used as a C4 HMO after 1 October 2010 and before the Liverpool City Council Article 4 Direction came into force on 17 June 2021.

10. Question c) - It was the Council's case, however, that subsequent occupation of No. 38 by 7 persons between 1 July 2021 and 30 June 2022 amounted to a material change of use of the property, supplanting the C4 lawful use – the case of *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461 showing that a lawful use could be lost, amongst others, by being superseded by a further change of use.

11. A change of use can only be material by bringing about a definable change in the character of the main use of the land. There needs to be some significant difference in the character of the activities from what has gone on previously, not just a change from, in this instance, from a C4 use, (occupation by between 3 and 6 persons), to a large HMO use, (occupation by 7 persons). Nor is it essential for the preservation of a lawful use for it to be unceasing or uninterrupted for lawfulness to be retained.

However, *Panton & Farmer* showed that a lawful use could be lost by abandonment, or its replacement by another lawful use, or by an unlawful use if that unlawful use was materially different to the original lawful use. While service of an enforcement notice in those circumstances allows for a landowner to revert to the previous lawful use, (s.57(4) of the Act), in the absence of such service, following *Stone & Stone v SSCLG & Cornwall Council* [2014] EWHC 1456 (Admin), an existing lawful use is capable of being extinguished by the creation of a new planning unit in respect of the land in question.

12. Having agreed with the Council's acceptance that the lawful use of No. 38 Hawarden Avenue was as a C4 3 – 6 persons HMO at least up to its occupation by 7 persons, was that additional person's occupation over a significant period and did it change the character of the use such that it amounted to a material change of use of the property?
13. In my view, the occupation of the small former dwelling at No. 38 Hawarden Avenue by 7 individuals, albeit just one more person than the 6 that I consider could be lawfully living in the property, materially changed its character. No. 38 is a small house set out on 2 floors with 6 bedrooms, 2 of which the application plans show to be extremely small. I consider that the house would have been over intensively used when occupied by 7 persons, the number of bedrooms also failing to match the number of occupants. The overall effect on the property and its immediate surroundings would, in my view, have been such that the character of the use would have been significantly different to that preceding. In my view, I consider that when occupied by 7 persons a material change in the character of the use of No. 28 occurred for a significant period, such that the lawful 3 – 6 person HMO use was supplanted by an unlawful 7 person large HMO use.
14. I deal briefly with question b). I consider that in the period July 2023 – August 2024, for which no tenancy details were provided, No. 38 was not in a dormant lawful C4 use. By that time, its last occupation had been in an unlawful 7 person HMO use. There was no lawful use to which it could revert in September 2024.

Conclusion

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development on the application made for the existing use as a House in Multiple Occupation for 3 - 6 persons (Use Class C4) under section 191(1)(a) of the Act in respect of the property at No. 38 Hawarden Avenue, Liverpool L17 2AL was well founded and that the appeal should not succeed. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

John Whalley

INSPECTOR