MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	142602/LE/2025
Date registered valid:	15 April 2025
Proposal:	Demolition of all buildings on site and installation/connection of main drainage from road to site
Address:	Land Bounded By Cheetham Hill Road, Lord Street & Fernie Street, Manchester, M4 4EX
Ward(s):	Cheetham Ward
Applicant:	Paul Neto Delph Properties One Lord Street Limited
Agent (if any):	Miss Rebecca Boston AshtonHale
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk

Recommendation: Grant

Date of recommendation: 10 June 2025

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: Not Required

Standard consultations:
No consultations have been printed and sent.

Neighbour notifications
No neighbour notifications have been printed and sent.

Site notice
No site notice has been produced

Press advert
No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building and area

The application site is approximately 0.16 hectares of land bounded by Cheetham Hill Road, Lord Street and Fernie Street.

The surrounding area is a mixture of residential and commercial developments reflecting the sites position to the north east of the city centre.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a Certificate of Lawful Existing Use or Development (CLEUD) for the demolition of all buildings on site and installation/connection of main drainage from road to site.

Consultations & Notification Responses

No Consultation Required - There is no statutory requirement to consult third parties, including neighbours. Any views expressed by third parties regarding the planning merits of the case or concerning the applicant's private rights to carry out the proposed operation, use, or activity, are irrelevant when determining the application.

Legislative Issues

Sections 191 and 192 of the Town and Country Planning Act 1990 provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

The onus of proof in regard to (1) is firmly on the applicant and the issue of a certificate will depend on the on factual evidence provided about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The relevant test of the evidence in this matter is “the balance of probability” and the applicants own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicant’s version of events or make them less then probable, there is no good reason to refuse the issue of a certificate.

In regard to (2), this provides that, if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

In short, the purpose section 192 is to enable any person who wishes to find out whether any proposed use or operations would be lawful to apply to the LPA for that purpose.

The application needs to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission that are to be relied upon in order to satisfy the LPA that a certificate should be granted for the proposal.

In making their decision on an application under section 192, the LPA ask themselves the hypothetical question - "If this proposed change of use had already occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?" In doing so, the LPA will not only consider whether the proposal would involve "development" requiring an application for planning permission, but whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon, and which therefore constrains what can be done on the land. The LPA will not make a proposal fit a scenario; the only question is whether the proposal made by the applicant is lawful at the time of submission.

Relevant Planning History

On 21 November 2016, planning permission was granted for development on land bounded by Cheetham Hill Road, Lord Street & Fernie Street Manchester M4 4EX.

The description of development approved under application reference. **113914/FO/2016** (‘the Permission’) is as follows:

> Erection of a 16 storey building to form 192 residential apartments (Use Class C3a) together with ground floor commercial unit (172 sqm) (Use Class A1, A2, A3 or B1) with associated vehicular access from Fernie Street, car parking and hard and soft landscaping following demolition of existing buildings.

Additionally, two amendments to the Permission were approved:

- **124193/JO/2019** (Decision Date: 28 August 2019) – Variation of Condition 10 (Replacement Environmental Standards) attached to planning permission 113914/FO/2016.

- **138553/NMC/2023** (Decision Date: 29 December 2023) – Non material amendment to planning permission 124193/JO/2019 to amend condition 2 (Approved drawings) to insert an additional internal staircase and AOV, amend number of car parking spaces, remove sub-basement and change the commercial space to residents amenity space.

The Application

This application is pursued under subsection (1) of section 191 which provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land is lawful for planning purposes.

The applicant is seeking a Certificate of Lawful Existing Use or Development (CLEUD) for the demolition of all buildings on site and installation/connection of main drainage from road to site as part of the development permitted under planning permission reference 113914/FO/2016.

Section 91 of the 1990 Act provides that every full planning permission granted or deemed to be granted shall be subject to the condition that the development to which it relates must be begun not later than the expiration of:

> (a) three years beginning with the date on which the permission is granted or, as the case may be, deemed to be granted; or
>
> (b) such other period (whether longer or shorter) beginning with that date as the authority concerned with the terms of planning permission may direct.

By virtue of Section 56(1) of the 1990 Act development of land is taken to be initiated:

> (a) if the development consists of the carrying out of operations, at the time when those operations are begun;
>
> (b) if the development consists of a change in use, at the time when the new use is instituted;
>
> (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).

Section 56(2) of the 1990 Act provides that development shall be taken to be begun on the earliest date on which any material operation “comprised in the development” begins to be carried out.

The effect of Section 56 is that planning permissions may remain legally extant and capable of full implementation indefinitely (even after their formal expiry) provided that development has lawfully commenced.

These so-called “material operations” are listed at Section 56(4) as:

a) any work of construction in the course of erection of a building;

aa) any work of demolition of the building;

b) the digging of a trench which is to contain the foundations, or part of the foundations of any building;

c) the laying of any underground main pipe to the foundations or part of the foundations of a building, or to any such trench mentioned in para.(b).

d) any operation in the course of laying out or constructing a road or part of a road;

e) any change in the use of the land which constitutes material development.

Considering the above legislative provisions, the applicant’s submitted evidence seeks to demonstrate that material operations specifically demolition and drainage works were lawfully commenced within the relevant timeframe.

The Planning Practice Guidance points to the need for evidence to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The relevant test, established by the court in Thrasyvoulou v SSE [1984], is the balance of probabilities – whether something is more likely than not.

Assessment of Evidence

The supporting covering letter states that the following has occurred.

> *“The demolition work has been successfully completed, with all buildings on-site demolished to ground floor level. Asbestos removal and demolition works took place between 28 March 2019 and 30 September 2019. Enclosed are photographic records documenting both the demolition process (dated 25 July 2019) and the final cleared site (dated 02 October 2019), in full compliance with the approved plans. Additionally, the main drainage connection from the road to the site has been completed. The supporting documentation (as per above) from Beaumont Morgan and Building Control Partnership Ltd (dated 28 June 2019) is attached, confirming the commencement of development, along with recent photographs of the cleared site. The Applicant has also provided a copy of the Section 81 notice from MCC (dated 14 February 2019), granting consent for the demolition, as well as a letter from Building Control Partnership confirming the commencement of the drainage connection following the issuance of the ‘Initial Notice.’*

Photographs





Photograph 1 & 2 Before and after demolitions works





Photograph 3 & 4 During and after drainage installation

All pre-commencement conditions under planning permission reference: **113914/FO/2016** have been discharged namely (in date order of decision):

- Decision CDN/19/0182 dated 7 May 2019 – confirmed the formal discharge of condition 5 (construction management plan) and confirmed satisfaction of the pre-commencement element of condition 6 (local labour);

- Decision CDN/19/0536 dated 25 July 2019 – confirmed the formal discharge of condition 3 (drainage); and

- Decision CDN/19/0418 dated 28 August 2019 – confirmed the formal discharge of condition 4(a) (ground condition).

Therefore, based on the evidence provided, the applicant has demonstrated that the works undertaken constitute material operations as defined under Section 56(4) of the 1990 Act, specifically subsections (aa) and (b), relating to demolition and the main drainage connection. In

accordance with Section 56(2), development is deemed to have commenced on the earliest date any such material operation was carried out, which in this case is 28 March 2019, when demolition began. This falls within the three-year period required by Condition 1 of planning permission reference **113914/FO/2016**.

On this basis, the certificate should be granted.

Other Legislative Requirements
Equality Act 2010

Section 149 (Public Sector Equality Duty) of the Equality Act 2010 requires due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and; Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment. Compliance with the Equality Duty involves consciously thinking about the aims of the Equality Duty as part of the process of decision-making.

Human Rights Act 1998 considerations
This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved polices of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: Grant

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

That those works constitute a material operation as set out under Section 56(2) of the Town and Country Planning Act 1990 (as amended) and are comprised in the development permitted under planning permission reference 113914/FO/2016.

Appendix 1 – List of consultees & neighbours notified

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Article 4 Direction - City Centre PD Restriction - Class B1(a) To C3
Article 4 Direction - City Centre PD Restriction - Class B1(c) To C3
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: CENTRAL