

Planning

Growth & Development

Delegated officer report for planning application

Application no. 142014/LE/2025
Date registered valid: 24 February 2025
Proposal: Use as a dwellinghouse (Use Class C3)
Address: 138A Crescent Road, Manchester, M8 5UF
Ward(s): Crumpsall Ward

Applicant: Mr Tariq Siddique
Agent (if any): Mr Subhan Saleem Saleem Architects
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Grant
Date of recommendation: 16 April 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

Printed: 3 March 2025 Expired: 24 March 2025

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 an end-terraced, two-storey building located on Crescent Road within the Crumpsall Ward of Manchester.

The property is attached to 138 Crescent Road and was built as an extension to this property under planning permission reference: 120095/FH/2018.

Crumpsall is a suburban area approximately 3 miles northwest of Manchester city centre, known for its residential properties, which typically include semi-detached and terraced houses.

The area offers a mix of residential and commercial properties, with various amenities nearby, including several primary and secondary schools, a variety of shopping options, and multiple green spaces and parks for recreation.

In terms of public transport, the area is well-served by bus routes and has easy access to the tram, providing direct links in and out 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 (CLEU) use as a dwellinghouse (Use class C3)

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby residential properties (see appendix 1 for the list of properties).

Local residents/public opinion – No objections, comments or representations in support of the application have been received.

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 than 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.

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.

In a case of this type, the onus is on the applicant to substantiate their case on the balance of probability. This involves the applicant demonstrating that the extension to 138 Crescent Road was in use as separate dwellinghouse (use class C3) four years prior to the date of this application, **29 January 2025**.

However, as of **25 April 2024**, the immunity period for planning breaches has changed from four years to ten years because of the changes brought in by section 115 of the Levelling-up and Regeneration Act 2023, which amended section 171B of the 1990 Act.

Therefore, should the application be considered for ten years instead of four? The answer depends on whether the use as separate dwellinghouse (use class C3) commenced on or before **25 April 2024** to be considered under the four-year immunity period. If the use has commenced after this date, the applicant would need to demonstrate ten years instead of four.

Assessment of Evidence

The application form submitted indicates that the use as a single dwellinghouse began more than four years before the date of this application, on 21 September 2020.

Considering the changes to the immunity period discussed above, the applicant needs to demonstrate that the property as a separate dwellinghouse commenced by 29 January 2021 and remained in situ for four years, until 29 January 2025, the date of the application, for a certificate to be granted.

Planning history for the site shows that on 4 July 2018, planning permission was granted under application reference 120095/FH/2018 for a part single, part two-storey side extension to form additional living accommodation at 138 Crescent Road, Manchester, M8 5UF. The approved drawings (images 1 and 2) show that the extension sought to provide a living room and a utility room on the ground floor, and a bedroom and w/c with shower on the first floor.

The extension would be accessed from the ground floor, which appears to be the kitchen, via an existing side door that provided access to a single-storey side and garage that has been replaced by the extension. A second door is shown providing access to the rear garden.

The application form explains that the dwelling has been registered as an address since 2020 and has been in use as a separate dwelling since its construction, with separate council tax, utility bills, and address from the main dwellinghouse at 138 Crescent Road, Manchester, M8 5UF.

The evidence provided by the applicant to demonstrate the four years includes the following:

- A letter and notice from the Council's Street Naming & Numbering dated 9 October 2020 to officially register 138A Crescent Road as an address.
- A council tax bill for the charge year 2024/25 dated 17 April 2024 with the property address identified as 138A Crescent Road, Manchester, M8 5UF.
- United Utilities water bill dated 22 February 2022 for the billing period 23 July 2021 – 19 January 2022 and a further bill dated 17 May 2024 regarding payment instalments. The

bill was sent to the property address identified as 138A Crescent Road, Manchester, M8 5UF.

- British Gas statement dated 20 May 2024 for electricity usage at the property for the period covering 20 February 2024 until 19 May 2024. The bill was sent to the property address identified as 138A Crescent Road, Manchester, M8 5UF.
- British Gas statement dated 11 December 2024 for electricity usage covering the period of 12 July 2024 to 11 December 2024.
- A photograph with no date showing the front of the property with a sign displaying the number and name of the address.
- A second photograph taken from the garden of 138 Crescent Road providing a view of the rear of both properties and a fence separating the gardens.
- Existing Floor Plan (image 3) showing the internal layout of the property, which includes a kitchen/living room on the ground floor and two bedrooms and a bathroom on the first floor. The floor plan also reveals that the driveway is shared with 138 Crescent Road.
- Existing Elevations (image 4) showing the elevations as built.

In this regard, the Planning Practice Guidance advises that:

“In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.” Paragraph: 006 Reference ID: 17c-006-20140306

The council tax band website for the property reveals that the property has been given a Council Tax Band A, which came into effect on 31 January 2021.

The applicant does not have to demonstrate beyond all reasonable doubt, as that is the standard of proof required for criminal cases and would be the wrong test to apply.

Therefore, on the balance of probability and without any evidence to the contrary, the property has been in use as a house in multiple occupation, and the certificate should be granted.



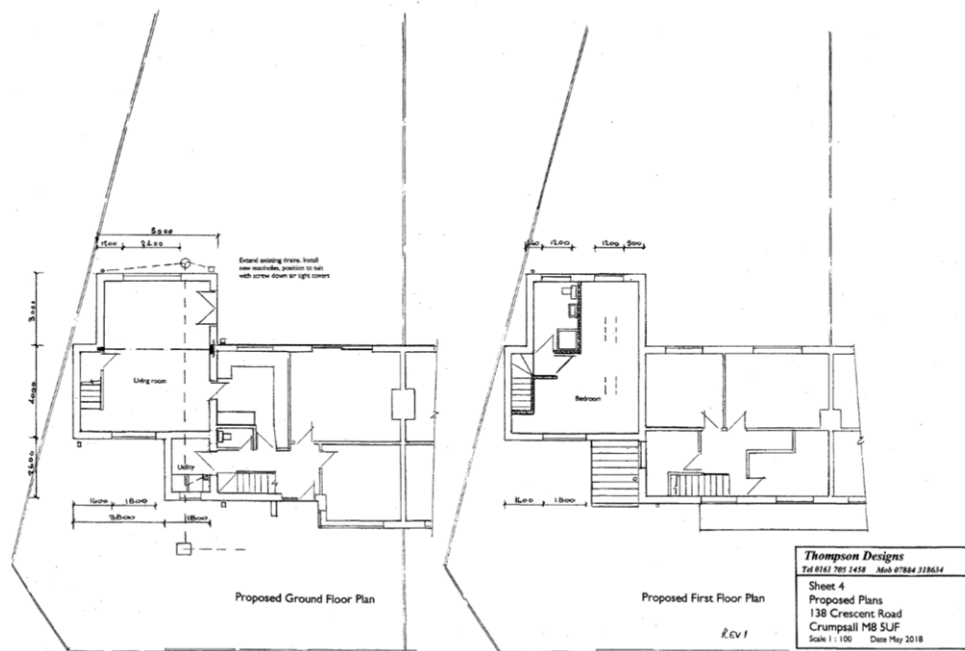


Image 2 Approved ground and first floor plans Planning Permission reference: 120095/FH/2018 Drawing No: 4 (Rev 1)

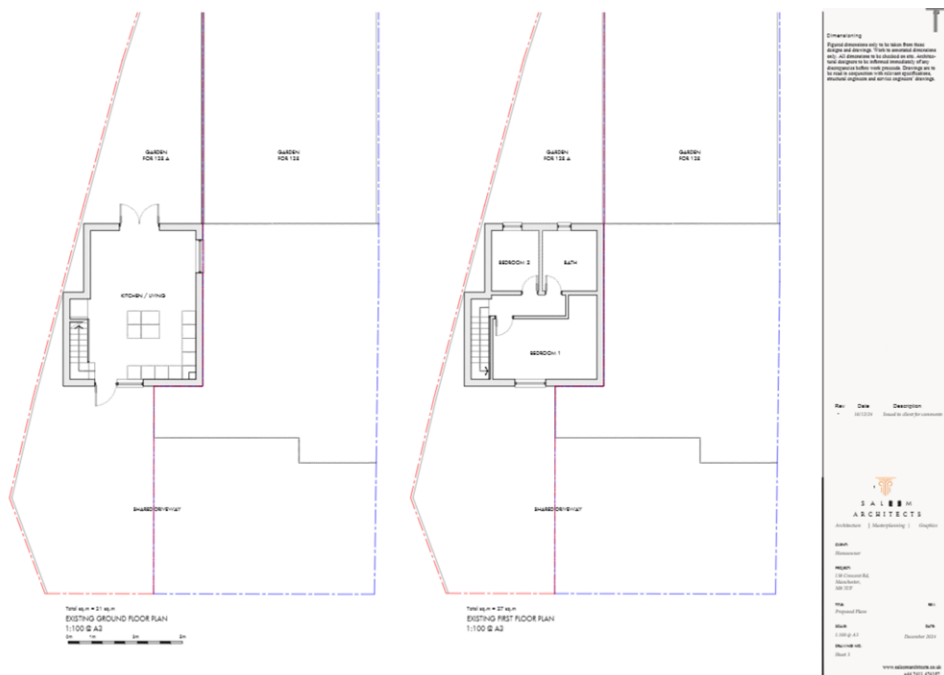


Image 3 Ground and first floor plans as built



Image 4 Front, side and rear elevations as built

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 policies 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

1) From the evidence available, and with reference to the relevant planning legislation, the use commenced on or before 25 April 2024 and has been in existence for a period of 4 years up to the date of this application.

Appendix 1 – List of consultees & neighbours notified

Units 1 To 4, Abraham Moss Centre, 140 Crescent Road, Manchester, M8 5UF
North Manchester Community Link, Abraham Moss Centre, 140 Crescent Road, Manchester, M8 5UF
Abraham Moss Library-Theatre, Crescent Road, Manchester, M8 5UF
Abraham Moss Centre, 140 Crescent Road, Manchester, M8 5UF
Flat 3, 181 Crescent Road, Manchester, M8 5UJ
169 Crescent Road, Manchester, M8 5UJ
181 Crescent Road, Manchester, M8 5UJ
Flat 2, 181 Crescent Road, Manchester, M8 5UJ
Flat 1, 181 Crescent Road, Manchester, M8 5UJ
171 Crescent Road, Manchester, M8 5UJ
138 Crescent Road, Manchester, M8 5UF
177 Crescent Road, Manchester, M8 5UJ
179 Crescent Road, Manchester, M8 5UJ
175 Crescent Road, Manchester, M8 5UJ
173 Crescent Road, Manchester, M8 5UJ
136 Crescent Road, Manchester, M8 5UF

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Historic Landfill Site 250m Buffer -
Area Team Boundary - Name: NORTH AREA