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**2025/0404**

**Applicant:** Mr Mark Wetton

**Development:** Certificate of Lawfulness for the use of the first floor of the existing building as a self-contained residential unit (Existing)

**Address:** 17 (Adjoining 19) Saville Lane, Thurlstone, Barnsley, S36 9RE

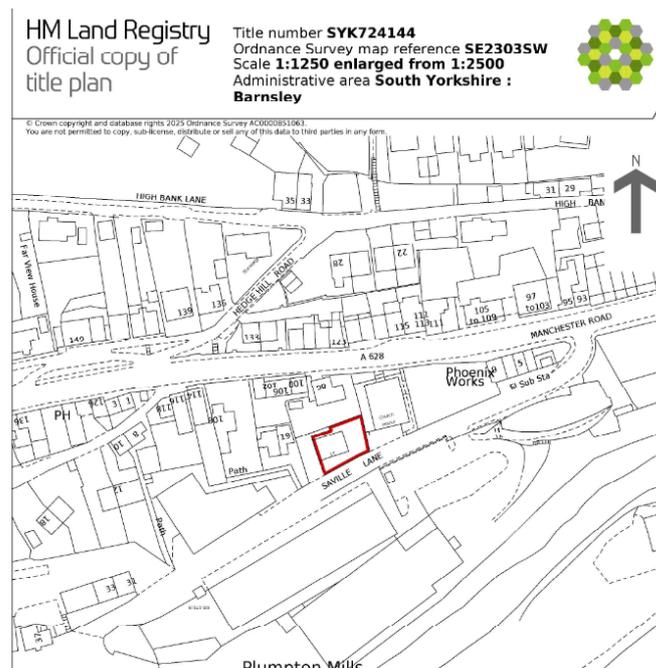
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## Site Description

The site is located on Saville Lane, Thurlstone. The building was originally a garage associated with 98 Manchester Road located at the bottom of the rear garden area. The building is detached, stone built with a pitched roof, two small windows and a door on the front elevation and a large roller garage door located on the east elevation. The site lies in the centre of Thurlstone and close to the boundary with the conservation area. Due to the topography of the site the land slopes steeply to the south from 98 Manchester Road and is accessed from Saville Lane. There is a partly retaining stone wall providing a boundary between the application site and 98 Manchester Road.

Saville Lane consists mostly of industrial and office buildings with a small number of residential peppered within. To the east of the site is a converted chapel and to the west is an industrial unit with some residential properties located to the rear. To the south of the site is a large industrial unit and associated car parking.

The building was originally approved in 1980 under application 80/0904 for the parking and repair of taxis. The structure commenced and the foundations constructed, however it was not complete until 2005, when an application was approved to erect a pitched roof to the garage. Planning permission for the building was granted under 2012/0674 for the erection of an extension to detached garage. The building has been described as a garage within all previous planning applications, and all plans submitted confirmed this.



## Proposed Development

There are 2 types of lawful development certificate. A local planning authority can grant a certificate confirming that:

- (a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990 or;
- (b) a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990.

This application is for a certificate of lawfulness to regularise the use of the first floor of this building as a self-contained residential unit under Section 191 of the Town and Country Planning Act 1990. Section 191 determines that if any person wishes to establish whether any existing use of land is lawful, may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

Section 191 then provides that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful, they shall issue a certificate to that effect; and in any other case shall refuse the application.

The applicant has submitted the following documents in support of their LDC application:

- Email dated 14/01/2025 from Lee Scott Yates stating that the building has been lived in by Mr and Mrs Wetton for 18 years.
- Existing Plan White Agus 23-174
- Statement of account Simon Elliot Associates 04/04/2025
- 03/09/2024 Statement from 19 Saville Lane stating that the building has been lived in on and off since approximately 2007/8.
- 03/03/2025 Statement letter from the applicant
- 03/04/2025 Statement of truth – Mr Wetton the applicant
- 03/03/2025 Statement from the occupier of the flat stating that the building was lived in by Mr & Mrs Wetton from March 2007 to August 2017, Mr Oliver Robinson August 2017 to July 2022 and Mr & Mrs Wetton September 2022 to present.

## History

B/80/0904 Erection of garage for the parking and repair of taxis

B/05/0519 Erect new pitched roof to existing flat-roof garage.

2007/10158 Erection of detached dwelling

2010/0741 Erection of detached dwelling

2012/0674 Erection of extension to detached garage.

2013/0548 Erection of detached dwelling (2010/0741 Extension of time limit)

## Policy Context

Section 191 of the Town and Country Planning Act 1990: Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations, or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—  
(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and  
(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—  
(a) the time for taking enforcement action in respect of the failure has then expired; and  
(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—  
(a) the time for applying for an order under section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,  
(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or  
(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—  
(a) specify the land to which it relates;  
(b) describe the use, operations, or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);  
(c) give the reasons for determining the use, operations, or other matter to be lawful; and  
(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations, or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—  
(a) section 3(3) of the Caravan Sites and Control of Development Act 1960 or section 7(1) of the Mobile Homes (Wales) Act 2013;]  
(b) section 5(2) of the Control of Pollution Act 1974; and  
(c) section 36(2)(a) of the Environmental Protection Act 1990.

In most cases the applicant has to provide evidence that the building was in residential use for 10 years or more, however, provided that the works were substantially complete by 25 April 2024, then the application will have to provide evidence that the building was in residential use for 4 years or more.

## **Consultations**

Enforcement – Enforcement notice appeal was dismissed for this use.

Legal – No comments received.

An objection was raised stating that the building has been used commercially since 1980, and more recently the objector states that there is evidence that the building has been used as an operating centre for a bus until August 2023. The objector presents an operator's licence number for this address to confirm this use. The objector states that the applicant has concealed any residential use within the building in order to obtain permission.

## **Assessment**

The application relates to the building addressed as 17 Saville Lane. The key issues within the assessment of this Lawful Development Certificate application is whether appropriate evidence has been presented to establish that 4 years continuous use for a self-contained flat within the first floor of the building, at what period, and whether a material change of use has occurred (either during or after the 4 years), which has disrupted the continuous use.

The applicant is a family member (brother of the deceased) and has presented a letter and a statement of truth stating that the first floor of the building was used for residential purposes on and off from 2004/2005 by Mr and Mrs Wetton. Mr Wetton sadly died in 2023, and his wife has continued to live at this address. There is also a letter from a neighbouring building and from the occupier of the building, all stating that the upper floor has been used as residential for a number of years.

In contrast the Council has also received a letter from a neighbour stating that the building has been used for commercial purposes only since 1980, and more recently the objector states that there is evidence that the building has been used as an operating centre for a bus until August 2023. The objector presents an operator's licence number for this address to confirm this use. The objector claims that the applicant has concealed any residential use within the building in order to obtain permission.

The information gathered as part of this application presents conflicting evidence. It is noted that the occupier received an enforcement notice, which was appealed, however this appeal was subsequently dismissed. It is also noted that the applicant has failed to provide any compelling evidence such as tenant agreements, utility bills, electoral register, or council tax payments. .

Furthermore, within the planning applications presented to the Council the building has been described as a garage, along with supporting drawings confirming this.

The information submitted lacks clarity, continuity and it is therefore considered that the supporting document does not provide sufficiently precise and unambiguous evidence of 4 years continued residential use. In view of this, the application cannot be supported and is recommended for refusal.

## **Conclusion**

The overriding conclusion from the information submitted is that the applicant's evidence is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

**Recommendation:** Refuse