

Officer Report

Case Reference: PL/2026/0669
Location: Bridge House, Mellor Street, Rochdale
Proposal: Application for a certificate of lawfulness (Existing) for the sub-division of existing Class E unit into 6 Class E units
Recommendation: Refuse
Officer: Majid Mir

SITE DESCRIPTION

The application relates to a site which consists of red brick building. The building fronts on to Mellor Street. The building appears as a single storey structure when viewed from Mellor Street. There is vehicle parking spaces on either side of the building.

To the rear, the land drops down and therefore the rear of the property is a two storey structure. Access to the rear of the property is via Spotland Road. There is land to the north that has hardstanding and is gated.

To the northeast there are commercial units that front on to Spotland Road. To the southeast there are multiple commercial units. All the units share the same access off Spotland Road. When viewing from Mellor Street, to the south there is a large industrial unit. On the opposite side of Mellor Street and to the east of the application site there are residential dwellings. To the north there are a mixture of commercial units and residential properties.

The river Spodden runs through the site with the building built over the river. The site is also located within the Spotland Bridge Conservation Area and a Mixed Employment Zone as identified under policy EC/3 of the UDP.

PROPOSAL

A certificate of lawfulness is sought under Section 191 of the Town and Country Planning Act 1990 for use under Use Class E and the sub-division in to six units. The application form states that the existing lawful use is commercial offices, which was formerly Use B1(a) and is now Use Class E(g)(i). The application form states:

“The property has been occupied and operated as commercial offices for approximately ten years or more. The lawful use is office accommodation (formerly class B1(a), now class E(g)(i). Internal refurbishment work has commenced to subdivide the building into six individual commercial units. No material change of use has taken place as all units remain within Use Class E.”

RELEVANT PLANNING

94/D30996 - Change Of Use From B1-Business Use To B2-General Industrial Use. Decision: Approve with conditions.

99/D36237 - Use Of Part Of Basement As A Private Hire Booking Office With Yard Car Parking. Decision: Approve with conditions.

99/D36658 - Erection Of Portacabin For Use As A Private Hire Booking Office With Associated Car Parking And External WC. (Retrospective Application). Decision: Approve with conditions.

RELEVANT PLANNING LEGISLATION

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 (England) 2015

PUBLICITY

In accordance with the Council's code for publicity for this type of application, no letters of notification have been issued.

ANALYSIS

The application seeks to demonstrate that there is an existing lawful use of the property as six commercial units within Use Class E that has taken place for 10 or more years continuously, and as such, is lawful in accordance with Section 191(2) of the Town and Country Planning Act 1990.

Section 10 of the Planning and Compensation Act 1991 sets out the requirements for a Certificate of lawfulness of existing use or development. The requirements of the act which substituted section 191 of the principal Act (Town and Country Planning Act 1990) are summarised below:

191 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 M1Caravan Sites and Control of Development Act 1960;

(b) section 5(2) of the M2Control of Pollution Act 1974; and

(c) section 36(2)(a) of the M3Environmental Protection Act 1990.

Section 171 of the Town and Country Planning Act 1990 establishes the time limits for enforcement as referenced above:

171B Time limits

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of—

(a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and

(b) in the case of a breach of planning control in Wales, four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of—

(a) in the case of a breach of planning control in England, ten years beginning with the date of the breach, and

(b) in the case of a breach of planning control in Wales, four years beginning with the date of the breach.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

Burden of Proof

The applicant is responsible for providing sufficient information to support an application. 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 (PPG Paragraph: 006 Reference ID: 17c-006-20140306)

Analysis of Evidence

As noted above, the application form states:

"The property has been occupied and operated as commercial offices for approximately ten years or more. The lawful use is office accommodation (formerly class B1(a), now class E(g)(i). Internal refurbishment work has commenced to subdivide the building into six individual commercial units. No material change of use has taken place as all units remain within Use Class E."

Evidence provided to support the application consists of a location plan, ground floor plan, lower ground floor plan, site plan and the application form.

The planning history for the site shows that there have been three planning applications associated with the site. Application 94/D30996 was for a change of use from Use Class B1 (Business Use) to Use Class B2 (General Industrial Use). Planning permission was granted subject to conditions. Following this, there were two applications in 1999 for the use of the basement as a private hire booking office and a retrospective application to site a portacabin for use as a private hire booking office with associated parking and external water closet. Planning permission 99/D36658 limited the siting of the portacabin until 10 August 2000, unless further planning permission is granted. No application to extend the use and siting of the portacabin was submitted. Condition 5 also required the use to cease if the proposed use of the basement of the adjacent building for private hire, granted under planning permission 99/D36237, is taken up. No evidence has been provided to suggest that the planning permission for the basement was implemented.

Google streetview images from August 2016 of the front elevation facing Mellor Street show that there were two units. The fascia signs read 'Langstreth & Hunter Accountancy Service' and 'Conservatory & Garden Furniture'. The most recent Google images show that the building has been the same from August 2016 to August 2024. The same fascia signs are still attached to the building. It is noted that images show that between August 2024 and August 2025, windows and the shutters on the building were replaced. The units appear to be empty, and shutters have been down on all the available images for that period. It is also noted that an image from June 2015 shows a 'for sale' sign.

Google images also show that from August 2019 to August 2021 there were vehicles in a state of disrepair parked within the grounds of the site. It is unclear what the purpose or use of the site was during this period. The images would suggest that the site may have previously been used as a vehicle repair shop. Officer photographs show walls signs for G1 Automotive installed on the elevation of the building. There is also a large shutter on the elevation and would suggest potential access for vehicles. Nevertheless, available information suggests G1 Automotive is a car sales business and therefore would fall under Sui Generis use.

Information available on geographic information systems have identified four addresses registered at the property. Three are unnamed and used for industrial purposes as warehouse/storage/storage depot. The fourth is 'ABN Fashions' which is identified as

workshop/light industrial. This use would be in line with the approved use (Use Class B2) under planning permission 94/D30996.

As such, it is unclear whether the existing lawful use of the building falls under Use Class E. There is evidence to suggest that the building has been used for another use within the Use Class Order within the last ten years and therefore has not been used continuously for a minimum of 10 years within Use Class E and thereby immune from enforcement in accordance with paragraph 171B of the TCPA. Nevertheless, the applicant has failed to provide any evidence to support the application that would show that the building has been used as offices.

On the balance of probability, it is considered that the lawful use of the site does not fall under Use Class E, and insufficient information has been provided to show that the building has been continuously been used for a minimum of 10 years under Use Class E. Additionally, subdivision of the building into six Use Class E units would represent a material change.

Recommendation: Refuse

Refusal(s) (1)

- 1 On the balance of probabilities, and given the lack of any definitive evidence, the application has failed to demonstrate that the premises have been used as an office within Use Class E and in operation for ten or more years as of the date of application. Given that the lawful use of the building within Class E is not demonstrated, the development is therefore not lawful within the meaning of Section 191 of the Town and Country Planning Act 1990.

- 1 For the avoidance of doubt, this decision relates to the following list of submitted plan documents:

- Application Form
- Location Plan
- Ground Floor Plan. Drawing number: 2447/1
- Lower Ground Floor Plan. Drawing number: 2447/2
- Site Plan. Drawing number: 2447/3