



JUDITH DOUGLAS TOWN PLANNING LIMITED

53-57 Berry Lane, Longridge, Preston. PR3 3NH.

Application for a Certificate of Lawfulness for the use of the first floor of the building and associated land as Class E Commercial, Business and Service (d) indoor sport, recreation or fitness.

Town and Country Planning Act 1990: Section 192 as amended by section 10 of the Planning and Compensation Act 1991. Town and Country Planning (Development Management Procedure) (England) Order 2015.

Planning Statement JDTPLO521

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## 1 INTRODUCTION

- 1.1 This application is submitted under the provision of Section 192 (1) (a) of the Town and Country Planning Act 1990 (as amended) for the purpose of seeking a certificate of lawful use or development for the use of the first floor of 53-57 Berry Lane, Longridge, Preston PR3 3NH and the associated land to the rear as a Pilates Studio under Class E Commercial, Business and Service (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public, under the Town and Country Planning Use Classes Order 1987 as amended.
- 1.2 The application is made on the basis that the first floor of the building 53-57 Berry Lane, Longridge, Preston PR3 3NH and land to the rear, have been used for retail purposes for a period of over 10 years before the date of this application.
- 1.3 The application is made on behalf of Mr W.J and Mrs J Swift the owners of the building. The application should be read in conjunction with the following documents:
- 3395 11 Location plan 1:1250 and Site Plan 1:200
  - 3395 12 Existing First Floor Plan 1:100
  - 3395 13 Proposed First Floor 1:100
  - 3395 14 Existing and Proposed Rear Elevations 1:100
  - 3395 15 Existing and Proposed Berry Lane Elevation 1:100
  - Statutory Declaration by W.J Swift. Appendix 1
- 1.4 The Town and Country Planning Act 1990 Section 192 provides for any person to apply to the local planning authority specifying the land and describing the use, operations or other matter to ascertain whether-
- (a) any proposed use of building; or
- (b) any operations proposed to be carried out in, on, over or under land, would be lawful.
- 1.5 For the purposes of the Act, uses and operations are lawful at any time if no enforcement action may then be taken against them because the time for enforcement action has expired and no enforcement notice is in place. The Planning Act 2008 (Commencement No.8) and Levelling -up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulation 2024 made changes to the enforcement system. The amendments made by section 115 (time limits for enforcement) do not apply where-
- “(a) in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act (5) (time limits), the operations were substantially completed, or
- (b) in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred, before the day on which that section comes into force.”

- 1.6 A lawful development certificate relates just to a snapshot in time and seeks to determine the lawful use of the land or buildings on the date of the application. The application is decided solely on the basis of the evidence submitted, as a matter of fact and degree, on the balance of probabilities. Planning policy is not relevant. The National Planning Practice Guidance states where the application is for existing use, *“in the case of application for existing use, if the 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 not good reason to refuse the application, provided that 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

## 2 SITE AND SURROUNDING AREA

- 2.1 The site comprises the first floor of 53-57 Berry Lane Longridge, pedestrian access from Warwick Street and land adjacent Warwick Street. The site is in the town centre of Longridge and within the Longridge Conservation Area. The site is currently vacant. The last use of the premises was a retail use as part of Swift’s Hardware shop. The ground floor of 53-57 is now occupied by Domino’s Pizzas hot food takeaway, a sui generis use and Mobi Village a retail shop Class E (a) use. The application site is physically separate from the ground floor uses.

## 3 BACKGROUND AND HISTORY

- 3.1 The relevant planning application history of the site is shown in the table below.

Reference	Address	Proposal	Decision
3/2023/0055	53 to 57 Berry Lane Longridge PR3 3NH	Change of use of Unit 2 from retail unit (Class E) to a Hot Food Takeaway (Sui Generis) with installation of extraction equipment. Shop front alterations to units 1 and 2.	APPROVED WITH CONDITIONS Date : 23/06/2023
3/2021/1160	53 to 57 Berry Lane Longridge PR3 3NH	Demolition of an extension, polytunnels and storage building and erection of extension to existing retail premises (use class E) at ground floor and five apartments above. Conversion of upper floor of existing building to create two apartments.	REFUSED Date : 14/04/2022
3/2001/0421	REAR OF, 53-57 BERRY LANE, LONGRIDGE, PRESTON	CHANGE OF USE OF GARAGE AREA TO RETAIL FLOOR SPACE	APPROVED WITH CONDITIONS Date : 20/07/2001

3/2001/0189	53-57 BERRY LANE, LONGRIDGE, PRESTON	ERECTION OF TEMPORARY POLYTUNNEL STRUCTURE TO REAR OF BUILDING	APPROVED WITH CONDITIONS Date : 19/06/2001
85/0007	53, 55, 57 Berry Lane	Extension and alteration to existing shop premises and change of use of optician and flat to shop with stores over.	Approved 21.02.85.

3.2 Arnold Swift purchased 55 Berry Lane in 1957 his first Berry Lane shop. In the early 1970's Arnold Swift had the opportunity to purchase the adjoining shop 53 Berry Lane. In 1985 the now Swift family purchased 57 Berry Lane establishing the Berry Lane store within 53-57 Berry Lane. The first floor of 55 Berry Lane was used as part of the shop from 1959 selling Hygena and Eastham Kitchen units. This use of the first floor for retail purposes continued as the adjoining properties were purchased. The store layout was changed as the premises expanded. When 57 Berry Lane was purchased in 1985 the first floor was modernised to accommodate staff toilets and a small stock room the remaining floorspace being retail. In 2008, a small part of the ground floor of the shop was sublet to "Pipkins" which was accessible from Berry Lane and also through an opening into Swift's Hardware. This was a store within a store with shared use of electric lighting, toilet and restroom facilities and refuse storage.

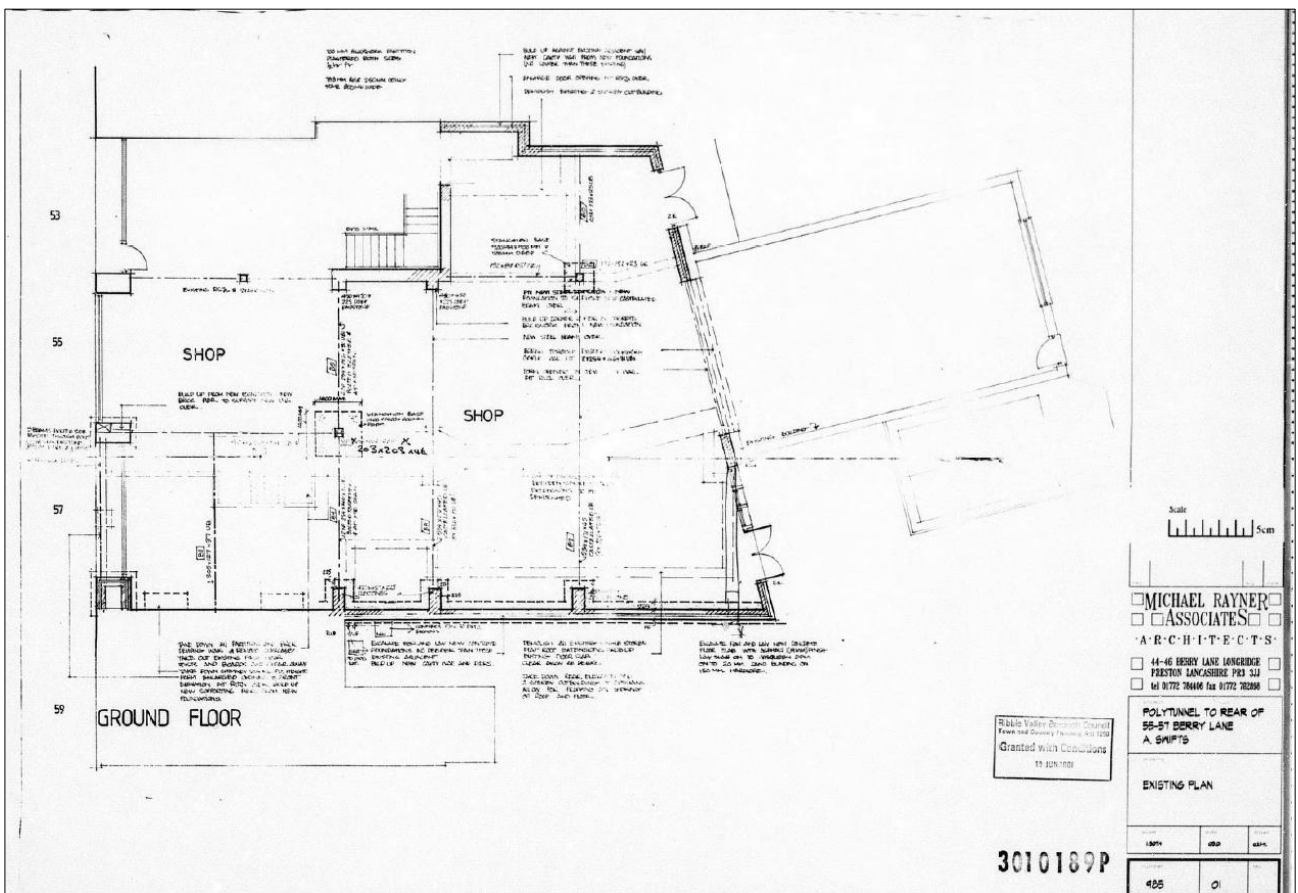


Figure 1 Existing ground floor plan 985-01 of 53-57 Berry Lane. 2001

- 3.3 The planning permission 85/0007 *“Extension and alteration to existing shop premises and change of use of optician and flat to shop with stores over”* placed no restriction on the use of the premises. The permission granted under 3/2001/0189 included an existing plan 985 01 of the ground floor. This shows the ground floor layout of the shop in 2001 including the single storey part adjacent to Warwick Street and rear doors. See figure 1
- 3.4 The ground floor and first floor of 53-57 Berry Lane Longridge was in retail use until the premises were damaged by fire on the 28<sup>th</sup> April 2021. At the time of the fire, the ground floor was as described above, that is, occupied by the retail uses, Swifts Hardware and Pipkins. The whole of the first floor of 53-57 Berry Lane Longridge was still in retail use as part of Swifts Hardware Shop with the ancillary staff facilities shared with Pipkins.
- 3.5 The existing floor plans submitted with planning application 3/2021/1160 show the existing floor layouts in 2021 after the fire. See appendix 1 21-043 PL03 Existing Ground Floor Plan and appendix 2. 21-043 PL04 Existing first floor and roof plan. The planning statement submitted with 3/2021/1160 at section 2.1 stated:  
*“The site comprises two storey retail premises (two units) which front Berry Lane. The first floor of the retail premises is used as storage, office, staff welfare facilities and a small retail area in connection with Swift Hardware. The larger of the two retail units, Swift Hardware, extends out at the rear to Warwick Street and has ancillary retail space within two polytunnels, and yard at the rear facing Warwick Street. Adjacent to this is a storage building which fronts Warwick Street.”*
- 3.6 The fire damage was extensive, particularly in the rear single storey element of the building. Emergency alterations to the building were undertaken to make the building safe.
- 3.7 The land at the rear of the building included in this application comprises a small area in front of the rear access door and the floor area of part of the building which was altered due to safety issues following the fire damage. All of this land was within the curtilage of Swift’s Hardware Store at the time of the fire in 2021 and has not been used for any other purpose since that time.
- 3.8 The planning permission granted in 2023, 3/2023/0055 related to the ground floor of 53-57 Berry Lane, excluding the fire damaged single storey section of the building adjacent to Warwick Street. The planning statement accompanying the application prepared by Pegasus Planning Group on behalf of the applicant Dominos Pizza UK and Ireland Limited stated at section 2.1 that the first floor was in use as two one-bedroom flats. This was not in fact the case and was a mistake made by Pegasus Planning probably due to a misunderstanding.

- 3.9 The upper floor of 53-57 Berry Lane has been vacant since the fire in 2021. It has not been put to any other use. Similarly, the land and the remaining ground floor part of the building at the rear adjacent to Warwick Street has not been put to any other use since the fire in 2021.

#### 4 EVIDENCE IN SUPPORT OF THE CERTIFICATE.

##### Evidence of use of building and land for retail Class E(a).

- 4.1 The existing use of the first floor of the building 53-57 Berry Lane and the land to the rear enclosed by the fire damaged part of the building is retail Class E (a) of the Use Classes Order. This is verified by the long-standing use of the building and there being no intervening uses. Whilst these parts of the building and land have not been used since the fire occurred in 2021, the use has not been abandoned and there have been no intervening uses. This is confirmed by the Statutory Declaration of W.J Swift.
- 4.2 The planning applications for the change of use of the ground floor of 53-57 Berry Lane in 2023 placed no conditions limiting the use of the rest of the building. We are not aware of any historic planning permissions which limit the use of the building.

##### Lawfulness of the proposed use as a Pilates Studio

- 4.3 The Town and Country Planning Use Classes Order 1987, Schedule 2 Part A Class E. Commercial, Business and Service includes “*use, part use, for all or any of the following purposes-*
- (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,*
  - (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,*
  - (c) for the provision of the following kinds of services principally to visiting members of the public—*
    - (i) financial services,*
    - (ii) professional services (other than health or medical services), or*
    - (iii) any other services which it is appropriate to provide in a commercial, business or service locality,*

*(d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,*

*(e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,*

*(f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,*

*(g) for—*

*(i) an office to carry out any operational or administrative functions,*

*(ii) the research and development of products or processes, or*

*(iii) any industrial process,*

*being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.”*

- 4.4 The proposed use is a Pilates Studio. The Pilates instructor will hold classes for members of the public to take part in. The instructor gives directions to the class to carry out exercise to improve flexibility, muscle strength and fitness. This activity falls within Class E (d) indoor sport, recreation or fitness. Planning permission is not required to move between use Class E (a) and Class E (d).

## **5.0 PLANNING ASSESSMENT AND CONCLUSION.**

### Lawfulness of the proposed use

- 5.1 We have demonstrated that the existing use of the building identified on the application drawings have a lawful use for retail purposes under Class E (a) of the Use Classes Order. The existing retail use had been in place for more than 10 years before the 28<sup>th</sup> April 2021. The land and building have been vacant since that time and there has been no other intervening use. The proposed Pilates Studio will offer activities which fall within Class E (d) indoor sport, recreation or fitness. Planning permission is not required to move between the uses listed under Class E.

## **Appendices**

Appendix 1 Statutory Declaration of W.J Swift

Appendix 2 21-043 PI03 Existing Ground Floor Plan

Appendix 3 21-043 PL04 Existing first floor and roof plan