

DELEGATED DECISION REPORT

HPK/2026/0095
Valid 09/03/2026

5 & 7 RIVERSIDE
THORNSETT
BIRCH VALE

**CERTIFICATE OF
LAWFULNESS FOR THE
EXISTING USE OF 5 AND 7
RIVERSIDE AS SINGLE
RESIDENTIAL UNIT**

**(CERTIFICATE OF
LAWFULNESS - EXISTING)**

MAIN ISSUES

- Whether the evidence submitted with the application proves that on the balance of probability, the existing use as described is lawful having regard to relevant sections of the Town and Country Planning Act 1990

DESCRIPTION OF SITE

The application relates to a split level stone building that lies adjacent to Thornsett, Birch Vale.

The building reads as a pair of two storey dwellinghouses from street level. Due to a change in land levels, the building contains two further floors below the finished floor level of the highway, accessed via a set of stone steps and a small area of shared amenity space, resulting in the building reading as a four storey building from the rear.

The rear of the premises is characterised by three ground floor entrance doors, the most eastern of which is separated from the others by a stone wall. Above this far eastern door are four windows in a diamond formation across three floors. Other windows in the rear are positioned in a linear pattern adjacent to the other two entrance doors.

The principal elevation is defined by two entrance doors. The most western entrance door sits adjacent to a ground floor window with first floor window above, whilst the most easterly door sits centrally either side of 2no ground and 2no first floor windows.

In line with records held by the Council's Income Tax team, the premises is home to 3no known residential units. 2no two storey dwellings (Nos. 36 and 38 Thornsett) are accessed via the principal elevation whilst No.38a is accessed via the most easterly rear access door, across two storeys, which has been paying Council Tax since 2005.

The other aspects of the building which are accessed via two rear entrance doors do not relate to any properties that are on the Council's record

PROPOSAL

In its original form, this application sought a Certificate of Lawful Development to establish that in addition to No.38a Thornsett, the rear of the premises serves two additional residential units known as No.5 and No.7 Riverside, Thornsett.

However, in light of the Council's assessment of the available evidence, the applicant has agreed to amend the description of development whereby the Certificate is now seeking to establish that the areas of the building referred to as Nos. 5 and 7 Riverside have a lawful use as a single residential unit across two storeys.

The application is supported by the following plans and documentation:

Plans

- Location Plan (Ref: G-307)
- Existing Level 1 Floor Plan (Ref: G-003 Rev B)
- Existing Level 2 Floor Plan (Ref: G-002 Rev B)

Documents

- Cover Letter from Walsingham Planning (Agent) 3rd March 2026
- Site Photos
- Statement of Truth Thomas Branson 10th February 2026
- Statement of Truth Robert Branson 13th February 2026

CONSULTATIONS

HPBC Income Team

I've checked our records and can see that both No.36 Thornsett, Birch Vale and No. 38 Thornsett have been registered as domestic properties for Council Tax since 1 April 1993 (when council tax began).

The Valuation Office brought 38a Thornsett in to Council Tax as a separate property from 25 April 2005.

I can't see any record of 5 & 7 Riverside, unless they go by a different name on our records.

OFFICER COMMENTS

Section 191 of the Town and Country Planning Act 1990 refers specifically to applications seeking a Certificate of Lawful Development for an Existing Use and reads as follows:

191 Certificate of lawfulness of existing use of 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.

1. Evidence

The evidence submitted in support of the case (as applied for originally) consists of the following:

Cover Letter to HPBC

- Properties have been in same ownership (Branson family) since 1956
- Building benefits from 5no separate postal addresses
- Each unit has its own front door and is self contained with bathroom, kitchen, bedrooms and living area
- Access to Nos 5 and 7 is via steps from Thornsett
- Signed Statements of Truth from Thomas and Robert Branson confirm history of properties and that they consist of four separate properties since at least 1956.
- No mention is made in relation to No.38a but it is understood that this was sectioned off at least 21 years ago and registered for Council Tax
- In absence of any planning history and in light of Branson family knowledge, evidence supports notion that Nos 5 and 7 Riverside are two separate residential units that have existed continuously for over 10 years and therefore have an established use

Statement of Truth – Thomas Branson

1. I have lived at No.38 Thornsett since 1956
2. When parents purchased the building it was made up of 4 separate addresses:
 - (i) No.36 Thornsett, Birch Vale
 - (ii) No.38 Thornsett, Birch Vale
 - (iii) No.5 Riverside, Birch Vale
 - (iv) No.7 Riverside, Birch Vale
3. 4 properties remain to this day
4. The properties have never in our ownership been subject to any planning or building regulations application

Statement of Truth – Robert Branson

1. Born at No.38 Thornsett, Birch Vale in 1956 and lived there until 1989
2. At the time I was born my parents owner No.38, No.36 Thornsett and Nos. 5 and 7 Riverside – 4 residential properties in one building
3. No.5 was positioned in basement and lower ground floor
4. No.7 was positioned on basement and lower ground floor
5. No.38 was positioned on ground floor, first floor, basement and lower ground floor

6. No.36 was positioned on ground floor and first floor
7. In 1984 my mother assigned the unregistered leasehold title to No.36 which is now registered to myself
8. My mother continued to own No.38 until her death. I am the executor of her estate.
9. I have not made or have in my possession an application or competition certificate for building regulations approval or planning permission for any alteration to the building.

Both Statements of Truth from Thomas and Robert Branson refer to a Floor Plan which has been colour coded – see screenshot below:



Above: Screenshot of Floor Plan that appends each Statement of Truth

Plans

The application is supported by architectural Floor Plans that show the layout of the existing Basement and Lower Ground Floor levels that sit below Nos. 36 and 38 Thornsett.

2. Assessment

Both members of the Branson family refer to there being 4no residential units within one building. However, both do not make any reference to No.38a Thornsett, which according to the Council's Income Team, has been a registered property paying Council Tax since 2005.

This contradicts the position set out within the supporting Cover Letter, which acknowledges that Nos. 36, 38 and 38A Thornsett exist alongside the asserted two other residential units referred to as Nos. 5 and 7 Riverside.

Further to these inconsistencies and inaccuracies, there are also deviations visible when comparing the colour coded Floor Plan that accompanies each Statement of Truth, and the Floor Plans prepared by an architect that have been prepared presumably based on a measured survey.

Having regard to the colour coded Floor Plans, there can be no doubt that the property shown in purple clearly shows the two storey property known as No.36 Thornsett accessed from the public highway.

However, Officers dispute what is presented in green, which the Statements of Truth state is all associated with No.38 Thornsett. This is due to the fact that Council records clearly show that No.38A, which comprises two floors accessed from the rear, sits separately from No.38 and comprises a third separate residential unit, with Council Tax being paid since 2005.

With regards the remaining elements of the building, the Floor Plan that accompanies the Statements of Truth present two separate properties with one room at the Basement level with one room above accessed via a flight of stairs. Crucially, however, this coloured Floor Plans shows a connecting doorway between the areas coloured yellow and blue both at Basement and Lower Ground Floor Level.

These connecting doorways are not shown on the Existing Plans that have presumably been drawn based on a measured survey. It is not clear when the coloured Floor Plan dates from but nevertheless provided competing and conflicting evidence with the position taken by the applicant in support of this part of the building serving 2no independent residential units.

Having shared the above analysis with the applicant's agent, there is acceptance that the Council would not be able to issue a positive Certificate for the description of development sought, in light of the competing evidence available to the Council.

However, in line with guidance set out within the online Planning Practice Guidance (PPG), the applicant and the Council have agreed that it is possible to issue a positive Certificate on the basis that Nos 5 and 7 Riverside when taken together, has (based on the evidence available and balance of probability) served as 1no residential unit for 10 or more continuous years and is therefore lawful.

As such, it is recommended that a Certificate of Lawful Development for Existing Use be granted having regard to the amended description as set out within this report and on the Decision Notice.

OFFICER RECOMMENDATION: Grant Certificate

Case Officer: James Stannard

Recommendation Date: 26th May 2026

X *B.J. Haywood*

Signed by: Ben Haywood

On behalf of High Peak Borough Council