

DELEGATED DECISION REPORT

HPK/2026/0072 46 HIGH STREET
Valid 17/02/2026 BUXTON

**LAWFUL DEVELOPMENT
CERTIFICATE FOR THE
EXISTING RETAIL PART OF
THE PROPERTY WHICH
CONSISTS OF THE GROUND
FLOOR OF 46 HIGH STREET**

**(CERTIFICATE OF
LAWFULNESS - EXISTING)**

MAIN ISSUES

- Whether the use of the ground floor of the site as a commercial (Retail) unit has been in use for a continuous period for more than 10 years and that the use of the site is now Lawful.

DESCRIPTION OF SITE

The application site relates to a mid-terrace stone built building located on Buxton High Street within the defined settlement boundary and Town Centre of Buxton. The site also lies within the Buxton Central Conservation Area which is also afforded Article 4 direction protection.

The wider site comprises a mix of residential, retail and commercial uses with residential dwellings, comprising predominantly traditional stone terraces.

PROPOSAL

The application in this instance seeks to confirm whether the existing use of the ground floor of the site as a commercial (Retail) Class E unit is lawful via a Section 191 Lawful Development Certificate.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

HPK/2005/0205: Change of use from residential to business at upper floor levels only (Approved – 04/05/2005)

HPK/2025/0293: Lawful Development Certificate for existing residential use (Approved – 28/10/2025)

OFFICER COMMENTS

Section 191(2) of the Town and Country Planning Act 1990 says that the use will be lawful if no enforcement action can be taken against it, and provided it does not contravene the requirements of any enforcement notice that is in force. Where an LDC is sought, the burden of proving relevant facts rests with the applicant.

Section 191(4) of the Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application.

Planning Practice Guidance (PPG) provides that "The applicant is responsible for providing sufficient information to support an application". PPG also provides 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."

The application in this instance seeks to confirm via this lawful development certificate application that the ground floor of this building is in a retail (Class E Use) and has been for a period of greater than 10 years.

As above, the PPG and NPPF provides that the burden of proof for Lawful Development Certificates lies firmly with the applicant with the onus being on the applicant themselves to evidence that on the balance of probability that the use of the site is lawful.

Notwithstanding this evidence available to the council identifies that following a previous change of use application (ref. HPK/2005/0205). The officer report identified that the proposal seeks permission for the change of use of the upper floors of the building to commercial with the existing ground floor shop unit to be retained.

The applicant has put forward a number of documents to evidence the use of the site as a retail unit for a continuous period of 10 years or greater.

The applicant has submitted details of the insurance of the shop dated from 2011. Business Invoices and statements for the period from 2005 to 2011, as well as further statements for years dated 2016, 2017 and 2020. The application is also afforded a business lease document which shows that the site was used for business use in 2019. Additionally, the supporting evidence includes a Business Royalties letter from August 2011 and a number of invoices dating from 2005 to 2011. The applicant has also submitted documentation regarding the lease of a vape shop in 2024 at the site address which identifies the latest use of the site and its continued use as a retail unit.

A search of Council records reveal that in 2019 an enforcement investigation was undertaken into the removal of a chimney at the premises. Photos taken at that time

show that the ground floor was being used as a shop for the sale of e-cigarettes/vapes, and further google street scene from June 2018 also indicated that the ground floor was used for the same purpose. The premises is now occupied by "Totally Wicked" a vape shop and it appears that they have occupied the premises since November 2015 (google street scene).

Taking into account all of the above evidence it is considered that the ground floor of the building is more than likely to have operated as a retail shop. It is noted that in earlier years the shop was previously occupied by a perfume retailer (letter dated 22/1/2007 by Goodwin, Cockerton & Colhoun Solicitors) and by lasting Impression, a nail and beauty salon in 2011.

It is considered that on the balance of probability, the applicant's evidence in combination with the Council's planning and enforcement history, that the site has been used as a retail unit for a period of ten years or greater and that the extant use of the site is Class E.

CONCLUSION

It is therefore considered that on the balance of probability, that the extant use of the development is that of a Class E retail unit and has been in this use for a period of 10 years or greater. The Certificate of Lawfulness for an existing use is therefore approved.

OFFICER RECOMMENDATION : Approval

Case Officer: Stuart Talbot

Recommendation Date: 14/04/2026

X 

Signed by: Jane Colley Signature

On behalf of High Peak Borough Council