

Dear Alex Bonser,

I write further to my application HPK/2026/0127 and in response to the third party representations received following the public consultation.

A Lawful Development Certificate is a legal determination and must be granted if the evidence establishes, on the 'balance of probabilities', that the last lawful use of the property was residential and that the use has not been abandoned.

The representations going to highway safety, drainage, trees, ecology, parking, infrastructure, construction impact, and the previous planning refusal are not material to that legal question, and I make no comment on them in this context.

Addressing the representations which engage the legal test:

1. The Art Studio and Recreational Use Assertion

The claim was made by Cameron Moore of 91 New Mills Road, who states that in the 1970s and early 1980s the building was used as an art studio by Mrs Dobson, and that in the 1980s it was used as a teenage recreational space.

First, the assertion is unsworn hearsay based on recollections of a third party (a late mother-in-law) of visits to the adjoining house over 40-50 years ago. It is not supported by any documentary evidence.

Secondly, and more fundamentally, the use of part of the application site as a personal art studio would be ancillary to the main residential use of the property, and does not represent a change of use. There is no claim by Ms Moore that the art studio use is anything more than a hobby.

2. Physical Condition

Several representations assert that the building is derelict, that its roof has collapsed, and that it is structurally unsound.

The applicant accepts that the building has not been occupied for a prolonged period and acknowledges that it requires restoration. However, the physical features of the building which confirm its residential character — fireplaces, independent consumer unit, plasterboard etc. are all present. These features have not been removed or replaced with features consistent with any other use. The fact that a building requires repair does not establish that its residential use has been abandoned.

The partial roof damage occurred less than 3 years ago. The applicant has since been awaiting planning decisions before making the necessary repairs. The intent is to perform the repairs as soon as a Lawful Development Certificate is granted.

3. Period of Non-Use and Storage

Multiple representations state that the building has not been used as a dwelling for over 40 years and that at times it has been used for storage. The use of a building for domestic storage does not constitute a material change of use — storage ancillary to the residential use of a building is not a separate use requiring planning permission. There is no suggestion that this was a commercial exercise or of scale that would constitute.

The applicant does not dispute that the building has been vacant for a prolonged period. The application is made on the basis of continuous residential use. The basis that the last established lawful use was residential, as documented in 1972, and that this use has not been extinguished by abandonment, material change of use, or the creation of a new planning unit. Prolonged vacancy does not constitute either abandonment or interruption under established planning law.

4. The Conveyance Plan

One representation states that the key document — the 1972 conveyance plan — was not attached to the application. The conveyance dated 17th October 1972, together with its plan labelling the building "Existing Bungalow," was submitted as part of the application documents.

5. No Council Tax or Electoral Register

Several representations rely on the absence of a separate council tax record and electoral registration as evidence that the building was never a dwelling.

These are the absence of evidence, not positive evidence of non-residential use. Many dwellings, particularly second homes, holiday cottages, and buildings last occupied decades ago have no council tax record simply because they were not occupied as a main residence during the period in which those records were maintained. The electoral register records who is registered to vote, not what a building's planning use is. The absence of these records does not establish that the use was anything other than residential.

An email from High Peak Borough Council "Revenues and Benefits" confirmed that:

“High Peak Borough Council was not formed until 1 April 1974 and the Council was formed from several different Councils.

Unfortunately I am not sure which Council dealt with the rateable value billing for Birch Vale before that date”.

And therefore could provide no further help.

The positive documentary evidence — a formal legal instrument prepared by solicitors, stamped by the Inland Revenue in 1972, labelling the building "Existing Bungalow" carries greater legal weight than the absence of administrative records which may have simply been lost.

I trust these observations assist the Council in its determination.

Yours sincerely, Aaron Polley