

DELEGATED DECISION REPORT

HPK/2026/0127
Valid 23/03/2026

MOOR EDGE NEW MILLS
ROAD
BIRCH VALE

CERTIFICATE OF
LAWFULNESS FOR AN
EXISTING C3 RESIDENTIAL
STATUS FOR THE BUILDING
KNOWN AS MOOR EDGE
BUNGALOW AS A SINGLE
DWELLINGHOUSE WITHIN
USE CLASS C3

(CERTIFICATE OF
LAWFULNESS - EXISTING)

MAIN ISSUES

- Whether, based on the specific facts of the case, the existing use as described is lawful as a matter of planning judgement, having regard to Section 191 of the Town and Country Planning Act 1990.

DESCRIPTION OF SITE

The application relates to an existing partly stone and partly rendered single storey building, which sits adjacent to the residential dwelling known as Moor Edge, New Mills Road, Birch Vale.

The site is located within the built-up area boundary, within the central sub-area of the Borough.

Land levels across the site vary, with land sloping in a north-west direction. The tree to the south-east of the site is protected by a Tree Preservation Order.

The site is accessed via a single track that extends to the south-east from its junction with New Mills Road, running between two end of terrace properties (Nos.91 and 93 New Mills Road).

Planning permission has previously been refused on the site for the demolition of the existing single storey building and the construction of 2 residential dwellings under application HPK/2025/0254. The application was refused due to:

“The siting of the proposed dwellings in close proximity to a Category A tree that is protected by a Tree Preservation Order would result in an unacceptable standard of amenity for future occupiers with regards to shading, outlook and sunlight and would lead to significant pressure to prune or remove this tree to overcome these issues, which would in turn be harmful to the amenity of the

area. The proposed development is considered to be contrary to Local Plan Policies EQ6 and EQ9 and Paragraph 136 of the National Planning Policy Framework.”

Planning permission has been granted on a parcel of land to the north-east of Moor Edge for 2 self-build dwellings (HPK/2025/0253).

The single storey building subject to this Certificate is in a run-down and dilapidated condition, such as broken doors and door frames, collapsed ceilings, collapsed roof to the rear section, collapsed southern gable, and tumbled stone walls.

PROPOSAL

This application seeks to establish the lawful use of the site by way of a Certificate of Lawful Development for Existing Use under Section 191 of the Town and Country Planning Act 1990.

The submitted application form describes the existing building as an existing self-contained C3 dwellinghouse, the use of which is alleged to have begun more than 10 years ago. The description of development as set out in the submitted application form is:

“I require a Lawful Development Certificate confirming C3 residential status for the building known as Moor Edge Bungalow as a single dwellinghouse within Use Class C3.

The building is a detached single-storey self contained structure situated within the curtilage of Moor Edge, Birch Vale, High Peak, Derbyshire, and is identified edged red on the block plan submitted with this application.

The building is physically distinct from the adjacent dwelling known as Moor Edge Cottage, which shares the same postal address. The application relates solely to the building edged red on the submitted plans, known as Moor Edge Bungalow.

The lawful use claimed is the use of the whole of the building as a single, self-contained dwellinghouse. No part of the building is excluded from the application.”

The application is accompanied by a Site Location Plan, which shows a different red edge compared to the application red-boundary of site as presented under the aforementioned refused application for 2 dwellings (HPK/2025/0254). A cover letter, and a conveyancing document from 1972 relating to the purchase of an adjacent land parcel, also form part of the applicant’s submission, along with various photographs showing the condition of the building.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

The applications considered to be of relevance to this Certificate are as follows:

Application Site:

HPK/2024/0007 - Two storey rear extension - Approved 10/04/2024.

NMA/2024/0020 - Application for a Non-Material Amendment in relation to application HPK/2024/0007 Changes to openings: - first floor study window widened by 70mm to ensure width complies as an escape window. - stone lintels omitted from rear ground floor openings. - NMA Approved 19/08/2024.

HPK/2025/0254 - Proposed demolition of bungalow and Erection of 2 x self-build residential dwellings at Moor Edge New Mills Road - Refused 08/12/2025.

Garage to south-west of building:

HPK/0001/7187 - Proposed Renewal Of Consent For Garage - Approved.

HPK/0002/5526 - Renewal Consent For Garage - Approved 24/07/1987.

Land to north-east of Moor Edge:

HPK/2025/0253 - Erection of 2 x self-build residential dwellings at Moor Edge New Mills Road - Approved 11/12/2025.

CONSULTATIONS

Public Comments

12 written representations have been received from residents, 9 objecting to the proposal, and 3 neither objecting nor supporting. The submitted comment(s) raise the following points:

Neither Object nor Support:

- In the 24 years that I have lived here the “bungalow” has never been lived in. The previous occupants at Moor Edge (who lived there for over 40 years) always said the “bungalow” never had planning permission.
- It hasn’t had a postal address, council tax hasn’t been paid on it, and it isn’t on the electoral list.
- The “bungalow” is in a very bad state of repair, including half the roof has collapsed. It would need full planning permission to make this into habitable dwelling.
- Planning permission HPK/2025/ 0254 was declined earlier this year to build a new build (a pair of semi-detached houses) on the footprint of the “bungalow”.
- Concerns of extra traffic using the lane and the danger of turning onto and exiting from New Mills Road. Bus stops straight across.
- Cars park to the right of the lane restricting visibility of approaching traffic.

Objections:

- This application is an attempt to compromise following the refusal of planning permission under HPK/2025/0254.
- The application is made on the basis that the last established lawful use of the building was as a single dwelling house, and that use has not been abandoned. This is not true and there is no evidence of separate postal address, council tax or utility bills.
- Many neighbours have lived here for over 40 years and none of them recall it being used as a residential property (although apparently it was a nice hang out spot for local youths).
- Have lived here for almost 8 years and the outbuilding was always in state of physical decay and barely suitable to use as a storage.
- Concerns remain as per previous application (HPK2025/0254) including impact on neighbouring properties, ground stability, dangerous access to the development site, traffic, parking, noise, light pollution, impact on protected trees, surface water drainage issues, impact on wildlife such as bats.
- Any approval should require the building to be rebuilt on the same building area.
- There is no credible evidence to demonstrate that the structure referred to in the application as the “Bungalow” has ever been used as an independent residential dwelling.
- The building has historically been used as an ancillary outbuilding to the main dwelling at Moor Edge, not as a separate residence.
- In the 1970s and 1980s, it was used as an art studio and informal recreational space. During the 1980s my husband and his friends regularly visited the outbuilding which was used as a teenage hang out den rather than functioning living accommodation. Whilst earlier than that in the 1970s and early 1980s, my late mother in law recalled often visiting the previous owner Mrs Dobson in her “Art Studio” they would then go into the house for lunch.
- From the 1990s onwards, it fell into disuse and disrepair, and for a prolonged period has not been occupied or maintained as habitable accommodation.
- Have resided at No. 91 New Mills Road since 1992, during which time the structure has not been used as a dwelling. Instead, it has remained vacant becoming increasingly derelict.
- To the rear of the “Bungalow” is a further outbuilding historically used for storage (including housing a washing machine). This structure has also not been used for residential purposes and has significantly deteriorated, including partial roof collapse in 2023. The application appears to propose combining these two structures into a single residential unit, yet fails to clearly define the scope or nature of such works.

- The proposed use of the “Bungalow” and the rear structure as a standalone dwelling would constitute the creation of a new planning unit and a material change of use.
- There has been no continuous residential use of the structure over the required period (10 years or otherwise). The building has effectively been abandoned for decades.
- The information submitted by the applicant is vague, lacks precision, and does not adequately describe the claimed use or the proposed development.
- The ‘bungalow’ is a single-storey building which has never been a dwelling and was built without planning permission – it was built as a storage outbuilding. Have lived at my address since November 2000 and the building was already quite derelict then and used for storage only.
- Unauthorised development should not be rewarded, and the planning system should not incentivise retrospective gain from unlawful building works.
- The building has not been occupied for over 40 years. It has been in a dilapidated state for many decades, and use has been limited to storage.
- As a neighbour since 1992 and regular visitor to Moor Edge in the 1980s I can testify the property has not been used as a residential dwelling in that period.
- Would be able to get affidavits from several other local / past residents stating the property has been empty for 40+ years.
- The applicants entire claim of legal residential dwelling revolves around the dilapidated building having a few decorative features and the word “bungalow” on a document relating to the sale of other land.

Other:

High Peak Borough Council Revenues:

- Have not had a separate assessment known as Moor Edge Bungalow brought into the Valuation List or Banded by the Valuation Office Agency for council tax purposes. The only assessment we have is for Moor Edge.

OFFICER COMMENTS

In assessing this Certificate officers must consider whether, based on the specific facts of the case, the existing use as described is lawful as a matter of planning judgement, having regard to Section 191 of the Town and Country Planning Act 1990.

Section 191 of the Town and Country Planning Act 1990 relates specifically to Certificate of Lawfulness of Existing Use or Development, and states the following:

“(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.”

Therefore 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 if that is the case, that the use has not been abandoned.

The applicants submitted cover letter states that the single storey building (the subject of this certificate) is “*situated within the curtilage of Moor Edge, Birch Vale, High Peak*”. The cover letter continues, stating that the whole of the building has been used as a single self-contained dwellinghouse. This assertion is based on the following observations of the applicant:

“The building operates, and has been documented as operating, entirely independently of Moor Edge Cottage — it has its own electrical installation, its own incoming water supply pipe, and its own foul drainage connection to mains sewage, which does not connect into the drainage at Moor Edge Cottage. The building is not, and has never been described in any document as, a granny annexe, ancillary accommodation or any other use dependent on an adjacent dwelling.”

On this basis the applicant highlights that this Certificate is not made on the basis of a continuous 10-year use period, but seeks to establish that the use has not been abandoned.

Conveyancing Document – Whether a Separate Dwelling

The primary evidence relied upon by the applicant is a conveyancing document from 17 October 1972, which relates to the purchase of a parcel of land to the rear of the single storey building. On the plan which forms part of the conveyancing document, the single storey building which is the subject of this Certificate, is labelled on the plan as “existing bungalow”. Interestingly a sentence on Page 3 of the conveyancing document identifies that “*the plot of land situated adjoining the purchasers present dwellinghouse at Moor Edge Cottage Birch Vale ... more particularly delineated and described for the purpose of identification only in the plan annexed*”. This would appear to suggest that the single storey building was not in fact a separate dwelling as it was not referred to as such in this written description. Furthermore the location description identifies the land as being adjacent to the dwellinghouse known as Moor

Edge Cottage (which is the main existing dwellinghouse on site where the applicant resides), and again makes no reference to the single storey building as being a standalone dwelling or by its alleged name of 'Moor Edge Bungalow'.

The applicant considers that due to the building being labelled as 'existing bungalow', this confirms that the building was in active residential use at that time. Whilst the conveyancing plan may indeed label the building as 'existing bungalow', this does not necessarily mean it was lived in as a dwelling at the time or since, nor whether its potential use as a residence was ancillary or independent.

No evidence has been submitted to demonstrate whether the single storey building has ever been in a separate ownership, or whether the building, if it was ever used as a dwelling, was ever let.

Additionally no evidence has been provided of proof of a separate billing for utilities or for Council tax purposes that might indicate an independent dwelling, nor has any evidence of it having its own postal address been provided. Indeed, the Council's Revenues Team have confirmed that they have no record of a separate assessment taking place under the name of Moor Edge Bungalow, and nothing has been brought into the Valuation List or Banded by the Valuation Office Agency for council tax purposes. The only assessments/details of this nature relate to the applications existing residence of Moor Edge.

The applicants claim that the building must have been used as an independent self-contained dwelling due to it having its own electric and water supply, and drainage outlets, it considered not to be determinative in its own right and the Council does not accept that these aspects alone suggest that the building was a residential dwellinghouse or support the claim of it being a dwelling based on the 1972 conveyancing plan.

Therefore aside from this conveyancing document, the applicant has not submitted any further evidence to demonstrate that the building was ever occupied either as a dwelling, either separate or ancillary to the Moor Edge residence.

Resident Comments

It is necessary for the Council to consider any counter evidence submitted by any neighbours / third party as well as evidence provided by the applicant. Numerous written representations have been submitted by residents, which have been summarised earlier in this report. Some of the salient points raised in the resident comments are as follows:

1. In the 24 years that I have lived here the "bungalow" has never been lived in.
2. There is no evidence of separate postal address, council tax or utility bills.
3. Many neighbours have lived here for over 40 years and none of them recall it being used as a residential property (although apparently it was a nice hang out spot for local youths).

4. The building has historically been used as an ancillary outbuilding to the main dwelling at Moor Edge, not as a separate residence.
5. In the 1970s and 1980s, it was used as an art studio and informal recreational space. During the 1980s my husband and his friends regularly visited the outbuilding which was used as a teenage hang out den rather than functioning living accommodation. Whilst earlier than that in the 1970s and early 1980s, my late mother in law recalled often visiting the previous owner Mrs Dobson in her "Art Studio" they would then go into the house for lunch.
6. From the 1990s onwards, it fell into disuse and disrepair, and for a prolonged period has not been occupied or maintained as habitable accommodation.
7. Have resided at No. 91 New Mills Road since 1992, during which time the structure has not been used as a dwelling. Instead, it has remained vacant becoming increasingly derelict.
8. The building has not been occupied for over 40 years. It has been in a dilapidated state for many decades, and use has been limited to storage.

Whilst it is acknowledged that the comments submitted by residents are not formal witness statements, the consistency and degree of recollection between the statements made within the comments does cast a sufficient level of doubt on the applicants assertions regarding the use of the building as a separate dwelling. The comments reference the building as either being abandoned, used for ancillary storage, or having historic uses for recreational purposes.

The applicant has submitted a further statement in response to the resident comments, seeking to rebut the neighbours statement. Within this statement the applicant accepts that the building has not been occupied for a prolonged period, and also accepts that the building has been used for domestic ancillary storage.

The applicant also considers that the submitted 1972 conveyancing document carries greater weight than the absence of administrative records relating to Council Tax or an electoral role. The Council does not accept that the sole reliance on the conveyancing plan is substantive in demonstrating an established lawful residential use of the building. Additional evidence, which could include Council Tax or electoral registration details, help to provide certainty and credibility to other documentation.

Therefore based on the limited extent of the evidence provided by the applicant, the comments of residents do cast sufficient doubt on the applicants claims regarding the use of the building.

Abandonment

Without prejudice to the foregoing argument that there was never independent use of the building as a dwelling, in the alternative, the matter of abandonment is discussed below. The applicant makes reference within their cover letter to the abandonment test as set out in 'Panton and Farmer v Secretary of [1999] 1 PLR 92', with the applicant stating the following:

“(1) Physical condition: The structure and all internal finishes remain consistent with residential use. No features have been removed or replaced with those of any other use.

(2) Period of non-use: The building is currently vacant. Vacancy alone does not constitute abandonment.

(3) Other use: There is no evidence of any other use having been established since the residential use documented in 1972.

(4) Owner's intentions: The applicant's intention is to restore the building to active, self-contained private residential use, consistent with its established lawful use.”

The applicant has submitted a series of photographs of various aspects of the building, including: a fitted toilet, part wallpapered wall, fireplaces, plastered walls & ceilings, electric consumer unit, light switches, roof and chimney, a window, and a water supply pipe. No floor plan has been submitted to indicate where these features are located within the building, and several of the photos are taken without any context, making it difficult to establish whether these are located within the property. At the time of the Council's site visit the internal areas of the building were filled with various paraphernalia, and due to access difficulties many of the items illustrated in the submitted photos were not observed.

The Council's response to the applicant's case regarding the four points of the abandonment test is as follows:

(1) Physical condition: Whilst some of the features within the building could be consistent with a residential use, such as the wallpaper and fire places for example, this does not in and of itself indicate that the building was used as a residential dwelling (either independently or ancillary to the main house) any more than it could indicate the building's potential use as an ancillary outbuilding. In any event it is clear that the building is in a poor condition commensurate to a lack of use.

(2) Period of non-use: Whilst it is accepted that vacancy alone does not constitute abandonment, the property appears to have been vacant for a significant period of time which does indicate that the building has been abandoned.

(3) Other use: As set out above, based on the submitted evidence, the Council disputes that the building was ever in a residential use. Nevertheless, based on the submitted representations by residents, there appears to be an indication that the building was used for other purposes ancillary to the main dwelling of Moor Edge, such as for an art studio, youth hangout/ informal recreational space, and most recently an ancillary storage area.

(4) Owner's intentions: The applicant's intention is to restore the building to active, self-contained private residential use. Based on the available evidence it does not

appear as though previous owners of the site had implemented any such use, with the building in more recent years (i.e. after the 1972 conveyancing document) appearing to be in an ancillary use, which would be consistent with the applicants claim that the building falls within the residential curtilage of the main dwellinghouse of Moor Edge. These ancillary uses would also be consistent with the claims made within the submitted resident comments, as detailed above in point 3.

The Council therefore consider that, even if a separate dwellinghouse existed historically at the site, the available evidence and on-site observations would lead the Council to conclude that any such use was abandoned many years ago.

Other:

Response to Resident Comments:

The above assessment covers many of the points raised in the comments submitted by residents. This section seeks to acknowledge and address those remaining matters.

This Lawful Development Certificate is a legal determination in relation to the last lawful use of the building and is determined based on evidence and on the 'balance of probabilities'. Therefore, matters which have been raised in relation to the impact on neighbouring properties, ground stability, site access, traffic, parking, noise, light pollution, impact on protected trees, drainage issues, impact on wildlife, and construction impacts are not material to the Council's consideration in this instance.

CONCLUSION / PLANNING BALANCE

In light of the detailed analysis contained within this report it is concluded that, based on the limited extent of the evidence provided by the applicant, the comments of residents do cast doubt on the applicants claims regarding the use of the building. The type and level of evidence submitted by the applicant is considered not to be determinative or substantive as to evidence the building having a lawful use as a dwellinghouse. The level of doubt cast by the resident comments is sufficient, on the balance of probabilities, for the Council to conclude that it has not been satisfactorily demonstrated that the building was ever in use as a separate dwellinghouse. The Council also consider that, even if a separate dwellinghouse existed historically at the site, the available evidence and on-site observations would lead the Council to conclude that any such use was abandoned many years ago.

Accordingly it is recommended this Certificate be refused.

OFFICER RECOMMENDATION : REFUSE

Case Officer: Alex Bonser

Recommendation Date: 08/07/2026

X *J. Colley*

Signed by: Jane Colley Signature

On behalf of High Peak Borough Council