

DELEGATED DECISION REPORT

SMD/2026/0139
Valid 23/03/2026

FLAT 2 BANK STREET
CHEADLE

**CERTIFICATE OF
LAWFULNESS FOR AN
EXISTING FIRST/SECOND
FLOOR FLAT (DWELLING)**

**(CERTIFICATE OF
LAWFULNESS - EXISTING)**

MAIN ISSUES

- Application seeks confirmation that the existing lawful use of the first/second upper floors above the shop premises, at 10 Cross Street Cheadle, is that of a single two-bedroom flat/dwelling (C3).
- If the use is immune from enforcement action, then it is lawful for the purposes of the Act.
- The application claim is that the LPA would be out of time to take action against the use because the upper floors have been used as a flat for well over 4 years.
- The upper floors are currently unoccupied and were last used as a flat in 2021, the applicant submits that this does not mean that the established use has lost its lawful status.

DESCRIPTION OF SITE

The application claim relates to the first and second floors above a ground floor self-contained shop premises (former hairdressers currently vacant) at 10 Cross Street in Cheadle.

The upper two floors are accessed via an external steel staircase that is reached via an alley way access from Bank Street. Hence, the upper floors are referred to in the application as 'Flat 2 Bank Street'.

The property provides a three storey mid-terraced brick-built town centre building comprising of ground plain tiled roof and timber painted windows.

PROPOSAL

The application relates to the two upper floors referred to as Flat 2 Bank Street.

The application seeks a certificate of lawfulness confirming that the existing lawful use of the two upper floors is that of a single two-bedroom flat/dwelling (Class C3).

It is said that the property was purchased by the applicant in 1987 as a ground floor shop and a first/second floor single flat and that the upper floors have been used as a flat/dwelling (C3) since purchase and, therefore, began, and has been used continuously for much more than 4 years before the date of this application. The historic use does not rely on a planning permission; it is unlikely that a permission has ever been granted.

The application makes the claim that the use is lawful because the Local Planning Authority would be out of time to take enforcement action against the use and in those circumstances the use is lawful for the purposes of the Act.

It is said that the flat is currently vacant, last occupied in May 2021, but that since that time it has only been used for occasional storage associated with the hairdressers.

The property is for sale and the prospective purchaser has requested the reassurance of a certificate to confirm that the existing lawful use of the upper floors is a single flat/dwelling.

Photographs from the sales particulars show the upper floors unfurnished but clearly providing the facility for them to function as a flat/dwelling (kitchen, bathroom, living room, two bedrooms)

The application includes:

- a location plan with a red edge identifying the premises
- A statement in support of the claim
- Council tax bills from 2010/2011 to 2020/2021

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

None relevant

CONSULTATIONS

Publicity

Site Notice expiry date: 23/04/2026

Neighbour consultation period ends: 23/04/2026

Press Advert: N/A

Public Comments

None

OFFICER COMMENTS

Section 171B 'Time limits' of the Town and Country Planning Act 1990 states that, in England:

Where there has been a breach of planning control consisting in the change of use of any building (or part of a building) to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

Section 171B of the Act was revised in April 2024 to replace what was previously a 4 year time limit in respect of the use of a building as a dwellinghouse. Under transitional arrangements the 4 year time limit still applies where the use as a dwellinghouse began before April 2024.

The use of the upper floors as a flat did not necessarily result in a breach of planning control, there is some likelihood that the upper floors have been used for residential purposes historically, pre-1948. However, where the applicant can clearly demonstrate that this part of the building has been used as a flat for a continuous period of 4 years before the date of the application (and the use began before April 2024) the matter can be definitively put to rest. This is particularly helpful where a prospective purchaser seeks the reassurance and confirmation of a lawfulness certificate.

The applicant provides photographs of the interior. The upper floors clearly provide the facilities necessary to function as a flat or self-contained dwelling. While, it is said that the floors have been used by the applicant since purchase in 1987, a complete set of Council Tax bills from 2009/2010 to 2020/2021 has been provided with the application.

2009/2010 Rebate under a Class A1 exemption for period 01/04/11 – 27/08/11
(uninhabitable major repairs)

2011/2012 Discount Class C for period 28/08/11 to 31/03/12 (Long term empty)

2013/2014 Long term empty premium charge (50%)

2015/2016 Long term empty premium charge (50%)

2016/2017 Long term empty premium charge (50%)

2017/2018 occupied and paid

2018/2019 occupied and paid

2019/2020 occupied and paid

2020/2021 occupied and paid

The Council tax bills show that, during the decade accounted for, there was a period when the premises were empty/unoccupied and the applicant was paying a premium. However, they confirm that for a continuous four-year period (2017 – 2021) the upper floors were occupied, and Council tax was paid on the premises as a flat. That four-year period was prior to the date of the application and began before April 2024.

After that 4-year period any enforcement action would be out of time and, the evidence demonstrates, the flat/dwelling had established lawful status.

Although the flat has been empty since 2021, that is still a relatively short period, and the applicant has demonstrated intention of retaining the upper floors as a flat by trying

to sell it as such. There is no evidence that, post 2021, the flat has been used for any materially different purpose (the occasional light storage would not meet the threshold of material change). Therefore, there is no evidence of any abandonment or intervening use that could, otherwise, mean that the established lawful use status has been lost.

CONCLUSION / PLANNING BALANCE

The existing lawful use of the upper floors is that of a flat/dwelling. If it were inclined to do so, the LPA would be out of time to take enforcement action against that use.

A certificate of lawfulness should be issued to that effect.

OFFICER RECOMMENDATION : APPROVE

Case Officer: Ben Hurst

Recommendation Date: 18th May 2026

X *B.J. Haywood*

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council