

**HIGH PEAK BOROUGH COUNCIL
DEVELOPMENT CONTROL COMMITTEE**

7th August 2023

Application No:	HPK/2023/0189 - COLP	
Location	High Peak Halls, Bridge Street, Buxton	
Proposal	Occupation of non-self-contained residential accommodation by non-students.	
Applicant	University of Derby	
Agent	Jones Lang LaSalle Ltd	
Parish/ward	Buxton	
If you have a question about this report please contact: Benjamin Hurst 07738506367 ben.hurst@highpeak.gov.uk		

REFERRAL

The application has been brought before Development Control Committee at the request of Councillors Hardy, Grooby and Hopkinson because it has become locally contentious.

1. SUMMARY OF RECOMMENDATION

REFUSE

Procedural matters

- 1.1 The application is submitted under s.192 of the Town and Country Planning Act 1990 (as amended) for a certificate of lawfulness for a proposed use. If any person wishes to ascertain whether any proposed use of buildings would be lawful he may make an application for the purpose, specifying the land and describing the use in question. A proposed use would be lawful if no enforcement action could be taken in respect of it (whether because it would not involve development or require planning permission or for any other reason).
- 1.2 As required by the Development Management Procedure Order 2015 the application was accompanied by a plan identifying the land to which the application relates; evidence verifying the information included in the application; and a statement setting out that the applicant, the University of Derby, is a lessee of the building which is owned by Infrastructure Investments Ltd II. The application form confirms that the building's owner has been provided with written notice. In these regards the submission met the criteria to be registered as a valid application.

- 1.3 The Local Planning Authority was advised on 14th July 2023, following submission of the application, that the intention is to use the building to accommodate asylum seekers.
- 1.4 However, the application as submitted does not seek a Lawful Development Certificate for an asylum dispersal centre or specify that, in particular, the Halls would be used to house asylum seekers. Instead, the planning authority is asked to consider a broader legal point – could High Peak Halls be used to house people (of any back ground or housing need) that are not students, lawfully, without a planning permission? Regardless of their intention, it is a reasonable question which the applicant is entitled to ask under cover of the application.

2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 2.1 High Peak Halls lie on the eastern side of Buxton town centre to the rear of the Railway Hotel, access joins Bridge Street and passes beneath the railway viaduct. The four to five storey building, spread across three attached blocks, occupying a site of just over an acre. The development was completed in 2005 in accordance with a planning permission (HPK/2004/0075) granted on the 18th May 2004. The halls provided furnished accommodation for 274 students. The use by students ceased some time ago. The University of Derby regards the Halls as being surplus to requirements.
- 2.2 The 274 bedsit rooms, all with ensuite shower rooms, are configured as flats with shared kitchens and dining areas. A shared common room, laundry room and reception area are situated at ground floor level, together with staff amenities, cycle storage rooms, waste rooms, back-of-house storage and plant areas, and a total of 50 car parking spaces (including accessible car parking spaces) are located externally.
- 2.3 An example 'Offer of Accommodation' letter (for the 2020-2021 academic year) confirms that the bedsits have been let on an individual basis, as residential accommodation, for periods of 42 weeks for the standard academic year (Terms 1-3) or 51 weeks with the addition of the Summer term (Terms 0-4).

3. THE APPLICATION

- 3.1 An application has been received under s192 of the Town and Country Planning Act 1990. The application seeks confirmation that the use of the halls by "non-students" would be lawful in planning terms. For the purposes of the Act a proposed use would be lawful if no enforcement action could be taken in respect of it (whether because it would not involve development or require planning permission or for any other reason). A use would not involve development if it does not result in a "material change of use". If on application a local planning authority are satisfied that the use would be lawful, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

3.2 Such an application must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application. An application needs to describe precisely what is being applied for and the land to which the application relates. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate.

3.3 The High Peak Halls are now vacant and no longer occupied by students, it remains under the control of the University of Derby but is now surplus to their needs. The applicant proposes to retain the existing layout of accommodation and let the rooms on a commercial basis as accommodation to people that are not students for periods of 90 days or more. The non-student residents would not be related and would each sleep in one of the private ensuite bedsit rooms - sharing the communal kitchen, dining room, common room, laundry room, cycle storage and car parking. There would be no significant provision of care and no catering provided to residents. The application submission includes:

- Completed application form
- Site location plan
- Planning permission decision notice HPK/2004/0075
- Photographs showing the hall's interior (bedsits and communal facilities)
- Example offer of accommodation letter (from University of Derby)
- Example room check system spread sheet
- All existing floor plans

3.4 However, it is noteworthy that the application does not further describe the nature of the "non-students" that would use the halls. The question arises whether the Council should grant the certificate applied for or indeed any certificate. The original grant of planning permission is not subject to any restriction, limitation that confines the use of the flats to students. The issue is whether the nature of the future occupants might give rise to a material change of use and thus require planning permission.

4. RELEVANT PLANNING HISTORY

4.1 HPK/2001/0236 Student accommodation, parking, landscaping and access. APPROVED 9th January 2004.

HPK/2004/0075 Four and five storey student residential development to provide approximately 286 bed spaces with associated car parking. APPROVED 18th May 2004.

- 4.2 The more recent permission granted in May 2004 was a varied standalone permission that provided for additional bedroom numbers. It effectively replaced the earlier permission.

5. PUBLICITY

- 5.1 With this type of application there is no statutory requirement to consult third parties, parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information or evidence about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application. In this case the application has not been publicised.
- 5.2 Despite this, over 1,400 objections and 14 comments of support have been received. The following provides a summary of the points and concerns raised:

- Buxton is a small town with limited infrastructure and health services
- The facility does not provide adequate on site social and amenities for the number of residents
- The single rooms would most likely be occupied predominantly by males
- Negatively impact tourism within the town
- Bored asylum seekers would loiter around the town
- Foreign people don't speak or understand the English language
- Refugees are more likely than students to cause noise and disturbance because they are in a state of despair, dejection and hopelessness.
- It appears the University have made agreement with the Home Office without consulting local people
- There is proof that this has caused gang culture and violence in other areas
- Crime will soar

All of these comments relate to the planning merits of what is assumed to be the applicant's intention. None of the representations offer evidence or comment relative to the legal determination before the Council.

6. OFFICER COMMENT

- 6.1 If the proposal does not involve a 'material' change of use then it is not development and does not require planning permission. It has long been accepted in planning law that when considering a material change of use what must be considered is the character of the use of the land not the purpose of

a particular occupier (*Westminster CC v Great Portland Estates* [1985] AC 661).

When considering whether a change of use is material it is relevant to consider not only the on-site effects but also the off-site effects of the character of the use (*Hertfordshire DC v SSCLG* [2013] EWCA Civ 1473). The point at which a change of use becomes a 'material' change is a matter of fact and degree based on the circumstances of an individual case. The Act does not define 'material change of use' and in general therefore, it is necessary to exercise some considered judgement in individual cases, and this is regarded by the courts as being primarily a matter of fact and degree for the Local Planning Authority.

6.2 The existing use and function of the building as permitted by the planning permission provides the baseline for comparison. The approved development is described on the planning permission as '*4 & 5 storey student residential development to provide approximately 286 bed spaces with associated car parking*'. The building was built out and completed to provide 274 bed sit rooms. In accordance with that permission students of the University of Derby slept in the private individual ensuite bedsit rooms and shared the kitchens, dining areas, common room, laundry room, cycle storage and 50 car parking spaces.

6.3 It is considered that the student use of the halls has particular characteristics including:

- The occupation is not generally year-round it follows a particular pattern associated with the arrangement of the academic year across three 10-12 week terms and approximately 20 weeks of holiday where they return to their 'home' address.
- The students often access services at their home address (they are already registered with dentists or doctors for example).
- The university campus is the focus of much of the residents' daily activity – learning, exercise, socialisation, leisure pass-times. The student residents generally have access to other off-site university amenity space as well as space open to the general population.

These are particular characteristics that can be identified as being specific to the use of the land by students, and its potential off-site effects. The character of the use therefore can be different to that of either the population generally or other sections of the population in particular.

6.4 In these respects, it is not possible to generalise and state with confidence that use by all categories of "non-students" would not give rise to material changes in the character and effects of the use. It is considered that within the broad scope of the proposed use there are likely to be significant variations when compared with the character and effects of the student use of the halls. For example, there are likely to be:

- differing housing needs where there is no alternative address that can be returned to for significant periods of the year (meaning periods of stay could be prolonged and not follow a set pattern).

- occupants that are not already registered elsewhere with doctors and dentists and are instead entirely dependent on the facilities, healthcare and services provided within the town.
- differing needs for on-site public open space (given the off-site space students may have access to).

6.5 For instance, the recent appeal decision concerning student accommodation in Stafford Borough provides us with an example of a case that identified a particular group of non-student residents and considered the specific characteristics of their proposed use. In that case, rather than advance a lawfulness claim, the application had sought planning permission for the change of use from student accommodation to, specifically, asylum-seeker accommodation. Although the question of lawfulness was not to be determined, it was common ground between the parties that planning permission was required for the material change of use, and the case provides a useful point of reference. The inspector in allowing the appeal imposed conditions concerning:

- Site security measures to protect the security of residents.
- The provision of a suitably sized on-site medical room.
- The minimum sizes of bedrooms and lounge/kitchen / dining areas.
- The size and availability of outdoor and indoor amenity space to support the well-being of residents.
- Site operational management plan for the provision of services and facilities to support residents.

The fact that the Inspector identified aspects of the proposed use that would require specific control or provision through condition, is an indication that there are matters concerning the character of the use of halls of residence by asylum-seekers that are capable of being different from the character of the use by the student or even general population.

6.6 Where the Council feels that it is not possible to reach the planning judgment that there would be no material change of use if the Halls were occupied by any class / type of “non-student” users, then it may refuse to grant the certificate applied for.

Conclusion

6.7 The use as described and proposed is of an excessively broad scope which is likely to include considerable variables with material difference in their character and effects. It has not been possible to reach the planning judgment and state with confidence that use by all ‘non students’ would not give rise to a material change of use and involve development. In these respects the proposed use as described in the application cannot be considered lawful.

RECOMMENDATION

That a ‘Certificate of Lawfulness’ is REFUSED for the proposed use for the following reason:

The use as described and proposed is of an excessively broad scope which is likely to include considerable variables with material difference in their character and effects. It has not been possible to reach the planning judgment and state with confidence that use by all 'non students' would not give rise to a material change of use and involve development. In these respects the proposed use as described in the application cannot be considered lawful.