

7th August 2023

HPBC DEVELOPMENT CONTROL COMMITTEE

UPDATES SHEET

Agenda Item 1 – HPK/2023/0189- High Peak Halls, Bridge Street, Buxton

Public Comments

The Council has received a further 500 objections and 2 more comments in support, since the original report was published. Total objections now stand at 1,902, while comments in support are at 17. The objections do not raise any new matters for consideration and are summarised in the original report. Points raised in the comments of support can be summarised as:

- The vacant building would be brought back into use after being empty for a number of years
- The building is well located for town centre facilities and public transport
- Assessment of original planning approval should have considered impact of anticipated residents on local services
- It is good for the Buxton community to support and welcome those in need
- Refugees and asylum seekers need to be treated as human beings and housed appropriately (rather than ex-military barracks, hotels or hulk ships)
- Excellent opportunity to improve diversity within Buxton

MP Comments

Correspondence has been received from Robert Largan MP, the following provides his statement in full:

I strongly oppose the application for a lawful development certificate. Although I am pleased that the report before the committee recommends refusal, I believe it could go further in stating the case against the applicant. My concerns are set out below.

Nature of the application

A different sui generis use requires a full planning process

The applicant has applied to change the use of High Peak Halls from:

Sui Generis – student accommodation

As specified on Page 5 of the application form, this would be changed to:

Sui Generis – large HMO

These are different sui generis uses. National planning guidance on ‘What uses are subject to local consideration?’ (Paragraph: 010 Reference ID: 13-010-20140306) states that, except “in defined circumstances, any change of use to or from such uses requires full local consideration through a planning application process”.

High Peak Halls does not fall under those defined circumstances. Therefore, any such change requires a full planning application. In my view, this puts the validity of the application in doubt.

Planning officers have chosen to apply a further condition, namely that the change also be material, which relies on their interpretation of the subsequent paragraph of guidance. I have asked the planning department whether any case law supports this interpretation. At present, I have not received a response, despite repeating my request.

Different uses and a material change in use

Should such support exist, an obvious question arises for the committee: if the applicant believes there will be no material change, why apply to change the description of use?

Common sense is enough to appreciate that a large HMO is not the same thing as student accommodation. HMOs are used by different people, from different demographics, on different terms, with intrinsically different occupations and patterns of behaviour. A material change is “a change in the character of the use” – a point repeatedly established in case law. The change sought in the description alone creates this likelihood.

Expert opinion backs common sense. Purpose-built student accommodation (PBSA) is distinguished from HMOs in national guidance, for example on the housing needs of different groups (Paragraph: 004 Reference ID: 67-004-20190722). A plethora of industry and sector material draws a clear distinction, noting the different needs and challenges for each of these separate housing types. They are materially different uses.

Intended use of the site

The University of Derby issued a public statement on or before 31 May 2023, stating that it intended to convert High Peak Halls into an asylum dispersal centre:

the University is in the process of applying to the local authority for a certificate [...] We have decided to make this space available to provide short term accommodation for vulnerable people coming to the UK as refugees.

It had applied for the certificate on 9 May 2023. The committee report notes that:

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.

This is technically correct, but implausible as a reading of the applicant's purpose. The University of Derby clearly believes that granting the certificate would allow it to open an asylum dispersal centre, which it is choosing to regard as a type of large HMO accommodation. The report reinforces that conclusion by stating:

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.

That is the purpose of this application. The relevant question is whether the certificate sought would permit this use.

Could an asylum dispersal centre be ‘a large HMO’?

The committee report perhaps implies, but unfortunately never states, that an asylum dispersal centre would be a materially different use to a large HMO. Although the application does not refer to asylum dispersal, the “broader legal point” being tested about people “of any background or housing need” may then be applied to asylum seekers.

The report therefore ignores the possibility that granting a certificate for a large HMO would allow the applicant to proceed with an asylum dispersal centre. The application itself seems to prepare the ground for this approach, comparing use by students to “any change in occupation”, not just the kinds of occupation more commonly associated with HMOs.

Because this risk is unaddressed, I believe the report is wrong to dismiss over 1,400 public objections as irrelevant. Not only could this be the only time that residents in Buxton are able to convey their alarm about the University's actual plan, but this concern relates directly to the decision before the committee.

The committee report says, “it is noteworthy that the application does not further describe the nature of the ‘non-students’ that would use the halls”. It certainly is and officers do not rule out the certificate sought being used to deliver an asylum dispersal centre. So how can the report state that “none of the representations offer evidence or comment relative to the legal determination before the Council”?

Work may have been undertaken already

A constituent contacted me on 20 July 2023 to relay the following information:

I live in Buxton and this morning I detoured my jogging route to pass by High Peak Halls. I did my best innocent bystander impression and said “Hey lads what's going on?” to the tradies in the car park. The guy was very uncomfortable with saying anything but said that if he was a local he would want to know. They are there to “get it up to spec” to receive up to

350 male asylum seekers. No women. No children. The job was meant to be 8 weeks but looks like running over. They started 6 weeks ago. They were told it must be finished as quickly as possible as it needs to be put into use.

If work of this scale has been required, it may cast further doubt on the applicant's claim that the change in use would be non-material. I hope the Council has been able to inspect the site and ascertain the scope of any changes made. The willingness to undertake work without waiting for the outcome of the application and without informing the planning authority would not be indicative of good faith.

The character of the use

The committee report concludes that "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." I strongly agree. This can be shown by comparing students to a particular category of non-students, namely asylum seekers.

How asylum seekers differ from students

Likelihood of single-sex use

Asylum seekers are predominantly male, accounting for 75% of adult arrivals for the year to September 2022. Dispersal centres are a recent initiative, given the pressure on other accommodation. The initial sites "accommodate non-detained, single adult male asylum seekers only" and this is highly likely to be part of the University of Derby's offer to make High Peak Halls available for use as a centre. All-male use would be a stark contrast to the mixed use of student accommodation.

Financial and employment status

Domestic students are eligible for student loans and have the right to work in the UK, with over half estimated to be in part-time employment. In fact, a recent study suggested student loans were supported by average earnings of over £350 a month. International students are subject to student visa requirements, which include strict financial eligibility checks.

Asylum seekers are not allowed to work. Dispersal centres are for those granted Section 95 support, which consists of a weekly cash payment of £47.39 and free accommodation. Many have no savings or other means of financial support.

Payment and sanctions

Students pay for their accommodation and therefore have something to lose by violating conditions of tenure. This also applies to most people living in large HMOs, who could likewise be evicted for misuse of a property and normally pay a deposit. Both sign contracts and are subject to rules of behaviour. Students also pay by term not month (as evidenced by the offer letter in the application) and can face further sanction from their academic institution for their behaviour in student halls.

Asylum seekers do not pay for their accommodation and do not sign tenancy contracts. As noted, their accommodation is provided as part of their Section 95 support. It is unclear what sanctions can be applied, in practice, for misbehaviour.

Length of stay

The applicant acknowledges that the halls were "predominately let to students of [the] University of Derby" under "contracts of 42-51 weeks". The application documents describe the proposed future use as "for stays of 90 days [13 weeks] or more".

A Home Office guide for asylum-seekers describes the actual length of the intended use:

Dispersal accommodation is longer-term temporary accommodation managed by accommodation providers on behalf of the Home Office. You will normally be able to stay in dispersal accommodation until your asylum claim has been fully determined. It is not always possible to stay in the same property.

Placements would not, as previously, be covered by contracts and there would be no minimum or maximum duration. The ninety days figure cited by the applicant does not appear to exist. Moreover, unlike students, some asylum seekers could be resident for many years. A wait of three years for determination of a first asylum claim is not uncommon and can be followed by multiple legal appeals, which again can take years to resolve.

This is a significant, material difference with student accommodation, which is never used for ongoing stays of that length and has set patterns. As the committee report also notes, students typically have a home address at which they spend most of the holiday periods.

Age and language abilities

Around 20% of all undergraduate and postgraduate students are over the age of 30. It is not possible to qualify for most courses without having above average proficiency in English.

Over 40% of adult asylum seekers are over the age of 30, more than double the proportion of students. Research published by the charity Refugee Action suggests that two-thirds of asylum seekers aren't confident that their current level of English would make them ready to work in the UK.

Activity and off-site amenities

The committee report accurately summarises the difference between students, who have access to a university campus and are often registered with a home GP, and other permanent, on-site residents. There are two further factors when compared to asylum seekers.

The first is that students have academic activities, study requirements and part-time work to both occupy them and compel them to spend time outside their student accommodation. Asylum seekers are in a position of enforced economic inactivity, unable to seek employment, with infrequent reasons to leave the area or the amenities surrounding the site. Secondly, the UNHCR argues that asylum seekers are five times more likely to have mental health needs than the general population, including higher rates of depression, PTSD and other anxiety disorders. They can also have complex general health needs. This would represent a significant increase in demand for local NHS services.

Community safety implications

In an extraordinarily deficient and specious paragraph, the applicant states:

Noise and disturbance: As students are (rightly or wrongly) associated with congregating in groups and generating noise and disturbance (particularly late in the evening), it is reasonable to determine that any change in occupation would be unlikely to give rise to any materially different amenity impacts from increased noise and disturbance.

If students are 'wrongly' associated with this behaviour, how can conclusions be based on it? However, the problem is not just the applicant's inability to establish the character of the existing use. More fundamentally, the application fails to provide any analysis of the 'amenity impacts' of the intended use, which it is reasonable to determine from the impact of other asylum dispersal centres. There is no mention of crime, disorder or social cohesion.

Derbyshire Constabulary is aware of these impacts and has stated that:

the placement of a dispersal centre in the area around Fairfield Road would not be appropriate due to the potential vulnerabilities of those being housed there and the proximity to an area that is the subject of ongoing policing concerns and activity.

Existing drug-use issues are a particular concern. I understand that the police will be submitting a partnership letter to the applicant, opposing the scheme, which I have asked them to bring to your attention. Their existing concern is a matter of public record.

The Police & Crime Commissioner is also objecting to the application.

Failure to follow Home Office guidance

Using High Peak Halls as an asylum dispersal centre would not be in line with the Home Office's full dispersal plan for the East Midlands region. One of the stated 'Principles of Full Dispersal Governance and Engagement' in Home Office guidance is that:

Full Dispersal procurement should take place in line with the Regional / Nations agreed Full Dispersal plans, where possible. Should procurement be required in areas beyond the plans, this will be conducted in collaboration with LAs and be managed through the regional governance.

This is not a Home Office proposal. It is driven entirely by the financial needs of the University of Derby. Ministers have confirmed to me that the Home Office has not yet been approached to give a view on the site. In a statement on its website, High Peak Council says:

Clarification of the intended use of the building was not received by the Council until the middle of July - the Council has not been involved in the development of the proposals and the University did not have pre-application discussions with officers.

The Council was requested to attend a meeting of the East Midlands Strategic Migration Partnership on 14 July where it was formally brought to our attention that Serco are considering the use of High Peak Halls for asylum accommodation and would like to have preliminary discussions with key agencies.

This is inconsistent with what I have been told by the University and indeed from council officers and senior administration councillors. However, the application obviously preceded the necessary collaboration and use of regional governance required by the Home Office. Again, this puts the good faith of the applicant in doubt.

Breach of Lawful Development Certificate guidance

National guidance on lawful development certificates (Paragraph: 005 Reference ID: 17c-005-20140306) states:

An application needs to describe precisely what is being applied for (not simply the use class) [...] Without sufficient or precise information, a local planning authority may be justified in refusing a certificate.

The application does not meet this requirement. Despite calling the imprecision about non-students "noteworthy", the report does not cite this breach of guidance as a reason for refusal. The acknowledgement "that the intention is to use the building to accommodate asylum seekers" not only proves the application's failure to provide precise information, but demonstrates that material information was withheld.

The national guidance further states (Paragraph: 013 Reference ID: 17c-013-20140306) that:

It is an offence to make a false or misleading statement, use false or misleading documentation, or, withhold any material information in order to obtain a certificate. Committing an offence can result in a fine on summary conviction, on indictment, the maximum penalty is 2 years' imprisonment or a fine, or both.

The applicant appears to have deliberately withheld material information, of multiple kinds, in the hope that this would make it easier to obtain a certificate. The application documents contain misleading information and the good faith of the applicant repeatedly appears in doubt. I request that officers will assess whether an offence has been committed in this case.

Local opposition

Since the University of Derby's plans have become public, there has been overwhelming public opposition. This can be observed in the unprecedented scale of objections submitted.

I have also conducted an extensive survey of local people. Over 5,000 local people have responded to my survey. As at the time of writing, 89% of respondents oppose the University of Derby's plans.

Conclusion

This application is deeply flawed and its validity is questionable. I am glad that planning officers appear to agree with me in their recommendation for refusal. The proposal to convert High Peak Halls into a large-scale asylum dispersal centre is poorly thought through, going against Home Office guidance, the advice of Derbyshire Constabulary and the overwhelming view of local people. I urge councillors to either refuse or return the application.

Officer Comments

By way of additional information, some objectors have suggested that instead of a recommendation to refuse the application the Council should reject the application as not having been validly made and refuse to determine it. As set out in the report the Council consider the application as made did contain all the information required by the Development Management Procedure Order 2015 and the application was

validated on the 15th May 2023. Even if validation of the application were considered to be incorrect, which is not the case here, there is no power within the Development Management Procedure Order to reverse that decision or to revisit it, so having validated the application it must now be dealt with or the applicant will be entitled to appeal it for non-determination to the Planning Inspectorate. "Returning" the application would not therefore remove the applicant's right to Appeal as has been suggested by some objectors. Accordingly the recommendation remains the same.