

**-HIGH PEAK BOROUGH COUNCIL
DEVELOPMENT CONTROL COMMITTEE**

Date 25th March 2024

Application No:	HPK/2024/0022	
Location	OAKLANDS MANOR, MANCHESTER ROAD, BUXTON, DERBYSHIRE, SK17 6ST	
Proposal	VARIATION OF CONDITION 3 RELATING TO HPK/2023/0233	
Applicant	Keys Active 8 Care Ltd	
Agent	Sarah Sands, Emery Planning	
Parish/ward	Buxton/ Corbar Ward	Date registered 26 th January 2024
If you have a question about this report please contact: Declan Cleary, dcplanningconsultancy@gmail.com		

1. SUMMARY OF RECOMMENDATION

Approve, subject to conditions

2. REASONS FOR REFERRAL AND PROCEDURAL MATTERS

2.1 This application has been brought before the Development Control Committee for consistency.

2.2 Planning application HPK/2023/0233 was considered by Development Control Committee on 13th November 2023, where the application was deferred, and on 11th December 2023, when members resolved to approve the application.

2.3 That resolution to approve was subject to an amendment to Condition 3, restricting the number of occupants within the property.

3. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

3.1 The application site lies outside of the development boundary for Buxton, and is within an area of countryside as defined by the Local Plan policies map. The site relates to a large detached three storey building known as Oaklands Manor, last used as an outdoor leadership training centre operated by the University of Derby. The building is set within a large rectilinear curtilage, with the building sited away from the road, and at a lower land level.

3.2 The site is accessed off the Manchester Road and includes a driveway leading to a large hardstanding area positioned to the rear of

the building. The site is well vegetated with existing trees covered by the Manchester Road Tree Preservation Order referenced DCCTPO 120.

3.3 The surrounding area is predominantly open countryside. However, the site shares a boundary with a large detached dwelling which is located to the northwest. There are also other dwellings located along this stretch of Manchester Road.

4. DESCRIPTION OF THE PROPOSAL

4.1 Planning permission has been granted for the use of the premises under planning application HPK/2023/0233. The description of the approved development is described as the *Change of use of residential outdoor pursuits training centre (Class F1) to activity based residential care home for up to 8 children between ages 8 and 17 years (Class C2)*.

4.2 As detailed above, the initial application was considered at Development Control Committee, with members resolving to approve the application. The approval was subject to conditions, including condition 3 which states:

Notwithstanding the description of development the premises shall be used as a residential care home for the occupancy of up to 4 young persons between the ages of 8 and 17 only, and for no other purpose (including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

The following reason for the condition is cited:

To reduce the potential for detriment to existing residents' amenity and to comply with the adopted High Peak Local Plan Policies:

- *S1 "Seeking to secure developments provide a high standard of amenity for all existing and future occupants of land and buildings, ensuring communities have a healthy, safe and attractive living and working environment and the risks from potential hazards are minimised";*
- *EQ6 "Requiring that development achieves a satisfactory relationship to adjacent development and does not cause unacceptable effects by reason of visual intrusion, overlooking, shadowing, overbearing effect, noise, light pollution or other adverse impacts on local character and amenity".*

4.3 This application seeks to vary the wording of condition 3. The application indicates the following wording:

"The premises shall be used as a residential care home for the occupancy of up to 8 children between the ages of 8 and 17 only, and

for no other purpose (including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).”

4.4 The proposed amendment therefore seeks to amend the number of residents who could occupy the premises from the consented 4 young persons to 8 young people between the ages of 8 and 17 as originally applied for. It is the position of the applicants’ that the condition is both unnecessary and unreasonable.

4.5 The application has been supported by an application form, planning statement, and site plan. The applicants have also provided a response to the comments raised by third parties during the consultation process. Full details of the application and all representations received can be found at:

<http://planning.highpeak.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=265590>

RELEVANT PLANNING HISTORY

5.1 The application site has been subject to a number of historic planning applications. The most relevant being:

HPK/2023/0233 - Change of use of residential outdoor pursuits training centre (Class F1) to activity based residential care home for up to 8 children between ages 8 and 17 years (Class C2) – Approved – 15/12/23

5. PLANNING POLICIES RELEVANT TO THE DECISION

High Peak Local Plan (Adopted 2016)

- S1 Sustainable Development Principles
- S1a Presumption in Favour of Sustainable Development
- S7 Buxton Sub-area Strategy
- EQ1 Climate Change
- EQ2 Landscape Character
- EQ3 Rural Development
- EQ5 Biodiversity
- EQ6 Design and Place Making
- EQ9 Trees, woodland and hedgerows
- CF5 Provision and Retention of Local Community Services and Facilities
- CF6 Accessibility and Transport

Supplementary Planning Guidance/Documents

Residential Design (2005)
High Peak Design Guide (2018)

National Planning Policy Framework

Section 9: Promoting Sustainable Transport
Section 12: Achieving Well-designed Places
Section 13: Protecting Green Belt land
Section 14: Meeting the challenge of climate change, flooding and coastal change
Section 15: Conserving and enhancing the Natural Environment
Section 16: Conserving and enhancing the Historic Environment

6. CONSULTATIONS CARRIED OUT

Site notice	Expiry date for comments: 28/02/2024
Neighbour letters	Expiry date for comments: 20/02/2024
Press notice	Expiry date for comments: N/A

Public Comments:

7.1 3 letters of representation have been received from members of the public, all objecting to the proposal on the following grounds:

- application has stressed throughout that only one or two residents will be in the home at any one time so allowing 4 seems more than reasonable
- area is not suitable
- There is not the infrastructure to support this kind of establishment.
- Other similar establishments resulted in numerous police and other agencies being involved
- Approved with 4, been to committee twice and some members wanted 2 or 3 occupants.
- 100s Residents and families close by do not want this
- only have their financial gain in mind.
- should be refused due to the unrest this is causing
- Neighbours are selling their homes
- Conditions of monitoring should be included
- told a large fence would be installed but no longer
- 8 would be disastrous for the town and residents and is not achievable

Consultee	Comment
Cllr Madeline Hall	Objection

	<p>Item 1.2 of the statement arguing for removal of a condition on planning approval states that planning permission was granted on 15 December 2023 for change of use to an activity based residential care home for up to 8 children. This is evidently inaccurate, The description of the proposed development is reproduced from the substantive application, as revised. However, the approval was granted on condition of limitation of residents to 4 at any one time.</p> <p>Item 1.3 suggests that the inaccurate description of the proposal on the letter to statutory consultees was the fault of the Council. In fact the description was a direct transcription from the original documentation applying for residential provision exclusively for 10 year olds with a maximum number of 8 children. Consultees questioned the precision of the restricted age cohort as impracticable. This necessitated correction by the applicant and a second round of consultation.</p> <p>These two opening contentions are repeated through the document. I find them illustrative of the distrust that has arisen between the applicant and local residents. People have reason to feel that facts are being misrepresented.</p> <p>I see nothing new in the application. Derbyshire Constabulary's response, recommending limitation of residents, is reiterated together with the response from the application. This was already included in previous submissions.</p> <p>The Planning team will advise if the argument that a recommendation for approval by a designated planning officer has more weight than the decision of the Development and Control Committee is sound. It seems to me to be without merit. The Committee agreed to approve change of use with a condition to reduce the potential for detriment to existing residents; amenity and to comply with the adopted High Peak Local Plan Policies. That remains a reasonable safeguard and reasonable adjustment , particularly as the application has stressed throughout that</p>
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	<p>typically only one or two residents with be in the home at any one time. Monitoring by Ofsted is highlighted, as in previous documents, as assurance of good practice in care and education.</p> <p>I hope that this application for removal of the condition is not granted. The applicant suggests an alternative wording which does not address the issue of resident numbers. I suggest another condition. As noted in my previous response, Ofsted inspections are occasional events and do not include reflection on planning compliance. Greater reassurance would be afforded by sharing schedules of residents' occupancy of the centre. This should not be a burden for a well-managed facility and would provide factual information on a point which has proved a focus of concern for many respondents.</p> <p>Should the committee agree that the application should be approved, I suggest that an additional condition be considered:</p> <p>Quarterly schedules of planned residents' occupancy to be shared in advance with the HPBC Planning Compliance team and/or the immediate neighbours of the centre.</p>
DCC Highways	None received
Severn Trent Water	None received
Environmental Health	None received

7. POLICY AND MATERIAL CONSIDERATIONS AND PLANNING BALANCE

Planning Policies

8.1 The determination of a planning application is to be made pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004, which is to be read in conjunction with section 70(2) of the Town and Country Planning Act 1990.

8.2 Section 38(6) requires the local planning authority to determine planning applications in accordance with the development plan, unless there are material circumstances which 'indicate otherwise'. Section 70(2) provides that in determining applications the local planning

authority "shall have regard to the provisions of the Development Plan, so far as material to the application and to any other material considerations." The Development Plan currently consists of the High Peak Local Plan 2016.

8.3 Paragraph 11 of the National Planning Policy Framework (NPPF) explains that at the heart of the Framework is the presumption in favour of sustainable development. For decision makers this means that when considering development proposals which accord with the development plan they should be approved without delay; or where the development plan is absent, silent or relevant policies are out of date, grant planning permission unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

8.4 The NPPF seeks to proactively drive and support sustainable economic development through the delivery of the homes, business and industrial units, infrastructure and thriving local places that the country needs. High quality design should be sought and a good standard of amenity provided for all existing and future occupants of land and buildings.

8.5 Local Plan policy S1a establishes a presumption in favour of sustainable development as contained within the NPPF.

Principle of Development and background

8.6 The principle of the development for the change of use of the building to an activity based residential care home for children between ages 8 and 17 years (Class C2), has been accepted through the granting of planning application HPK/2023/0233. This permission remains extant.

8.7 The application is made under s.73 of The Town and Country Planning Act (1990) which applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. S.73 therefore allows for conditions to be removed or varied.

8.8 Only the detail of the condition(s) applied to be varied (or removed) can be considered, and it is not a complete re-consideration of the application. The original planning permission continues to exist whatever the outcome of the variation of condition application. Decision Notices should repeat relevant conditions from the original permission, or as amended in this instance, unless they are no longer relevant or have already been discharged. New conditions can also be imposed, provided they a) do not materially alter the development as originally approved and b) are conditions that could have been imposed on the original permission.

8.9 Condition 3 on planning permission HPK/2023/0233 relates to a restriction on the number of occupants at the site. The condition, as detailed above, limits the occupancy of the premises to 4 children aged between 8 and 17. The reason for the condition was to limit the effect of the development on the amenity of nearby residents.

8.10 In terms of imposing conditions, s.70 (1) (a) of The Act, states that the Local Planning Authority may “*grant planning permission, either unconditionally or subject to such conditions as they think fit*”. Planning Practice Guidance confirms that “*this power needs to be interpreted in light of material considerations such as the National Planning Policy Framework, this supporting guidance on the use of conditions, and relevant case law*”.

8.11 The National Planning Policy Framework (2023) provides guidance on the use of planning conditions (paragraphs 55 and 56). P.55 states that “*local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions*”. P.56 goes on to state that, “*conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects*” (emphasis added). These are the “tests” which conditions ought to satisfy. It is necessary for the condition to meet all of the tests.

8.12 The main consideration is therefore the effect of the variation of the condition, to allow for up to 8 occupants to reside at the premises, on the amenity of nearby residents.

Amenity

8.11 Policy EQ6 requires development achieve a satisfactory relationship to adjacent development and not cause unacceptable effects by reason of visual intrusion, overlooking, shadowing, overbearing effect, noise, light pollution or other adverse impacts on local character and amenity. Policy S1 relates to the delivery of sustainable development. To achieve this, Policy S1 seeks to secure developments which provide a high standard of amenity for all existing and future occupants of land and buildings, ensuring communities have a healthy, safe and attractive living and working environment and the risks from potential hazards are minimised.

Case of the applicant

8.12 The position of the applicant is that the condition does not meet the tests of necessity or reasonableness. Further, they are of the opinion that the application, as originally applied for, would not result in an unacceptable effect on the amenity of neighbouring properties.

8.13 With regard to necessity, the applicants consider, in summary that:

- The number of occupants based on 8 young people was accepted throughout the planning officer's assessment of the application. It therefore follows that further reducing the number of occupants would not make an unacceptable development acceptable because the development is already acceptable;
- the existing lawful use of the building could operate far more intensively than the application proposal (based on 8 young people), and the use of the property could operate intensively and without any planning restrictions having an adverse impact on amenity;
- therefore no justification to further restrict the number of occupants below that originally set out;
- The purpose of conditions is to mitigate any adverse effects of granting consent. Whilst it is accepted that the condition should refer to the specific development applied for within Use Class C2 use it is not considered necessary to restrict the number of occupants; and,
- The decision maker is required to consider whether the proposal would be policy compliant, if the condition were varied to permit consent for up to 8 young people aged between the ages of 8 and 17 years, as the application originally sought. This was the basis of the recommendation of approval by the planning officer and, as was resolved by Members to be approved committee on the 13 November and the 11 December.

8.14 With regard to the reasonableness of the condition, the applicants consider, in summary, that:

- The restrictions are unreasonable, as the development is acceptable without;
- The officer had concluded that 8 residents was acceptable in terms of amenity and, therefore, Policy compliant;
- PPG advises that conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness;
- Conditions should be discussed so that unreasonable burdens are not being imposed;
- Given the size of the existing building it is not viable to operate such large premises on the basis of 4 young children;
- PPG states that it would not be appropriate to modify the development in a way that makes it substantially different from that set out in the application. The condition as it stands reflecting the numbers of children as 4 does substantially alter the development as applied for; and,
- The case officer suggested, in their report, that it would be unreasonable to limit the number of occupants below that applied for.

8.15 In light of the above, the applicant considers that development would have not adverse effect on the living conditions of the occupants of neighbouring properties, and that the condition 3, attached to HPK/2023/0233, does not meet the required tests for conditions.

Officer Assessment

8.16 The reason for the imposition of the condition is clear, insofar as the condition was deemed to be required to limit the effect of the development on the amenity of nearby properties. The condition is precise, relevant to planning and the development, and is enforceable.

8.17 The effect that the development would have on the living conditions enjoyed by neighbours where the main concern relates to noise and disturbance arising from activities arising at the site, is a planning consideration and embedded in the policies of the Development Plan. There is no technical level to establish the level of activity to which unreasonable disturbance would arise. The matter is therefore a subjective one.

8.18 In considering the earlier application, the advice of Planning Officers was that the development, for the occupation of up to 8 occupants, was acceptable in regard to amenity. However, in this instance, it was deemed necessary by the decision makers (members of the Development Control Committee) to limit the occupancy to a level below that applied for due to concerns in this regard.

8.19 While the recommendation set out in the Committee reports indicated that, in their opinion, the development was acceptable with regard to amenity, the Development Control Committee, as the decision makers are not duty bound to follow the recommendation. Planning Practice Guidance advises that, *“Where members take decisions on planning applications they must do so in accordance with the development plan unless material considerations indicate otherwise. Members must only take into account material planning considerations, which can include public views where they relate to relevant planning matters. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid material planning reasons”*.

8.20 As indicated above, the effect of the development on residential amenity is a material consideration and, in terms of the issue considered, is a subjective matter. Members have therefore considered the effect of the development in accordance with the Development Plan. In the opinion of the Committee, this restriction made the development acceptable in planning terms and such a conclusion is a reasonable one to be made.

8.21 While arguments of viability and unreasonable burdens have been advanced, there is little evidence provided to identify that the effect

of the condition would make the development unviable and unduly burden the applicant. While the size of the building has been cited, this does not necessarily make the condition unreasonable, *per se*. Furthermore, while the case officer suggested that it would be “unreasonable” to restrict the development to an intensity which is below that applied for, this opinion was in the context of the view that the development was acceptable in accordance with the Development Plan.

8.21 The principle of imposing such a planning condition is therefore not unreasonable, while it was deemed necessary to control the perceived impacts of the development. Having regard to the tests for conditions, and s.70(1)(a) of The Act, the Council has not acted unreasonably in coming to such conclusions.

8.22 Notwithstanding the above commentary, it is considered that the advice of the previous committee report for Committee on 11th December 2023, remains relevant to the main issue of amenity. In that report members were advised that:

8.20 The lawful use of the property is a material consideration. The lawful use as a training centre, has the potential to operate in an intensive manner which would result in noise and activity generated at the site. The applicants supporting documentation has advised that:

“The current owners of the property (the University of Derby) have advised that the premises was used for 80 to 90 students in 2015, this reduced to 66 students in 2019/20, and supported by 6 11 staff. The building was used for teaching during term time and over the holiday periods it was used for outdoor activities including summer camps. The shower facilities were used regularly by students who would engage in outdoor pursuits such as caving, climbing and bushcraft activities during the day before attending lectures”.

As that use has ceased operation a direct comparison cannot be made. Nonetheless, the building is large, while sales particulars indicate dormitories, classrooms and conference rooms. It is very clear that an existing lawful use could operate in an intensive manner.

8.21 The degree of potential lawful activity is not restricted. Comparatively, the use of the building for up to 8 occupants, and their carers at a ratio of 2:1, would result in up to 24 persons occupying the premises. Even taking into consideration staff turnover/shift changes, and the attendance of any other ancillary staff or visitors, the degree of activity given the size of the building, comparatively to its lawful use is not considered to be significant.

8.22 It is understood that any such residential home requires a registration process through Ofsted. This process includes staff assessments to ensure that staff are appropriately experienced and trained. Ofsted would be required to carry out inspections of the home. This regulatory process, outside of the planning system, is in place to ensure that such sites operate effectively.

8.23 The proposals have also been considered by the Designing out Crime Officer at Derbyshire Police who have carried out their own internal consultations. The advice is that there are no material reasons connected to crime, disorder, or safeguarding which would amount to a sustainable objection to the change of use as proposed. While their comments appear to indicate a preference to restrict maximum occupancy to the levels suggested in the application, i.e. 2, it is considered that there is no material planning reason to do so, and to attach such a restriction would be unreasonable.

8.24 Therefore, while it is noted that there is considerable concern locally with regard to the proposed development it is not considered that the development would result in any material harm to the living conditions and safety of the community, or any robust evidence that demonstrate that the proposals would result in crime or disorder in the area.

8.23 Since the decision was made by Committee there has been no material change in circumstances or the nature of the application proposed. Therefore, it remains the view of Officers that the level of activity arising from 8 occupants at the site would be acceptable in terms of the effect on the amenity of neighbouring properties

8.24 Therefore, as previously concluded, it is not considered that the development would result in any material harm to the living conditions and safety of the community, or any robust evidence that demonstrate that the proposals would result in crime or disorder in the area. It is therefore concluded that whilst a restriction on numbers of children is necessary it is not necessary to restrict the occupancy to 4 and that a restriction to 8 would be appropriate.

Nutrient Neutrality

8.25 The site lies within the catchment of the River Wye which forms the Peak District Dales Special Area of Conservation (SAC). The Council has been notified that action must be taken to address exceedances of phosphorus in the River. As such, the Council cannot grant consent for development unless it can rule out “likely significant effects” on the SAC. A Habitats Regulations Assessment (HRA) will be required when the plan or project creates a source of water pollution or has an impact on water quality and when it is within the catchment of

the SAC. Initially, a screening assessment will be required to consider if “likely significant effects” (alone or in-combination) on the SAC can be ruled out. If not, this will be followed by an “Appropriate Assessment” where the impact of the plan or project is considered in detail.

Screening Assessment

8.26 The proposal is not directly connected with or necessary for the conservation management of a European site. The lawful use of the property is as an outdoor education training centre. The building includes dormitories and numerous shower rooms and bathrooms.

8.27 Under the previous application, the applicants commented that *“The current owners of the property (the University of Derby) have advised that the premises was used for 80 to 90 students in 2015, this reduced to 66 students in 2019/20, and supported by 6 staff. The building was used for teaching during term time and over the holiday periods it was used for outdoor activities including summer camps. The shower facilities were used regularly by students who would engage in outdoor pursuits such as caving, climbing and bushcraft activities during the day before attending lectures”*.

8.28 The proposed use would have an occupancy of 24 (at maximum occupancy levels and only when all occupants are on site at any one time), comprising 8 young people and 16 adults. It is considered that the proposal will not increase overnight stays, or increased bathroom use, compared to the potential lawful use of the site. The scheme does not include any additional hardstanding or additional roof and in turn will not risk having a significant negative effect on the SAC either on its own or in combination with other proposals and therefore it is not necessary to carry out an Appropriate Assessment.

Other Matters

8.29 It has been suggested by third parties that, if minded to approved, a condition be attached to any permission requiring the submission of quarterly registers of occupants attending the site. While the comment is noted, such a condition may not meet the test of necessity or precision. However, should members consider a condition of such a nature to be required, then a condition requiring a register to be kept and made available “upon request” of the Council could be imposed. This may assist with any investigations into concerns relating to breaches of the rates of occupancy at the site.

8.30 Other comments have been raised with regard to suitability of the site, level of infrastructure, level of objection and financial gain are not directly relevant to the main issue of amenity within the contended condition.

9. PLANNING BALANCE AND CONCLUSIONS

9.1 At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development. For decision making this means that amongst other things, that local planning authorities should positively seek opportunities to meet the development needs of their area unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits and to secure a development that improves the economic, social and environmental conditions of the area.

9.2 The use of the site has been approved and is acceptable as a matter of principle, and the delivery of housing weighs in favour of the development. While the local concerns are noted, there is no robust evidence to determine that the proposals would result in an adverse effect on residential amenity at the level of occupancy proposed. On this basis a restriction to 4 young people is considered to meet the test of reasonableness but not necessity and that a restriction to 8 would be appropriate. As previously concluded there are no other issues with regard to design and landscape matters, highway safety, or nutrient neutrality.

9.3 Accordingly, the proposal is considered to comprise sustainable development under the terms of the Framework, and it is recommended that the application be approved. This would be subject to the conditions previously attached, with condition 3 amended accordingly.

10. RECOMMENDATIONS

A. That planning permission is GRANTED subject to the following conditions:

- 1. Standard Time Limit**
- 2. Development to be carried out accordance with approved plans**
- 3. Restriction of use for occupancy for up to 8 young persons between the ages of 8 and 17 only**

B. In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions/ informatives/planning obligations or reasons for approval/refusal) prior to the decision being issued, the Head of Development Services has delegated authority to do so in consultation with the Chairman of the Development Control Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.

This recommendation is made following careful consideration of all the issues raised through the application process and thorough discussion with the applicants. In accordance with Paragraph 38 of the NPPF the Case Officer has sought solutions where possible to secure a

development that improves the economic, social and environmental conditions of the area.

Site Plan

