

Planning
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Dear Sir/Madam

High Peak Halls, Bridge Street, Buxton, SK17 6BB
Application for a Certificate of Lawful Proposed Use or Development

We write on behalf of our client, University of Derby ('the Applicant'), in order to submit an application for a Certificate of Lawful Proposed Use or Development ('CLOPUD') in respect of the use of High Peak Halls, Bridge Street, Buxton, SK17 6BB ('the Site').

This application, submitted under Section 192 of the Town and Country Planning Act 1990 (as amended) ('TCP Act'), seeks to confirm that the proposed occupation of the existing non-self-contained accommodation on the Site by non-students, would not result in any material change of use and will, therefore, be lawful.

Application documentation

The application package comprises the following suite of documentation and drawings:

- Completed application form
- Site Location Plan
- Planning permission reference HPK/2004/0075
- Site photographs showing the bedsits and communal facilities
- Example Offer of Accommodation letter (from University of Derby)
- Example Room Check System spreadsheet (from University of Derby)
- Existing / proposed floorplans:
 - Ground Floor Plan, 23208 (20)004, Rev 5
 - First Floor Plan, 23208 (20)005, Rev 5
 - Second Floor Plan, 23208 (20)006, Rev 5
 - Third Floor Plan, 23208 (20)007, Rev 5
 - Fourth Floor Plan, 23208 (20)008, Rev 5

For clarification, the statutory application fee of £231 (+ £32.20 service charge) has been paid via the Planning Portal.

Background to the proposals

High Peak Halls occupies a four to five storey building spread across three attached blocks ('Block A', 'Block B' and 'Block C') on a Site exhibiting a land area of circa 1.04 acres. The building completed construction in 2005, in accordance with planning permission reference HPK/2004/0075, dated 18th May 2004.

Internally, the existing building comprises of 274 bedsit rooms, all with ensuite shower rooms, and 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. All areas of the premises are provided as furnished.

A copy of the final construction floor plans for the existing building, demonstrating the internal layouts of all five levels, is included in support of this application. Both the internal and external appearances of the Site, as existing, are shown in the photographs submitted as part of this application. Details of furnishings are included within the inventory forming part of the Room Check System spreadsheet. Together, the plans, photographs and Room Check System spreadsheet make clear the existing use of the Site for non-self-contained housing.

Following the completion of the development, the Site was occupied by students of University of Derby, accommodating up to 274 students, supported by staff on a 24-hour basis, including a hall manager, deputy hall manager and caretaker. Further support was afforded by residents' advisors, a head cleaner, a cleaning team of up to six people and a night-time supervisor.

The Site remains in the control of University of Derby, although is now vacant, being surplus to the needs of the University.

Overall, in terms of layout and operational management, this provision of non-self-contained bedsit rooms, communal primary cooking facilities and other shared areas is typical for large Housing in Multiple Occupation ('HMOs').

The lawful use of the building

Planning permission (reference HPK/2004/0075) was granted on 18th May 2004 for the following description of development:

'4 & 5 storey student residential development to provide approximately 286 bed spaces with associated car parking'.

In accordance with this permission, the Site has continually provided non-self-contained accommodation since completion of the building in 2005. Although the rooms within the property were predominately let to students of University of Derby on contracts of 42-51 weeks, during the Summer period the premises were let to visitors as short-stay accommodation in association with conferences and events.

Although the building currently remains vacant, the established lawful use has been maintained, due to the fact that the building is capable of immediate re-occupation (and there has been no other use of the premises since the last occupants vacated the property).

Whilst a number of conditions (tied to planning permission reference HPK/2004/0075) remain applicable throughout the operational life of the development, these are related to access, car parking, cycle storage, surface water discharge, retention of the Hollywood Room (within the adjoining Railway Hotel) and retention of the Railway Hotel itself. In the absence of any enforcement action having been taken, it is understood that the development has continually operated lawfully. None of these conditions would be impacted as a consequence of the proposed use of the premises by non-students.

There are no conditions or legal agreements which restrict the usership of the accommodation. As reference to 'student' is included in the description of development only, there is no such control over the occupancy of the building as would have been afforded in the instance of conditions or a legal agreement having been included. This has been well-established through case law, dating from *I'm Your Man Ltd v SoSE (1998) 4 PLR 107*, which confirmed that for a limitation on the grant of permission to be effective, it cannot appear in the operative part, but instead needs to be included as a condition. As Hickinbottom J stated in *Cotswold Grange County Park v SoSCLG [2014] JPL 981* in relation to an application for a certificate of proposed use:

'Simply because something is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is proposed is a material change of use – for which planning permission is required, because such a change is caught in the definition of development – generally, the only things which are effectively prohibited by a grant of planning permission are those things that are the subject of a condition...'

On the basis that the reference to 'student' in the description of development is non-material to the overall operation, and in the absence of any planning controls on the occupancy of the bedsits within High Peak Halls, it is understood that it can be lawfully occupied by students and non-students alike.

This provides greater flexibility to minimise vacancy now that the building is surplus to University of Derby's requirements. Notwithstanding, University of Derby is intending to maintain the provision of non-self-contained housing as existing, as a clear need for this form of budget accommodation within High Peak Borough has been identified.

Accordingly, this application for a CLoPUD under Section 192 of the TCP Act, seeks to confirm that the proposed occupation of the non-self-contained accommodation within the property by non-students, would not result in any material change of use and will, therefore, be lawful.

The Statutory requirements for a CLoPUD

The statutory requirements for obtaining a CLoPUD, and the criteria for determining such an application, are contained in Section 192 of the TCP Act. This identifies that if any person wishes to ascertain whether any proposed use of buildings or other land is lawful (s)he may 'make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question'.

Section 192(2) confirms that ‘If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.’

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (‘DMPO’) specifies the contents of an application for a CLoPUD and how it must be submitted. It identifies at Part (2) that an application for a CLoPUD must be accompanied by:

- a. ‘a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North;*
- b. such evidence verifying the information included in the application as the applicant can provide; and*
- c. a statement setting out the applicant’s interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.’*

National Planning Practice Guidance (‘NPPG’) also clarifies that any application for a CLoPUD must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application. Paragraph: 005 (Reference ID: 17c-005-20140306) identifies that ‘[a]n application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate.’

The applicant is responsible for providing sufficient information to support an application for a CLoPUD, although a local planning authority is entitled to canvass evidence if it so wishes before determining an application. NPPG Paragraph 006 (Reference ID: 17c-006-20140306) states that if a local planning authority obtains their own evidence ‘this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.’

In advising on the evidence required for a certificate to be granted, NPPG Paragraph 006 (Reference ID: 17c-006-20140306) identifies that, ‘[i]n 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.’

NPPG is also clear in identifying (at Paragraph: 009, Reference ID: 17c-009-20140306) that ‘[a] local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.’

The proposed use

University of Derby is proposing to retain the layout of the property as existing and let the non-self-contained bedsit rooms on a commercial basis as accommodation for stays of 90 days or more.

As University of Derby is no longer seeking to house its students within the property, it has made it clear that future residents will not necessarily be students. However, the proposed occupation would be very similar to that already well-established on-Site, involving non-related persons sleeping in private bedsit rooms and sharing the kitchens, dining areas, common room, laundry room, cycle storage and car parking. There would be no significant provision of care and no catering provided to residents.

Assessment of the proposed use

In accordance with the statutory requirements for an application for a CLoPUD, a site location plan (drawn at 1:1250 scale, with a north arrow and the Site outlined in red) is enclosed. It is also confirmed that the landowner has been notified in writing of the application.

The following evidence is provided in support of the application:

- Planning permission reference HPK/2004/0075, confirming the lawful use of the Site
- Example Offer of Accommodation letter (from University of Derby) for the 2020-2021 academic year, identifying the bedsits to be let on an individual basis for rental periods in excess of 90 days (42 weeks for the standard academic year (Terms 1-3) or 51 weeks with the addition of the Summer term (Terms 0-4));
- Example Room Check System spreadsheet (from University of Derby), demonstrating the maintenance, annual safety check and end of year check regimes which were in place, and also containing an inventory of room contents;
- Photographs, showing the bedsits and communal facilities within the property; and
- Floorplans, showing the existing layout on all floors (proposed to be retained).

As outlined above, as can be seen from the enclosed photographs and floorplans, High Peak Halls provide 274 non-self-contained bedsits. There are no private cooking facilities provided in any of the bedsits, with these basic amenities instead provided as communal kitchen facilities and dining areas, shared between clusters of bedsits. As evidenced in the inventory included within the enclosed Room Check System spreadsheet, rooms have been furnished with a bed, mattress, desk, chair, shelves, wardrobe and drawers. The enclosed 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 more than 90 days (42 weeks for the standard academic year (Terms 1-3) or 51 weeks with the addition of the Summer term (Terms 0-4)). It is understood that there has also been some historic occupation by non-students, where accommodation was let on a short-term basis to visitors attending conferences and other Summer events. The enclosed Room Check System spreadsheet demonstrates the maintenance, annual safety check and end of year check regimes which were in place. Accounting for these physical and operational attributes, it can be deduced that the use of High Peak Halls has been generally typical of a large HMO.

Although prior to becoming vacant the bedsits were predominately occupied by students as residents for periods in excess of 90 days, there are no conditions (attached to planning permission reference HPK/2004/0075) or legal agreements which limit the occupation to students exclusively.

Accordingly, the aim of this assessment is to demonstrate that the proposed use of the bedsits as non-self-contained accommodation for non-students, does not represent a material change of use

and, therefore, does not constitute ‘development’ for the purpose of Section 55(1) of the TCP Act, meaning that planning permission does not need to be obtained.

In considering whether the proposed change of use from residential accommodation for students to unrestricted HMO use might be considered ‘material’, NPPG explains (at Paragraph: 011 Reference ID: 13-011-20140306) that:

‘There is no statutory definition of ‘material change of use’; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case.’

However, notwithstanding NPPG, in case law it has been established that the test for deciding whether there has been a material change of use is whether there has been a change in the character of the use, as cited in *Hertfordshire County Council v Secretary of State for Communities and Local Government & Anor* [2012] EWHC 277, in turn citing *East Barnet Urban District Council v British Transport Commission* [1962] 2 QB 484 in which Lord Park CJ stated:

‘It seems clear to me that under both Acts [Town and Country Planning Acts, 1932 and 1947] what is really to be considered is the character of the use of the land, not the particular purpose of a particular occupier.’

Additional clarification is offered by Ousley J in *Sage v Secretary of State for Housing, Local Government and Communities* [2021] EWHC 2885 in stating that:

‘The crucial test is whether there has been change in the character of the use. Environmental impact can be relevant as evidence that a material change has occurred, because a use of the new character may be capable of yielding environmental impacts or have done so already. The Guidance as written is apt to mislead as to what the real question is, and as to the true but limited relevance of environmental impact.’

Accordingly, the balance of this assessment focuses on the degree to which the proposal represents a material change in character and, by implication, a material change of use, having proportionate consideration to environmental impacts insofar as they are relevant to the character of the use.

As noted above, the existing layout and former operation of non-self-contained bedsit rooms complemented by communal primary cooking facilities and other shared areas, is typical for large HMOs, and is sought to be maintained. There are no features or attributes which make the premises uniquely suitable for students, as opposed to other individuals, or which render the property notably distinct from any other large HMO with unrestricted occupancy. Accordingly, physically, there would be no changes impacting on the building.

The nature of the occupation would continue to be for unrelated persons living together and sharing communal facilities for periods of at least 90 days. The premises would continue to be commercially let as low-cost accommodation, on an individual bedsit basis, for independent living complemented by some minimal level of staffing and the provision of some cleaning, maintenance and related servicing, consistent with the former arrangements for High Peak Halls. The capacity of the Site

would remain unchanged, including with respect to both residents and staff. Accordingly, the character of the occupation would closely resemble the existing.

Given the above similarity in the character of the occupation, occupancy by non-students would not give rise to any materially different impacts, including with respect to traffic, car parking, cycle parking, noise and disturbance or waste management. Each of these potential impacts is assessed in turn below.

- **Traffic:** The occupancy of the premises would remain unchanged, with 274 bedsit rooms, each capable of accommodating one individual. Staffing and servicing levels would also remain generally consistent with, or be slightly reduced compared to, the former operation. As such, there would be no material impact in terms of traffic generation, having regard to resident cars, staff cars and delivery/servicing vehicles.
- **Car parking:** The existing 50 car parking spaces (including accessible parking spaces) would be retained on-Site, with no additional parking provision proposed. Given the same residential capacity and similar (or reduced) staffing levels, similar car parking demand is forecast and would be accommodated within the on-Site parking provision. Therefore, there would be no material impact in terms of car parking.
- **Cycle parking:** The existing cycle storage facilities would be maintained and made available for use by residents and staff. Given the same residential capacity and similar (or reduced) staffing levels, similar cycle parking demand is forecast and would be accommodated within the on-Site cycle storage rooms. Therefore, there would be no material impact in terms of cycle parking.
- **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.
- **Waste management:** The existing refuse and recycling facilities would be maintained and, given the consistent capacity of the premises, waste generation is anticipated to be generally consistent with the former occupation, both in terms of quantum and nature as domestic streams. Servicing and collection arrangements would also reflect the former occupation. Therefore, there would be no material impact in terms of waste management.

Therefore, on the basis that the existing provision of non-self-contained bedsits and communal facilities (providing shared basic amenities) is to be maintained and continued to be occupied by persons from different households as their sole/main place of residence for stays of 90 days or more, the proposed occupation by non-students (rather than students) is considered to be non-material to the character of the use. As such, the proposed change from student accommodation to an HMO does *not* amount to a *material* change of use.

Given that only a *material* change of use constitutes 'development' for the purpose of Section 55(1) of the TCP Act, and that the proposal is for a *non-material* change of use, planning permission should not be required to allow the lawful use of High Peak Halls as an HMO (*Sui Generis*).



It is, therefore, contended that a CLoPUD should be issued to confirm that the occupation of the bedsits by non-students is not material and, therefore, the proposed use of the premises is lawful.

We look forward to validation of the application, shortly. In advance of this, if you have any queries, please do not hesitate to contact Rachel Streeter of this office on 07858 363 431.

Yours faithfully,

Jones Lang LaSalle Limited

JLL