

DELEGATED DECISION REPORT

HPK/2024/0465
Valid 13/11/2024

12 EXETER HOUSE
TERRACE ROAD
BUXTON

APPLICATION FOR LAWFUL
DEVELOPMENT CERTIFICATE
FOR 3 EXISTING DWELLINGS

(CERTIFICATE OF
LAWFULNESS - EXISTING)

MAIN ISSUES

- Whether the application can demonstrate 4 years continuous residential use as three independent flats

DESCRIPTION OF SITE

The application relates to No.12 Exeter House, Terrace Road, Buxton, an attractive three storey semi-detached town house with further accommodation present in the roof space, located in a highly sensitive and prominent location within the Buxton Central Conservation Area, that fronts westwards towards the Grade II* Listed Registered Park and Garden.

The roof is characterised by a small pitched dormer window which replicates a similar dormer at the adjacent semi-detached property, with a shared chimney stack sitting centrally within the block. The property is constructed in a high quality natural stone with slate tiled roof, with the principal elevation characterised by symmetrical bay windows at ground and first floor level, replicating a similar design in the adjacent neighbouring property.

The property benefits from a small area of off-street parking to the front adjacent to the highway with a garden situated to the rear.

PROPOSAL

The application seeks a Lawful Development Certificate to establish that No.12 Exeter House comprises three residential flats (C3 use).

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

HPK/2024/0224 – Conversion to 4 x Apartments – Withdrawn

HPK/0001/5884 For Proposed Construction Of Vehicular Access To Provide Off-street Car Parking For One Flat (Approved)

OFFICER COMMENTS

Background and Relevant Legislation

This certificate has been submitted under s.191 of The Town and Country Planning Act to determine whether an existing use of a property as three individual flats is lawful. S.191(2) states that uses and operations are lawful at any time if no enforcement action may be taken in respect of them. S.171B sets out the time limits for where no enforcement action may be taken and confirms, that no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

It is noted that the 4 year rule for residential use has recently changed to 10 years but the new 10 year rule only applies to works that were not substantially complete by 25 April 2024.

In this instance, therefore, it needs to be established whether the use has endured continuously for a period of more than 4 years from the date that the application was submitted to the LPA. The relevant date is therefore 8 November 2020, from which a continuous use must be demonstrated.

S.191(4) states that if the LPA are provided with information satisfying them of the lawfulness at the time of the application of the use then they shall issue a certificate to that effect. Planning Practice Guidance also confirms that the applicant is responsible for providing sufficient information to support an application and, in the case of applications for existing use, if a LPA has no evidence itself, nor any from others, to contradict or make the applicants version of events less than probable there is no good reason to refuse the application, provided that the evidence alone is sufficiently precise and unambiguous to grant on the balance of probability.

Evidence Submitted

The application submission includes a covering letter which list the evidence that has been submitted in support:

1. Statement of Truth from Mrs Thomas (previous owner) – dated 01.11.2024
2. Statement of Truth from David Busby (current owner) - dated 08.11.2024
3. Purchaser enquiry form dated 21.10.1981
4. Property Information Form and Fittings and Contents Form dated 02.11.2020
5. Screen shot of council tax records

In addition to the above information specific details related to each of three flats has been provided:

Flat 1 (Ground Floor Flat)

- Council tax bill dated 10.08.2002
- EPC dated 2020
- Utility bill dated 22.02.2003

Flat 2 (First Floor)

- Assured Shorthold Tenancy agreement dated 24.02.2005
- Assured Shorthold Tenancy Agreement dated 25.10.2023
- Council tax bill dated 26.07.2002
- Gas safety certificated dated 12.06.2020
- EPC dated 2022
- Utility Bill

Flat 3 (Second Floor)

- Assured Shorthold Tenancy agreement dated 15.12.2016
- Electrical Installation Condition Report dated 07.12.2016
- Assured Shorthold Tenancy Agreement dated 30.10.2023 EPC dated 2016

Analysis of Evidence

i) Statement of truth from Carol Thomas (previous owner) – dated 01.11.2024

This statement declares that the property was purchased by Carol Thomas in March 2002 and subsequently sold in December 2020. It also states that during the duration of their ownership it was three separate apartments and in residential purposes the whole time.

ii) Statement of Truth from David Busby (current owner) - dated 08.11.2024

This statement declares that the property was purchased by David Busby in December 2020 and remains in his ownership. It also states that the property was three separate apartments at the time of purchase and he was advised that it had been so for more than 20 years. The Statement also confirms that at time of purchase flat 1 was occupied by Mr & Mrs Thomas, Flat 2 was tenanted and Flat 3 was vacant.

iii) Purchaser enquiry form dated 21.10.1981

This is a historic purchaser enquiry form which was completed by the vendor's solicitor in response to the following questions:

Q10 a) (i) When did the present use of the property commence?

Response – 'Divided into flats about 20 years ago'

Question 12 (a)(i) what is the rateable value of the property?

Response - £111.00 (ground floor) £120.00 (First Floor) and £120.00 (second floor)

iv) Property Information Form and Fittings and Contents Form dated 02.11.2020

This form was completed by Mrs Thomas at the time of the sale to Mr Busby. The following questions and responses have been identified as pertinent:

Question 4.1 Have any of the following changes been made to the whole or any part of the property (including garden)?

(as) Building works (e.g. extension, loft or garage conversions, removal of internal walls). If Yes please give details including dates of all work undertaken.

Response – No

Question 4.4 Is the seller aware of any breaches of planning permission conditions or Building Regulations consent conditions, unfinished work or work that does not have all necessary consents?

Response – No

Question 13. Connection to utilities and services

Response to the location of stopcock lists locations for flats 1, 2 and 3.

Fittings and Contents Form dated 02.11.2020

Question 7 "Other Rooms" refers to Flat 2 and 3.

v) Screen shot of the council tax records

This shows the properties listed as three separate entries:

- Ground Floor, 12 Terrace Road – Band B
- Flat First Floor, 12 Terrace Road, Buxton – Band B
- Flat 3, 12 Terrace Road, Buxton – Band B

Collectively the evidence that has been presented demonstrates that the property has comprised three individual flats for many years. The Statement of Truth from Carol Thomas indicates that the property, Exeter House, 12 Terrace Road, Buxton had been three individual flats prior to her purchase of the property in 2002. If the purchasers enquiry form from 1981 is taken at face value, its use as three flats predate this and maybe as long as 20 years prior. The Council tax records indicate three separate listings for the flats and this together with Post Office address records (informed by HPBC land charges) provide evidence of three individual addresses for the three flats listed as Flat 1, Exeter House, Flat 2, Exeter House and Flat 3, Exeter House.

Further evidence has been provided about the individual flats to corroborate the extent of time that they have used independently.

Flat 1

The evidence provided in relation to flat 1 includes a Council tax bill, EPC and utility bill. The Council tax bill is the oldest piece of evidence which dates from 10 August 2002 and references the address as being 'Ground floor, 12 Terrace Road, Buxton'.

The utility bill dates from February 2003 (with a receipt showing payment on 22.02.2003) and the address is shown as Flat 1. An EPC has also been submitted which is dated 13 November 2020 it lists the address as Flat 1.

Flat 2

The evidence provided in relation to flat 2 includes a Council tax bill, gas safety certificate, EPC and two shorthold tenancy agreements. The Council tax bill is the oldest piece of evidence and dates from 26 July 2002 and references the address as being First Floor Flat, 12 Terrace Road, Buxton'. The utility bill is undated but is for Mr & Mrs Thomas at Flat 2. The gas safety certificate for flat 2 is dated 12.06.2020. An EPC has also been submitted which is dated 13 November 2020 it lists the address as Flat 2.

Two copies of Assured Shorthold Tenancies have been provided. One dates from 24th February 2005 and refers to the property as Flat 2 and being a 3 bedroom flat. The second AST is more recent and dates 25th October 2023.

Flat 3

The evidence provided in relation to flat 3 includes EPC, Electrical Installation Condition Report and two shorthold tenancy agreements. The oldest evidence dates from 2016, the EPC was undertaken on 2 December 2016 and the Electrical Installation Condition Report on 7 December 2016 both refer to the address as Flat 3.

Two copies of Assured Shorthold Tenancies have been provided. One dates from 15th December 2016 and refers to the property as Top Flat and being a 2 bedroom flat. The second AST is more recent and dates 30th October 2023.

The evidence provided for the individual flats helps to establish that the flats have not just been formed by sub-dividing 12 Terrace Road but that they have had their own individual addresses for some time. For Flats 1 and 2 this evidence dates from 2002 and for Flat 3 since 2016. The ASTs establish that the flats were not only owned by Mrs Thomas and then Mr Busby but they have been let to other occupants as independent properties. Evidence of the individual addresses has been provided on a range of documents from council tax and utility bills to AST across a wide timeframe. Albeit it is noted that the documents do not all use the same address reference, such as flat 1 is sometimes referred to ground floor flat. The formal registry of addresses refers to the flats as Flat 1, Flat 2 and Flat 3.

As previously referenced, as this application is seeking to establish a residential use it needs to demonstrate 4 years continuous use from the date the application was submitted to the LPA. This application has provided evidence that significantly pre-dates 8 November 2020 that establishes the property comprises three flats and that they have been occupied independently as separate residential units.

Therefore, in the absence of any evidence to the contrary to the version of events presented, on the balance of probabilities it is concluded that Exeter House, 12 Terrace Road, Buxton have been used as three independent flats (flat 1, flat 2 and flat 3) for a continuous residential use in excess of 4 years from the date the application was validated i.e. between 8 November 2020 and 8 November 2024. It is evident from the evidence submitted that the works to the flats were completed well before 25 April

2024, indeed the evidence from the purchasers enquiry form dated 1981 suggests that the conversion of the building may well been as long as 20 years prior. Moreover, the Council tax records submitted for flats 1 and 2 are shown from 2002, and the EPC was undertaken on 2 December 2016. This has been corroborated by the Councils own Council tax team, who state that records indicate that payment has been made from three indivial flats since 2003. The Council has limited evidence to dispute the applicants version, the only planning history associated with the building dates from the 1970's, where a planning application ref, HPK/0001/5884, sought and was granted consent for a vehicular access to provide off street parking for one flat. Whilst this does not determine the total number of flats at the property it does indicate that at least one flat was present in the building.

In order to reflect the applicants evidence, it is recommended that the description of development is amended to "Application for lawful development certificate for 3 existing flats – Flat 1 ground floor, Flat 2 – first floor and Flat 3 second floor". This provides certainty on the specific nature of the existing development which has been found to be lawful.

CONCLUSION / PLANNING BALANCE

There is sufficient evidence, on the balance of probabilities, that Exeter House, 12 terrace Road, Buxton have been used as three independent flats (flat 1, flat 2 and flat 3) for a continuous residential use in excess of 4 years and is therefore lawful.

OFFICER RECOMMENDATION : Approve

Case Officer: Rosie Dinnen

Recommendation Date: 09.01.25

X 

Signed by: Jane Colley Signature

On behalf of High Peak Borough Council