

<b>Agenda Item</b>	A6
<b>Application Number</b>	20/00677/FUL
<b>Proposal</b>	Retrospective application for the change of use of the first and second floor managers accommodation (C3) to student accommodation comprising of one 7-bed flat (sui generis) and one 4-bed flat (C4)
<b>Application site</b>	15 China Street Lancashire LA1 1ET
<b>Applicant</b>	Mister Capital Holdings
<b>Agent</b>	Mr Michael Harrison
<b>Case Officer</b>	Mrs Petra Williams
<b>Departure</b>	No
<b>Summary of Recommendation</b>	Refusal

(i) **Procedural Matters**

This application has been referred to Committee by Cllr Brookes on the grounds of the following concerns; viability of the ground floor use of the listed building; quality of the accommodation proposed and to understand how DM13 is applied to city centre conversions. As such, in line with the Scheme of Delegation in the Council's Constitution, the application must be determined by the Planning Regulatory Committee.

**1.0 Application Site and Setting**

- 1.1 The application site is located on China Street, Lancaster on the junction with Church Street. The overall site comprises the former Duke of Lancaster public house, a grade II listed building and its associated curtilage listed former stable block which lies to the south of the plot with a gable fronting China Street. An open service yard lies between the main three storey building and the single storey stable block to the rear of the plot which is in use as four student apartments with the benefit of planning and listed building consents. The first and second floors of the subject building have been converted to two flats without the benefit of planning permission and are known as flats 5 and 6, 15 China Street. The ground floor, which was last used as a restaurant, is identified as 75 Church Street. The ground floor is also the subject of a legal agreement which prevents it being used as a public house.
- 1.2 The neighbouring properties are 73 Church Street, a listed town house currently used as a solicitor's office and an open car parking area associated with the neighbouring office building which lies to the south of the site. The eastern gable of the stable building forms part of a larger boundary wall separating 73 and 75 Church Street. The ground floor of 75 Church Street recently gained listed building consent for works to facilitate its use as a restaurant by new tenants.
- 1.3 The site is located on the eastern side of China Street within the boundary of the city centre. China Street forms part of the one way gyratory system which runs through the city centre and is a public transport corridor and cycle route. The site is within an Air Quality Management Area and Lancaster

Conservation Area.

## 2.0 Proposal

2.1 The application seeks retrospective planning permission for the change of use of the first and second floor managers accommodation to student accommodation comprising of one 7-bed flat and one 4-bed flat. Works have involved minor changes to the internal layout and the installation of rooflights.

## 3.0 Site History

3.1 The property has been the subject of an ongoing Enforcement case since April 2013. At that time, it came to the attention of the local planning authority that unauthorised works had taken place to the building to facilitate a change of use of the first and second floor to separate living accommodation. Although consent was subsequently granted for some works to the listed building (13/00692/LB) an Enforcement Notice was issued in April 2014 which required the use of the first and second floors as separate residential student accommodation to cease within six months of the date of the Notice. The reasons for issuing the Notice related to air quality impacts and noise impacts on the occupiers from the ground floor public house use. The Enforcement Notice was subsequently appealed but this was dismissed by the Inspector in February 2015 and the enforcement notice upheld.

3.2 Notwithstanding the outcome of the Enforcement Notice appeal, internal and external works to the listed building continued despite conditions not having been discharged in respect of 13/00692/LB. However, these works were the subject of ongoing monitoring by the Senior Conservation Officer at that time and conditions were formally discharged in August 2015. Parallel to this, applications were submitted (14/01322/FUL and 14/01323/LB) in December 2014 for the change of use of vacant former stable block which was associated with the original public house to form four student apartments. These permissions were granted in September 2015 but were subject to a legal agreement to ensure that the ground floor of the adjacent building could not be used a public house in order to protect the residential amenity of the occupants of the converted stable building.

3.3 Since the outcome of the Enforcement Notice Appeal, the applicant has received regular contact from the Planning Enforcement Team which encouraged the applicant to submit an application to regularise the unauthorised residential use of the upper floors of the building through the submission of planning and listed building applications with the necessary supporting documents in relation to air quality and noise.

3.4 Applications 18/00119/FUL and 18/00120/LB were subsequently submitted in February 2018. These applications were the same as the current submissions but failed to fully assess the impacts on the student accommodation from the ground floor use with regard to noise and failed to give adequate consideration to air quality measures. Although the use had already commenced, the applicant was advised to withdraw the applications at that time and resubmit with all of the required information. The scheme was re-submitted in April 2019 (19/00477/FUL and 19/00478/LB) but the applications were returned in July 2019 as they had remained invalid despite the fact that the applicant had been notified and reminded that outstanding information was required for the purposes of validation. The current applications were submitted in July 2020 but pending the submission of required information they were not validated November 2020. Notwithstanding this, the applicant was required to carry out a further noise assessment in respect of the ground floor restaurant use and the possible impacts on the residential amenity of the upper floors.

3.5 Relevant site history:

Application Number	Proposal	Decision
20/00678/LB	Listed Building application for the removal of a partition wall, installation of new partition walls and internal doors on the first floor, installation of partition walls and roof lights and infilling of external doors on the second floor and installation of ventilation system	Pending consideration
20/01363/LB	Listed building application for the infilling a doorway and removal of an internal wall at ground floor level and	Permitted

	installation of new steelwork	
<b>19/00477/FUL</b>	Change of use of the first and second floor managers accommodation (C3) to student accommodation comprising of one 7-bed flat (sui generis) and one 4-bed flat (C4)	<b>Application returned</b>
<b>19/00478/LB</b>	Listed Building application for the removal of a partition wall, installation of new partition walls and internal doors on the first floor, installation of partition walls and roof lights and infilling of external doors on the second floor and installation of ventilation inlet to roof	<b>Application returned</b>
<b>18/00119/FUL</b>	Change of use of the first and second floor managers accommodation (C3) to student accommodation comprising of one 7-bed flat (sui generis) and one 4-bed flat (C4)	<b>Withdrawn</b>
<b>18/00120/LB</b>	Listed Building application for the removal of a partition wall, installation of new partition walls and internal doors on the first floor, installation of partition walls and roof lights and infilling of external doors on the second floor and installation of ventilation inlet to roof	<b>Withdrawn</b>
<b>14/01322/FUL</b>	Change of use of vacant former stable block to form 4 no. student apartments	<b>Permitted</b>
<b>14/01323/LB</b>	Listed Building consent for works to facilitate the change of use of former stable block, within site curtilage of vacant public house (A4) to form 4 no. student apartments (C3)	<b>Permitted</b>
<b>13/00692/LB</b>	Listed Building Consent for various alterations including replacement windows, doors, gates and works to ceilings, courtyard and elevations and the blocking up an existing doorway	<b>Permitted</b>

## 4.0 Consultation Responses

4.1 The following responses have been received from statutory and internal consultees:

Consultee	Response
Conservation Officer	<b>No objection</b>
Environmental Health	<b>No objection</b> subject to conditions
County Highways	<b>No objection</b>
Waste and Recycling	Advice regarding the provision of refuse storage
Lancashire Constabulary	Advice regarding security measures
Lancaster University	Raise a number of points: <ul style="list-style-type: none"> <li>• In terms of the current supply and demand of student accommodation within Lancaster City Centre the University would like to see the evidence of the current Lancaster City Council supply and demand analysis.</li> <li>• Recommend that any developments are homes under the Lancaster University Homes remit.</li> <li>• Development should adhere to Fire Service requirements</li> <li>• Consideration should be given to adequate light levels, noise and air quality assessment.</li> </ul>

4.2 No items of public comment have been received.

## 5.0 Analysis

5.1 The key considerations in the assessment of this application are:

- Principle of development
- Amenity and standard of accommodation
- Heritage impacts
- Air quality and Noise
- Other Matters

5.2 **Principle of development - Strategic Policies and Land Allocations DPD Policies SP1: Presumption in Favour of Sustainable Development; SP2: Lancaster District Settlement Hierarchy; Development Management DPD Policies DM1: New Residential Development and Meeting Housing Needs; DM7: Purpose Built Accommodation for Students; DM13: Residential Conversions; Residential Conversions and Houses in Multiple Occupations SPD 8 December 2020 and National Planning Policy Framework sections 2, 6, 8, 9, 11 and 12.**

5.2.1 The NPPF and policy SP1 offer a presumption in favour of sustainable development. The location is within the urban area, and in this respect it is sustainable as the site is situated in a central location, close to local services and facilities and is close to public transport routes (bus routes) to Lancaster University and the University of Cumbria.

5.2.2 In the 2015 Enforcement Notice appeal decision, it was noted by the Inspector that “the upper floors have been converted into good quality student accommodation with each floor having a shared kitchen and living room and a number of en-suite bedrooms”. The Inspector also noted that the residential use of the upper floors of this town centre building was encouraged by, and compliant with former local plan policies H20 and H22 which were in place at that time (policy H20 encouraged the residential use of upper floors in town centre properties and policy H22 supported the creation of new houses in multiple occupation (HMO) that met the needs of, and limited to particular groups). However, policies H20 and H22 were superseded by the Development Management DPD which was adopted in July 2020.

5.2.3 Policy DM13 of the DMDPD states that proposals which involve residential conversions must meet the following criteria:

- I. Provide accommodation that will address local housing needs and imbalances in the local housing market;
- II. Contribute towards the provision of affordable housing in accordance with Policies DM3 and DM6;
- III. Not result in a significant detrimental impact on the amenity of nearby residents and the character and appearance of the street scene; and
- IV. Satisfy all other relevant planning policy including the requirements of Appendix H where appropriate.

Specifically in relation to Houses in Multiple Occupation (HMOs), DM13 highlights the importance of maintaining an appropriate housing mix and safeguarding the character of residential areas to be important priorities. In doing so, the Council have adopted an approach of a general presumption against new housing in multiple occupation within the district. Proposals which would lead to a concentration of more than 10% of houses being classed as HMOs of the total housing stock within a 100m radius will not be considered acceptable. This includes proposals for changes of use to HMOs, or extensions to existing HMOs.

5.2.4 HMO Density Records show a concentration of 45.45% including the two applied for, so the proposal does not accord with DM13. Policy DM13 goes on to state that proposals may on exception be considered acceptable where:

- V. Effective measures are proposed to minimise noise and other forms of disturbance to neighbouring residential properties;
- VI. Suitable means of storage including refuse, recycling and bicycle storage is provided;
- VII. The proposal would not harm the character of the building or surrounding area;
- VIII. The proposal would not result in unacceptable impact on parking including unacceptable levels of on-street parking;
- IX. The proposal would not result in the creation of sub-standard living conditions.

It is considered that even if points V. to IX. are satisfactorily addressed, no case has been put forward which would allow the local planning authority to consider the proposal as an exception and that there would be alternative uses of the upper floors which would have a greater level of policy compliance, such as a single residential unit or holiday accommodation.

5.2.5 The applicant has argued that policy DM13 was brought into effect to safeguard the character of residential neighbourhoods and safeguard dwellinghouses and not a mixed use site as proposed. However, in the Enforcement Notice appeal decision, the Inspector noted that 'There is no longer any internal connection between the ground floor and the upper floors and it is clear that the use of the upper floors is independent of the use of the ground floor.' It is considered that the former Duke of Lancaster public house is now comprised two separate planning units and as such the proposal is not for a mixed use as the application relates to the upper floors only. Furthermore, DM13 does not relate to a specific geographical or residential area within the District and the Council's concerns regarding the concentrations of HMOs within the City Centre are highlighted by the recent introduction of an Article 4 direction which covers central Lancaster as well as the surrounding residential areas. The Article 4 came into force in November 2021 and removes permitted development rights which allow the change of use of a building from a use falling within Class C3 (dwellinghouses) to a use falling within Class C4 (houses in multiple occupation). Although the introduction of the Article 4 does not directly influence the determination of this application, the fact that the direction includes the City Centre is a material consideration.

5.2.6 The applicant has also argued that applying DM13 in this case would be at odds with policy DM16 which is within chapter 6 of the DPD which relates to Town Centres and Retailing. The applicant has highlighted a paragraph from Policy DM16 which states that;

"proposals for residential development within city or town centre locations will be considered favourably provided that they are above ground floor level and do not restrict the maintenance of an active street frontage, particularly within a designated retail frontage. Such proposals should include a separate and secure access, preferably to the rear of the property that does not result in a net loss of ground floor retail space".

It is considered that the applicant has taken the above paragraph out of context as the primary aim of DM16 is to direct main town centre uses (such as shops and services) to the defined town centre. Furthermore, policy DM16 does not override the requirements and criteria of policy DM13 which are wholly relevant in this case.

5.2.7 The applicant commenced and completed works of conversion some years ago (without the benefit of planning permission) and at that time the scheme would have been policy compliant. In conclusion, it is unfortunate that the applicant did not heed the advice of the local planning authority some time ago in order to regularise matters. Although the site is considered to be in a sustainable location the proposal fails to comply with current policy DM13 and as such the principle is unacceptable.

5.3 **Amenity and standard of accommodation - Development Management DPD Policies DM7: Purpose Built Accommodation for Students, DM29: Key design principles; Appendix G: Purpose Built Student Accommodation and National Planning Policy Framework section 12.**

5.3.1 Notwithstanding the principle of development not being acceptable in this location, policy DM13 Residential Conversion stipulates that HMO proposals should not result in the creation of substandard living conditions. Appendix G of the DMDPD sets out standards for converted shared accommodation. Bedrooms should be a minimum of 9sqm or minimum of 11sqm with an en-suite and there must be at least one bathroom for every three bedrooms. Similarly, a kitchen/dining room needs to demonstrate a range of equipment can be accommodated within the room and should not serve more than six residents. All living spaces (kitchens, kitchen/diners, dining rooms, living rooms and bedrooms) must have an adequate level of natural light and adequate outlook (i.e. clear glazed windows with the lowest part of the glazing set at a height no greater than 1.5m from the finished floor level with a separation distance of at least 12m between the window and any wall or structure opposite (or at least 21m if facing windows serving a habitable room).

5.3.2 In terms of the accommodation, two flats are provided over the first and second floors. The first floor flat has 7 bedrooms, three of which are en-suite shower rooms with the four remaining rooms served by a single shower room which includes a W.C. in addition to a separate W.C. In terms of room sizes all those within the first floor flat are deemed acceptable. However, there is an issue with the outlook from rooms 5 and 6. Room 6 is served by a window which looks into a glazed lightwell which is 2.8m wide. Room 5 is shown on plan as having no window at all but the agent has confirmed that this is an error and this room is also to be served by a window into the lightwell

(revised plans are awaited in this regard and councillors will be verbally updated). This does not accord with the guidance set out within Appendix G and as such it is considered that these rooms would not provide an acceptable level of natural light and adequate outlook for the occupants.

5.3.3 Turning to the second floor, this would provide a four bedroom flat. Each room would be en suite and comply with the room sizes set out by Appendix G. In terms of outlook rooms 1 and 2 would comply but rooms 3 and 4 are to be served by rooflight windows. As per Appendix G, this may be acceptable if the lowest part of the glazing is set at a height no greater than 1.5m from the finished floor level with a separation distance of at least 12m between the window and any wall or structure opposite (or at least 21m if facing windows serving a habitable room). However, the submitted plans indicate that the rooflight windows to flat 3 would be 2.25m above the finished floor level and approximately 2m from the floor level in flat 4 which would have an outlook over the roof plane of flat 3 approximately 4m away. As such this would not accord with the guidance set out within Appendix G and consequently it is considered that these rooms would not provide an acceptable level of natural light and adequate outlook for the occupants.

5.3.4 Most of the room sizes are in excess of the guidance set out within Appendix G and this might normally allow some degree of flexibility with regard to compliance, particularly in the case of a proposal which would seek to bring a listed building back into an active use. However, in this case it has been identified that two of the rooms within each flat would not meet the standards of light and outlook which would normally be expected. As such it is considered that overall, the submission fails to meet the requirements of Appendix G.

5.4 **Heritage impacts - Development Management DPD Policies DM37: Development Affecting Listed Buildings, DM38: Development Affecting Conservation Areas, DM39: The Setting of Designated Heritage Assets. National Planning Policy Framework sections 12 and 16.**

5.4.1 The proposal relates to a Grade II Listed Building, which is situated in a Conservation Area. As outlined in the Planning (Listed Buildings and Conservation Areas) Act 1990, the local authority should have a desirability of preserving the Listed Building and any features of special interest which it possesses (s.16 and 66) and preserving or enhancing the character and appearance of the Conservation Area (s.72). The National Planning Policy Framework (NPPF) outlines that, in determining applications, the local authority should take account of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation (par.192). It highlights that any harm to the significance of a designated heritage asset should require clear and convincing justification (par.194) and great weight should be given to the conservation of the designated heritage asset (par.193). This is reiterated by Policies DM37, DM38 and DM39 of the DM DPD. Policy DM37 relates to development affecting Listed Buildings and states that proposals which involve the alterations or extensions to Listed Buildings, including any partial demolitions, should be based on an accurate understanding of the significance of the asset. Proposals which involve external and/or internal alterations to a Listed Building which would have an adverse impact on the special architectural or historic character of the building and/or their surroundings will not be permitted.

5.4.2 In terms of alterations to facilitate the use, minor changes to the internal layout have been undertaken and involve alterations to timber stud partitions and the insertion of a number of conservation roof lights. It is noted from the planning enforcement history that these unauthorised works were the subject of some oversight by the Senior Conservation Officer at the time. The current application includes the proposed installation of a ventilation system in association with the air quality mitigation.

5.4.3 Whilst the retrospective and proposed works to the listed building are acceptable in their own right, they are not considered to be essential to the future preservation or enhancement of the building. Although the degree of heritage impact is very modest, the physical interventions implemented at the site could only be justified where this supports an acceptable use and development of the site. There is a public benefit of bringing the building back into use and refurbishing the building. However, the use is considered to be unacceptable for the reasons set out above and therefore the public benefits of bringing the building back into use are outweighed by the principle of development being considered as unacceptable and therefore the development is considered contrary to NPPF Paragraph 202 and policy DM37.

5.5 **Air Quality and Noise - Strategic Policies and Land Allocations Policy DPD EN9: Air Quality Management Areas; Development Management DPD Policies DM29: Key design principles, DM31: Air Quality Management and Pollution, DM32: Contaminated Land. National Planning Policy Framework sections 11, 12 and 15.**

5.5.1 The site is within the Lancaster Air Quality Management Area which broadly follows the gyratory system running around Lancaster and the one way system to the north of the city including the bridge crossings over the River Lune. Whilst the development in itself may not add to the vehicle movements in the area and a potential to reduce air quality, the site is located within an area with acknowledged air quality issues and action plans where development needs to be assessed both in terms of its potential to impact upon future air quality but also the potential impacts of the current air quality conditions upon the development and its occupiers.

5.5.2 The current submission has been supported by an Air Quality Assessment by Miller Goodall which suggests that mitigation is required and could be provided by installation of a mechanical ventilation system. The assessment concludes that the site is affected by air quality issues and will need to be ventilated by mechanical means. Given air quality impacts, particularly upon the western facade of the building, it is recommended that a “whole house” type of ventilation system be installed to rooms facing China Street and Church Street. The clean air inlet for the ventilation system would be at roof level on the eastern facade of the development. Ventilation layout drawings have been provided and this approach has the support of Environmental Health and is subject to undertaking of the development to address the mitigation measures, no objections were raised.

5.5.3 With regard to noise, a report by Martin Environmental Solutions has been provided which identified traffic as being the main source of daytime noise and considered mitigation. Following a request by the Case Officer a further noise assessment was provided which examined potential noise impacts from the use of the ground floor as a restaurant. It is the opinion of the Environmental Health consultee that the impact of noise from traffic and general city centre noise, and the commercial premises below the flats has been adequately assessed in submitted noise assessments.

5.5.4 The Environmental Health consultee is satisfied provided with mitigation measures as outlined in the air quality and noise reports to provide secondary double glazing and mechanical ventilation to resolve the noise and air quality issues. In the event of the application being viewed favourably a condition would be added to ensure that these measures are installed within a set time period.

5.6 **Other Matters**

5.6.1 Waste Storage – The upper floors are already in residential use and the existing site includes the provision of waste storage facilities to the rear of the property. It is considered that the bin storage area will provide sufficient space for the required number of bins to serve the development.

5.6.2 Highways – The County Highways consultee has reviewed the submission and is satisfied that works will have no impact on existing access arrangements around or within the building. Cycle storage provision is already in place and the site is in a highly sustainable location close to shops and services as well as public transport routes.

5.6.3 Habitat Regulations Assessment – In accordance with the Conservation of Habitats and Species Regulations 2017 the Council have undertaken a Habitat Regulations Assessment in order to assess the impact of the development proposal upon the special characteristics of the European Designated habitat sites protecting Morecambe Bay. It has been determined that likely significant effects upon these designations can be mitigated through the provision of ‘Homeowner Information Packs’ to be supplied to each unit of accommodation. This could be controlled through planning condition in the event of an approval.

6.0 **Conclusion and Planning Balance**

6.1 Whilst the heritage impacts of the proposal are very modest, this harm is unjustified due to the unacceptable use of the site. The Council considers the importance of maintaining an appropriate housing mix to be an important priority. In doing so, the Council have adopted an approach of a general presumption against new housing in multiple occupation within the District. Furthermore, the scheme fails to provide a satisfactory standard of amenity for all residential occupiers. The additional

economic activity of accommodating students within the site is a modest benefit to the proposal. However, this fails to outweigh nor justify non-compliance with policy DM13 or Appendix G of the DMDPD. As such, the proposal is recommended for refusal.

## **Recommendation**

That Planning Permission **BE REFUSED** for the following reasons:

1. The concentration of Houses in Multiple Occupation (HMOs) within 100 metres of the subject property equates to 45.45%, which exceeds the maximum concentration of 10% prescribed by Policy DM13 and the submission fails to demonstrate that an exception to the Policy should apply in this instance. The retrospective application is therefore considered to be contrary to Policies DM1 and DM13 of the Development Management Development Plan Document (2020) and the Residential Conversion and Houses in Multiple Occupation Supplementary Planning Guidance (December 2020) and the aims and objectives of the National Planning Policy Framework with respect to impact on character and distinctiveness of the locality (paragraph 197).
2. As a result of the change of use of the first and second floor managers accommodation (C3) to student accommodation comprising of one 7-bed flat (sui generis) and one 4-bed flat (C4) the retrospective development results in the creation of sub-standard living conditions by virtue of inadequate light and outlook to two of the bedrooms within each flat. Therefore, the application is considered to be contrary to Policy DM13 and Appendix G of the of Development Management Development Plan Document (2020) and the aims and objectives of paragraphs 119, 130 and 185 of the National Planning Policy Framework.

## **Article 35, Town and Country Planning (Development Management Procedure) (England) Order 2015**

Lancaster City Council takes a positive and proactive approach to development proposals, in the interests of delivering sustainable development. As part of this approach the Council has provided access, via its website, to detailed standing advice for householder development in the Lancaster District (the Householder Design Guide), in an attempt to positively influence development proposals. Regrettably the proposal fails to adhere to this document, or the policies of the Development Plan, for the reasons prescribed in the Notice. The applicant is encouraged to consult the Householder Design Guide prior to the submission of any future planning application.

## **Background Papers**

None