



**Supplementary Planning Statement**

**Application Reference DC/26/1238**

**Certificate of Lawfulness for Proposed Use or Development  
(Section 192, Town and Country Planning Act 1990)**

**Replacement of the existing timber decking to the external  
balconies and access walkways with a proprietary aluminium  
decking system.**

**The Forum Building, Black Horse Way, Horsham**

**Prepared by:**

Charles Uzzell MRTPI

Director

Durrants Land Ltd

**On behalf of:**

AP Facades Ltd

**Date:**

25<sup>th</sup> September 2026

# 1. Introduction

1.1 This Supplementary Planning Statement has been prepared in support of application DC/26/1238 for a Certificate of Lawfulness for Proposed Use or Development under section 192 of the Town and Country Planning Act 1990.

1.2 It should be read alongside the Planning Statement submitted with the application.

1.3 The supplementary statement has been prepared following discussion with the Local Planning Authority regarding the fact that The Forum contains residential flats and that the permitted development rights ordinarily available to dwellinghouses do not apply to flats.

1.4 It is accepted that the relevant householder permitted development rights under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”) do not apply to flats. The application does not, however, rely upon those permitted development rights.

1.5 The application is made on the separate and antecedent basis that the proposed works fall within section 55(2)(a) of the Town and Country Planning Act 1990 because they do not materially affect the external appearance of the building and therefore do not constitute development.

1.6 The distinction is important. Permitted development rights become relevant where works constitute development but planning permission for that development is granted by the GPDO. The present application contends that the proposed works do not constitute development in the first place.

# 2. Statutory Framework

2.1 Section 55(1) of the Town and Country Planning Act 1990 defines “development” as including the carrying out of building, engineering, mining or other operations in, on, over or under land.

2.2 Section 55(2)(a), however, expressly provides that works undertaken for the maintenance, improvement or other alteration of a building are not to be taken to involve development where they:

“do not materially affect the external appearance of the building”.

2.3 Section 55(2)(a) applies to any building. Its operation is not restricted to dwellinghouses and does not depend upon the availability of permitted development rights.

2.4 Section 57(1) provides that planning permission is required for the carrying out of development. It follows that where works do not constitute development by virtue of section 55(2)(a), the requirement for planning permission under section 57 is not engaged.

2.5 This is distinct from permitted development. Article 3 of the GPDO grants planning permission for specified classes of development described in Schedule 2. The GPDO therefore provides a route by which works that amount to development may nevertheless already have planning permission.

2.6 Consequently, the proper sequence of consideration is:

**a. Do the proposed works constitute development within section 55?**

**b. Only if they do constitute development is it necessary to consider whether planning permission is granted by the GPDO or whether an express planning application is required.**

2.7 Section 192 expressly enables a person to apply to the Local Planning Authority to ascertain whether proposed operations would be lawful. Where the Authority is satisfied that the operations would be lawful if begun at the date of the application, section 192(2) requires the Authority to issue a certificate.

2.8 Government guidance similarly confirms that a section 192 application may relate to “operations proposed to be carried out in, on, over or under land” and that the Authority must determine whether, on the facts and relevant planning law, those operations would be lawful. Planning merits are not relevant to that determination.

### **3. Flats and Permitted Development Rights**

3.1 The GPDO definition of “dwellinghouse”, subject to specified exceptions which are not relevant here, does not include a building containing one or more flats or a flat within such a building. It is therefore accepted that the ordinary Part 1 householder permitted development rights cannot be relied upon for the proposed works.

3.2 That does not determine whether the proposed works require planning permission.

3.3 The absence of a relevant permitted development right only becomes material if the works first constitute “development” for the purposes of section 55.

3.4 The application is not seeking a determination that the decking replacement is permitted development under the GPDO. It is seeking a determination that the works do not amount to development under section 55(2)(a).

3.5 Accordingly, the fact that The Forum contains flats does not prevent the application from being determined under section 192 and does not alter the statutory test which falls to be applied.

### **4. Relevant Appeal Decision – 18 Bath Road, Buxton**

4.1 A particularly relevant Planning Inspectorate decision is:

**Appeal Ref: APP/H1033/X/17/3173648**  
**18 Bath Road, Buxton.**

4.2 The appeal concerned an application under section 192 for the proposed replacement of existing timber sliding sash windows with uPVC sliding sash windows.

4.3 Importantly, the appeal building was a three-storey Victorian villa converted into flats. The proposal involved the replacement of 14 windows on its side elevation. The Inspector recorded that the windows and bays were notable features of that elevation and that most of the first and second-floor windows were visible from the road. The Council argued both that the change in external appearance was material and that there were no permitted development rights because the premises comprised flats.

4.4 The Inspector did not regard the absence of permitted development rights as determinative. He applied section 55(2)(a) and considered whether the proposed works would materially affect the external appearance of the building as a whole.

4.5 The Inspector examined the physical and visual differences between the existing timber sash windows and the proposed uPVC replacements. The proposed window alterations were, in visual terms, **significantly more prominent than the works proposed at The Forum**, affecting 14 visible elements forming part of the building's elevations. Despite the change in material and detailing, the Inspector concluded as a matter of fact and degree that the replacement windows would not materially affect the external appearance of the building as a whole and therefore would not constitute development.

4.6 The Inspector consequently concluded:

“Section 57 is not engaged, and neither is Section 58...”

The appeal was allowed and a Certificate of Lawfulness was issued under section 192 on the express basis that the proposed operations would not involve development under section 55(2)(a).

4.7 The comparison with the present application is particularly instructive. The Buxton proposal involved the replacement of 14 prominent vertical elements forming part of the external elevation of a Victorian building, changing their principal material from timber to uPVC. Notwithstanding that visible change, the Inspector concluded that the external appearance of the building as a whole would not be materially affected.

4.8 The proposed works at The Forum are, in visual terms, appreciably more limited. The decking boards form the horizontal walking surfaces of the existing balconies and access walkways. They are being replaced within the existing balcony and walkway envelope and do not involve any alteration to the size, footprint, layout or external configuration of those features. The existing structural supports, steelwork and balustrades remain unchanged.

4.9 The change therefore does not affect the principal form or composition of the elevations. Unlike the replacement windows considered in the Buxton appeal, the proposed decking does not replace prominent vertical elements forming part of the architectural expression of the elevation. It substitutes one walking-surface material for another within the existing balcony and walkway structures. The submitted elevations accordingly identify the elevations as unaffected by the works.

4.10 If the replacement of 14 visible timber sash windows with uPVC units in the Buxton case was capable of falling within section 55(2)(a)(ii), notwithstanding the change in material and their prominence within the elevation, the substantially more limited visual consequences of replacing the decking boards

at The Forum provide particularly strong support for the conclusion that these works do not materially affect the external appearance of the building as a whole.

4.11 The appeal also demonstrates that the absence of permitted development rights for flats does not prevent a section 192 certificate being granted. The correct first question remains whether the proposed operations constitute development under section 55. Where they do not materially affect the external appearance of the building, section 57 is not engaged and there is no need to identify a permitted development right.

## **5. Application of Section 55(2)(a) to The Forum**

5.1 The original Planning Statement addresses in detail the physical nature and visual consequences of the proposed works.

5.2 The proposal is limited to replacing the existing timber decking to the balconies and access walkways with proprietary non-combustible aluminium decking.

5.3 The existing:

- supporting structures;
- steelwork;
- balustrades;
- trims;
- flashings; and
- associated construction

are retained.

5.4 There is no enlargement or reconfiguration of the balconies or walkways. Their dimensions, footprint, layout and external configuration remain unchanged.

5.5 The replacement decking occupies the same position and performs the same physical function as the existing decking. Although the material changes from timber to aluminium, the proposed decking is of a very similar visual appearance to the existing timber decking in terms of its form, scale, profile and overall presentation within the balconies and access walkways.

5.6 The proposed aluminium decking has been selected as part of the works to improve the fire safety of the building by replacing combustible timber decking with a non-combustible alternative. The principal difference between the existing and proposed decking therefore relates to its material composition and fire performance rather than to its visual effect on the building.

5.7 The submitted elevations confirm that the appearance and architectural composition of the elevations are unaffected by the works. The revised drawings also expressly identify that the existing timber decking is replaced by proprietary aluminium decking while the supporting structure and balcony dimensions remain unchanged.

5.8 The test under section 55(2)(a) is not whether there is any change whatsoever to an external building component. If that were the statutory test, the exemption for the “improvement or other alteration” of a building would have little practical effect.

5.9 Rather, the question is whether the works materially affect the external appearance of the building.

5.10 As identified in the original Planning Statement, the approach established in **Burroughs Day v Bristol City Council [1996] 1 PLR 78** requires the effect on external appearance to be considered in relation to the building as a whole rather than by focusing upon the altered component in isolation.

5.11 In the present case the change from timber decking to aluminium decking is materially less visually significant than the replacement of timber sliding sash windows with PVC windows considered acceptable in APP/H1033/X/17/3173648. The decking remains within the existing balconies and walkways and does not alter their form, dimensions, positioning, supporting structure or overall relationship with the building.

5.12 Viewed in the context of The Forum as a whole, the replacement decking does not materially affect its external appearance.

5.13 The proposed works therefore fall within section 55(2)(a) and are not development.

## 6. Conclusion

6.1 The fact that The Forum contains flats and does not benefit from the ordinary Part 1 householder permitted development rights is not determinative of this application. The application does not rely upon the GPDO.

6.2 The correct and prior question is whether the proposed works amount to development at all for the purposes of section 55 of the Town and Country Planning Act 1990.

6.3 The works are confined to the replacement of existing timber decking with aluminium decking of a very similar appearance. There is no alteration to the size, footprint, layout or external configuration of the balconies and walkways, and the existing structural supports, steelwork, balustrades and other principal external elements remain unchanged.

6.4 The submitted drawings and supporting information demonstrate that the proposal does not alter the form, scale, massing, composition or architectural character of The Forum. The change is limited to the material forming the horizontal walking surface of the existing balconies and access walkways.

6.5 Applying section 55(2)(a), and assessing the effect of the works on the external appearance of the building as a whole, the proposed works **do not materially affect the external appearance of The Forum**. They therefore fall squarely within section 55(2)(a) and **do not constitute development**.

6.6 That conclusion is reinforced by the directly relevant reasoning in APP/H1033/X/17/3173648, where substantially more prominent alterations to visible external elements of a building containing flats were

held not to materially affect the appearance of the building as a whole and therefore not to constitute development.

6.7 Section 57 is consequently not engaged. There is no requirement for planning permission, whether express or granted through the GPDO, because the proposed operations are not development.

6.8 On the evidence before the Council, the statutory test is met. The proposed works are lawful for planning purposes and the **Certificate of Lawfulness under section 192 should be granted.**

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## **Appendix 1**

**See Attached - Planning Inspectorate Appeal Decision APP/H1033/X/17/3173648 – 18 Bath Road, Buxton**

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# Appeal Decision

Site visit made on 12 December 2018

**by Iwan Lloyd BA BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 February 2018**

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**Appeal Ref: APP/H1033/X/17/3173648**  
**18 Bath Road, Buxton SK17 6HH**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr S Walsh against the decision of High Peak Borough Council.
  - The application Ref HPK/2017/0027, dated 19/01/2017, was refused by notice dated 17/03/2017.
  - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is proposed replacement of existing timber sliding sash windows with new PVC sliding sash windows.
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## Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

## Reasons

2. The appeal building is a three storey end of terrace Victorian villa converted to flats, situated in Buxton Central Conservation Area and Article 4 area. The proposed lawful development certificate relates only to the windows on the east/side elevation of the building. In total there are 14 windows on this elevation, and are four lights timber sliding sash windows with the exception of the side bay windows which are two lights timber sliding sash. The stone sills, surrounding timber bays and mullions would remain unchanged. The proposal would be to change the sliding sash elements of the windows to uPVC sliding sash windows with wood frame effect.
  3. There is no disagreement between the parties that the installation of replacement windows would amount to a building operation as defined by s55(1) of the Act. Section 55(2), however, goes on to clarify at subsection (a)(ii) that the carrying out of operations which do not materially affect the external appearance of the building shall not be taken to involve development of the land. The issue in dispute is whether the proposed operations in this case would materially affect the external appearance of the building. The Council say that the change to the external appearance is material and that there are no permitted development rights to change windows on flats because
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they are not dwelling houses within the meaning of the Order<sup>1</sup>. In addition the Council say that Buxton Article 4 Direction prevents such works to elevations that front a relevant location.

4. The appellant refers to the case of *Burroughs Day v Bristol City Council* [1996] 1 PLR 78 where it was held that it is the effect on the external appearance and not just the exterior which must be considered; and that the effect on the external appearance must be judged in relation to the building as a whole and not by reference to a part of the building taken in isolation.
5. No. 18 Bath Road is a large end of terrace building fronting the road. The road rises relatively steeply to the east. No. 19 is the beginning of the next terrace block of equal stature to No. 18 but separated by a side garden and is situated on higher ground. Whilst windows and bays are notable features on the east/side elevation of No. 18 due to the topography and the angled view from the road and the intervening higher front garden of No. 19, broadly most of the first floor and second floor windows and bays are visible from the roadside. Although the windows are visible at an angle they are seen in the context of these constraints, and as the elevation is a secondary one, looking across and up to the garden of No. 19, the elevation presents a glimpsed view to passers-by on Bath Road. The ground floor windows of this elevation are hardly noticeable given that they are below the boundary wall and the vegetation of next door's garden.
6. At the site visit I saw a sample of the window type it is purported to be installed. Apart from the marginal difference in the horn detail, the frame, beading, glazing bars, chamfered sill, meeting rail, 4 light sliding sash, finish inside and between the sashes, and the wood grain effect, matched quite precisely the relevant details of the existing sash windows on the building. There are slight variations in the proposed technical drawings to the existing sash windows detailed plan, but the difference is only very marginal. There is a 3mm difference in the cross section of the proposed unit to that of the existing sash unit, resulting in a similar recessed position for the proposed window on the stone sill as that of the existing window.
7. The replacement windows have been closely engineered to reflect the dimensions of the sash window in detail. In my view, the change from the timber sliding sash to the specified uPVC sliding sash window in the LDC application would not as a matter of fact and degree materially affect the external appearance of the building as a whole, and shall not be taken to involve development.
8. Given this conclusion, express planning permission is not required for the operation the subject of this application under Section 55(2)(a)(ii). Section 57 is not engaged, and neither is Section 58, planning permission granted by development order, since the operation does not involve development.
9. For these reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development was not well founded. The appeal succeeds, and I exercise accordingly the powers transferred to me in Section 195(2) of the 1990 Act as amended.

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<sup>1</sup> Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015

*Iwan Lloyd*

INSPECTOR

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## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 19/01/2017 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations would be lawful as it would not involve development of the land under Section 55(2)(a)(ii).

Signed

*Iwan Lloyd*

INSPECTOR

Iwan Lloyd BA BTP MRTPI

Inspector

Date: 15 February 2018

Reference: APP/H1033/X/17/3173648

### **First Schedule**

Proposed replacement of existing timber sliding sash windows with new PVC sliding sash windows (Application ref: HPK/2017/0027 dated 19/01/2017 with accompanying plans and technical drawings)

### **Second Schedule**

Land at 18 Bath Road, Buxton SK17 6HH

### NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

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It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

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## Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 February 2018  
by Iwan Lloyd BA BTP MRTPI

Land at: 18 Bath Road, Buxton SK17 6HH

Reference: APP/H1033/X/17/3173648

Scale: Not to scale



18 Bath Road, Buxton