



# Appeal Decision

Site visit made on 29 June 2023

**by E Brownless BA (Hons) Solicitor (non-practising)**

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

**Decision date: 19 July 2023**

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**Appeal Ref: APP/M5450/X/22/3295300**

**154 Whitmore Road, Harrow, HA1 4AQ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Vincent Reynolds against the decision of the Council of the London Borough of Harrow.
- The application ref: P/4137/21, dated 13 October 2021, was refused by notice dated 8 December 2021.
- The application was made under section 192(1)(b) of the Act.
- The development for which a LDC is sought is alterations and extension to roof to form end gable; rear dormer; two rooflights in the front roofslope; two windows in end gable.

## 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 found to be lawful.

## Procedural Matter

2. I have amended the description of the development above to remove the reference to the existing roof structure and to more accurately describe the development for which a LDC is sought. I have used the description provided by the Council on their reason for refusal which matches the detail of the appeal given by the appellant within the appeal questionnaire. This will not cause any injustice to either party.
3. The Council's reasoning within their Decision Notice does not include any reference to the proposed rooflights and gable end windows. As such, I take it that the Council accepts that these elements would be lawful and I have determined the appeal on that basis.

## Main Issue

4. Section 192(2) of the Act indicates that if, on application under that 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. In any other case they shall refuse the application. The planning merits of the proposed development are not relevant in this appeal and therefore the main issue in this appeal is whether the Council's decision to refuse to grant an LDC was well-founded.
5. In turn, this relates to whether the proposed development would constitute permitted development by virtue of the provisions of Article 3(1) of, and Class

B, Part 1, Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 ("the GPDO").

## Reasons

6. In an appeal relating to an LDC, the onus of proving the relevant facts rests with the appellant to show that the development would be lawful. The standard of evidence is the balance of probabilities.
7. The appeal property is a semi-detached two-storey dwelling. The appellant proposes a loft conversion involving an extension to the hip roof to form an end gable, a rear dormer window, and the insertion of two rooflights in the front roofslope and windows within the end gable.
8. Pursuant to Class B of the GPDO, the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development subject to certain limitations and conditions. Paragraph B.1 stipulates that development is not permitted by Class B if, amongst other matters, the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 cubic metres in the case of a semi-detached house.
9. According to the Council's calculations, the additional roofspace that would be created would be 52.05 cubic metres in volume. If this figure is correct, the appeal scheme would exceed the 50 cubic metre threshold set out within paragraph B.1(d) and an express grant of planning permission would be required for the development.
10. It is the appellant's case that the Council has incorrectly calculated the volume by utilising inaccurate figures and by including areas within their calculation that should have been excluded. In addition, that the Council have failed to take account of the complex bellcast roof form, which I was able to observe in the existing roof at the time of my site visit. The bellcast form includes a slight upward curve as the roof approaches the eaves, and therefore calculating volume by taking a line between the ridge and the edge of the eaves will include some airspace and over-state the volume of the roof. Based upon the appellant's calculations, the submitted volume calculation<sup>1</sup> (the "VC") indicates that the cubic content of the proposed roof and dormer amounts to 49.60 cubic metres, which would be within the permitted development limitation.
11. Each party has set out their approach to calculating volume. The Council has multiplied the width, depth and height of the rear dormer and then halved this figure to arrive at its cubic content. Similarly, the Council has multiplied the width, depth and height of the gable end extension and divided this figure by six. The cubic content of the rear dormer and gable end have been combined to obtain the overall cubic content of the roof alteration. No consideration has been given to the bellcast form above the eaves, nor has any adjustment been made to deduct volume attributable to the roof verge.
12. Having had regard to the plans submitted as part of the application and the figures used within the Council's calculation, it is not clear to me where the Council's figures are taken from. There is little correlation between the Council's figures and the dimensions presented on the appellant's VC. It is suggested by the appellant that those figures have been 'simply scaled from

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<sup>1</sup> Drawing No. 21/154WR/03

the drawings'. The Council have not disputed this point within their evidence. Notwithstanding that the application did not explain the roof form nor describe why scaling would not be correct, nonetheless, I agree with the appellant that an approach using figures scaled from a plan could introduce inaccuracies and the Council's findings should therefore only be used as a guide.

13. The appellant's VC takes account of the shapes and geometric forms that comprise the roof form including its complex bellcast eaves detail. Its formation included the use of CAD software with the areas being formulated using computer software rather than by calculation. I consider this to be a more accurate method of calculating volumetric content in this instance.
14. The Council's suggestion that there are discrepancies with the appellant's evidence is not explained in any detail. However, I am mindful that the VC is subject to the measurements of the existing and proposed development being taken correctly and those measurements being correctly inputted into the software. In fact, the appellant has drawn my attention to an incorrect figure being used within the VC which included an area of the bellcast detail that had been calculated separately. However, the effect of the error is to reduce the additional volume that would be created to a revised figure of 47.347 cubic metres, which would also be within the permitted development limitation.
15. I take the view that the appellant's method of calculating volume is more appropriate. It is in the appellant's best interests to ensure the measurement survey is as accurate as possible. A failure to give accurate measurements could result in a development being constructed that has a cubic content that exceeds the limits of the GPDO and thus does not benefit from permitted development rights.
16. Furthermore, in calculating the volume of the hip to gable extension, the Council has used the overall height of the roof and the length of the extended ridge. It seems that no adjustment has been made to take into account the bellcast detail. The appellant's submitted drawing shows the impact of the bellcast in creating an overestimation of volume. The Council have not provided any explanation that suggests they have taken this into account within their calculation, nor any compelling reason why it is not appropriate for a deduction to be made. An email between the parties dated 3 February 2022 appears to concede the point, with the Council stating '*whilst our calculation for the bellcast was slightly above that stated in the application, even if we apply your volume of 0.477 m<sup>3</sup>, this would still result in the volume being grater (sic) than 50 cubic metres*'.
17. Similarly, the appellant considers the Council's calculation wrongly includes space under the projecting verge of the roof. Albeit the proposed roof structure will overhang the walls of the building, the space underneath the overhang is not enclosed and so is not part of the building. No policy or technical guidance requiring its inclusion within the volume calculation has been put to me by the Council. Therefore, it has not been shown that the space forming the roof verge should be included within the overall cubic content. To my mind, the VC properly deducts the roof verge volume at 'Volume F' and appropriately includes the cubic content of the materials that make up the overhanging roof elements.
18. On the basis of the evidence before me, I am not satisfied that the figures derived by the Council are correct. I consider that the appellant has provided

sufficiently precise and unambiguous evidence, as is required within the Planning Practice Guidance<sup>2</sup> to demonstrate, on the balance of probabilities, that the appeal should be allowed.

19. In these circumstances, I consider that on the balance of probabilities, the proposed development would be permitted development under the provisions of Article 3(1) and Class B, Part 1, Schedule 2 of the GPDO.

### **Conclusion**

20. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC in respect of alterations and extension to roof to form end gable; rear dormer; two rooflights in the front roofslope; two windows in end gable, was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

*E Brownless*

INSPECTOR

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<sup>2</sup> Planning Practice Guidance Paragraph: 006 Reference ID: 17c-006-20140306

## 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 13 October 2021 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 permitted development by virtue of Article 3(1) of, and Class B, Part 1, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

*E Brownless*

INSPECTOR

Date: 19 July 2023

Reference: APP/M5450/X/22/3295300

### **First Schedule**

Alterations and extension to roof to form end gable; rear dormer; two rooflights in the front roofslope; two windows in end gable.

### **Second Schedule**

Land at 154 Whitmore Road, Harrow, HA1 4AQ

IMPORTANT NOTES – SEE OVER

## NOTES

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

It certifies that the 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.



The Planning Inspectorate

## Plan

This is the plan referred to in the Lawful Development Certificate dated: 19 July 2023

**by E Brownless BA (Hons) Solicitor (non-practising)**

**Land at: 154 Whitmore Road, Harrow, HA1 4AQ**

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Scale: Not to Scale

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