

Date: 22/09/04

Ref: 45/1/207

Note: The following letter was issued by our former department, the Office of the Deputy Prime Minister (ODPM). ODPM became Communities and Local Government on 5 May 2006 - all references in the text to ODPM now refer to Communities and Local Government.

Building Act 1984 - Section 16(10)(a)

Determination of compliance with Requirement H4 (building over sewers) of the Building Regulations 2000 (as amended) in respect of building work to erect a two-storey extension to a two-storey house

The proposed work

4. The building work to which this determination relates is the provision of a two storey side extension to a small two bedroom, two storey, detached house of approximate plan footprint 5m x 8m in depth. The extension is to be built to the left of the front elevation and its approximate plan footprint is 2.5m x 8m. It will involve the demolition of an existing detached garage. The new accommodation provided by the extension will comprise a utility room, WC cloakroom, and dining room at ground floor level, with two bedrooms at first floor level.
5. The plans you have submitted indicate that the distance between the flank wall and the boundary on the right hand side of the front elevation of the house (south) would appear to be approximately 1m. This boundary is formed by some substantial trees.
6. The distance between the left hand wall of the proposed extension and the boundary would also appear to be approximately 1m.
7. At present there is an Water Services Limited (.WSL) foul sewer of 225mm internal diameter serving some 100 properties and passing underneath the detached garage. The affected length is approximately 8.5m and is shown as 1.96m deep on the statutory 'map of sewers'. An .WSL survey indicates that there is a 100mm diameter private drain from the adjacent property that discharges into the main sewer within this affected length.

8. The proposals for the extension formed the basis of a full plans application first deposited on 28 September 2001. The proposals included demolition of the garage and construction of new build over the existing sewer. .WSL objected on the grounds that its company policy does not allow two storey extensions to be built over public sewers and, under the terms of the then extant Section 18 of the Building Act 1984, the application was rejected by the District Council in November 2001.

9. Following the coming into force of new Requirement H4 (Buildings over sewers) of the Building Regulations and the repeal of Section 18 on 1 April 2002, a further full plans application was made to the District Council on 2 April 2002. .WSL was again consulted and objected on the grounds that your proposals did not accord with paragraphs 1.4 and 1.5, Section H4, of Approved Document H (Drainage and waste disposal) (2002 edition). Your proposals were therefore again rejected by the District Council in May 2002 on the grounds that they were considered detrimental to the sewer and therefore did not comply with Requirement H4.

10. However, the documentation comprising your determination application indicates that your proposals for achieving compliance now incorporate: foundations which have been designed to be no shallower than the invert level of the sewer and to ensure stability of the house should it be necessary to replace the length of sewer beneath the proposed extension; all existing connections to the sewer to be retained; the existing length of sewer to be encased, if it is not already encased; and that an additional manhole will be provided at the rear of the house to facilitate access to the sewer beyond the proposed extension. Given these proposals you believe that the availability or otherwise of a diversionary route is therefore no longer an issue, and that they are in compliance with Requirement H4. It is in respect of this question that you have requested a determination.

The applicant's case

11. In response to .WSL's rejection of your initial proposal to replace/renew and/or encase the existing length of the foul sewer you questioned the depth of the sewage pipe and its diameter as quoted by .WSL. You added that in your view there will be sufficient area of around 2m to redirect the pipe work on either the left or right hand side of the property if necessary. You also referred to a similar case in an adjoining road where a two storey extension was built over a sewer which serves a number of properties.

12. You subsequently submitted a Surveyors report to support your case, which details your further proposals as outlined in paragraph 10 above and refers to the guidance in Section H4 of Approved Document H. The report closes with the following summary which concludes that .WSL's assessment of the situation is unreasonable:

(i) .WSL's opposition to the proposed extension is primarily based on the absence of a suitable diversionary route should the sewer fail and ignores the fact that the situation already exists as a result of the detached garage which has been constructed over the sewer.

(ii) The construction of the proposed extension incorporating foundations designed to facilitate access to the sewer improves the situation. A diversionary route is no longer an issue as the sewer could always be maintained.

(iii) By retaining the existing sewer all connection thereto will be maintained.

(iv) All the requirements of Section H4 of Approved Document H have been met, apart from paragraph 1.5 but the extent to which the actual length under the extension exceeds the guidance is minimal and from a practical point of view is irrelevant. In any event the Building Regulations provide for such proposals.

13. You subsequently submitted a further response to .WSL's response to the Surveyors report which disputed some of the points made and concluded that, in your view, .WSL have not seriously considered your proposals for building over the sewer. As outlined in the Surveyors report you consider that those proposals will considerably improve the section of the sewer system in question.

The District Council's case

14. The District Council has confirmed that it has consulted .WSL on your application, as required under regulation 14A of the Building Regulations 2000 (as amended), and that the Council has had regard to .WSL's views in reaching its decision to reject your plans.

15. The District Council has submitted a detailed "statement" from .WSL, which considers the background, the matter in dispute and the current situation before reaching conclusions, in support of its decision to recommend rejection of your proposals. As indicated above, having referred to paragraphs 1.4 and 1.5, Section H4, of Approved Document H, .WSL recommended rejection of your proposals on the grounds that the length of the foul sewer under the proposed extension exceeds the 6m referred to in the guidance and a satisfactory diversionary route is not available. .WSL reached the following conclusions to support this decision:

(i) Although .WSL regrets having to recommend rejection, it must ultimately protect the public health interests of the public as a whole and is of the opinion that your proposals could lead to a deterioration in levels of service provided should the sewer fail as a result of these or the inability of .WSL to access the sewer.

(ii) Your proposals will compromise the statutory rights of .WSL for access to its infrastructure in the future. In the event of diversion or replacement there would be considerable disturbance to the residents affected and this could also adversely affect the private connection arrangements already existing under the garage. Any additional costs of maintaining the sewer in these circumstances would need to be borne by customers elsewhere.

(iii) Your proposals are insufficient to meet the criteria in the guidance in Approved Document H and would not provide an acceptable design. Even if these were to include the additional works you have suggested, .WSL would still have concerns over access to the infrastructure and, in carrying out such diversion or maintenance work, the much greater risk of causing damage either to adjoining property or the original foundations of the house. No-dig technology methods would not be appropriate for renewing the sewer.

(iv) Should a diversion be actively pursued and implemented such work would be carried out in accordance with Section 185 of the Water Industry Act 1991 and the costs would be borne by you.

16. The District Council subsequently confirmed that it has re-consulted .WSL on your application in the light of the Surveyors report. .WSL disputed a number of points made in the report and reached the overall conclusion that its assessment of the situation is reasonable.

The Secretary of State's consideration

17. The purpose of Requirement H4 of the Building Regulations is to ensure that the erection or extension of a building is not detrimental to the continued maintenance of the foul sewer. This means that the buildings or extension should be constructed in such a way that they will not overload or damage the sewer. There should be sufficient space around the sewer to permit access for repair and if necessary to provide a route for diverting the sewer.

18. The Secretary of State notes that the proposed building work involves the removal of a garage for storage purposes and the erection of a two storey extension that will provide additional living accommodation for the house. There is however a sewer passing beneath the existing garage.

19. In making this determination, the Secretary of State has considered your proposals which incorporate those outlined in the report prepared by the Surveyors, as summarised in paragraph 10 above. He has also considered the other matters at issue namely: the availability of diversionary routes to the north and south of the house as extended; the impact on other properties should the sewer service have to be temporarily disrupted; and concern over the private sewer branch which is understood to join the sewer length in question underneath the garage.

20. The Secretary of State has noted the following points in respect of his consideration as to whether your proposals are able to make adequate provision for replacement or repair of the sewer and thereby comply with Requirement H4:

(i) It is accepted that design (deep foundations - encasement of sewer etc) and subsequent construction techniques could be adopted that would prevent immediate and long term damage to the sewer. However, encasing the sewer would make some no-dig repairs impossible as pipe bursting machines would not be able to overcome the resistance of the encasing concrete.

(ii) Presently, if the sewer, that is now under a single storey garage, was to fail drastically work, including demolition, by the sewerage undertaker would not cause extreme inconvenience to the occupier. However, if the sewer was to fail when the proposed two storey extension is built over it to provide additional living accommodation, there might well be considerable disruption to the household and possible damage to the extension. Such repair work to the sewer might even involve the demolition of the extension. It is unlikely that the demolition option could be contemplated if a two storey building were involved thereby removing a reasonable solution for replacement/repair.

(iii) There is insufficient space on either side of the house with the current extension proposals for a satisfactory diversion. The sewer is approximately 2m deep. If normal allowance is given for the support of the soil and the passage of machines and materials a working space of at least 4m in width would be needed. From the block plan that forms part of your main plans for the extension the distance between the proposed new flank wall to the left hand side boundary appears to be approximately 1m only. The distance between the right hand side of the house and the adjacent boundary would appear to be between 1 and 2 metres - there is some discrepancy between the plans you have submitted and WSL's map of sewers.

Furthermore, diversion further away from the house is likely to be impractical due to problems with levels and gradient and in making connections with drains from adjacent properties. As the District Council has stated, if a diversion were to be actively pursued and implemented such work would be carried out in accordance with Section 185 of the Water Industry Act 1991 and the costs would be borne by you or by your successors in title.

(iv) Although your proposals include the provision of an extra manhole to the rear of the property, the available access spaces either side of the property will be insufficient for machinery to gain access to the rear.

(v) As regards the possible use of no-dig techniques to effect repairs, it is accepted that the presence of manholes at either side of the property might offer some degree of access for the equipment to do this type of repair. However, in that event the sewer would have to be closed off and the effluent pumped over ground. There would also need to be enough space to accommodate the jacking machinery which would be required to insert the

replacement pipes from the front of the property. The front garden of your property does not appear to be large enough to permit such an operation.

(vi) Irrespective of its size the sewer serves over 100 properties. In the Secretary of State's view any failure of the sewer would therefore cause inconvenience to these households. Restricting access to the sewer by building over it as proposed would inevitably extend the time to carry out repair work. This would increase the problem to neighbouring properties and would be a general nuisance and potentially be a hazard to public health.

(vii) The Secretary of State has noted your reference to a similar case in an adjoining road but he is required to consider all cases on their own individual merits.

21. In the light of the above considerations, the Secretary of State has therefore concluded that your proposals do not comply with Requirement H4.

The determination

22. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties and by .WSL in its role as sewerage undertaker.

23. As indicated above, the Secretary of State considers that your proposals as submitted do not make adequate provision for replacement or repair of the public foul sewer shown on the map of sewers maintained in accordance with Section 199 of the Water Industry Act 1991. He has therefore concluded and hereby determines that your proposals do not comply with Requirement H4 (Building over sewers) of Schedule 1 to the Building Regulations 2000 (as amended). You should note that the Secretary of State has no further jurisdiction in this case.