

Requirement L1

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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Front Cover

Text of ODPM 'appeal' letter dated 7 April 2004 (Reference 45/3/167)

Building Act 1984 - Section 39

Appeal against refusal by the District Council to relax Requirement L1 ("Conservation of fuel and power" - "dwellings") of the Building Regulations 2000 (as amended) in respect of the proposed glazing within the windows, forming part of building work at a farmhouse

The appeal

3. The original building to which this appeal relates is a two storey Grade II listed, timber framed, farmhouse with a south facing front elevation of 12m in width. It is of single ridge, tiled construction with end hips and low eaves some 4.5m above ground level. The front (south facing) elevation incorporates at ground floor level traditional Georgian vertical sliding timber box sash windows with small panes of single glazing. The farmhouse has previously been extended in respect of both storeys on the north east corner which introduced a new dining room on the ground floor and a new stair to additional accommodation at first floor level.
4. The building work and alterations which are the subject of this appeal relate to two new proposed two storey extensions on the north west corner and the north east corner measuring in plan area approximately 3.1m x 3.6m and 4.2m x 11.9m respectively. The former will provide a new kitchen at ground level and a walk-in wardrobe at first floor level. The latter extension will build on to the east side of the earlier extension and provide an additional entrance hall, dining room, study, WC and new stairs to the first floor. The first floor plan will accommodate an en suite guest bedroom and three other bedrooms.
5. Additional alterations comprising some 'in filling' of the external plan area on the north elevation between the earlier extension and the proposed north east extension will provide a utility room at ground floor level and a further bedroom above.
6. Within the overall Listed Building Consent and the Building Regulations procedures, alterations are also proposed to the accommodation within, and the windows of, the original listed building but these are not the subject of this appeal.
7. The overall floor area of the two extensions is approximately 230m². Their external elevations have been designed in a Georgian style and the extensions will provide an increase in the area of accommodation of approximately 75% of the existing. You state that all the building fabric for this work, including the floors, walls and roof are highly insulated, and it is understood that they comply with the current requirements of the Building Regulations.
8. The two extensions will contain twenty two windows and six partially or fully glazed doors. In addition, from the section plans provided it is apparent that there are two rooflights which need to be taken into account. The windows have been specified as traditional, vertical sliding timber box sash windows, sub-divided into small single-glazed panes with narrow glazing beads.

Their dimensions are of varying sizes ranging from 500mm x 1000mm to 1800mm x 1850mm.

9. These proposals were the subject of a full plans application under the Building Regulations which was approved by the District Council subject to a condition (no. 2) that details of the proposed glazing in the windows, doors and roof lights should be deposited for approval prior to installation. The proposals were also the subject of a Listed Building Consent which was approved subject to a similar condition (no. 3) that drawings of the windows/doors and their surrounds should be submitted and approved by the Council in its capacity as the Local Planning Authority.

10. For the two extensions you have specifically chosen to use traditional, vertical sliding timber box sash windows sub-divided into small panes with narrow glazing beads and you claim that the only way to achieve this in a traditional manner is with single-glazing. However, in respect of the Building Regulations the District Council took the view that these proposals did not comply with Requirement L1. You therefore applied to the Council for a relaxation of Requirement L1 in respect of the proposed two extensions in order to provide for the use of single, rather than double glazed windows. This application was refused by the District Council and it is against that decision that you have appealed to the Secretary of State.

The appellant's case

11. As indicated above, you state that the windows to the two extensions were designed specifically to be traditional, vertical sliding timber box sash windows sub-divided into small panes with narrow glazing beads and that the only way to achieve this in a traditional manner is with single glazing. You take the view that if the windows were to be double glazed with sealed units and not sub-divided, the visual effect would be totally inappropriate and would detract from the listing of the original building.

12. You add that the building fabric of the two extensions - including the floors, walls and roof - are to be highly insulated and meet the criteria set by the Building Regulations. With the exception of the glazing, Building Regulations criteria have been satisfied using traditional materials and construction.

13. When considering fenestration in extensions to listed buildings, you consider that the historical and architectural importance of the original dwelling, together with its individuality and the relationship of the existing and new fenestration detailing, must be borne in mind. You conclude that in these circumstances there must be flexibility in the Building Regulations, especially relating to Part L ("Conservation of Fuel and Power"), and that failure to accommodate flexibility will preclude the use of traditionally constructed windows.

14. You subsequently responded to the District Council's representations to the Secretary of State by reiterating your case with reference to the guidance in Approved Document L1 ("Conservation of fuel and power in dwellings"), and stating that the external design of the extensions was carried out in conjunction with the Council's then Conservation Officer, who encouraged the use of traditional box sash windows with single glazing. You argue that each case must be considered on its own merits.

15. You commented specifically on the District Council's points, as outlined in paragraph 18

below, as follows:

(i) The use of double glazing in purpose made traditional box sash windows demands a substantial increase in the section of the glazing beads - this is very visible and causes the window detailing to be heavy and therefore not traditional.

(ii) As the extensions accommodate 22 windows and 6 doors, the alternative option offered by the Council would result in an unacceptable increase in cost to your clients. The practicalities of use of the suggested windows would also be difficult.

(iii) Various measures can be employed to reduce condensation and its effect on the fabric including: the use of hardwood for all external purpose made joinery; controlled ventilation; or controlled heating.

(iv) The heat loss from the extensions would be minimised by using either purpose made traditional internal shutters to the windows or thick curtains; or by controlling the heating.

16. You also subsequently submitted a letter from English Heritage to support your appeal, which refers to paragraphs 2.9 - 2.11 of Approved Document L1 (headed 'Historic buildings') and paragraph 6.7 of its Interim Guidance Note (titled 'Applying Part L to extensions to historic buildings'). English Heritage expresses disappointment at the lack of flexibility shown by the District Council in this case, and emphasises that the Building Regulations require 'reasonable provision' only to be made for the conservation of fuel and power by limiting heat loss through the fabric of the building and that more flexibility is needed in the case of such historic buildings. They also make the point that Approved Document L1 does not set out requirements but only practical guidance on how to achieve reasonable provision. In this particular case English Heritage believes that the provision of single glazing could be compensated for by very high standards of energy efficiency to be achieved by better U-values for the other elements of the extensions such as the walls, floors and roofs.

The District Council's case

17. The District Council refers to Requirement L1 and the supporting guidance in Approved Document L1, particularly paragraphs 1.11 - 1.14, which deal with ways of achieving compliance when constructing extensions to dwellings using the 'Elemental Method' to demonstrate reasonable provision to limit heat loss through the building fabric of such extensions. The Council points out that when following the 'Elemental Method', paragraph 1.12 refers to the possibility of varying the U-values contained in Table 1 for floors, walls and roofs providing the overall heat loss is no higher than it would be if all the elements met the U-values given in Table 1. However, the Council also points out that in respect of windows, doors and rooflights (i.e. 'openings') paragraph 1.14 states that the weighted average U-value of these shall not exceed the values in Table 1. In this particular case the appropriate U-value in Table 1 for windows, doors and rooflights with wood or PVC frames is 2.0. On this basis the Council concluded that the utilisation of single glazed windows would not comply with Requirement L1.

18. The District Council adds that in making a request for a relaxation of Requirement L1 you referred solely to the need to ensure that the windows in the two new extensions match those of the original building. In reaching its decision to refuse your relaxation application the Council

states that they considered the following factors relating to what they describe as quite large windows:

(i) Purpose made timber box sashes are available which would replicate the external appearance of the windows in the listed building. Only close inspection would reveal the constructional differences necessitated by the use of double glazing.

(ii) If single glazed box sashes are essential to satisfy planning criteria a separate 'double glazed' internal window of simple design could be installed within the opening reveals to achieve the requisite standards of insulation without compromising the external appearance of the building.

(iii) The walls, floors and roofs of the new extensions are to be constructed with insulation suitable to meet current regulation standards. The Council describe these as high levels of insulation which will, if single glazed windows are utilised, result in excessive condensation being formed on the new windows with the resultant damage to finishes and encouragement of rot to develop within the box sashes.

(iv) The overall dimensions of the proposed extensions (some 230m² floor area) are such that the use of single glazing will result in a significant loss of heat from the building.

19. The District Council concludes that the aesthetic considerations cannot outweigh the requirements of the Building Regulations, particularly where suitable alternative courses of action are available which, whilst retaining the external appearance required, could satisfy current thermal insulation standards. The Council considers that any reduction in insulation standards could be seen as a precedent for the use of single glazing in many similar extensions to the four thousand buildings of architectural or historic interest which exist in the district.

The Secretary of State's consideration

20. In considering this appeal the Secretary of State has borne in mind that because the building work comprises two extensions to a listed building a reasonable compromise may be necessary between achieving compliance of the proposed building work with the appropriate U-value standards applicable to Requirement L1 and the need to avoid prejudicing the character of the original listed building. In considering whether there is a justification for relaxing Requirement L1, the Secretary of State has noted that the new extensions have been positioned to the side and rear of the original listed building, and taken particular note of the implications for heat loss consequent upon the 75% increase in floor area (approximately 230m²) and the addition of 22 windows, and 6 partially or fully glazed doors, and 2 rooflights.

21. The Secretary of State has also taken note of the comments made by English Heritage in their letter addressed direct to your partnership (see paragraph 16 above). These comments relate to their interpretation of paragraphs 2.9 - 2.11 of Approved Document L1; and to English Heritage's own Interim Guidance Note from which they have quoted the first of the three paragraphs comprising section 6.7. That paragraph commences: "An extension will normally be able to accommodate a higher standard of thermal performance than the host building". It goes on to explain that exceptions may be in respect of 'a true facsimile' of a previous structure

or where certain planning requirements must be met to complement the host building. In English Heritage's view the implication of this caveat is that flexibility needs to be shown.

22. The above representations illustrate the degree of inter-dependence which arises in a case such as this between Listed Building consent and Building Regulations procedures. The remaining part of this letter takes full account of this interdependence; and makes clear that the Secretary of State's decision on this appeal is without prejudice to further decisions on the Listed Building procedures.

23. The District Council has expressed two main concerns. First, if the concept of an exact match of the Georgian windows is to be taken to the point of replicating the single glazed panes of the windows in the original listed building, then the overall dimensions of the proposed extensions will result in a significant additional loss of heat. Second, the proposed standards of insulation for the walls, floors and roof of the new extensions are to be to current standards and this will result in the risk of excessive condensation forming on the new single glazed panes.

24. The District Council has taken the view that purpose made timber box sashes are available which would replicate the external appearance of the windows in the original listed building. Only close inspection would reveal the constructional differences necessitated by the use of double glazing. Alternatively, the Council considers that if single glazed box sashes are considered essential to match the original building, then suitably designed 'double glazed' internal windows could be installed without compromising the external appearance of the extensions.

25. The Secretary of State acknowledges the District Council's concern over unreasonable heat loss from the new extensions. Such loss will have a direct relationship to increased carbon emissions. He has also noted that the overall fenestration design is generous in area and represents an element of the two new structures which will lose heat several times more rapidly than other elements. In the Secretary of State's view if the same total area of windows, doors and rooflights were to be proposed for an ordinary building, then compensatory heat loss measures would be required for other elements of the structure by the specification of U-values better than those in Table 1 in Approved Document L1. The generosity of the fenestration design will also exacerbate the additional concern over the potential for condensation to be generated which could damage finishes, generate structure rot, as well as lead to mould growth which in turn could result in unhealthy indoor air quality.

26. The District Council has sought to reduce heat loss by citing the guidance in Approved Document L1 in respect of securing compliance with Requirement L1 - which in this case would be a standard of 2.0 U-value, and which as the Council has noted clearly would not be achieved with single glazed windows. The Secretary of State therefore accepts the Council's judgement that if possible it is important to achieve a design solution which involves either double glazing units in the box sash windows or involves the installation of secondary 'double glazed' units.

27. With respect to the first option suggested by the District Council - viz, use of purpose made Georgian style double glazed windows - the Secretary of State's view is that these should meet, or come very close to meeting, the 2.0 U-value standards and therefore achieve

compliance with Requirement L1.

28. The second option suggested by the District Council of installing secondary 'double glazed' units might not fully deliver the 2.0 U-value recommended in Approved Document L1, and there might be some particular difficulties relating to the glazed doors. However, if this option was considered necessary for design/architectural reasons, then in the Secretary of State's view this too would achieve reasonable compliance with Requirement L1.

29. It will be a matter for the District Council to consider whether the appearance of these windows, having regard to the siting of the new extensions vis-à-vis the original listed building, will meet with their approval in respect of the additional approval required under the terms of the Listed Building Consent dated 5 April 2002. However, given that the Council has put forward these two options in the context of this appeal under the Building Regulations, and without prejudice to the Council's subsequent decision on any window details reserved for further Listed Building Consent, the Secretary of State considers it appropriate to take these options into consideration in determining this appeal. On this basis he considers that there are therefore no extenuating circumstances in respect of the Building Regulations which would warrant the relaxation of Requirement L1 in order to facilitate the use of single glazed windows.

The Secretary of State's decision

30. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties.

31. You have appealed to the Secretary of State in respect of the refusal by the District Council to relax Requirement L1 in order to secure compliance for the use of single glazing in the two proposed extensions to your listed building. The Secretary of State considers that compliance with the requirements of Part L of the Building Regulations is an important element of the Government's overall climate change policy and as such he would not lightly consider relaxing these other than in exceptional circumstances. Equally, in the context of the extension of a listed building, he accepts that there may be a need on occasions to achieve a compromise by relaxing the requirements of Part L.

32. Paragraphs 26 - 28 above express the Secretary of State's view that the single glazed Georgian box sash windows proposed for the two new extensions will not achieve compliance with Requirement L1. The paragraphs compare this situation with the two options put forward by the District Council which - by approaching the standards for new buildings in Approved Document L1 - will achieve an acceptable degree of compliance with Requirement L1. In coming to this view the Secretary of State has had regard to the guidance in Approved Document L1; the Interim Guidance Note produced by English Heritage; and the circumstances of this particular case, including the fact that the overall fenestration design is generous in area.

33. In the particular circumstances of this case the Secretary of State considers that the two options suggested by the District Council to secure compliance of the proposed windows with Requirement L1 do have the potential to do so by achieving, or nearly achieving, the standards in Approved Document L1 for windows in new buildings. He acknowledges the inter-dependency of the Building Regulations approval procedures with the Listed Building Consent

procedures in respect of the appropriateness of the design of the subject windows. Therefore, without prejudice to any future decisions in respect of the outstanding application for Listed Building Consent for these proposals, he has concluded that for the purposes of compliance with the Building Regulations there is no prima facie case for relaxing Requirement L1 ("Conservation of fuel and power" - "Dwellings") of the Building Regulations 2000 (as amended) and that the District Council therefore came to the correct decision in refusing your application for a relaxation. Accordingly, he dismisses your appeal.

