

Date: 05/06/06

Ref: 45/3/179

Note: This letter has had personal details edited out.

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL BY THE BOROUGH COUNCIL TO RELAX OR DISPENSE WITH 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 TO CONVERT A LISTED BARN TO A DWELLING

The building work and appeal

3. The documentation submitted indicates that the building work to which this appeal relates comprises the conversion of an existing Grade II listed oak framed open barn from agricultural use to a five bedroom two storey dwelling, with a total floor area of approximately 540m².

4. The above building work was the subject of a Building Regulations full plans application which was conditionally approved by the Borough Council on 25 August 2004. You indicate that this approval provided for "high performance double glazing" throughout the building, which included a significant number of large glazed screens. However, for the reasons explained below, you subsequently applied to the Borough Council to relax or dispense with Requirement L1 to enable you to install single glazed windows in the new dwelling, together with the double glazed screens, and you have submitted an *annotated drawing 230241 07E* to indicate the windows in question. Your application was refused by the Borough Council on 6 May 2005 and it is against this refusal that you have appealed to the Secretary of State.

The appellant's case

5. You accept that the Borough Council is correct in applying Requirement L1 of the Building Regulations to the building work, but you are concerned about a "conflict" between this requirement and planning / listed building requirements, as interpreted by the local planning authority's 'conservation officer'.

6. You originally indicated that you would be content to provide double glazing in the new dwelling in line with the Borough Council's building control department's recommendations. However, you state that while your Building Regulations full plans approval provides for double glazing throughout the building, the planning / listed buildings consent for the development is

conditional, requiring the details of the glazing and framing to be agreed with the planning authority's 'conservation officer'. You have been advised that only single glazed windows will be acceptable by the 'conservation officer', although he considers that the proposed large glazed screens can be double glazed. But as the Borough Council's building control department has refused to relax or dispense with Requirement L1 to allow single glazing, you have, therefore, appealed to the Secretary of State to overturn the building control decision to enable you to progress with the work.

7. In your view, the use of single glazing within the building should, in theory, increase the air movement, which is of importance in maintaining the original structure's ability to breathe, in order to prevent either sealing dampness into or causing excessive drying out of the building fabric. The area of these windows will be relatively limited in relation to the building as a whole which, whilst clearly affecting the thermal performance of the building to an extent, would not in overall terms bring that performance below an unreasonable level.

8. You point out that reasonable provision for conservation of fuel and power is all that is required by the Building Regulations and you believe that this is achieved by the higher levels of insulation specified elsewhere in the building work and by the design of the heating system, by which you mean that they would conform to the basic guidance given in *Approved Document L1 (Conservation of fuel and power in dwellings - 2002 edition)*. You accept that condensation is likely to occur on the windows but consider that this can be partly overcome by regularly wiping down the areas concerned and opening trickle vents.

9. You consider that the use of 28mm, high performance, sealed double glazed units will have the effect of increasing the profiles of the window frames beyond a level which would be in keeping with the historical and architectural nature of the building. You conclude that when dealing with historic buildings, it is of the utmost importance that their character is not altered which is likely to occur if 'heavier' frames are used and you refer to a letter from the 'conservation officer' (which would appear to be the County Council Historic Buildings & Conservation department's letter of 1 June 2005 - see paragraph 12 below) which details this point and sets out the planning / listed building position.

The Borough Council's (building control) case

10. The Borough Council's building control department submitted a statement headed "Building Control Response" with its letter of 9 June 2005. This statement refers to Requirement L1, the Government's commitment to reduce CO2 emissions, a previous appeal decision issued by the Secretary of State, and makes the following general points to support the Borough Council's case:

(i) when undertaking building work relating to historic buildings and assessing what is 'reasonable provision', the character of the building should be preserved and the local planning authority / the conservation officer should be consulted

(ii) however, having regard to the views / advice of the conservation officer does not mean following without question the views / advice given, particularly if these relate to marginal aesthetic considerations. These should be balanced with the need to reduce CO2 emissions and to consider what is in the best overall interests of the building and the health of its occupants

(iii) when determining the balance in cases where existing window patterns need to be matched and only single glazed units can do so, then it may be considered reasonable for single glazing to be adopted to preserve the character of the building as an over-riding consideration. However, when there are no existing windows to match, then narrow gap double glazed units may be the more balanced approach to adopt. These would allow lighter timber frames whilst also helping to avoid excessive condensation and the resultant health risks and negative impact upon the 'local building fabric', and at the same time reducing CO2 emissions.

11. Turning to the building in question, the Borough Council's building control department adds that:

(i) the extensive conversion work will inevitably change the character of the barn, but this change should be sympathetic to the perceived original character of the building

(ii) there are no exact window frame profiles to match within the existing barn. The planning process also considers that the way light refracts through single glazing is preferable and more in keeping with the type of windows that would have been installed in a building of the barn's age. However, approximately two thirds of the glazed areas have been approved during the planning process with double glazed units, including areas where double and single glazed units are positioned side by side. The mixture of double and single glazed units currently proposed (comprising your relaxation/dispensation application), would lead to a clear difference in perception, which the consistent use of double glazing would avoid. Narrow 6mm gap double glazing could be produced with spacers coloured to suit frame finishes, which would reduce visual impact even at very close range

(iii) the installation of narrow 6mm double glazed units would not prejudice the character of the building but would be a considerable gain for the serviceability of the building fabric and also reduce CO2 emissions.

12. The Borough Council's building control department also comments in response to the detailed advice provided by the County Council's Historic Buildings and Conservation department on this case in its letter of 1 June 2005 to the Borough Council's planning department (ie the local planning authority), a copy of which the Borough Council has submitted, which followed a meeting between building control and planning colleagues on 14 April 2005.

13. The Borough Council's building control department concludes that it is important to achieve a balance between the need to conserve, as far as is reasonably practicable, the character and structure of an historic building and the ever increasing demand to reduce CO2 emissions. When considering this balance, they believe that in your case it is reasonable for all the windows in the new dwelling to be double glazed in a sympathetic manner.

The Secretary of State's consideration

14. The Secretary of State notes that since this appeal was submitted new Part L (Conservation of Fuel and Power) requirements were introduced on 6 April 2006 by *SI 2006/652*. However, having had regard to the prescribed transitional provisions, she considers that the new requirements are not applicable to this case. The applicable requirement in this case is, therefore, Requirement L1 of the Building Regulations 2000, as amended by *SI 2001/3335*, and the relevant guidance is the 2002 edition of Approved Document L1.

15. You are concerned to resolve what you see as a "conflict" between Requirement L1 of the Building Regulations and the planning authority's conservation advisor's interpretation of the listed building requirements in this case, and to do so you have appealed against the Borough Council building control department's refusal to relax or dispense with Requirement L1, to allow single glazed windows in the listed building. You also give your views on why single glazing would be appropriate in your case, having regard to the building's historical status.

16. The Secretary of State takes the view that the issue in question would appear to be whether the proposed fenestration in the new dwelling should be single or double glazed and to what extent this should apply to the windows and glazed screens. But he wishes to make it clear that his considerations and decision on this Building Regulations appeal are without prejudice to any planning or listed building decisions that have been, or may be, taken relating to the building work.

17. 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 Climate Change policies. The aim of Part L is to ensure that reasonable provision for the conservation of fuel and power is made whenever building work is carried out. *Paragraph 1.3 in the English Heritage Interim Guidance Note on the application of Part L (Building Regulations and*

Historic Buildings) indicates that English Heritage and other building conservation bodies support this aim provided that it does not compromise the special interest, character and appearance of historic buildings. The Secretary of State welcomes this balanced approach.

18. In this respect, the Secretary of State has noted the efforts that the Council has made to resolve the conflicts between the need for energy efficiency and that of preserving the character of historic buildings and has attempted to apply a balanced approach to this case.

19. The Secretary of State has also noted the advice to the Borough Council's planning department on this case from the County Council's Historic Buildings & Conservation department in its letter of 1 June 2005. This includes acceptance, subject to sympathetic detail design, that the glazed screens which the conservation adviser states makes up two thirds of the windows to be provided in the listed building can be double glazed because they are large, uncharacteristic, a significant source of heat loss and alien to traditional openings. But the advice maintains that the situation for the smaller openings is different as they provide the additional air movement the listed building would need, and that these smaller windows should be traditional in character making them incapable of accommodating double glazing. However, the Borough Council's building control department maintains that it would be reasonable to install narrow 6mm gap double glazing in frames approximating in 'weight' to traditional designs. This would achieve a lower performance than that required for new buildings but the Borough Council has suggested that this would be reasonable provision in this particular case.

20. It seems to be accepted that the proposed introduction of windows and glazed screens will not unacceptably interfere with the historic fabric of the building unless they restrict the ability of the building to breathe - see below. *Drawing 230241 07E* gives a general indication that the type of windows proposed will incorporate large panes. In the Secretary of State's view, single glazing supported by secondary glazing would be an alternative to double glazing as suggested by the Borough Council's building control department if Georgian or similar style multi-paned windows were to be considered essential.

21. The County Council's Historic Buildings & Conservation department rightly draws attention to the need to enable the building to continue to breathe in order to preserve the historic fabric. However, the Secretary of State considers that single glazed windows which are weather-proofed and draught-stripped will perform no better than double glazed windows in achieving ventilation. It would be imprudent to rely on occupiers to keep windows cracked and there might be security considerations precluding such an approach. The proposed windows are few and they are unevenly dispersed around the elevations so it may be ineffective to rely on them to protect the fabric even if fitted with trickle ventilators. Trickle ventilators would also add to the 'weight' of the window frames. Part C (Site preparation and resistance to contaminants and moisture) of the Building Regulations, and the supporting

guidance in *Approved Document C*, address the issue of moisture control in buildings.

22. The Secretary of State also notes that single glazed windows will generate condensation in winter which could create a nuisance and sustain mould growth leading to an unhealthy indoor climate. In addition to this accumulations of condensate could enter the building fabric and cause damage over time.

23. The Secretary of State concludes that, in the absence of more convincing considerations to the contrary than those submitted, he takes the view that it would be reasonable to install double glazed windows or single glazed windows with secondary glazing in the listed building in question, for the purpose of compliance with Requirement L1 of the Building Regulations, and that a case has not been made to relax or dispense with the requirement. To summarise, this is because:

- there are no existing windows that make matching a consideration
- there is no dispute over the majority of the fenestration being double glazed which would nevertheless be anachronistic to the original building style
- single glazed windows will not in themselves perform any better than other forms of glazing in enabling the building fabric to breathe
- there are two options to glazing (narrow gap sealed double glazing or secondary glazing) that would enable window designs similar to those in use at the times when the building was previously altered.
- It seems there is no dispute that introducing the proposed windows and glazed screens, and replacing them in the future, will not significantly or permanently interfere with the preservation of the historic fabric

The Secretary of State's decision

24. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by the parties. She has also had full regard to the need to balance compliance with the Building Regulations and conservation interests.

25. As indicated in paragraph 23 above, the Secretary of State has concluded that a case has not been made to relax or dispense with Requirement L1 (Conservation of fuel and power - Dwellings) of Schedule 1 to the Building Regulations 2000 (as amended by SI 2001/3335) in this particular case. Accordingly, she dismisses your appeal.

ANNEX

COPIES OF PLANS / DRAWINGS SUBMITTED WITH APPEAL

230241, 12 May 2004
230241, 13 June 2004
230241, 13 August 2004
230241 05B, Revised 12 August 2004
230241 07D, Revised 12 August 2004
230241 07E, Revised 08 October 2004
230241 08C, Revised 12 August 2004
230241 09C, Revised 29 September 2004
230241 10B, Revised 12 August 2004
230241 11C, Revised 12 August 2004
230241 14, Revised 29 September 2004
8711/01A, May 2004
8711/02A, May 2004
8711/03A, May 2004
8711/04, June 2004
8711/05, June 2004
8711/06, June 2004
8711/07, June 2004
8711/08, June 2004
8711/09, June 2004
8711/10, June 2004