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Ref: 45/3/159

*Note: The following letter which has had personal details edited out 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 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 a proposed "open plan conservatory"**

#### **The appeal**

3. The building work to which this appeal relates comprises a ground floor 'L' shaped extension with a glazed roof and extensive windows and glazed doors which is to be built on to the corner of, and be integral with, a two storey detached house. You describe the proposal as an "open plan conservatory".

4. The outer plan measurements of the extension comprise two lengths which are approximately 6.3m and 7.0m, and two internal depths of approximately 2.6m and 3.3m. The internal floor area is about 25m<sup>2</sup>. The extension is to be built onto the corner of the kitchen and integrated into that area by knocking through the windows on both sides to create two openings approximately 2.6m in width, whilst retaining a 660mm x 660mm brick pillar for the lintels to bear on.

5. The construction of the proposed extension itself is to comprise insulated cavity walls made up of facing brick and block inner leaf. Approximately one half of the length facing the garden is to comprise glazing where the internal sill height will be 600mm. On the left side of the glazed section two French doors are proposed. The remainder of the two lengths of the conservatory will comprise cavity wall up to eaves height, with the exception of one door opening at the rear to give access to the garage on the side of the property. The roof is to be 100 per cent glazed at a single pitch of approximately 15 degree.

6. All windows and external doors are to be fitted with sealed double glazing units with low 'E' glass. The inner leaf glass in the doors and sidelights will satisfy tests for safety glass to class 'B' BS 6206: 1981 (*Impact performance requirements for flat safety glass and safety plastics for use in buildings*), and will be permanently marked accordingly.

7. Ancillary alteration work includes removal and replacement of the existing upper window of the house facing the garden which would be above the proposed extension. The cill height of this window is to be built up to enable the external wall of the house to receive the pitched roof of the extension.

8. Because the proposed extension construction is to be integrated into the existing accommodation, the District Council took the view that it could not be construed as a conservatory suitable for exemption under Schedule 2 of the Building Regulations 2000 but should be regarded as an extension to the dwelling and therefore subject to control under the Building Regulations. In particular they consider that the proposed extension should comply with Requirement L1 of Schedule 1 to the Building Regulations. Your proposals were therefore subject to a full plans application which was rejected by the Council on the grounds that your plans did not comply with Requirement L1, and contained insufficient information to comply with regulation 14.

9. However, as part of your proposals you obtained two Standard Assessment Procedure (SAP) Energy Rating certificates from one of the organisations authorised by the Secretary of State for Environment, Food and Rural Affairs which show that the overall performance of the dwelling would improve if the proposed extension were to be built.

10. You are concerned that the implications of the refusal of your application are to make it impossible to build any conservatory-type extension as an integral part of an existing dwelling which will be compliant with the requirements set out in Requirement L1. You attribute the problem in part to the insistence of the District Council that the proposal should be treated as an extension to the house rather than what you describe as an "open plan conservatory".

11. You therefore applied for a relaxation of Requirement L1 which was refused by the District Council on the grounds that a new dwelling with an integral conservatory would be expected to meet the substantive requirements of Requirement L1 having regard to the guidance given in *Approved Document L1 (Conservation of fuel and power in dwellings)* (published in 2002), and that the guidance on replacement glazing in the document sets a precedent in that proposed work in respect of this requirement should meet present day standards. It is against this refusal that you appealed to the First Secretary of State.

### **The appellant's case**

12. You are concerned that you are receiving "conflicting decisions and advice" from "several building control offices" as to how Requirement L1 - which came into force on 1 April 2002 - should be applied to what you describe as "open plan conservatories".

13. You point out that a proposal to erect an open plan conservatory has to comply with the Building Regulations, whereas the same room with doors separating it from the main house does not. Having considered the guidance on conservatories in *section 1 of Approved Document L1*, you believe that open plan conservatories do not seem to have been taken into account for the purposes of compliance with Requirement L1.

14. As stated in paragraph 9 above, you have demonstrated that the overall energy (and carbon emissions) performance of the house as a whole would be better after the conservatory was erected, but this has not been accepted by the District Council because the house with the extension does not achieve the Carbon Index of 8.0 given in *Approved Document L1* as the standard of reasonable performance to be achieved. With reference to paragraph 1.60 of the Approved Document, in your opinion you have demonstrated "reasonable provision".

15. You note that the District Council regards the proposed conservatory as an extension. Your understanding is that extensions are not normally permitted to have more than 25 per cent of glazing. It is therefore your view that, as the methods you are being asked to adopt to show compliance with Requirement L1 relate to the materials used for building extensions rather than conservatories, compliance seems impossible.

16. In response to the District Council's representations to the Secretary of State, you subsequently added that you were prepared to reduce the amount of brickwork in your proposal to less than 50 per cent of the wall area. However, the Council responded that the new accommodation would still be termed an extension as it would remain integral to the house. You therefore question the position on compliance of your proposal as it stands and also what the position would be if the brick walls were less than 50 per cent, given that the vast majority of your installations would have less than 25 per cent brickwork.

17. You reiterate that the SAP Energy Rating and Carbon Index calculations submitted show improvement by the addition of the proposed conservatory and you therefore consider that the District Council's statement that "no additional documentation was submitted that provided sufficient evidence to prove compliance" to be inaccurate and unfair. You suggest that you were told by the Council that compliance with Requirement L1 cannot be achieved due to their interpretation of *Approved Document L1*.

18. In conclusion, you take the view that the issue of compliance with Requirement L1 appears to hinge on one main issue - is your proposal an extension or a conservatory? Furthermore, if it is considered to be an extension, you question whether there is not some percentage limit applicable to the area of glass or translucent material forming part of the roof.

## **The District Council's case**

19. The District Council refers to the definition of a conservatory in *paragraph 1.58 of Approved Document L1* as having "not less than three-quarters of the area of its roof and not less than one half of the area of its external walls made up of translucent material". The Council points out that the plans submitted for the proposed "open plan conservatory" indicate that it has less than half of its external walls made of translucent material and no separation is planned between the dwelling and the new work. The Council therefore considered the proposed work to be an extension.

20. The District Council considers that the Carbon Index calculation of 3.9 for the whole extended dwelling - against a target of 8.0 - to be unacceptable. The Council states that as no additional documentation was submitted to provide sufficient evidence to prove compliance with Requirement L1, your full plans application was rejected.

21. The District Council has considered your argument that the building as a whole would be more energy efficient and the Carbon Index would rise after the proposed extension had been built. The Council acknowledges that the overarching objective of Requirement L1 (ie reduction of unintended energy consumption) would be met even though the extended building would not meet current levels of energy retention. However, the Council does not consider that this is an appropriate basis for approval of the plans and would not like to see a "precedent" that exempts under-insulated extensions.

## **The Secretary of State's consideration**

22. Schedule 2 to the Building Regulations indicates that conservatories with floor areas less than 30m<sup>2</sup> built at ground level are exempt from the regulations. In this case the floor area is approximately 25m<sup>2</sup>. Neither the Building Act nor the Building Regulations prescribe a definition of "conservatory" for the purposes of Building Regulations, so the issue as to whether a proposed construction is a conservatory or not - and is therefore exempt or not - has to be decided in each case on its individual merits. The ODPM is in the process of consulting upon the status of conservatories in general as exempt buildings, and also upon an appropriate definition of "conservatory". But for the present recourse must be made to dictionary and technical definitions given in the Approved Documents supporting Parts B and L.

23. The dictionary definitions of a "conservatory" range from a "greenhouse for tender plants" to "a similar room used as a lounge, which is attached to and entered from, the house". *Paragraph 1.58 of Approved Document L1* offers as guidance that a conservatory would have not less than three-quarters of the area of its roof and not less than one half of the area of its external walls made of translucent material. Paragraph 1.59 goes on to state that when a conservatory is attached to and built as part of a *new dwelling*, and if there is no separation between the conservatory and the dwelling to

enable energy savings to be made when the conservatory is not being used in winter, then the conservatory should be treated as part of the dwelling.

24. In this case it is clear that the proposed construction will form an integral part of and an enlargement of, the existing kitchen; and will have brick walls which will form more than 50 per cent of the external area. Therefore, the construction cannot be construed as a conservatory by any of the existing definitions - dictionary or technical. It follows that the Secretary of State accepts the judgement of the District Council that the proposed construction is an *extension* which must meet all the applicable requirements in Schedule 1 to the Building Regulations - including Requirement L1.

25. The relevant Requirement L1 ((a)(i)) requires that reasonable provision shall be made for the conservation of fuel and power in dwellings by limiting the heat loss through the fabric of the building. In considering this appeal it is therefore important to assess whether your proposals do or could amount to reasonable provision.

26. *Approved Document L1* gives guidance on some ways of showing compliance with the requirement, including the Carbon Index method. Paragraph 1.27 of the document points out that this method is intended to be used in applications for approval of new dwellings, but it does provide a precedent for using an overall annual carbon emissions approach for work on existing buildings. From the papers it appears that the District Council has not sought to challenge this.

27. It is clear from the import of the guidance in the section on material alterations on page 20 in *Approved Document L1* that when considering the compliance of building work carried out on existing buildings, reasonable provision will depend on the circumstances of the particular case. Lower standards may be reasonable because of the constraints imposed by the existing fabric and services. Although not directly relevant to this case, this guidance on lower standards would apply equally to replacement windows as well as to other elements of building fabric. In this respect it is noted that the District Council has stated incorrectly that the guidance on replacement glazing in *Approved Document L1* has set a precedent that proposed work in existing buildings should meet present day energy performance standards. More specific examples of the concept of how lower energy performance standards in refurbishment and extension work may be acceptable in particular circumstances are given in some of the guidance in *Approved Document L2 (Conservation of fuel and power in buildings other than dwellings)* (published in 2002) in relation to the refurbishment of offices (see Table 12 on page 24 where different standards of Carbon Performance Rating are explicitly declared).

28. Your client has used an authorised firm to undertake SAP calculations which show that the calculated annual carbon emissions performance of the dwelling with the proposed extension is better than the present case. Bearing in mind that the Carbon Index scale is non-linear, and that it is harder to improve the higher up the scale you start from, the Secretary of State takes

the view that in this particular case the proposals represent a significant improvement on the performance of the dwelling as at present, and that this should be judged in the context of regulation 4(2)(a) of the Building Regulations which requires that after building work has been carried out to a building, the building as a whole is made no worse in terms of compliance with the applicable requirements than before that work was carried out.

29. Finally, the Secretary of State has noted the point made by the District Council that if someone proposed to build a new dwelling with an integral conservatory, a way of showing compliance would be to achieve a Carbon Index of 8.0. When using this method there are design limits which apply to the roof and wall insulation performance (U-values), but there are no limits on window area or window U-values. In terms of a practical design it is therefore quite likely that an integral "conservatory" would have a very poor performance when compared to the rest of the building - which would have to be constructed to much higher standards so as to compensate for the conservatory's performance in the calculation results for the dwelling as a whole.

### **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. Paragraphs 28-29 above have given the Secretary of State's view on compliance of the proposed building work with Requirement L1, having regard to the guidance in *Approved Document L1* and the circumstances of this particular case.

31. However, you have appealed to the Secretary of State in respect of the refusal by the District Council to relax Requirement L1. The Secretary of State considers that compliance with the requirements of Part L of the Building Regulations are 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. Moreover, because in the particular circumstances of this case he considers that your proposed building work does in fact *comply* with Requirement L1, there would appear to be no prima facie case for relaxing the requirement in any event. Therefore, taking these factors into account, the Secretary of State has concluded that it would not be appropriate to relax Requirement L1 (Conservation of fuel and power - Dwellings) of the Building Regulations 2000 (as amended). Accordingly he dismisses your appeal.