REPLACEMENT WINDOWS AND PLANNING LAW

Introduction
The use of PVC-U windows in modern dwellings is subject to few, if any, legal requirements and over the last 15 years the consumer has overwhelmingly chosen to fit replacement windows made from PVC-U. These products are cost effective, energy efficient, durable, low maintenance and ideally suited to many modern houses and buildings.

Despite this, there have been cases where PVC-U windows have been fitted where this has proved to be against the Planning Acts for the house or area. This has caused both a loss of our common architectural heritage and often substantial cost to the consumer and installer.

This information sheet has been prepared by the British Plastics Federation Windows Group to provide guidance for both consumers and the window industry in the selection of windows for use in historic buildings.

Window replacement and general planning law
Windows are often referred to as the eyes or soul of the house and they play an important part in the expression of period, image and regional building traditions. Incorrect use of styles or products can change the character and style of a house and affect the whole look of the house. This leaflet is a brief summary of the law regarding the replacement of windows in buildings and for further information you should consult your local Planning Department.

Government policy is that the general tendency should be in favour of preserving buildings of architectural or historic interest. This policy also recognises that the character of our towns and villages is created not only by individually important buildings but also by groups or areas of lesser buildings. The Planning Acts reflect these ideas in the protection they give to both individual buildings and areas.

The responsibility for retaining and enhancing architecturally important buildings and areas is mainly with the relevant local authority and they are given the appropriate powers by the various Planning Acts.

These Planning Acts control the replacement of windows in both individual buildings and in defined areas and the requirements depend on the type and location of the building and whether it is:
- a listed building.
- in a conservation area or area accorded a special designation.
- subject to Article IV direction.

The requirements of the various Planning Acts for replacement windows also depend on the use of the building and whether the replacements are exact copies in every detail or are of a different material and or design that affect a building's external appearance.

Detailed recommendations and guidance on planning are given in the Department of the Environment and National Heritage Policy Planning Guidance Note 15 (Planning and the Historic Environment).

Listed buildings
A listed building is one included in the list of buildings of special architectural or historic interest. Listing also covers any object or structure fixed to the building or within its area. The lists give a description of the building, but the absence of a feature in the description does not mean that it is not protected.

There are thought to be about 500,000 listings nationally but this only covers the actual list entries. Bedford Square in London is only one list entry although it includes as many as 52 individual Grade 1 houses. Estimates are that the number of listed buildings is probably nearer one million.
The current criteria for listing allow inclusion of all buildings in anything like the original state from before 1780, most buildings from 1780 to 1840, buildings of quality and character from 1840 to 1914, selected buildings of high quality from 1914 to 1939 and from 1939 onwards a few outstanding buildings.

Listed buildings should have a special value for architectural, social or economic reasons, show technical innovation, have an association with well known people or events or have a group value as an example of town planning.

Further information on listed buildings

Information on listed buildings is available in local authority planning departments, at county councils, at county record offices and at larger public libraries.

Ignorance of the fact that a building is listed, or of laws concerning listed buildings, is no defence. Breaches of listed building control are offences of strict liability and are criminal offences. If a contractor is involved, both contractor and owner are liable.

Conservation Areas

A Conservation Area is an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance.

Designation of an area as a Conservation Area recognises that the buildings or environment are of collective interest even if they do not merit individual listing. There are about 5,000 Conservation Areas in the UK and this is increasing at the rate of about 150 per year.

Conservation area consent is required for demolition or substantial change to an unlisted building in a conservation area. It is not always needed for small extensions under 50 m3 in volume.

The planning requirements are not clear for the replacement of windows which are not 'like for like' in unlisted buildings in Conservation Areas. Window replacement within existing openings is sometimes considered to be an alteration but sometimes the removal of the old window is considered to be a small-scale demolition. Government guidance is that: "...routine works of repair, maintenance or replacement, including work involving such items as doors or windows, would not in the Secretary of State's view normally constitute demolition requiring conservation area consent." (PG 15 para 4.28) but the local interpretation of this guidance varies throughout the UK.

Criteria for listing

Listed buildings fall into two main categories, Grade I for buildings of exceptional interest and Grade II for buildings of special interest, with particularly important Grade II buildings given Grade II*.

It is an offence to demolish, alter or extend a listed building in any way that would affect its special character without 'listed building consent'. This offence is punishable by imprisonment or a fine, or both. Consent is needed for replacement windows in a listed building, unless the replacements are exactly the same as the originals in every detail. Application for listed building consent is by a special form, available from the local authority planning department.

Listed building consent is almost always required. It is essential to check with the local planning authority in every case.

If work is carried out without consent a listed building enforcement notice can be issued. This can require that the building be restored to its former state, the effects of the works removed or works to meet the requirements had any listed building consent been observed.

Ignorance of listing, or of laws concerning listed buildings, is no defence and both the contractors and owner are liable.

For unlisted buildings of special interest which are in danger of demolition or substantial alteration, local authorities may serve a 'building preservation notice' on the owner and occupier of the building. This notice gives the building temporary status as a listed building.
Applications for consent and appeal decisions against refusal of consent are frequently judged on individual merits on the basis of visual impact and the effect on the character and appearance of the Conservation Area.

Irrespective of the window material to be used an application for Conservation Area consent may be needed. Check with the local planning authority in every case.

**Article IV directions**

The Planning Acts permit some alterations or extensions to a house in a Conservation Area as 'permitted development rights'. These rights are restricted in Conservation Areas, but not specifically for window replacement, although local interpretations may vary (see above).

If a Conservation Area can be shown to be under threat of developments which will substantially change the character then the local authority can apply for an Article IV direction. An Article IV direction removes the permitted development rights for an area and once granted all works to houses require both Planning Approval and Conservation Area consent.

Article IV directions are not granted easily and the designation of an area as a Conservation Area does not itself justify the granting of an Article IV direction. Permission for the granting of a direction requires the local authority to provide a positive policy which they have adopted for enhancing the character or appearance of the Conservation Area. For example, a direction may be granted to prevent permitted developments which would be unsympathetic to a programme or scheme of conservation work currently underway. Permission also takes into account the overall quality of the area, clear identification of the special character of the area and evidence of a threat to the character or appearance of the area. Areas which have already lost their 'historical or architectural integrity' are often refused Article IV directions.

Under an Article IV direction the replacement of any windows requires Planning Approval and may also require Conservation Area consent. Check with the local planning authority in every case.

**Further information on Conservation Areas and Article IV directions**

Information on designated Conservation Areas and those covered by Article IV directions is available from the local authority planning department.
The legislation

The legislation is clear for the replacement of windows in listed buildings but local variations can sometimes arise for Conservation Areas.

Government guidance is that demolition of any building in a Conservation Area needs Conservation Area consent but works of extension or alteration do not. The distinction between demolition and alteration is often unclear to the layman.

Each local authority has developed an approach based on the Government guidance. This local policy and approach may consider that demolition is a separate operation involving the removal of the historic fabric and therefore that Conservation Area consent is required.

In Conservation Areas the permitted development rights are withdrawn for various defined architectural features but not specifically for the replacement of windows in unlisted buildings. However, unless the replacement windows are ‘like for like’, Conservation Area consent could be required and possibly refused on the basis that the change was damaging to the character and appearance of the Conservation Area.

Appeals decisions

Applicants who are refused planning permission or consent may appeal to the Secretary of State. An inquiry is held and a judgement taken on the basis of the interpretation of the current law, the application of government advice as published in policy planning guidance notes and the merits of the individual application.

Appeals regarding replacement windows in listed buildings are highly likely to be rejected and appeals regarding replacement windows in unlisted buildings (in Conservation Areas) are more likely to be rejected than allowed.

The replacement of windows in houses covered by any of the Planning Acts without the correct approvals is strongly discouraged.

Appeals concerning replacement windows in listed buildings are dismissed in more than 75% of cases.

Appeals concerning replacement windows in Conservation Areas are dismissed in more than 50% of the cases.

Owners and developers should check with the local Planning Department before starting any work.

The withdrawal of permitted development rights in Conservation Areas is regarded as a last resort and local planning authorities are encouraged to achieve their conservation aims by education and providing information on the architectural or historic value of the area.

Essential Points

- Replacement of windows in historic buildings needs the relevant approvals before works can begin.
- Starting works without the relevant approvals may be costly for both the installer and the home owner.
- Do not begin works without these approvals.
- If in any doubt about the status of a house with regard to Planning Law you should inform the customer that this must be clarified before works can begin.
- Check with the local planning authority for the location of Conservation Areas (and especially those with Article IV directions) in your sales area.

The information in this leaflet is given as guidance only. Expert advice should be sought before carrying out any building work or replacing windows.

Compliance with the recommendations given in this leaflet does not give any immunity from legal obligations.

The BPFWG is a responsible trade body whose members are engaged in the building industry.

We support developments that are appropriate and generally in accord with the character of the building and the environment.

We want to play an active part in the education of our industry, and the general public, to enable us all to retain and enjoy the rich and unique character of our towns.

We believe that people improve their homes in the way that they find attractive. There is no universal style or taste and any attempt to impose the existing controls or further regulate in this area is inappropriate.

The BPFWG believes in consumer choice and education. This leaflet is part of our continuing efforts to provide the tools for this education.

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