

Date: 21/09/98

Ref: 45/3/125

Note: The following letter which has had personal details edited out was issued by our former department, the Department for Environment, Transport and the Regions (DETR). DETR is now Communities and Local Government - all references in the text to DETR now refer to Communities and Local Government.

Building Act 1984 - Section 39

Appeal against refusal by the Borough Council to dispense with Requirement H3 (Rainwater Drainage) of the Building Regulations 1991 (as amended) in respect of a 5 bay aircraft hangar port

The appeal

3. The proposed work to which this appeal relates comprises the erection of a steel framed aircraft port measuring 72.5 metres by 12.5 metres in plan on the above airport complex. The side and rear elevations together with the monopitch roof are to be clad in single skin plastic coated steel sheeting of a profiled design. The front elevation is to be completely open and the top of the ridge flashing is 5.3 metres above ground level. The height of the eaves flashing to the rear of the monopitch is 4 metres. The drawing shows pad foundations to engineers details.

4. These proposals were the subject of a full plans application which was rejected by the Borough Council on the grounds that the omission of any form of means of collecting and conveying the rainwater away from the roof and building resulted in your proposals not complying with Requirement H3. However, you took the view that the omission of such provision was appropriate having regard to the type and design of the building, and the nature of the surrounding ground. You therefore applied to the Borough Council for a dispensation of Requirement H3 which was refused. It was against that refusal that you then appealed to the Secretary of State.

The appellant's case

5. In support of your case for dispensing with Requirement H3 you state that the Borough Council approved a building of similar construction 2 years ago and that this has not given any problems at all. In addition you state that there are several other buildings on the industrial estate, which forms part of the airport complex, which were built in the 1940s and also have no gutters but are not showing any sign of erosion.

6.The plans of the building show pad foundations which you have described as enormous and you have stated that at a site meeting the building inspector agreed there was no likelihood of erosion.

7.You state that you have already experienced extreme weather conditions and torrential rain after which your monitoring has shown no more rain penetration in the vicinity of the building than anywhere else on the airfield.

8.You contend that a common sense approach to rain water dispersion around the building is appropriate as your proposal is far less, or at least no more, likely to give future problems than would the provision of gutters and a channel to take all the water into a few specially constructed soakaways which in time may create their own problems.

9.You have pointed out that in its letter the Borough Council makes no mention of the chalk strata on which the building is constructed.

The Borough Council's case

10.It is the Borough Council's opinion that Section 21 of the Building Act 1984 should apply. This requires that satisfactory provision is made for drainage and includes the conveyance of rainwater from roofs. They point out that the roof area of the proposal is far greater than the 6 square metres exception quoted in the *Approved Document H (Drainage and waste disposal)*.

11.The Borough Council state that the building in question whilst being an open hangar, has a roof area in excess of 900 square metres and that this would result in a large volume of surface water being discharged about the foundation of the building resulting in possible saturation of the ground strata which over a period of time could affect the stability of the building. The Borough Council considers that the surface water from the roof should be collected and discharged to an open, filled or trench form soakaway positioned at a distance of not less than 5 metres from the building.

12.The Borough Council remarks that your proposals make no provision for any form of a concrete channel to discharge the rainwater away from the building which would help to alleviate the possible saturation of the ground about the foundations.

The Department's view

13.Requirement H3 (Rainwater drainage) states that:

Any system which carries rainwater from the roof of the building to a sewer, soakaway, watercourse, or some other suitable rainwater outfall shall be adequate.

14. The Borough Council rejected your full plans application because no provision had been made for the collection and disposal of rainwater from the building which they considered to be contrary to Requirement H3. Their concern was that the lack of such provision could lead to the building becoming unsafe to persons about or within the building due to saturation of ground strata about the foundations leading to potential collapse. That is to say, in the first instance the Borough Council's concern appears to have been in respect of the implications for compliance in structural terms with Requirements A1 and A2. However, it appears that after further consideration you took the view that your proposals to omit guttering and any form of drainage did not comply with Requirement H3 and on this basis requested a dispensation of Requirement H3.

15. The Department is of the opinion that what needs to be considered in this case is the effect on the stability of the building and its foundations if no gutters and/or provision for drainage is made. The Department has taken the following into consideration:

- The foundations are quite large, have earth covering of approximately 500mm, and are more than 1 metre below ground level. The Department considers that this will give reasonable protection from erosion.
- The building has profiled metal cladding. This will distribute the rain running off from the roof over the length of the rear part of the building and in so doing will reduce the risk of erosion of the ground due to the impact, flow or saturation effects of the rainwater.
- The chalk strata in the area will aid the dispersal of the rainwater discharged from the building and reduce the probability of water accumulating.
- The building has a steel framed structure. The Department considers that such a structure is unlikely to collapse without warning but would distort if the foundations were severely undermined and thus tend to be sufficiently noticeable for the occupier to evacuate the building and close off the area around it so that persons will be unable to approach it.

In addition the Department considers it is reasonable in this case to take into account the fact that the building is a detached open fronted hangar for the sheltering of light aircraft and is not dissimilar to buildings used for the storage of agricultural implements which are exempted under Schedule 2 of the Building Regulations 1991.

16. Having regard to all of the above the Department is of the view that the non-provision of rainwater gutters or other means of controlling the discharge of rainwater from the building is unlikely to compromise the health and safety of persons about or within the building.

The Secretary of State's decision

17. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. He has also taken note of the nature of the building, and its intended use. He has concluded that under the circumstances the non-provision of rainwater gutters or other means of controlling the discharge of rainwater from the building does not compromise the compliance of your proposals with the Building Regulations. He has therefore concluded that it would be neither relevant nor appropriate to dispense with the requirements of Requirement H3 given that this requirement can only apply to proposals which incorporate systems which will carry rainwater from a roof. Accordingly, the Secretary of State dismisses your appeal.

18. You will also wish to note that the Borough Council rejected your proposals under section 16 of the Building Act 1984 (see paragraph 4 above). However, they have stated in their submission that section 21 of the 1984 Act should apply. You should therefore note that this appeal has been determined under the provisions of Section 39 of the Building Act 1984, the content of which carries implications for conformity with the requirements of the Building Regulations in so far as a local authority will take this into account when dealing with a full plans application under section 16 of the 1984 Act. However, this appeal decision affects neither the provisions and duties contained in section 21 of the 1984 Act, nor the recourse which may be made under that section to a magistrates' court to determine the specified questions contained therein.