

Date: 31/08/00

Ref: 45/4/28

*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.*

## **Hampshire Act 1983: Section 13 (Fire Precautions in certain large buildings)**

### **Appeal under Section 13(5) against a decision by the District Council to impose a condition relating to the provision of a smoke ventilation system as part of building work**

#### **The appeal**

3. Section 13 of the 1983 Act applies to either: the erection of a building of the warehouse class or which is intended for trade or manufacturing use and which exceeds 7000 cubic metres; or to the extension of a building so used or intended to be used which as extended would exceed 7000 cubic metres.

4. Section 13(2)(a) of the 1983 Act provides the discretionary power that a district council may reject plans and particulars unless it is shown to their satisfaction that the building which is the subject of the operation will be provided with (i) fire alarms (whether automatic or otherwise) and a fire extinguishing system, or either such alarms or such system; and (ii) effective means of removing smoke in case of fire. Section 13(3)(b) enables a district council, irrespective of any decision made under the Building Regulations, to refuse or to approve, the particulars with or without conditions.

5. Section 13(5) of the 1983 Act provides that a person who is aggrieved by the action of a district council which has rejected plans, or imposed conditions, may appeal to the Secretary of State for the Environment, Transport and the Regions.

#### **The building work**

6. This appeal relates to a typical, newly constructed industrial building 31m x 43m in plan, with a small first floor office element along one side which is 5.3m x 31m in plan. The compartment within the building, which is the subject of the appeal, is approximately 8250. The building is surrounded by roads on three sides and an embankment leading to a disused railway cutting on the fourth side. Access for the Fire Brigade is available from all sides.

7. The building is of a steel portal frame structure with external construction of cavity brickwork up to a height of 2.3m with corrugated steel cladding to upper walls and roof. The portal frame has been designed against collapse in accordance with Constrada with central columns supporting the steel rafters at the ridge. The stanchions and rafters consist of substantial steel sections which are encased in dense concrete blockwork up to the portal haunch and which you state gives four hours fire protection. The internal height from floor level to roof covering is 6.1m at eaves level.

8. Internally the building is largely open plan with a small ground floor reception area separated by half hour fire resisting construction with the first floor offices being separated by one hour fire resisting construction. Other elements of the structure are one hour fire rated. The open plan area contains printing machines and presses etc. There will also be some storage of paper which will be densely packed on metal shelving.

9. The building is fitted with a P1 fire alarm system, a non-maintained emergency lighting system with battery back-up to BS 5266: Emergency lighting Part 1: 1988 Code of practice for the emergency lighting of premises other than cinemas and certain other specified premises used for entertainment, together with all relevant fire safety signs and fire extinguishers, as requested by the Fire Prevention Officer. You state that an auto dial facility to BS 5839: Fire detection and alarm systems for buildings Part 1: 1988 Code of practice for system design, installation and servicing was also due to be in place shortly after you lodged your appeal. The building has fire exits in all four corners.

10. The above proposals were the subject of a full plans application which was approved by the District Council, subject to a condition that at the time of commencement of the project details of both the fire alarm and smoke venting systems should satisfy the provisions of section 13 of the 1983 Act. However, you took the view that the District Councils request for an smoke ventilation system - which you describe as automatic - to be installed in the building was unnecessary and you asked for omission of the condition. This was refused by the Council and it is in respect of this refusal that you subsequently appealed to the Secretary of State under section 13(5) of the 1983 Act.

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

11. You make the following points in support of your appeal against the District Council's requirement for the installation of a smoke venting system:

(i) the four hours fire protection to the steel columns is more than that required under the Building Regulations and any fire developing within the factory would not seriously affect the safety of the building structure until the fire was at a very advanced stage

(ii) the maximum number of people working in the building will be twenty, of whom ten people only will be working in the compartment which is the subject of this appeal

- (iii) The paper storage is densely packed and will not therefore burn easily
- (iv) in the event of fire it is unlikely that the building will become smoke-logged for some considerable time, due to its internal height and content
- (v) in the event of fire the fire alarm system will give early warning of danger, enabling personnel to safely leave the building. In addition the auto dial facility will give early warning to the Fire Brigade
- (vi) the building complies fully with the requirements of Part B of the Building Regulations 1991 (as amended)
- (vii) the estimated cost of installing a smoke ventilation system is approximately £20k and your clients building insurance company does not require smoke ventilation for insurance purposes

12. You also contend that the 1983 Act was written seventeen years ago and in your view it takes no account of the fact that fire protection measures have improved considerably since it came into force. You consider that the requirements of the Act are both unfair and excessive for this type of building and with respect to similar buildings erected elsewhere in the country. You also consider that in the event of fire it is unlikely that the building will become smoke-logged for some considerable time.

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

13. After giving the matter due consideration, following consultation with the Fire Authority and having regard to the provisions in sub-sections 13(2) and (3) of the 1983 Act, the District Council was unable to agree to the omission of a smoke ventilation system. The District Council considers that Section 13 of the Act is primarily intended to safeguard fire-fighters in large volume open buildings, and therefore in their view the recommendations from the Fire Authority are of paramount importance.

14. The Fire Authority has confirmed that in their view an automatic fire ventilation system is required in the building. However they suggest that a more modest ventilation system may be installed if a sprinkler system is provided in accordance with BS 5306: Fire extinguishing installations and equipment on premises Part 2: 1990 Specification for sprinkler systems, or the Loss Prevention Council rules. They also state that they would be willing to consider the matter further if a professional risk assessment addressing all relevant issues was provided.

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

15. The issue for consideration by the Secretary of State in this case is whether it is reasonable for the District Council to exercise its discretionary powers under section 13 of the 1983 Act to insist on the installation of a smoke ventilation system. It is noted that full compliance with Part B (Fire safety) of the Building Regulations will be achieved without the installation of a smoke ventilation system. It is also noted that the use of the building is for printing and some storage of densely packed paper on metal shelving.

16. The District Council has expressed concern about the safety of fire-fighters and has therefore supported the Fire Authority's view that a smoke venting system needs to be in place. The Secretary of State fully understands this argument but considers that to some extent there will be a natural smoke reservoir formed by the roof shape which in his view will help assist fire fighting operations, particularly in view of the low number of persons likely to be in the building.

17. It is noted that although you are not prepared to install either a sprinkler or smoke ventilation system you are prepared to install an automatic smoke detection system with an auto dial facility. The Secretary of State considers that this will be of benefit both from the life safety aspect of the buildings occupants and from the point of giving early warning to the Fire Authority.

18. It is also noted that the Fire Authority has stated that they would be prepared to consider a risk assessment carried out by a professional person. However, it is unclear what such an assessment would be compared with given the wording of section 13(2) of the 1983 Act which is not specific about the purpose of the provisions cited in sub-section (2)(a)(i) and (ii); and more specifically because sub-section (2)(a)(ii) does not require an automatic smoke venting installation, but refers only to an effective means of removing smoke in case of fire. With regard to the latter it could, therefore, be argued that effective smoke removal could be achieved by making use of windows and roof lights.

19. Finally there is the question of the cubic capacity of the compartment - ie, the industrial unit - in question which is 8,250 cubic metres. This needs to be compared with the fact that a cubic volume in excess of 7,000 cubic metres invokes section 13 of the 1983 Act. In the circumstances of this particular case it is considered that there is likely to be little material difference between these two cubic figures.

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

20. The Secretary of State has given careful consideration to the facts of this case together with your grievance and representations, and to the representations of the District Council.

21. The Secretary of State has taken into account in this case the use of the building and the types of material to be stored; the low number of occupants; and the provision of an automatic smoke detection system together with the proposed auto dial system. In addition, he has also noted that the cubic capacity of the industrial unit is not greatly in excess of the 7,000 cubic metres specified in section 13(1) of the 1983 Act. Having regard to all these factors he has concluded that it would be unreasonable to require even a smoke ventilation system on its own - ie, one without a sprinkler system combined with it. Accordingly, the Secretary of State hereby upholds your appeal and under the powers conferred upon him under section 76(2) of the Hampshire Act 1983 directs that this determination shall be in respect only of the type of use, and therefore the associated fire risk of the building, as described in your letter of appeal.