

Date: 12/11/98

Ref: 45/4/23

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 Borough Council to reject proposals for fitting out of a new distribution warehouse building

The appeal

3. Section 13 of the 1983 Act (Fire precautions in certain large buildings) 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 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 building work to which section 13 applies will be provided with: 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.

5. Sub-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. The proposed building work to which this appeal relates consists of the fitting out of a new single storey portal framed warehouse building with a gross internal floor area of 2,238m and volume of 20,814m. The building is to be divided into two compartments - a distribution unit and offices - with respective volumes of 15,689m and 5,125m. You state that the building is designed to fall within the medium to low risk category.

7. The building will comply in all respects with the requirements of Section 13 of the Hampshire Act except that you do not propose to install a fire extinguishing (sprinkler) system and this is therefore the only point at issue. You do however propose to install a fire alarm system in accordance with BS 5839: Part 1: 1988 with beam detectors in the distribution unit interlinked to smoke vents and also connected to a remote monitoring station. The smoke ventilation system will be installed to BS 7346 and sized to take account of a non-sprinklered building. Smoke curtains to BS 7346 will also be installed in the unit.

8. The proposed use of the distribution unit involves the receipt of palletised newspapers and magazines which are distributed on a daily basis to newsagents. You state that the majority of this product is processed and despatched within a few hours of delivery and that there is limited pallet storage facility in 4.5m high racking. It is understood that your clients will operate the unit on a 24 hour basis throughout the 7 day week, with all work being carried out at ground floor level. Staffing levels within the warehouse will not exceed 70 persons. This number of persons could be maintained throughout the 24 hour operating period but are predicted to be substantially reduced during certain periods.

9. A full plans application for the construction of the warehouse building was submitted by agents. A full plans application for the fitting out of the building was submitted in parallel on 9 June 1997 on behalf of your clients. This latter application was rejected under section 13 of the 1983 Act and also on grounds of non-compliance with requirements contained in Parts A, B, H, L and M of the Building Regulations 1991. A further submission resulted in a conditional approval of the fitting out works in respect of the requirements of the Building Regulations; but you had at that time confirmed your intention with the Borough Council of appealing in respect those aspects of the proposals which had been rejected under section 13 of the 1983 Act. On this basis the Borough Council have therefore taken the view that the proposals do not provide adequate fire precautions to meet the requirements of the 1983 Act without the installation of a sprinkler system. However, you take the view that the requirement for the provision of a sprinkler system in the distribution unit is unreasonable and it is in this respect that you have appealed to the Secretary of State.

The appellant's case

10. You make the following points in support of your case:

i) the requirement for sprinklers is contained in a Local Act which you believe is not enforced throughout the country and no other building within the development group of your clients organisation has a sprinkler installation. On this aspect you have submitted a letter from a risk consultant confirming that no major fires have occurred within the groups buildings during their long association

ii) the proposed development will be constructed in accordance with the current Building Regulations and meet the requirements of the 1983 Act except for the installation of a sprinkler system in the distribution unit

iii) the building is positioned centrally on the site such that it is remote from boundaries where you state future development will take place.

The Borough Council's case

11. The Borough Council make the point that the requirements of Section 13 of the 1983 Act are complimentary to but go further than the requirements of the Building Regulations. They therefore make the following points in support of their refusal to approve your proposals in the absence of provision of a sprinkler system:

i) sprinkler systems reduce fire growth thus enabling the Fire Brigade to enter the building and fight the fire with less risk to fire fighters

ii) most smoke venting systems used on their own have difficulty in controlling the level of smoke and hot toxic gases within a building where an uncontrolled fire has developed

iii) a building with a compartment volume in excess of 15,000 cubic metres cannot be considered as being a small building and a building of such a size should be provided with the best passive and active fire precautions available. This would also provide for future changes in the fire loading and risk of the distribution unit.

12. The Borough Council have consulted the fire authority who have submitted a video which shows that fires in unsprinklered, excess cube buildings cannot be successfully extinguished and the fire is therefore likely to become uncontrollable.

The Department's view

13. The Department accepts that compliance with the Building Regulations can be achieved without the installation of the fire precautions which may be required under Section 13 of the 1983 Act. However, although the requirements of Section 13 are additional to the requirements of the Building Regulations the Department acknowledges that by virtue of sub-section 13(2) of the 1983 Act the Borough Council is under a statutory duty to consider rejecting the plans, having consulted the fire authority, if they are not satisfied that the proposals contain the fire precautions specified in section 13(2)(a) of the 1983 Act.

14. The point at issue in this case is the non-provision of a fire extinguishing (sprinkler) installation in the distribution unit. The objective of installing such a system is to control a fire and prevent further conflagration. The expectation is not necessarily that it will always extinguish the fire. Thus irrespective of the merits of your argument about the nature of the stored goods and the quick

turnround of those goods, in the Department's view these cannot detract from the fundamental point concerning the ability of a sprinkler system to help control a fire. Moreover, although your proposals incorporate smoke vents, the provision of a sprinkler system would enable a fire design scenario to be established which, in turn, would facilitate a proper design assessment of the capability of that smoke ventilation system. The Department therefore takes the view that in this particular case the installation of a fire extinguishing (sprinkler) system in the distribution unit is justified in order to satisfy the overall fire safety needs of the unit.

The Secretary of State's decision

15. The Secretary of State has given careful consideration to the facts of this case together with your representations and those of the Borough Council. He takes the view that the Borough Council have chosen to exercise their power in the 1983 Act to reject your proposals on grounds of the overall fire safety of the distribution unit. On this basis he has concluded that it has been appropriate for the Borough Council to consider the inter-dependence of a smoke venting and a sprinkler system. In the context of overall fire safety of the unit this interdependence is important not just for the operation of fighting and minimising the effect of a fire but also for the design specification of the venting system. In this particular case he has therefore concluded that the installation of a sprinkler system in the distribution unit would be appropriate.

16. Having regard to the above issues the Secretary of State has come to the conclusion that if the distribution unit's overall fire safety is to be met, then the Borough Councils request for the provision of a fire extinguishing (sprinkler) system in the distribution unit is reasonable. Accordingly, he dismisses your appeal.