

Date: 02/02/00

Ref: 45/4/24

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

Appeal under Section 13(5) against a decision by the Borough Council to reject plans relating to the erection of a single storey distribution warehouse

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.

6. The proposed building work to which this appeal relates consists of the erection of a 57m x 36m steel portal framed building containing a single storey warehouse with a floor area of 1729metres square and a volume of 14,168m. First floor/mezzanine offices with a floor area of 482 metres square extend the full width of the building at the southern end and some smaller ground floor offices/staff facilities with a floor area of 142 metres square are located to one side and beneath the first floor offices. All office and ancillary accommodation is shown on the plans to be fire separated from the warehouse area. The building is centrally located on the site and the plans show that the rear elevation wall will have 60 minutes fire resistance because of its close proximity to the boundary.

7. You state that the warehouse will operate on a 24 hour basis for 7 days per week and that the proposed use of the building involves the receipt of palletised newspapers and magazines delivered in bulk from publishers and distributed daily to newsagents. You propose to provide limited pallet storage facility in the warehouse which will consist of 4.5m high racking.

8. You state that the construction of the building will be in compliance with the current Building Regulations. A smoke ventilation system will be installed to British Standard (BS) 7346 (Components for smoke and heat control systems) and will be sized to take account of a non-sprinklered building. Smoke curtains to BS 7346: Part 3: 1990 (Specification for smoke curtains) will also be installed. Beamed smoke detectors will be installed in the warehouse and the fire alarm system will be interlinked to the smoke ventilation system and connected to a remote monitoring station.

9. Your client does not propose to install an automatic sprinkler system and it is because of the lack of provision of this precaution that the Borough Council rejected your plans under section 13(2) of the 1983 Act. However, you do not consider this precaution to be necessary in this case and it is in respect of this that you have therefore appealed to the Secretary of State.

The appellant's case

10. You make the following points in support of your claim that it is unreasonable to ask for the installation of a sprinkler system:

(i) The requirement for sprinklers is contained in local act legislation which you believe is not in force in other parts of the country. No other building in your client's group has a sprinkler installation and you have provided a letter from your client's insurance broker which states that there have not been any major fires reported in your client's premises. As a consequence of this no fire claim has had to be settled.

(ii) You have cited two earlier developments where you claim that the requirement under the 1983 Act for sprinkler installations must have been waived.

(iii) The proposed development will be constructed in compliance with the Building Regulations 1991 and will satisfy all other requirements of the 1983 Act - including means of access for Fire Brigade appliances and personnel.

(iv) The smoke ventilation system will be sized to take account of a non-sprinklered building and be interlinked with the smoke detection and alarm system, all of which will be connected to a remote monitoring station.

(v) The nature of the business is such that the majority of the product is processed and despatched within a few hours of delivery and there will only be a limited pallet storage facility available in the 4.5m high racking.

(vi) All work in the warehouse is carried out at ground floor level and there is an unobstructed view across most of the warehouse.

The Borough Council's case

11. The Borough Council has rejected your proposals on the basis that the capacity of the warehouse element of the building is in excess of 14,000m³ - double the volume specified in section 13 of the 1983 Act which invokes the provisions of that section. The Council, after consulting with the Fire Authority, has requested that an adequate sprinkler installation be installed. The Council points out that section 13 of the 1983 Act is intended to go further than the provisions which can be required under the Building Regulations.

12. The Borough Council takes the view that extinguishing and sprinkler systems maintain and reduce the growth of fire at its seat of origin so that the Fire Brigade can enter the building and fight the fire with less risk to themselves. The Council believes that smoke removal and venting systems when used in conjunction with sprinklers reduces and enables the level of smoke produced to be controlled. But the Council adds that most smoke venting systems used on their own have difficulty in controlling the level of smoke and hot toxic gases produced within a building where an uncontrolled fire has developed.

13. The Borough Council also expresses the view that if there is a total loss of a building then its contents, jobs and a company's viability could also be at risk.

14. The Fire Authority has confirmed that it supports the provision of an automatic sprinkler system as part of the fire protection of a building which has a compartment of the size of your proposed warehouse. The Authority takes the view that high bay palletised storage arrangements are custom made for rapid fire spread and if a sprinkler system is not provided then it is very doubtful that the Fire Brigade would be able to gain access to fight fire or rescue casualties. The Authority has also stated that although it accepts that the majority of the stored product may be processed in a few hours, this amount of time would still give scope for a fire to start. In addition the Fire Authority has stated that three of the developments you have referred to as representing a precedent for not installing a sprinkler system, in fact fall well below the cubic capacity specified for the provision of section 13 of the 1983 Act to come into operation.

The Department's view

15. The Department accepts that compliance with the Building Regulations can be achieved without the installation of the fire precautions which may be required by a Building Control Authority under section 13 of the 1983 Act. However, although these precautions are additional to the requirements of the Building Regulations, the Department acknowledges that the Borough Council is under a statutory duty to consider whether, having consulted the Fire Authority, it wishes to exercise its discretionary power to reject the plans if it is

not satisfied that the proposals contain the fire precautions specified in section 13(2) of the 1983 Act.

16. The point at issue in this case is the non-provision of a fire extinguishing (i.e. sprinkler) installation. The objective of installing a sprinkler system is to help control a fire and prevent further conflagration. The expectation is not necessarily that it will always extinguish the fire. The objective of a smoke ventilation system is that it will help maintain a smoke free layer for escape purposes and may also help prevent flash-over of combustible materials, particularly if these are stored at higher levels.

17. You have stated that the smoke ventilation system will be sized to take account of a non sprinklered building. However, in the Department's view it will be much more difficult to design an adequate smoke ventilation system if fire growth is not to be controlled by a sprinkler system. The provision of a sprinkler system would enable a fire design scenario to be established which, in turn, would facilitate a proper design assessment for the capacity of the smoke ventilation system.

18. The Department accepts that the stored products in this case have a fast turn-round time and that there is limited high bay storage. But the Department is of the opinion that if sprinklers are not provided there would still be plenty of scope for rapid fire growth which could possibly overwhelm the ventilation system before the Fire Brigade arrives. Such a scenario could, in the Department's view, put fire fighters at risk. The Department therefore accepts the view of the Borough Council that in this particular case the installation of a fire extinguishing (ie sprinkler) system is reasonable in the circumstances.

The Secretary of State's decision

19. The Secretary of State has given careful consideration to the facts of this case and the representations made by the parties.

20. The Secretary of State takes the view that the Borough Council has chosen to exercise its power in the 1983 Act to reject your proposals on the grounds of the overall fire safety of the warehouse. On this basis, and in this particular case, he has therefore concluded that the Borough Council's request for the provision of a fire extinguishing (ie sprinkler) system in the building would be appropriate and is reasonable in the circumstances. Accordingly, he dismisses your appeal.