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Call for an Institution with the Authority and Mandate with Regard to Technical Disputes and Fundamental Consideration for the System

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Abstract: Based on this evidence and many other examples, this paper advocates a drastic overhaul of the system, in which a distinction is made between simple, standard projects, less simple solutions that can be assessed with performance requirements, and high-value projects which are handled in accordance with the science of probabilistics. Next to or in addition to the Council of State, there has to be a technical body appointed under statute with non-departmental public body status, which can issue binding rulings in technical disputes, with very short procedural delays.

Key words: Building regulation and control, construction law, conflict resolution.

1. Introduction

This paper concerns the application of the principle of equivalence in Dutch building regulations. The 2003 Building Decree makes reference to the principle of equivalence. A solution, to which a performance requirement is not sufficiently tailored, may be applied provided that the solution satisfies the grounds of the rule at least to the same extent as is achieved with the performance requirement. This is expressed in Article 1.5 of the 2003 Building Decree [1]:

"A rule which is stipulated in the second to sixth sections of the decree [1], which must be applied in order to satisfy a requirement with regard to a building or a section thereof, does not need to be satisfied so far as the building or the section thereof in question offers at least the same level of safety, health protection, practicability, energy efficiency and environmental protection as is intended by that rule by means of others than application of that rule."

However, the 2003 Building Decree or since April 1st, 2012, the 2012 Building Decree [2] may not obstruct the application of innovative or experimental products.

The decree on fire safe use of buildings also refers to a stipulation of equivalence in Clause 1.4 which may only be applied so far as the decree on fire safe use of buildings also makes reference to performance requirements:

"(1) A rule as stipulated in Paragraphs 2.1 to 2.9 inclusively does not need to be satisfied if the use of a building offers at least the same level of fire safety as is intended by the rule in question by means other than application of that rule;

(2) If requested to do so, the owner of a building or another person who is otherwise regarded as the most obvious person to do so, shall make sufficient case for the maintenance of an equivalent solution as implied in the first paragraph."

Due to lack of knowledge in all disciplines related to the building permit process, the use of these equivalence clauses leads to cost and time consuming

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disputes. A drastic system change in the Netherlands is needed to solve the problem. That change can also give a enormous quality push in the end quality of works and address the problem of dissatisfaction of the end users of these works.

2. Summary Description of the Case

In 2008, an existing hotel with restaurant, bowling alleys and miniature-golf course in the cellar submitted an application for a building permit for work to construct a cover over the interior premises between the hotel and the restaurant (Fig. 1). As a result of this work, a large glass-covered area (atrium) was created. The building permit was issued on September 24, 2008. The building permit stipulated that the smoke and heat exhaust system must satisfy the design brief dated June 23, 2008 as formulated by FSE (fire safety engineering). It was stated, in this regard, that this design brief was based on the usage as specified in the building permit application. In the event of usage not in accordance with the application, the building permit stipulated that a new request for equivalence or a new building permit application must be submitted by using the equivalence clause of the decree.

With regard to fire safety, the signed building application drawings do not stipulate any further requirements concerning the application of the principle of equivalence owing to the fact that the atrium represents a fire compartment which exceeds 1,000 m^2 and the escape routes of the hotel section of the building pass through the atrium on the ground floor, first floor and second floor.

Furthermore, the building permit also requires that the stipulations of the 2003 Building Decree and the municipal bylaw are satisfied, whereby it is not specified what minimum performance level must be achieved for what aspect. According to established case law from the council of state, a stipulation such as this is however zero and voids [3].

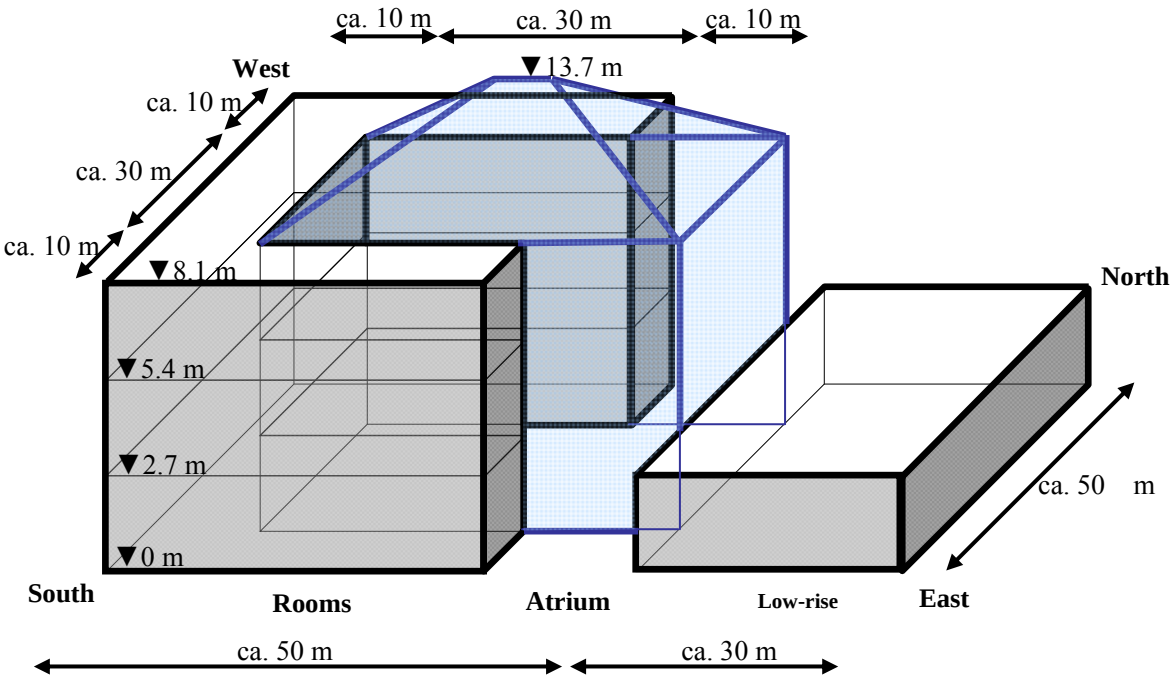

Fig. 1 Schematic diagram of geometry of Hotel Den Helder.

The construction of the smoke and heat exhaust system was taken care of by hotel owner itself, and involved the import of components from China. That choice was the starting point of a technical and juridical battle. A detailed case description is in Annex 1.

A number of legal proceedings have been commenced:

(1) objection against the penalty of July 28, 2010, which was denied by the municipality;

(2) objection against the compliance period of the order of December 2, 2010;

(3) objection against the temporary exemption order of January 28, 2011;

(4) objection against the temporary exemption order of February 8, 2011;

(5) objection against the order to pay the financial penalties;

(6) objection against the draft new environmental permit;

(7) objection against the negative decision of the municipality at Point 2;

(8) appeal against the decision of the court of October11, 2012;

(9) petition to order an interim expertise report;

(10) decision on the petition from March 21, 2013;

(11) civil proceedings on account of improper handling by the municipality with a claim for compensation owing to improper closure.

Because the rejection of the objections and of the appeal at the court, an appeal is lodged at the highest court.

This matter has not only caused considerable nuisance in the municipality in question, but also significant damage to the proprietor.

3. Technical and Legal Analysis

A building permit was issued, substantiated afterwards by Efectis Nederland BV on account of insufficient knowledge of the matter by the municipality. The proprietor, not familiar with this matter, placed its confidence in the municipality and his own advisors and lodged no objection against this building permit which, technically speaking, was not suitable. The same also applied to the legal interpretation of the permit. None of the parties concerned possessed sufficient knowledge of the regulations or of the technology involved to formulate a building plan of this type and content.

The system was constructed from components purchased in China, which had not been demonstrated to be in line according to the European standards. The municipality did not give its approval for this by lack of knowledge. A certificate could not be issued as a certification institution would be unable to establish equivalence, neither formally nor practically. The municipality imposed a penalty. The term "equivalence" is introduced, but none of the parties (the competent authority, the proprietor and the fitters) can give their approval for this.

The services of TNO[1] (Efectis Nederland BV) were called in, new calculations were performed and modifications were carried out, but the municipality did not possess the knowhow to properly value this. The temporary period before the hotel was closed was extended, but due to a lack of appropriate knowledge, the municipality continued to demand a certificate although what it actually required was a declaration of equivalence.

Ultimately, the hotel was closed although, from a technical perspective, it was entirely safe with regard to safe evacuation at the time (the only reason for the municipality being able to close the hotel). The reason for the closure was the absence of the certificate, which could neither be provided nor would be provided. The court ruled that the municipality was in the right as in the view of the administrative court, the proprietor had not lodged an objection against the unsuitable building permit or the requirements of the penalty of July 28, 2010 on account of lack of information. The interlocutory proceedings are not

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suitable for issuing a judgment as to whether the letter dated August 6, 2010 with the objection against order for penalty must not be taken at face value, now that the municipality denies ever having received it. The court stated that it was not authorized to consider the technical content.

The consequence of this was ultimately the closure of the hotel and the redundancy of 70 members of staff, even though no unsafe situation was present.

The municipality then imposed a set of additional conditions, including the requirement for a certificate for the fire alarm system, even though the system had been installed for some time, albeit now in a modified form. This began with an approved design brief for this system. The fire service refused to sign this on account of the supposed presence of a healthcare function, while this actually concerned the statutorily-required hotel rooms for disabled guests. Finally, the municipality demanded a signed application for the certificate from the NCP (National Centre of Prevention). A discussion concerning qualifications then arose between the party authorized to submit this application (a certified fire detection company) and the fitter who was also responsible for undertaking maintenance to the fire alarm system, but who was not accredited to do so (the employee had not successfully passed the examination). This led to a further delay. The proprietor was neither in a position to see this through nor understand it. Ultimately, this was resolved by calling in a third party to undertake the maintenance under the authority of the permanent fitter.

The proprietor has been required to move heaven and earth to demonstrate that he is right. This cost him a considerable amount of money, whilst his advisers found themselves faced with a competent authority with no understanding of the case, but which still took decisions with regard to the closure, reopening subject to limitations, based upon requirements that exceeded the legal requirements and required the processing of new permit applications that were entirely unnecessary. These were unnecessary and lengthy consultations, while the loss the proprietor suffered continued to increase with each day that passed.

At the end of November 2010, the municipality was in possession of all of the technical information that it required, but did not have the knowledge to assess it. The municipality continues to stand by incorrect application of the law and is supported in this by the administrative court in interlocutory proceedings and by its own appeals committee. In discussions, the experts (Efectis Nederland BV, CHRI (Cauberg Huygen Consulting Engineers) BV, the ERB (Expert Centre of Building Regulations) Foundation, the VRNHN (Safety Region North Holland North (regional fire brigade) and Veritas) are in agreement, but do not possess the power of decision. The municipality requires a document which satisfies its own editorial requirements, without there being any statutory requirements for this in terms of its form. The municipality wishes to impose additional requirements although, with the permit of September 24, 2008, it has forfeited its rights to do so. The level acquired by law shall apply.

The situations are as follows:

(1) Which fire safety scenario is indicative? Not the scenario in the original design brief, part of the building permit, and not a fire which may develop in the neighboring bowling alley or mini golf course. A fire in the atrium;

(2) Safe evacuation was demonstrated by Efectis on November 22, 2010, but the municipality was not in a position to assess this report;

(3) The municipality did not recognize the difference between a certificate and declaration of equivalence and wrongly supported the incorrect administrative point of view;

(4) The municipality did not call in the necessary expertise in good time to allow it to assess all information that it had collected before the end of the temporary compliance period;

(5) At the expense of the proprietor, the

municipality has arranged for the formulation of an explanation statement, while the municipality itself should possess the knowledge required to assess a building plan of that nature. When this knowledge is not available, the municipality should seek advice at its own expense;

(6) The municipality has imposed additional requirements on top of a building permit which has already been issued, but not legally permitted;

(7) Due to inadequate knowledge of the technology and of the legal and administrative fulfillment of permits, requirements have been imposed on the form and content of documents which far exceed the intentions of the law.

Can a municipality impose excessive requirements above the legal minimum? Case law confirms this to be the case, but this must be an example of tolerance not due to a lack of the law. The law is quite clear. It is not permitted that the competent authority demands additional securities. In this case, the conclusion has been one of the only process judgment by the court, neglecting the technical content. All experts involved have the opinion the legal requirements have been satisfied accordingly.

The discussions and proceedings are still ongoing. The costs for technical and legal assistance have far exceeded €100,000—in addition to the loss of turnover and harm to the proprietor's image, while the municipality has been able to cover the costs of proceedings using public funds and is bringing advisors to despair.

4. Other Examples

Is this case a unique one? Unfortunately, it is not. ERB constantly encounters decreasing levels of knowledge at all levels of the building process, both in terms of technical knowledge and knowledge of the regulations. We also see civil servants who are becoming increasingly fearful of their responsibilities, which contribute to them losing all sight of reasonableness.

Unfortunately, ERB has numerous examples which have either concluded full legal proceedings or are still in the process thereof, for example:

(1) A large discotheque which was opened 25 years ago with an occupancy permit for 1,500 people had its permit reduced to 800 people in spite of there being no amendment to the regulations or structural changes. Proceedings have lasted for 8 years and the municipality involved does not wish to let the matter progress so far that a judgment is handed over to the administrative court, afraid that its policy imposed on uninformed proprietors would be reversed. A municipality which brought a beach volleyball centre annex recreation centre to bankruptcy twice by stating that escape routes to emergency exits adjacent to volleyball courts was forbidden by law;

(2) Several church councils were forced to spend unnecessary amounts of money widening exits and installing fire alarm systems;

(3) A recreation centre with permits issued in 2000 and 2002 which, in spite of experts judging equivalent safe situations to be present, had its previously-approved solutions unexpectedly rejected. The administrative court in this case also failed to respect the acquired rights and the judgment of top experts related to equivalent safety;

(4) A residential building with a porch with fire alarm system was obliged by the municipality to appoint fire service personnel at a cost of €500,000, as the municipality refused to accept the fire alarm system, whilst at the same time, the fire service claimed that it had never seen such a safe building.

These are merely a few of the many examples from experience, all of which have extreme (unnecessary) consequences for business due to defective authorities. Other examples include Cinemec in Ede (a sprinklered parking garage that had been closed motivated by insufficient fire alarm with the objective to extinguish the fire), Monastery in Tegelen (evaluated as a hotel), Spuimarkt-building in the Hague (refusal of a permit for fire safe use by demanding supplementary

technical provisions in contradiction with the law), Restaurant in Deventer (evaluated as a dancing hall, so it may not be put into operation and is already bankrupt).

As a result of poorly formulated objectives underpinning the regulations and a lack of adequate knowledge of the regulations and their background, we are seeing a rapid decline in knowledge which is leading to an even greater gap between the experienced experts and the decision makers at local municipalities, which in turn is leading to ever increasing incomprehension amongst proprietors.

5. Results and Discussions

We see authorities that are struggling. On the one hand, the level of expertise is deteriorating, while on the other hand, technology is advancing and the regulations are unable to keep pace. In many cases, authorities are no longer aware of the reasons that underlie the rules. We also see society and the building processes becoming increasingly more complex.

On the other hand, the authorities are of the opinion that conflicts which may occur between the competent authorities and citizens should be resolved by administrative law. However, the administrative court may only test for reasonableness and the judge may scarcely have any understanding of technology and the technical content of the rules. From a technical perspective, the outcomes of such proceedings can frequently be an exercise in frustration, and the outcome concerning the aforementioned hotel is a good example. The 70 members of staff still cry shame over the matter. If the best experts in the country can say that the hotel is clearly safe, how is an administrative court able to conclude that the hotel cannot remain open? This is something that could not be explained to the citizen.

Furthermore, the route to the administrative court is made difficult due to the court costs, which, as a result of austerity measures, was introduced by the Rutte I cabinet, having increased sharply. The level playing field is therefore somewhat restricted.

Work has to be done to rapidly update the substantive technical knowledge of the regulations, whilst not forgetting the legal perspective. In fact, in all educational courses, from a university level to intermediate vocational training, lawyers and technicians should be trained to a level that would allow them to debate and draw conclusions on both sides of the table within the correct meaning of the law.

Technical disputes should no longer be presented to the administrative courts. There is a need for a change to the administrative law that would lead to the establishment of an specialized institution within administrative law alongside the council of state, which, in the event of a technical dispute, could judge/mediate with binding force from a technical perspective within the framework of the law. The position of the institution must be equal to that of the council of state. Appeal against a decision would not be possible. The change in the law must ensure that a substantive dispute can be brought before this institution in one simple step. The construction industry cannot wait for many years for a decision on who is correct or how to proceed.

The establishment of this institution would considerably contribute to reduce the financial burden and improve the slowness within the system.

As technology advances, so too does the complexity of the building process, whilst knowledge within the competent authorities diminishes. The ERB foundation is arguing for a major change to the system, distinguishing between straightforward projects realized by standard solutions (which make up around 80% of cases), less straightforward projects which can be assessed on the basis of performance requirements (which requires a minimum level of higher vocational education amongst the market parties and competent authorities) and high-value projects which are dealt with according to the theory of probability (this requires education to an academic level with

postgraduate education via an organization for postgraduate education). Furthermore, an authoritative technical institution must be instituted by law and be given the status of non-departmental public body (ZBO ("independent governing body" in English)), which, alongside the council of state, is able to make binding judgments in technical disputes with a very short processing time.

In addition to this, the lack of knowledge within all sectors of the construction industry must be resolved, which requires a thorough revision of technical education. Subsequent research must also be conducted to facilitate collaboration between the arts, social sciences and scientists which will ultimately give rise to optimal building regulation and a re-organization of the entire building process (from lawmaker, administration of the law, to executive parties, whereby users will ultimately understand what they are responsible for and how they can fulfill these responsibilities). Building regulation cannot be organized by political scientists alone. A certified building plan will not resolve the issue nor will the strict removal of 25% of government rules that have taken place in 2012. Abolishing municipal building supervision in the belief that the market is responsible and can cope is neither a solution.

7. Conclusions and Recommendations

Administrative law is not suitable to solve technical disputes with regard to the correct interpretation of the regulations and its correct technical and legal application.

There is an increasing need for a competent institution to make binding judgments on disputes so as to prevent significant financial wastage.

To this end, proposals must be formulated. In the Netherlands, ERB has published two brochures on this matter [4, 5]. The authorities did realize end 2011 that change is needed, and the government had, at that moment, announced a thorough revision, aiming to begin testing a new organization documents about partial subjects produced. Discussions between interested parties are intense. Political decisions are not taken. In a next publication, the state of the art Anno 2014 will be discussed.

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Annex: More Cases in Detail

The design brief refers to NEN 6093 [6] and NPR 6095 [7]. The standards document sets out the dimensioning of a smoke and heat exhaust system and the NPR contains rules which serve as agreements between the companies which construct a system and the future owner of a building. It contains instructions concerning the design and installation of equipments which handle the exhaust of smoke and heat (smoke and heat system) in the event of a fire. Neither the design brief nor the building permit stipulated that a certificate or equivalent document needed to be submitted at the end of the construction phase. This was however implied in the rules against which the building application must be tested, but must be adopted as a condition in the permit. The law places the building permit above the rules which apply to the issuance thereof.

Due to the method of installation, the smoke evacuation systems regulation [8] cannot be satisfied in its entirety and are currently maintained under the regime of the CCV (Centre for the Prevention of Criminality and Safety), the regulations of which form the basis for certification of systems of this type. However, application of this regulation is not a statutory obligation, but rather a means of demonstrating that appropriate equipment is in place which functions, is maintained and checked adequately. The regulation refers to NPR 6095 [7].

Construction was not carried out to the specific letter of the building permit issued as it could not be demonstrated that all stipulations of NPR 6095-1 concerning components in the smoke and heat exhaust system had been satisfied owing to the use of non-European components, and furthermore, as the aerodynamic surface of the supply and discharge hatches did not correspond with the aforementioned design brief. Moreover, no certificate was submitted.

On July 28, 2010, the municipality imposed a penalty whereby it demanded a certificate be submitted for the smoke and heat system (implying the submission of a valid document accepted by the mayor and executive board, clearly stating the equipment functions, is maintained and checked adequately). However, this does not suggest that the stipulations of the Building Decree 2003 and the decree on fire safe use of buildings, the regulations which underpinned the building permit, were not satisfied, but, in the opinion of the municipality, that administrative justification was not provided. As part of the penalty, the municipality did not stipulate that as yet uninstalled fire walls between the restaurant/bowling alley/miniature golf centre and the atrium still be brought into line with the building permit issued.

In accordance with statutory regulations, an objection may be lodged against a decision taken by the competent authorities, followed by an appeal to the court and ultimately, further appeal to the council of state. Aside from the time span and the financial losses that are associated with this process, the outcome is frequently a frustrating one. In proceedings of this nature, technical content is not examined, but rather whether or not the procedures have been properly followed, even if the content thereof is technically and scientifically incorrect.

A hospitality proprietor applied for a building permit to enclose the external premises between his/her restaurant/bowling alley and 70 hotel rooms which are built in a three-level square with a glass roof (an atrium). In order to guarantee fire safety, a smoke and heat exhaust system was provided. The building permit indicates that the competent authorities do not possess sufficient specialism to correctly assess a building permit of this type. Reference was made to an incorrectly formulated design brief and demands were made by the municipality for the submission of a certificate, while the law offers no scope for this.

The proprietor and the municipality will meet shortly, which means that it is unclear whether or not the objection lodged by the proprietor on August 6, 2010 was submitted by the municipality. The municipality denies this. One can draw the conclusion that Efectis Nederland BV (previously TNO Centre for Fire Safety) shall be requested to independently assess fire safety and the correct and sustainable operation of the smoke and heat exhaust system. The penalty was ultimately deferred in two stages until December 1, 2010.

Efectis conducted an investigation and outsourced part thereof to CHRI (Caubergh-Huygen Consulting Engineers). As a result, three reports were produced (two from Efectis and a draft report from CHRI) [9-11]. At the request of Efectis, a number of modifications

were made to the systems and a number of non-binding recommendations were made with the aim of enhancing fire safety. Efectis came to the conclusion that the fire safety rules were ultimately satisfied at the end of November 2010.

In order to arrive at this conclusion, Efectis established the following:

- That the test of the building plan conducted in 2008 against the rules of the Building Decree 2003 was not carried out effectively;
- The design brief accepted in June 2008 could not withstand the test of criticism.

The system modified following recommendations by Efectis Nederland BV gave rise to a level of fire safety which, with regard to safe evacuation, was equivalent to that which can and may be required on the basis of the Building Decree 2003, the Dutch structural engineering regulations. Efectis Nederland BV makes the following distinction in this regard:

- If working properly, the smoke and heat exhaust system has a capacity which is twice that required.
- If the system is operating with 50% of its discharge hatches working properly, this is equivalent to that implied by the structural engineering rules.

In the event of total malfunction of the smoke and heat exhaust system, every occupant of the building will still be able to evacuate the building safely, which may give rise evacuation of the 3rd floor in a bent-over position.

In the worst-case scenario (malfunctioning smoke and heat exhaust system), the circumstances of evacuation in the gallery on the third floor are certainly no more worse than in a corridor situation for which a permit is required.

The system cannot be certified as not all stipulations of NPR 6095 are satisfied and as certification is only possible if these practice guidelines are satisfied to the letter. In view of the margin in safety and the findings of the draft report prepared by CHRI, it can be concluded that an equivalent system is in place which functions as is intended by the law.

The municipality persisted with its requirement for a certificate, did not receive one and therefore wished to have the hotel closed.

This was sufficient reason for urgent talks between the municipality, the hotel owner and ERB at the end of November 2010. The functioning of the regulations was central to the talks, in particular the difference between the two terms equivalence and certificate. By applying the principle of equivalence, the proprietor demonstrated that an equally safe situation is present as seen from the perspective of the Building Decree 2003 and the decree on fire safe use of buildings. The municipality stands by the extreme literal application of the regulations, requiring the submission of a certificate, something which in actual fact is not possible and whereby professional advice has been sought to clarify that, in spite of this, the rules have still been satisfied.

During the talks with the municipality, it has become clear that demands for a certificate are incorrect, but that a declaration of equivalence should be discussed. The executive council could have accepted the reports mentioned as confirmation of this but is reluctant to do this. The municipality is aware of the fact that it cannot simply implement its decision of July 28, 2010, for which a deferment had been granted until December 1, 2010. On December 2, 2010, the municipality took a new decision in which it once again demanded that a certificate be submitted, at the latest by January 4, 2011, with the details to be submitted no later than 14 days prior to this date for assessment. The municipality commissioned certification office Veritas to investigate whether or not NPR 6095 has been satisfied (a question which Efectis and CHRI had already provided an answer to, meaning that this question was being asked merely for the sake of asking, resulting in the already acknowledged negative conclusion). Veritas was not qualified to judge equivalence. On the same day, the municipality received a plan of approach from the hotel owner, detailing additional investigation work still to be carried out by the ERB foundation under its responsibility, leading to the agreed declaration of equivalence by January 15, 2011 at the latest.

The municipality did not issue a response to a written request to bring its decision of December 2, 2010 into line with the agreements of November 30, 2010. On December 14, 2010, the hotel owner lodged an objection against the decision of December 2, 2010, with the express request to have the compliance period extended to January 15, 2011 or later in the event of consultation on the declaration of equivalence. Once again, the municipality did not respond to this objection which led to urgent talks of December 28, 2010. On this date, all additional investigation work was complete and reported with positive outcome. Only the formulation of the declaration of

equivalence remained to be completed. Although the solution was there for the taking, the municipality refused to take a decision on the request to postpone the compliance period and postponed the meeting of the mayor and executive board to take a formal decision until January 4, 2011.

Other than to submit a request for a provisional settlement, the only form of recourse that is open to the proprietor under Dutch law is to seek the suspension of the decision of December 2, 2010. The court did not wish to schedule interlocutory proceedings before January 4. On January 5, 2011, the hotel was closed owing to no certificate having been provided.

On January 13, 2011, a sitting of the court took place in which the judge ultimately judged that the municipality was justified in closing the hotel owing to no formal objection having been lodged against the decision of July 28, 2010. The judge did not give any attention to the technical content of the file. However, during the court session, the municipality stated that even in the event of the supply and discharge openings being opened permanently, the hotel could not be opened, in contrast with the content of the penalty.

The draft declaration of equivalence was submitted on January 14, 2011 [12].

On January 19, 2011, further emergency technical consultation was held, on this occasion attended by Efectis and the ERB foundation as experts on behalf of the hotel owner, and the Regional fire service VRNHN (Noord-Holland Noord) as called in by the municipality. During the consultation, the experts established that no fault could be found with the reports produced by Efectis. The VRNHN refrained from making a judgment on the operation of the smoke and heat exhausting system on the grounds of lack of expertise. After postponing the consultation by more than one hour, the municipality produced a list of additional structural and occupancy requirements which must be satisfied before the hotel could be opened under a temporary exemption order.

One of the administrative conditions for this was that the municipality required an initial explanation statement in which ERB once again set out how a building plan of this type should be assessed and why one should draw the conclusion that all rules had been satisfied based on the information contained therein. On January 25, 2011, a draft version of this document was provided to the municipality.

On January 28, 2011, a new application for a environmental permit was submitted for:

- the structural modifications which the municipality set on January 19 as an additional condition for fire safe use, although a permit of this kind already existed which had not been cancelled and which only can be changed by administration;
- the use of a double hotel room as a staff residence in breach of the regulations.

This was also an inextricable condition with regard to opening the hotel.

Once a number of the additional requirements had been satisfied, a temporary exemption order was made on January 28, 2011 which required the supply and discharge hatches to remain open (during the winter period).

Furthermore, once surplus, durable fire resistant cabling had been laid in locations where the risk of a fire was virtually nil, the hatches could be closed again on February 8, 2011, upon which a new temporary exemption order was made.

The necessary structural modifications, with no connection to the smoke and heat exhausting system, were then made. Further consultation was also held with Veritas concerning the functioning of the smoke and heat exhausting system and the equivalence thereof. With regard to the latter point, Veritas has indicated that it does not wish to express an opinion.

The municipality then indicated that it wished the statement of principles and the draft declaration of equivalence to be editorially amended and updated to reflect the current state of affairs.