

Planning and Regulatory Committee

25 September 2024

PROCEDURAL MATTERS – MEMBER QUESTIONS

1. Question submitted by Catherine Powell

Which Statutory Agency is responsible for the review of which elements of flood risk and where does the liability site if the assessment is not completed or is incorrect?

NPPF paragraph 167 is clear that flood risk assessments must take ***“into account all sources of flood risk and the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property”***.

What is less clear is which statutory agency is responsible for which assessment, which is not defined in the NPPF or in guidance. Please can Officers advise which statutory agency is responsible for the following:

- a) Evaluation of flood risk associated with water courses breaking their banks and the mitigation of such risk for a new development and existing developments
- b) Evaluation of surface water flood risk, particularly in areas with hills and valleys and the mitigation of such risk for a new development and existing developments
- c) Evaluation of groundwater flood risk and the mitigation of such risk for a new development and existing developments
- d) Review of developments where infiltration test data is necessary to support the determination of a planning application as it will materially impact on the layout of a scheme and the required sustainable drainage system.
- e) Review of proposed sustainable drainage systems and it's appropriateness

Reply:

In relation to Planning Applications, the statutory consultation requirements in relation to flooding and related matters area as follows:

The Environment Agency

- Development involving the carrying out of works or operations in the bed of, or within 20 metres of the top of a bank of, a main river which has been notified to the local planning authority by the Environment Agency as a main river
- Development, other than minor development, which is to be carried out on land (i) in an area within Flood Zone 2 or Flood Zone 2 or (ii) in an area within Flood Zone 1 which has critical drainage problems and which has been notified as such to the local planning authority by the Environment Agency

The Lead Local Flood Authority

- Major development with surface water drainage

The Canal & River Trust

- Development likely to affect (i) any inland waterway (whether natural or artificial) or reservoir owned or managed by the Canal & River Trust; or (ii) any canal feed channel, watercourse, let off or culvert, which is within an area which has been notified to the local planning authority by the Canal & River Trust

In addition, the county planning authority may seek advice from our specialist consultants in relation to matters of hydrological or hydrogeological matters. As consultees these bodies provide advice to the county planning authority who is responsible for reviewing that advice and determining the planning application based on their assessment of this advice and any other relevant considerations.

In relation to points (a) – (e) within the question:

- a. Depending on the nature of the watercourse this may be covered in the response from Environment Agency, the Canal & River Trust or the LLFA for ordinary watercourses
- b. - (e) Would fall within the remit of the Local Lead Flood Authority who would provide a consultation response on these matters to the Planning Authority.

2. Question submitted by Catherine Powell

NPPF paragraph 56 requires that ***“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification”***

Please can Officers advise if:

- a) Having a condition to undertake infiltration testing for SUDs design as a pre commencement condition in areas known to have poor infiltration capacity is compliant with NPPF Para 56 given that the results could materially impact on the layout of a scheme and the required sustainable drainage system.
- b) When LLFA reviews a SUDs design against the SUDs Guidance and identifies concerns about the maintainability of the system, is proposing a condition for a robust maintenance scheme compliant with NPPF Para 56 and NPPF Para 175c. For example, in a recent application (which was subsequently refused by the LPA planning committee) a developer’s FRA stated, ***“small diameter restrictors below 50mm diameter are prone to blockages from debris that might enter the drainage system”***, yet the design included the use of orifices as small as 10mm.

Reply:

In response to (a), in general terms such a condition could be compliant with paragraph 56 if sufficient information has been submitted at application stage to demonstrate that the final SUDS design after infiltration would not materially alter the layout of scheme.

In response to (b), in the absence of further information and the wider context it is not possible to respond to the specific instance referred to in the second part of this question. A condition requiring a robust maintenance scheme is in line with NPPF para 175C which states that such information should be secured for major developments. Subject to being appropriately worded, a condition requiring a robust maintenance scheme would comply with the tests set out in para 56.

This approach is in line with Surrey County Council’s published [Sustainable Drainage System Design Guidance](#).

Edward Hawkins
Chairman of the Planning and Regulatory Committee
25 September 2024