

## **NORTH LINCOLNSHIRE COUNCIL**

### **PLANNING COMMITTEE**

#### **NATIONAL PLANNING POLICY STATEMENT 25 – DEVELOPMENT AND FLOOD RISK: APPLICATION OF THE SEQUENTIAL AND EXCEPTION TESTS**

##### **1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 To inform members about the application and implication of applying the sequential and exception tests as laid out in PPS 25.

##### **2. BACKGROUND INFORMATION**

- 2.1 PPS 25 – Development and Flood Risk was issued by Government in December 2006 and aims to steer more vulnerable development away from areas at higher risk of flooding. On most planning applications in flood risk areas the Environment Agency advise the local planning authority to apply the sequential test and, if necessary, the exception test. This is to ensure the proposed development is appropriate, fundamentally in terms of the principle of the development in that location, and also whether the development is safe.
- 2.2 PPS 25 also sets out the requirements for sequential and exception tests and the Environment Agency advises the planning department in writing when these should be applied. Every site in the council's area can be identified on the Strategic Flood Risk Assessment and the land is categorised as being within zones of varying levels of flood risk, with zone 1 being the land least at risk. The sequential test is designed to steer development into the lowest risk land available. The starting point is to check the designated risk level for the site in question and then check whether there is any land available in a lower risk area in the same settlement (if within a development boundary) or elsewhere if the site is in open countryside.
- 2.3 For example (within settlement boundaries), if a site is in flood risk zone 3 and it is known that land designated as zone 1 is available in that settlement then the test is failed as there is land less at risk of flooding available and the development should not be allowed on the higher risk land. If there is no other land available in a lower risk area within the settlement then the test is passed. Where the test is passed the exception test has then to be considered. The exception test should be applied to all planning applications except minor non-residential extensions, alterations and householder applications.

- 2.4 Application of the sequential test should ensure that more vulnerable property types, such as housing, will not be allocated to areas at high risk of flooding. In exceptional circumstances, there may be valid reasons for a development type which is not entirely compatible with the level of flood risk at a particular site location to nevertheless be considered favourably. In these circumstances, it will be necessary for the local planning authority or developer to demonstrate that the site qualifies for development in the manner proposed by passing ALL the elements of the exception test (see paragraph 2.5 below). The table below illustrates flood risk vulnerability and flood risk compatibility for developments falling within each zone.

**Table D.3<sup>22</sup>: Flood Risk Vulnerability and Flood Zone ‘Compatibility’**

Flood Risk Vulnerability classification (see Table D2)		Essential Infrastructure	Water compatible	Highly Vulnerable Caravans, park homes	More Vulnerable Residential , health	Less Vulnerable Shop, commercial
Flood Zone (see Table D.1)	Zone 1	✓	✓	✓	✓	✓
	Zone 2	✓	✓	Exception Test required	✓	✓
	Zone 3a	Exception Test required	✓	x	Exception Test required	✓
	Zone 3b ‘Functional Floodplain’	Exception Test required	✓	x	x	x

Key:

✓ Development is appropriate

x Development should not be permitted

- 2.5 The exception test required by PPS 25 should only be applied following application of the sequential test. This is a planning judgement on whether, in principle, a development should be allowed in a high-risk flood zone. It should not be used to justify developments in high flood risk areas. There are three stringent conditions, **all** of which must be fulfilled before the exception test can be judged to have been passed. These conditions are as follows:

- a) it must be demonstrated that development provides wider sustainability benefits to the community that outweigh flood risk, informed by a SFRA, if one has been prepared;
- b) the development must be on developable previously-developed land or, if it is not on previously developed land, that there are no reasonable alternative sites on developable previously developed land; and

- c) a site-specific flood risk assessment must demonstrate that the development will be safe, without increasing flood risk elsewhere, and where possible, will reduce flood risk overall.
- 2.6 It should be noted that PPS 25 was issued after the North Lincolnshire Local Plan (2003) but before the Local Development Framework (LDF) has been prepared and adopted. PPSs can and do supersede local plan policies. PPS 25 is more recent than the local plan and must be given considerable weight in making decisions on planning applications. When, in due course, either the LDF is adopted, or when further Central Government guidance is produced this report will need to be revisited. This report therefore may be seen as a stopgap position.
- 2.7 It should also be noted that this is a complex issue and there are a number of areas that are open to interpretation. It is clear that this is difficult for all those involved in the development process. Other local authorities are finding this issue equally challenging and there is difficulty nation-wide on interpretation and trying to get definitions. Negotiations are ongoing between officers and the Environment Agency on developments of 10 or less dwellings, at regional and national level regarding the advice being given. The Yorkshire and Humber Plan Regional Spatial Strategy issued in May 2008 gives guidance on flood risk in Policy ENV1 and a stated target is that there should be no increase in population living in flood risk areas.

### **3. ISSUES FOR CONSIDERATION**

- 3.1 This report has explained in detail the requirements of the sequential and exception tests and the process involved in applying them. This next section of the report sets out the issues for consideration.
- 3.2 With regard to the sequential test, where an application site is within a development boundary the sequential test is applied to that particular settlement. Sites outside of development boundaries would normally be refused on the grounds of being in the open countryside and therefore the sequential test would not be considered relevant.
- 3.3 In terms of the exception test, it is important to define what constitutes 'wider community benefit' and why (see paragraph 2.5a). Examples could include commercial with residential above, affordable housing, infrastructure, doctors' surgeries, dentists' surgeries and hospitals.
- 3.4 Upon failure of part a) of the exception test (paragraph 3.3 above), in other words, that the development would not be considered to have a wider community benefit that outweighs the risk of flooding, the council would normally refuse applications in high flood risk areas.

#### **4. ANALYSIS OF ISSUES**

- 4.1 With respect to the exception test, it is necessary to define what constitutes 'wider community benefit'. It is crucial that what does and what does not constitute a wider community benefit is applied consistently as this will frame what types of development will be considered acceptable in a high flood risk area. If subsequently development floods, the council could be criticised for allowing planning permission. Open-market housing is not considered to offer wider benefits to the community, and even affordable housing may not be considered to offer community benefits that outweigh the risk of flooding.
- 4.2 A recent appeal decision within North Lincolnshire at Crowle indicates that open-market housing does not offer 'wider community benefits'. An appeal decision dated 2 April 2008 dismissed an appeal that related to the erection of a bungalow at Wharf Road in Crowle. The inspector accepted that whilst much of Crowle lies within flood zones 3a and 3b, significant areas of the town are within zone 1 where 'more vulnerable' developments, such as dwellings, are appropriate. The inspector went on to state that, in any event, even if it could be shown that no sites were reasonably available in an area less likely to flood, all three elements of the exception test, as set out in PPS 25, would need to be met. The inspector stated that there was no evidence that the proposal for a single dwelling in one of the district's most sustainable settlements is necessary to ensure the viability of that settlement and its services or facilities or that it is needed to avoid social or economic blight.
- 4.3 Commercial uses could be considered as providing a wider benefit by facilitating local services and employment opportunities, and would mean fewer lives were put at risk. A good example of this benefit would be shops with flats above. Other examples would be commercial and industrial, social and recreational facilities and doctors, dentists and shops.

#### **5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

##### **5.1 Financial**

5.1.1 None

##### **5.2 Staffing**

5.2.1 None

##### **5.3 Property**

5.3.1 None

## 5.4 IT

5.4.1 None

## 6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

6.1 The implementation of PPS 25 has significant implications for the environment as it seeks to direct new 'flood sensitive' development away from land that has been identified as at 'high risk'.

## 7. OUTCOMES OF CONSULTATION

7.1 This report has been circulated to relevant officers and their comments included as appropriate.

## 8. RECOMMENDATIONS

8.1 That the information in this report is noted and that planning applications are determined in accordance with the provisions of PPS 25 and that with reference to the exceptions test the current application by officers be confirmed.

8.2 That the definition of what constitutes 'wider community benefits' be the subject of a further investigation and consideration and that a further report on this be submitted at a later date.

### **HEAD OF STRATEGIC REGENERATION, HOUSING & DEVELOPMENT AND HEAD OF PLANNING**

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#### **Background Papers used in the preparation of this report:**

PPS 25: Development and Flood Risk