

Planning and/or for Water
Planning permission and water

Jacqueline Lean

Potential Issues



- Local/national policy framework
- Flood risk
- EIA / Habitats
- Interaction with the Environmental Permitting regime
- Supply / Sewerage / drainage

Policy guidance



When is water likely to be a consideration in making a planning application?

This will depend on the proposed development, its location and whether there could be concerns about water supply, water quality or both.

Planning policy: NPPF



- Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. (Para 100)
- The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The Strategic Flood Risk Assessment will provide the basis for applying this test. A sequential approach should be used in areas known to be at risk from any form of flooding. (Para 101)

Planning policy: NPPF



- When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test, and if required the Exception Test, it can be demonstrated that:
 - within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and
 - development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to the use of sustainable drainage systems. (Para 103)

Planning policy: NPPF



- A site-specific flood risk assessment is required for proposals of 1 hectare or greater in Flood Zone 1; all proposals for new development (including minor development and change of use) in Flood Zones 2 and 3, or in an area within Flood Zone 1 which has critical drainage problems (as notified to the local planning authority by the Environment Agency); and where proposed development or a change of use to a more vulnerable class may be subject to other sources of flooding. (NPPF fn 20)

Potential issues: location (flood risk)



- Floodzone / Flood risk
 - Allocated in the local plan?
 - No need to apply Sequential Test (NPPF para
 - Site specific flood risk assessment may still be required
 - Not allocated –
 - Is the Sequential Test met?
 - Is the Exception Test met?
 - Site specific flood risk assessment – vulnerable development in areas of lowest flood risk unless “overriding reason” to prefer a different location
 - Development appropriately “flood resilient” and “safe”
 - Priority given to use of SUDs

SUDs (1)



House of Commons: Written Statement (HCWS161) Department for Communities and Local Government: 18 Dec 2014

Sustainable drainage systems

“... we expect local planning policies and decisions on planning applications relating to major development - developments of 10 dwellings or more; or equivalent non-residential or mixed development (as set out in Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010) - to ensure that sustainable drainage systems for the management of run-off are put in place, unless demonstrated to be inappropriate.

Under these arrangements, in considering planning applications, local planning authorities should consult the relevant lead local flood authority on the management of surface water; satisfy themselves that the proposed minimum standards of operation are appropriate and ensure through the use of planning conditions or planning obligations that there are clear arrangements in place for ongoing maintenance over the lifetime of the development. The sustainable drainage system should be designed to ensure that the maintenance and operation requirements are economically proportionate.”

SUDs (2)



- Technical standards (non-statutory) available on EA website
- Need for early consideration of who is to maintain (EA recommends a 'publicly accountable body') and what this means for conditions / s.106 obligations
- Note: Sch 3 of the Flood & Water Management Act 2010 provides for the establishment of a unitary authority or (where no unitary authority) county council as 'approving body' for drainage systems on new developments in their area. Not yet in force in relation to England

Potential issues: location (water bodies / habitats)



Water quality

Early engagement with the local planning authority, the Environment Agency and relevant water and sewerage companies can help to establish if water quality is likely to be a significant planning concern and, if it is, to clarify what assessment will be needed to support the application. Water quality is only likely to be a significant planning concern when a proposal would:

- involve physical modifications to a water body such as flood storage areas, channel diversions and dredging, removing natural barriers, construction of new locks, new culverts, major bridges, new barrages/dams, new weirs (including for hydropower) and removal of existing weirs; and/or
- indirectly affect water bodies, for example,
 - as a result of new development such as the redevelopment of land that may be affected by contamination, mineral workings, water or wastewater treatment, waste management facilities and transport schemes including culverts and bridges;
 - through a lack of adequate infrastructure to deal with wastewater.

PPG Paragraph: 016 Reference ID: 34-016-20140306



Assessing impacts on water quality

Where water quality has the potential to be a significant planning concern an applicant should be able to explain how the proposed development would affect a relevant water body in a river basin management plan and how they propose to mitigate the impacts. Applicants should provide sufficient information for the local planning authority to be able to identify the likely impacts on water quality. The information supplied should be proportionate to the nature and scale of development proposed and the level of concern about water quality.

PPG Paragraph: 016 Reference ID: 34-016-20140306

The Water Framework Directive



- Purpose of the Water Framework Directive (Directive 2000/60/EC) is to establish a framework for the protection of inland surface waters, estuaries, coastal waters and groundwater.
- Implemented in UK by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- UK has been split into several River Basin Districts (RBDs) shown on official map on EA website
- Each RBD has been characterised into smaller management units known as Water Bodies.

The Water Framework Directive (2)



- ‘Appropriate agency’ (EA for England) must prepare and submit to ‘appropriate authority’ (SS for England) proposals for environmental objectives for each RBD (see reg 13) and a programme of measures to be applied to achieve those objectives (see reg 20) [Reg 12]
- The Environmental Objectives are reported for each water body in a River Basin Management Plan (RBMP).
- RBMPs a material consideration for determining planning applications which may impact on relevant water body included within a RBMP

Planning policy: PPG



Can planning permission be granted for developments that harm water bodies?

Changes to scheme design and mitigation will often avoid harm to water bodies. In the few cases where a detailed assessment indicates that development will have a significant adverse impact on water quality then the proposed development will only be acceptable where the conditions in Article 4.7 of the Water Framework Directive having regard to the river basin management plan. The Environment Agency may be able to advise on meeting those requirements.

Paragraph: 018 Reference ID: 34-018-20161116

The Water Framework Directive – Art 4.7



7. Member States will not be in breach of this Directive when:

- failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or
- failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities

and all the following conditions are met:

The Water Framework Directive – Art 4.7



- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
- (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;
- (c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
- (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.

Potential issues: location (water quality / habitats)



- Need to consider if water quality is likely to be a significant planning concern due to physical interference with water body / structure or potential indirect affects
 - To be addressed in EIA where EIA required
 - Otherwise, stand alone assessment
 - Need to consider potential impact on relevant water body/ies within RBMP
 - If significant effect, PP can only be granted where conditions are met having regard to provisions of RBMP
- Potential impact on protected sites?
 - Appropriate Assessment required under Habitats Regs?

Potential issues: location (water quality / habitats)



- Recent decision from CJEU on screening decisions: *C-323/17 People Over Wind v Coillte Teoranta*
- Question referred to the CJEU: “Whether, or in what circumstances, mitigation measures can be considered when carrying out screening for appropriate assessment under Article 6(3) of the Habitats Directive?”
- CJEU conclusion (para 40)

“Article 6(3) of the Habitats Directive must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site”.

Role of EA / permitting regime?

EA Guidance for developments requiring planning permission and environmental permits (2012)

“As part of our response to planning consultations, we will provide the following supporting information/advice.

We will:

- Indicate that a permit is likely to be needed and what impacts the permit is likely to control.
- Based on the information available, identify polluting activities related to the development that will not be controlled by the permit.
- Identify where there could be impacts on planning if the developer needs to take further measures to obtain a permit (for example, increasing the height of structures to reduce pollution).
- Recommend appropriate planning conditions on issues such as flood risk.
- Inform the planning authority if a new development could affect an existing permitted activity complying with its environmental permit”

Role of EA / permitting regime?



- NPPF Para 122:
 - “...local planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Local planning authorities should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities”
- Reflects principle articulated in Gateshead MBC v SSE [1995] 1 Env LR 37 line of case law

Role of EA / permitting regime?



- See, e.g. Carnwath LJ in *Cornwall Waste Forum St Dennis Branch v Secretary of State for Communities and Local Government* [2012] EWCA Civ 379

“...there was no misdirection. The inspector was not saying that the emissions were irrelevant to the planning decision, but was simply following the well- established principle, approved by this court in *Gateshead MBC v Secretary of State* (1971) 71 P. & C.R. 350 (citing the then current policy guidance, which is reflected in similar guidance today) that:

“It is not the job of the planning system to duplicate controls which are the statutory responsibility of other bodies... Nor should planning authorities substitute their own judgment on pollution control issues for that of the bodies with the relevant expertise and the responsibility for statutory control over those matters.”

Water supply



Water supply

Planning for the necessary water supply would normally be addressed through the Local Plan. Water supply is therefore unlikely to be a consideration for most planning applications. Exceptions might include:

- large developments not identified in Local Plans that are likely to require a large amount of water; and/or
- where a Local Plan requires enhanced water efficiency in new developments as part of a strategy to manage water demand locally and help deliver new development.

PPG Paragraph: 016 Reference ID: 34-016-20140306

Water / sewerage connections



“In the planning system, the preparation of Local Plans should be the focus for ensuring that investment plans of water and sewerage companies align with development needs. If there are concerns arising from a planning application about the capacity of wastewater infrastructure, applicants will be asked to provide information about how the proposed development will be drained and wastewater dealt with. Applications for developments relying on anything other than connection to a public sewage treatment plant should be supported by sufficient information to understand the potential implications for the water environment.”

When drawing up wastewater treatment proposals for any development, the first presumption is to provide a system of foul drainage discharging into a public sewer to be treated at a public sewage treatment works (those provided and operated by the water and sewerage companies). This should be done in consultation with the sewerage company of the area.

...

Septic tanks should only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer to be treated at a public sewage treatment works or a package sewage treatment plant is not feasible (taking into account cost and/or practicability).”

Paragraph: 020 Reference ID: 34-020-20140306

Water / sewerage connections



“The timescales for works to be carried out by the sewerage company do not always fit with development needs. In such cases, local planning authorities will want to consider how new development can be phased, for example so it is not occupied until any necessary improvements to public sewage treatment works have been carried out”

PPG Paragraph: 020 Reference ID: 34-020-20140306

- Can be secured by *Grampian* condition: *Barratt Homes Limited v Dwr Cymru Cyfyngedig (Welsh Water)* [2009] UKSC 13