

# Flooding

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## Overview

- Flooding policy in development control
  - NPPF
  - PPG
- Flood risk management
  - Flood and Water Management Act 2010

## NPPF - overview

- Chapter 14 – *Meeting the challenge of climate change, flooding and coastal change*
- Paras. 155 - 165
- Footnote 6 – para. 11 – presumption in favour of sustainable development
  - Para. 11(d)(i)
  - “*the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed*”

## NPPF – guiding principles

- Para. 155:

*“Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere”*

- Paras. 156 and 157 – plan making – sequential risk based approach to the location of development – strategic flood risk assessment

## NPPF – sequential test

- Para. 158:

*“The aim of the sequential test is to steer new development to areas with the lowest risk 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 risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.”*

- PPG – see paras. 019 – 022.

## NPPF – exception test

- Paras. 159 – 161 – if impossible to locate development in zones with a lower risk of flooding – see Flood Risk Vulnerability Classification in PPG (together with paras. 023 – 028)

- Para. 161:

*“...For the exception test to be passed it should be demonstrated that:*

*a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and*

*b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall”*

## NPPF – determination of applications

- Para. 158 – “*Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding*”
- Para. 162 – allocated sites do not need the sequential test to be reapplied – may be necessary to reapply the exception test
- Para. 163 – “*ensure that flood risk is not increased elsewhere*” – site specific flood-risk assessment – demonstrate: (a) most vulnerable development in lowest risk areas; (b) flood resistant and resilient; (c) sustainable drainage systems; (d) managed residual risk; (e) safe access and escape
- Note specific provisions for minor/major development – paras. 164 and 165

## NPPF – key cases (all NPPF1 world)

- ***Menston Action Group (Acting by Professor John David Rhodes) v City of Bradford MDC*** [2016] EWHC 127 (QB), Dove J
  - See [38] – [41]
- ***Watermead Parish Council v Aylesbury Vale District Council*** [2017] EWCA Civ 152, Patten and Lindblom LJJ
  - See [28]
- ***R (on the application of Kenneth Kolb) v Buckinghamshire County Council*** [2013] EWHC 1055 (Admin), Lindblom J





## Flood risk management

- Division of responsibilities –
  - Environment Agency (national flood risk management, “main rivers”, supervisory role);
  - Internal Drainage Boards (“ordinary watercourses”)
  - Statutory undertakers – highways and sewerage
- Legislation:
  - Flood and Water Management Act 2010
  - Land Drainage Act 1991
  - Water Resources Act 1991
  - Floods Directive – Flood Risk Regulations 2009

## FWMA 2010 – definitions

- Chapter 1 of Part 1 FWMA 2010
  - Section 1 – “flood” and “costal erosion”
    - *“any case where land not normally covered by water becomes covered by water”* – irrespective of cause – excluding sewerage system and burst water main
  - Sections 2 and 3 – “risk” and “risk management”
    - Broad in scope: analysing a risk, assessing a risk, reducing a risk, reducing a component in the assessment of risk, altering the balance of factors combined in assessing risk, otherwise taking action in respect of a risk
    - *“increase the probability of an event but reduce or alter its potential consequences, or that increase the probability of an event occurring at one time or in one place but reduce the probability of it occurring at another time or in another place”*

## Flood risk management – powers

- EA and IDBs/local authorities have wide-ranging powers to:
  - drain;
  - construct new works;
  - maintain/operate existing works; and
  - enter land.
- IDBs also have supervisory powers
  - Notices requiring upkeep of ordinary watercourses (apple to magistrates)
  - Designation of flood defence structures & enforcement notice procedure (appeal to FTT)

## Flood risk management - compensation

- Water Resources Act 1991 and Land Drainage Act 1991 make provision for compensation where “injury” is sustained by reason of the exercise by the relevant authority of its flood defence or drainage powers
- Must be shown that:
  - injury would have given rise to an actionable liability if carried out in absence of statutory authority
  - Injury arises out of exercise of authority’s powers
- Common law actions? See ***East Sussex Rivers Catchment Board v Kent*** [1941] A.C. 74; ***Marriage v East Norfolk Rivers Catchment Board*** [1950] 1 K.B. 284; ***Hall v EA*** [2018] 1 W.L.R. 1433

## Flood risk management - recent cases

- ***King v EA*** [2018] EWHC 65 (QB)
- ***Sharp v North Essex MC*** [2017] EWCA Civ 1143
- ***Robert Lindley Limited v ERYC*** [2016] UKUT 0006 (LC); ***Brown v Natural Resources Body for Wales*** [2016] UKUT 0514 (LC).



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