

Flood zone development clarification: Planning/Environment

Developments subject to some exceptions, such as minor developments and some changes of use, that are intended to be carried out in flood zones designated by the Environment Agency as zones 2¹ or 3² will normally require a sequential test to be carried out as part of a flood risk assessment.

The sequential test requires the putative developer or promoter to compare the site that is proposed to be developed with other available sites to ascertain which carries the lowest flood risk. Whether land is liable to such a process is therefore very significant when considering development potential.

Planning authorities are required to develop more detailed strategic flood risk assessments (SRFA's) for use in the areas they cover and for use in the decision-making process.

Additionally the following policies apply from NPPF:

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.

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.

159. If it is not possible for development to be located in zones with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in national planning guidance.

160. The application of the exception test should be informed by a strategic or site- specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. 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. (both elements need to be met)*

¹ 'medium' probability 1 in 100 to 1 in 1,000 annual probability.

² 'high' probability 1 in 100 or greater and 'functional floodplain' areas.

In the recent case of *R (Martin) v Folkestone and Hythe District Council* [2020] EWHC 1614 (Admin)³ Dove J was called upon to determine the interrelationship between the Environment Agency Flood risk maps, the SRFA prepared by the planning authority and the Flood Risk Assessment prepared in relation to the application. In particular he dealt with the arguments that the Environment Agency designation and local authority core plan required the sequential test to be implemented.

Rejecting those submissions, Dove J found that what was in fact required was a detailed flood risk assessment utilizing the SRFA contents to be submitted with the application. He said:

In my view the provisions of policy SS3c⁴ provide that where a location for proposed development is identified by the EA flood risk maps as being at risk of flooding or at risk of wave overtopping, then what is required pursuant to the policy is the preparation and submission of a detailed FRA, utilising the materials in the Shepway SFRA. This is what occurred in the present case, and the FRA submitted demonstrated that the proposal would pass the sequential test on the basis that, utilising the Shepway SFRA, the site was not identified as being in an area where flooding was an issue. Given that the conclusions of the SFRA were that the site was in an area with the lowest probability of flooding, the question of searching for other areas at lower risk of flooding for the purposes of the sequential test did not arise.

The case provides useful clarification of the approach to be taken where there is apparent or possible conflict as between the EA FRA and a SRFA.

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³ The full judgement can be found here: <https://www.bailii.org/ew/cases/EWHC/Admin/2020/1614.html>

⁴ From the core policy for Folkstone and Hythe District Council.