

Appeal ref 3295556 - Land adjacent to HMP Garth and HMP Wymott

Surface Water Flood Risk

May 2024

- 1.1 This note provides a response to the matter raised by a third party on 8th May 2024 (and circulated to the appeal parties on 9th May 2024) regarding the surface water flood risk at the appeal site and the requirement for the sequential test to be satisfied.
- 1.2 The Appellant is disappointed that representations from interested parties continue to be accepted even after the close of the reopened inquiry and contrary to comments from the Inspector on 19th April 2024 that *“there will come a point soon where he will be unable to accept anything further”*. Notwithstanding, whilst we consider that appeal decision ref. 3326187 is of limited relevance given it was for a different development in different circumstances and determined on its own merits, we do consider it highlights an issue requiring a response in the interests of ensuring a robust decision on this appeal is ultimately made.
- 1.3 As the Inspector will be aware, the original planning application was submitted in August 2021. It was refused by the LPA in December 2021 and the first inquiry subsequently held in July 2022. The Inspector’s report was submitted to the Secretary of State (‘SoS’) in October 2022, before the SoS issued his ‘minded to grant’ decision in January 2023. This resulted in a second inquiry being held recently in March and April 2024.
- 1.4 At the time that the planning application was prepared, determined by the LPA and the first inquiry held, the planning policy position was that the sequential test with regards to flood risk was only required for areas in flood zones 2 or 3. It was common ground between all parties that the majority of the site is within flood zone 1 with no built development proposed in the small area of the site in flood zone 2, such that the sequential test with regards to flooding was not required.
- 1.5 The relevant section of PPG was amended in August 2022 (after the first inquiry concluded). The appellant accepts that it introduced a requirement to undertake the sequential test in relation to all sources of flood risk which now includes surface water flooding. We note that comments were not submitted by nor sought from any party at the time of the PPG being amended in August 2022.
- 1.6 We accept that the appeal site includes some areas which are at medium and high risk of surface water flooding, however we are of the view that the majority of the site is at low or no risk of surface water flooding, with the higher risk areas associated with ditches and localised depressions. The surface water flood risk at the site has not changed since the planning application was prepared in 2021.
- 1.7 Nonetheless, we accept that the August 2022 PPG would therefore require a sequential test to be met with regards to surface water flooding.
- 1.8 We contend that there is limited conflict with PPG in this regard and that limited weight is attached to this conflict for the following reasons.

- a. Firstly, it has already been found by the SoS that there is an urgent need for the proposed development to which significant weight is attached (DL21);
 - b. It is common ground between all parties that the proposed surface water drainage strategy comprises a range of measures to ensure that there is no adverse impact¹, which was also agreed by the Inspector (IR13.83);
 - c. The particular circumstances of this case, namely the length of time since the planning application was first prepared and the late stage this is now being raised at. The original flood risk assessment, and site search prepared for reasons relating to the appeal site being in the Green Belt, were both undertaken prior to PPG being amended.
 - d. Notwithstanding the limited weight afforded by the SoS to the alternative sites discussed at the 2022 inquiry, we would highlight that both the main alternative sites examined at that time ('Kirkham' and 'Stakehill') contain similar localised areas of medium and high risk surface water flooding.
- 1.9 We acknowledge that the exercise at 1.8d above does not necessarily meet the requirements of the PPG in full, however in the particular circumstances (1.8c) and the matters already established between the parties and by the SoS (1.8a-b), we contend that very limited weight should be accorded to any conflict.

¹ Paragraph 5.46, CD/C8 and Paragraph 7.55, CD/C7