

Major Casework  
The Planning Inspectorate,  
3rd Floor, Temple Quay House,  
2 The Square,  
Temple Quay,  
Bristol,  
BS1 6PN

**Email** Claire.pegg@cushwake.com  
**Direct** +44 (0)161 235 7638  
**Mobile** +44 (0)7877 661883

22 July 2024

[Via email]

Dear Leanne,

**Appeal Ref. APP/D2320/W/22/3295556**

This letter is in response to the Inspector's request on 22<sup>nd</sup> May 2024 that the Appellant undertake a sequential test in respect of the surface water flood risk matter that has arisen.

We note that the Inspector considers it would not be sufficient to simply note the absence of the sequential test and hence has requested that a sequential assessment is undertaken by the Appellant. The Appellant thanks the Inspector for the opportunity to submit this further evidence and the extensions that were agreed to in light of the General Election.

The Appellant has a strong rationale and time imperative to not undertake a sequential test at this late stage and will accept the consequential effect that this approach may have in the recommendation submitted by the Inspector to the Secretary of State. This decision is based on the following considerations:

- i. The timeline of this appeal is distinct from appeal decision 3326187 (CD/Q20b) as well as that of the attached appeal decision 3329702 (which we consider relevant to make the Inspector aware of). In both these appeal cases, the planning applications were submitted after the August 2022 change to PPG and so it is entirely expected that those applications should have been supported by a sequential assessment that considered surface water flooding. We have previously set out the protracted timeline of this appeal in CD/Q21, but of particular relevance is that the application submission, appeal submission and first inquiry were all prior to August 2022.
- ii. There is an increasingly urgent need for the proposed new prison development. The Lord Chancellor has committed<sup>1</sup> to continuing the prison building programme and has set out temporary measures to reduce the proportion of certain custodial sentences served in prison from 50% to 40%, with important safeguards and exemptions to keep the public safe and clear release plans to manage them safely in the community. This highlights the urgent need for more prison capacity and the Appellant considers it imperative therefore that a decision on this appeal is made in the shortest possible timeframes.

---

<sup>1</sup> <https://www.gov.uk/government/news/lord-chancellor-sets-out-immediate-action-to-defuse-ticking-prison-time-bomb>

- iii. The request to undertake a sequential assessment is likely to result in a very significant delay. We anticipate it will take c. 6 months to undertake the site search (particularly given the summer holiday period), the other appeal parties to then provide submissions on this, and the appellant to respond.

We anticipate that it is unlikely that the site search can be conclusively dealt with through written submissions and so a third inquiry is very likely to be called for. The Inspector will be aware of the difficulties the parties faced in identifying mutual availability for the second inquiry, and we consider this could add a further 6-12 months.

A 12-month delay is not therefore unrealistic to allow for the sequential assessment to be dealt with. Such a lengthy delay will cause real harm in terms of meeting the need for the proposed development as per point ii) above.

- iv. Whilst we appreciate the requirement in the PPG for the sequential test to be undertaken, as referenced in the Appellant's original response (CD/Q21) it is agreed between all parties (reinforced by the relevant technical consultees) that the draft drainage strategy is such that the development will not result in any adverse impact to surface water flooding, and thus the actual risk of harm in this case is low.

We accept that there remains a policy breach, however in these specific circumstances, we remain of the opinion that it should be attributed limited weight in the overall planning balance. It is a well-established legal principle (*Mead Realisations v. SOS LUHC* ([2024] EWHC 279 (Admin) (§ 111 to 115)) that a policy requirement should not be elevated to a legal requirement, and thus the consequences of, and weight to be accorded to, a policy conflict is a matter of judgement for the decision maker, taking into account all other material considerations.

Yours sincerely



**Claire Pegg MRTPI MRICS**  
**Partner, Cushman & Wakefield Planning**