

## COLNEY HEATH PARISH COUNCIL

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Land to the Rear of 42-100 Tollgate Road & 42 Tollgate Road, Colney Heath

**CD 9.16**

date	Issue version	Revision
22 Aug 2023	1	Issue to Planning Inspectorate

## RELEVANT PLANNING MATTER

Colney Heath Parish Council Rule 6 Party

Planning Inquiry

PINS Ref : APP/B1930/W/23/3323099

LPA REF: [5/2022/1988](#)

<b>SUMMARY</b>	
<p>One or more of the reasons for refusing the appeal is that the appellant has not complied with the NPPF as they have failed to:</p> <ul style="list-style-type: none"> <li>• Complete Sequential Testing Assessment (STA) ( NPPF P161)</li> <li>• Take account of all sources of flooding</li> <li>• Consider the whole development area</li> <li>• To undertake research into other sites that are reasonably available in the wider area.</li> <li>• Prove a wider sustainability benefits to the community (NPPF P164(a)). and that it will be safe for a lifetime (NPPF P164(b))</li> </ul>	
<b>1</b>	<b>Relevant Planning Matter</b>
1.1	<p>Whilst the LPA did not include flood risk as a reason for refusal, under appeal procedures the Inspector is allowed to consider all relevant planning matters in reaching a decision. Accordingly, the following evidence relating to development and flood risk is submitted to the Inspector for consideration in their determination of this appeal.</p>
1.2	<p>In the application the Appellant failed to comply with the National Planning Policy Framework (NPPF) and the Planning Policy Guidance (PPG) as it applies to flooding. The LPA condoned the failure and failed to consider flooding as an issue when recommending the refusal of this application. The Planning Inspector is requested to exercise discretion and allow the failure to comply to be considered as a justification to refuse the appeal</p>
<b>2</b>	<b>Potential reasons for refusal</b>
	<p>The appeal should be refused as the Appellant has failed to:</p> <ol style="list-style-type: none"> <li>a. Complete an Sequential Testing Assessment (STA) ( NPPF P161)</li> <li>b. Take account of all sources of flooding (NPPF P161)</li> <li>c. Consider the whole development area (NPPF P159)</li> <li>d. To undertake research into other lesser flood risk sites that are reasonably available in the wider area (NPPF P162)</li> <li>e. Prove a wider sustainability benefits to the community (NPPF P164(a)). and that it will be safe for a lifetime (NPPF P164(b))</li> </ol>

3	<b>Avoiding inappropriate development</b>
3.1	<p>In relation to flooding the NPPF demands that developments are directed away from flooding high risk areas to lower risk areas. Para 159 states:</p> <p><i><b>159.</b> Inappropriate <u>development</u> 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.</i></p> <p>The key words being “Development”. The recent precedents are that this covers the whole of the development site not just a “built area” that is confined to low risk (FZ1) areas.</p>
3.2	<p>The precedents include the following references:</p> <p>APP/W2465/W/21/3283279 [‘Leicester Appeal’]  APP/D0840/W/21/3281713 [‘St Austell Appeal’]  APP/W2465/W/21/3283279 [‘Leicester Appeal’]  APP/D1265/W/22/3296683 [‘Dorset Appeal’]  APP/N1920/W/23/3314268 (Bushey Appeal)  APP/E2734/W/18/3219294 (Bishop Monkton Appeal)  APP/W3520/W/22/3308189 (Needham Market Appeal)</p>
4	<b>Sequential Test Assessment</b>
4.1	<p>The NPPF mandates a Sequential Test Assessment (STA) should apply. Para 161 states:</p> <p><i><b>161.</b> <u>All plans should apply a sequential, risk-based approach to the location of development – taking into account all sources of flood risk and the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by:</u></i></p> <p><i>(a) applying the sequential test and then, if necessary, the exception test as set out below;</i></p> <p><i>(b) safeguarding land from development that is required, or likely to be required, for current or future flood management;</i></p> <p><i>(c) using opportunities provided by new development and improvements in green and other infrastructure to reduce the causes and impacts of flooding, (making as much use as possible of natural flood management</i></p>

	<p><i>techniques as part of an integrated approach to flood risk management); and</i></p> <p><i>(d) where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking opportunities to relocate development, including housing, to more sustainable locations.</i></p>
4.2	<p>The key words “All plans should apply a Sequential (STA) Risk Based Approach” and “Taking into account all sources of flooding”. In this application the Appellant has not applied a STA before or during the application or since the refusal. This despite the fact that the development has fluvial flooding in the site in the areas of FZ3, FZ2 and groundwater flooding in FZ1</p>
4.3	<p>Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. (PPG Paragraph: 023 Reference ID: 7-023-20220825)</p> <p>It is said that the Appellant conducted a single test (therefore not sequential) in the summer of 2022 during one of the driest periods on record.</p>
5	<p><b>All sources of flooding</b></p> <p>The Appellant has not taken into account all sources of flooding by relying on the built area being solely within FZ1.</p> <p>The Environment Mapping for Planning Site clearly shows there is extensive groundwater flooding in the FZ1 area in particular a line running parallel to the rear boundary of the houses on the south side of Tollgate Road including behind number 42 Tollgate Road (the house to be demolished for an access road) and across the area to be used as an access to the development. The Figure 1 of the Appellants Stantec Technical Note of 24 January 2023 confirms this.</p>
6	<p><b>Responsibility for conducting STA</b></p> <p>The responsibility for conducting an STA is solely that of the applicant/appellant. The LPA have a role in defining the area and extent of the assessment. In this case there was an agreement between the Appellant and the LPA that a STA was not necessary because the built area was only in FZ1. While unspoken there appears to be an opinion that Para 162 can be applied to disaggregated areas</p>

	<p>within the site. Recent precedents suggest that this is not the case. There is a recognition that detailed survey is required as the appellant has agreed to a post approval condition for a site survey. The LPA stance is recorded in paras 8.15.2 – 8.15.4 of the Planning Officer Report to the Planning Committee.</p>
7	<p><b>Reasonably available sites</b></p> <p>An STA has not been completed as the Appellant has not complied with NPPF para 162 that places a responsibility on the applicant to search for reasonably available sites with less flood risk</p> <p><i>162. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. <u>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.</u> 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.</i></p> <p>There is no evidence that the Appellant has researched reasonably available sites.</p>
8	<p><b>Para 162 - Search area</b></p> <p>The search area for reasonably available sites is not confined to the Development Site. It may extend for up to 15 miles from the proposed development and include other local authority areas potentially including all of the South West Hertfordshire Housing Market Area (HMA), namely Dacorum, St Albans, Three Rivers, and Watford and other adjacent Local Authority areas. Consideration may have to be given to multiple smaller sites to meet the requirement.</p>
8	<p><b>Exception Test – Post STA</b></p> <p>In the event that it is not possible to locate a reasonably available site with a lower risk of flooding an exception test may be applied. NPPF Para 163 to 165 state:</p> <p><i>163. If it is not possible for development to be located in areas 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 Annex 3.</i></p>

	<p><b>164.</b> <i>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. To pass the exception test it should be demonstrated that:</i></p> <p><i>(a) the <u>development would provide wider sustainability benefits to the community</u> that outweigh the flood risk; and</i></p> <p><i>(b) the development will be <u>safe for its lifetime</u> taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.</i></p> <p><b>165.</b> <u>Both elements of the exception test should be satisfied for development to be allocated or permitted.</u></p>
9	<p>The Planning Policy Guidance states, “<i>The Exception Test is not a tool to justify development in flood risk areas when the Sequential Test has already shown that there are reasonably available, lower risk sites, appropriate for the proposed development. It would only be appropriate to move onto the Exception Test in these cases where, accounting for wider sustainable development objectives, application of relevant local and national policies would provide a clear reason for refusing development in any alternative locations identified</i>”. (PPG Paragraph: 031 Reference ID: 7-031-20220825)</p>
10	<p><b>Appellant and LPA agreement</b></p> <p>The negotiation and decision between the Appellant and the LPA that there would not be an STA for this application in favour of a post planning approval test condition does not comply with the NPPF.</p> <p>The post approval condition is:</p> <p><i>“No development shall be commenced until detailed ground investigations have been conducted across the site and submitted to the Local Planning Authority. The ground investigations should identify seasonal groundwater levels (to reflect that the initial testing conducted in summer) and ensure that areas of shallow groundwater will not compromise the development or vice versa. Where shallow groundwater is identified, appropriate measures to mitigate groundwater flood risk should be proposed to ensure the the risk of groundwater flooding is not increased on or off the site.” (Para 8:15:4 of the Planning Officers report to the Planning Committee.)</i></p>

	This condition effectively condones the failure to comply with the requirements of NPPF paragraphs 159 and 161 – 165. The agreement fails to direct the development to an area of lesser risk and removes the topic of “Flooding” from consideration until after planning approval has been granted when there is less scrutiny
11	<b>Role of EA in the Appellant and LPA Agreement</b>
11.1	As required the LPA consulted the Environment Agency (EA) (Para 160 NPPF) and the above agreement appears to have been influenced by the response of the Sustainable Places Planning Officer at the EA in a written response to the LPA.
11.2	The following extract applies: <i>“The documents and email submitted provide us with confidence that it will be possible to suitably manage the risks posed to groundwater resources by this development. Further detailed information will however be required before any development is undertaken. It is our opinion that it would place an unreasonable burden on the developer to ask for more detailed information prior to the granting of planning permission but respect that this is a decision for the local planning authority. In light of the above, the proposed development will be acceptable if a planning condition is included requiring submission and subsequent agreement of further details as set out below. Without this we would object to this proposal in line with paragraph 170 of the National Planning Policy Framework because it cannot be guaranteed that the development will not present unacceptable risk to groundwater resources.”</i>
11.3	It should be noted that documents and email referred to did not include any details from objectors especially regarding the groundwater flooding. The author appears to be focussed on contamination of groundwater.
11.4	It is not clear whether the EA or indeed the LPA can absolve the applicant of there responsibilities under paragraphs 159 and 161 – 164. It is also noted that condition referred to by the author appears to focus solely on the assessment of the ground and not the other aspects of an STA.
11.5	Later in the same document under the heading of “Advice to LPA” there is detailed advice on the roles and responsibilities for completion of an

	STA. It is also confirmed that there is a potential risk of groundwater flooding on the site.
12	<b>Underground Chalk Stream</b>
12.1	The local oral history of the site contends that there is an underground chalk stream near to and parallel with the rear (southern) boundary of 42-100 Tollgate Road. It further contends that this rear boundary took account of the location of the stream.
12.2	This being the area indicated in figure 1 of the Stantec Technical Note of 24 January 2023 and the Environment Agency Flood Map for groundwater shown below. Photographs of flooding in this area are shown below.
12.3	Based on the photographs the appellant “suspects” local ponding of water in a depression in the surface of the site. (Stantec Technical Note of 24 January 2023). Local residents “suspect” that it is a chalk stream that this a tributary of the River Colne, the linear nature of the flooding/ponding in the photographs tend to support this.
12.4	Based on the photographs the appellant “suspects” local ponding of water in a depression in the surface of the site. (Stantec Technical Note of 24 January 2023). Local residents “suspect” that it is a chalk stream that this a tributary of the River Colne, the linear nature of the flooding/ponding in the photographs tend to support this.
12.5	Chalk streams are fed mainly by chalk groundwater, streams whose flows are affected be chalk groundwater in this way they are known as “winterbournes” where seasonal variations in the water table result in a flow in winter and early spring but no flow in summer and autumn. (The Stantec Test was in the summer)
12.6	If such a stream exists and it is a tributary of the river Colne disruption or pollution to the areas of the stream will have a negative effect on the River Colne and associated wildlife. An STA will prove or disprove if the feature is a tributary of River Colne. It should be noted that the proposed access route to the development crosses the area of flooding and, if it is a stream, will seriously disrupt, obstruct or otherwise be detrimental to the stream.
12.7	Chalk streams are part of a globally rare and internationally important habitat, Approximately 85% of the global chalk streams are found in the

	UK and about 10% in Hertfordshire. Chalk streams have no protection and face a number of threats to their survival including over-abstraction, water pollution disruption to flow global warming, etc. There is grave concern that, if the Development commences before an STA to prove or disprove the existence or otherwise of a subterranean stream, significant damage may be done to such a rare and important geological and ecological environment.
	<b>Conclusion</b>
	The appeal be refused.



## Learn more about this area's flood risk

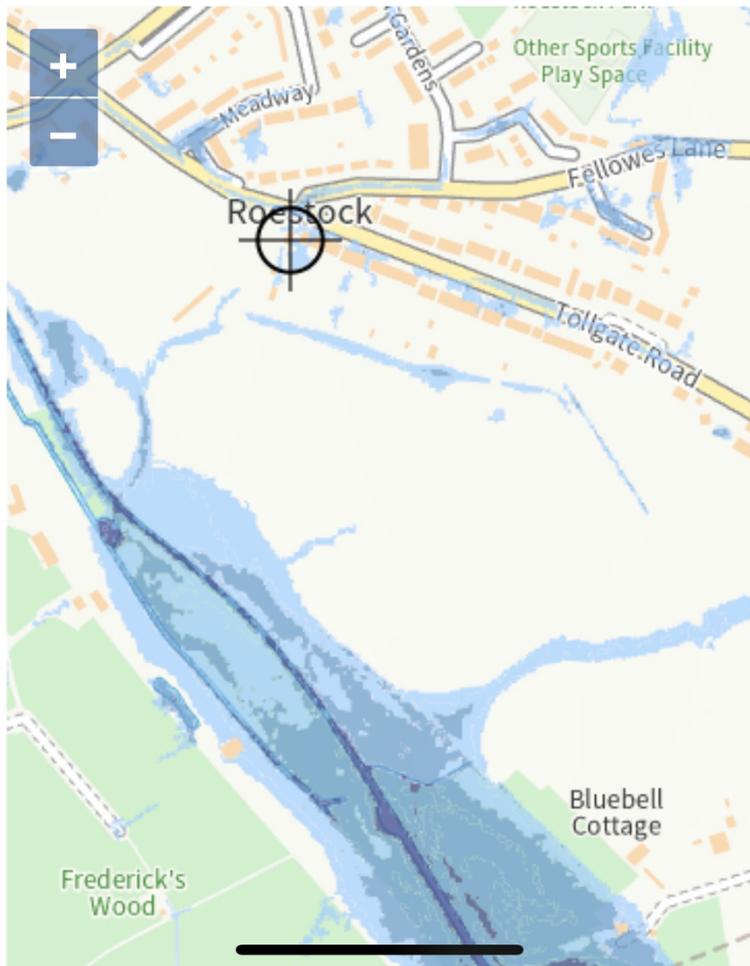
Select the type of flood risk information you're interested in. The map will then update.

Flood risk

Low risk: depth 

Location

Enter a place or postcode





**Photographs of “groundwater” flooding to rear boundary of 42-100 Tollgate Road**