

Dear James and Steven,

In advance of our meeting this afternoon, please find attached a note on drainage and flood risk matters, which summarises the outcome of the flood modelling work and why this has resulted in all development will sit outside of the reclassified flood zones 2 and 3. This note is intended to act as a Non-Technical Summary to the Flood Risk Assessment and its appendices.

With regard to the requirement or otherwise for a sequential test, and notwithstanding our position that there will be no development in Flood Zones 2/3, no doubt you will be aware of recent appeal decisions and the Inspectors' approach to the application of the sequential test. I attach three, relevant examples, as follows:

- March 2025 decision in Yatton. 190 homes. Site is within Flood Zone 3a.
- June 2025 decision in Faversham. 250 homes. Within an area at risk of tidal flooding.
- July 2025 decision in Feniton. 86 homes. Located within a critical drainage area.

I should highlight that each of these sites is subject to greater flood risk than the site at Lunce's Hill, and hopefully you will agree that the FRA demonstrates the extensive modelling which has taken place in order to manage and mitigate flood risk, and take the development outside of the flood zones. Nevertheless, I feel that these appeal decisions are relevant as they highlight the approach that Inspectors' are taking, to consider flood risk, and sequential test requirements, as part of the overall planning balance but ultimately concluding that a failure of/ a failure to undertake a sequential test is not necessarily fatal to a planning application (with reference to the *Mead* case) (see paragraph 175 of the Yatton appeal decision).

The Yatton appeal involved a failure of the sequential test (paragraph 64). Nevertheless it was found that the appeal scheme would include land raising within the parcels where development would take place, and the proposed houses were considered to be safe from flooding during the lifetime of the development. Significant weight was attached to the failure of the sequential test, but ultimately the adverse effects were not considered to outweigh the benefits and the appeal was allowed.

Paragraphs 12 – 26 of the Faversham appeal deal with flooding/flood risk. Paragraph 16 expressly acknowledges that the proposed scheme includes homes and even the proposed vehicular access within areas of risk of tidal flooding (we obviously do not have this issue). Very importantly, the Inspector goes on to state (Paragraph 25) that *'There would be no real world from either the failure to undertake a sequential test or the failure to properly undertake a sequential approach [...]. There would also be no real world surface water flood risk to the finished and occupied development proposal.'* See also paragraph 90.

The Inspector also helpfully addresses Footnote 7;

101. Footnote 7 confirms that areas at risk of flooding are counted as assets of particular importance. Although the proposal has failed to perform the required sequential tests, there would be no real world effects after mitigation is taken into account. A 'strong' reason for refusal based on flooding must, to my mind, go beyond mere technical conflicts, even if they are important. There must be substantive risks and harms that go beyond policy. I do not, therefore, view this as a strong reason for refusing the development proposed. For the avoidance of doubt, I also do not view the minor harms to heritage assets as representing a strong reason for refusal, or even a reason for refusal at all, as set out in my heritage balance section above. The 'tilted balance' is therefore engaged.

Notwithstanding this, the titled balance was applied and the appeal was allowed.

Similarly, the Feniton appeal included a failure of the sequential test. However the benefits were considered to outweigh the harms and the appeal was allowed.

Accordingly, given our position on flood risk on site, and the conclusions of these recent appeals, we do not consider it necessary to undertake a sequential test. The modelling undertaken demonstrates that all dwellings will be located outside of flood zones and as such, there is no real world issue, as expressly highlighted in the Faversham appeal.

I trust this provides a useful clarification of our position on flood risk and the requirement for a sequential test to be undertaken.

Regards

Mark

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