

**SOUTH EAST ENGLAND REGIONAL ASSEMBLY
PLANNING COMMITTEE**

Date: 6 March 2001

Subject: **Flooding**

Report of: Director of Planning and Transport

Recommendations:

That:

1. In response to the letter from Elliot Morley, Minister at MAFF, the Committee emphasise to the Minister the particular sensitivity of the South East region for flooding, and the potentially serious implications this will have for future development prospects if the region does not receive a substantial proportion of the increased resources now planned.
2. In view of the very serious flooding that has occurred in recent months in the South East, MAFF and the DETR review the adequacy of the level of investment now planned.
3. The Committee welcomes the publication of new planning guidance on flood risk, but express concern that a misleading emphasis on the impact of recent planning decisions as contributors to flooding problems is being conveyed by the new guidance and by ministerial statements and the comments of the Environment Agency. This, imbalance, could have significant implications for public perceptions development and the ability of the Region to meet regional planning guidance targets.
4. Ministers should therefore amend the Guidance to:
 - publishing their findings on recent development control decisions relating to planning;
 - place the contribution to the planning process into a wider context of active management of drainage plans in both rural and urban areas to reflect sustainability principles;
 - review the wording of the Guidance to balance the flood risk dimension with other development considerations in a more equitable manner;
 - ensure that planning authorities have up-to-date and accurate information about flood risk, which they can use in an objective way to take a balanced view of development decisions;

- provide resources for the Regional Assembly and local authorities in the South East region to undertake research in a sample of strategically important areas to determine the likely impact of the new Guidance on the release of development land.
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1. Introduction

- 1.1 This paper responds to a request at the December meeting of the Committee that the matter of flood risk and its implications for development should be the subject of a report and discussion at this Committee. It has been informed by a paper presented to the Assembly Executive Committee on 8 December 2000, a copy of which is appended, together with subsequent correspondence between the Chairman of the Assembly and Government Ministers. It further provides an opportunity for the Planning Committee to comment on the latest draft of the revised Planning Guidance on flooding (PPG 25), which was published on 9 February 2001, and on which comments are invited by 9 March 2001.
- 1.2 Although it will not be our practice to bring to the Committee a report on every policy consultation paper issued by the Department, the current consultation on flooding clearly relates to a matter of high political sensitivity and also of considerable importance in relation to future patterns and targets across the region. In view of this report, a copy of the full consultative draft is appended for Members to consider. (The appendices to the draft have not been included for brevity.) This is the second draft of the revised Guidance and reflects comments made on the draft published early last year and, of course, the impact of the recent severe flooding in the region on ministerial thinking. The Planning Committee did not have an opportunity to comment on the earlier draft as it was not in existence.
- 1.3 The production of new Guidance on development and flood risk is clearly welcome and particularly timely. It is obviously prudent to sharpen planning practices, wherever sensible, to ensure that inappropriate development which would contribute to further flood risk is avoided. Much of the Guidance provides helpful comment and focus to that end and invaluable links more closely together the assessments undertaken by MAFF and the DETR's approach. As the earlier paper to the Executive Committee pointed out, this co-ordination has not been adequate in the past.

2. Comment

- 2.1 Nevertheless, there are some aspects of the draft Guidance which give cause for concern. Local authorities have a very difficult task in seeking to weigh and balance every dimension when judging the appropriateness of new development. Flood risk, although of course important, is only one of the factors that they must take into account. The draft Guidance, in placing such a strong emphasis on the need to avoid future flood risk, may significantly shift the balance of perception amongst authorities in a manner which has

significant development implications. Perhaps more importantly, it may contribute to a further hardening of public attitudes towards development, particularly in areas close to major drainage such as rivers and coasts. As many potential development areas in the South East region fall into this category, the implications could be of strategic significance.

- 2.2 It is of course appropriate in a democratic society that perceptions and priorities will change overtime and that the view may be taken that areas should now be excluded from development that were previously considered acceptable. If this is to happen however, then the consequences do need to also be accepted. Either the targets for development would need to be reduced, or alternative development land would need to be released that had not previously been considered suitable. This would mean reviewing existing designations and priorities for land release within the region. The current draft Guidance addresses neither of these possible implications. It simply concludes “the Government does not intend this Guidance to inhibit the redevelopment of sites on previously developed land where this can be done within the requirements set out above and, in particular, a sequential test”. Implicitly therefore the Government is assuming that the implications of this Guidance are not significant for the process of land release and, in particular, for the potential release of land previously developed and the re-use of buildings, which are cornerstones of their urban renaissance policy and the new draft Regional Planning Guidance.
- 2.3 It is not clear, however, that the Guidance and its implications provide the basis for such optimism. The Guidance proposes the imposition of an explicit risk based sequential test, combined with an urgent review by planning authorities of all land allocations in their Development Plans in the light of the latest information on flood risk from the Environment Agency. It further imposes new requirements, of an onerous nature on potential applicants, to undertake detailed investigations that satisfy the Environment Agency. It makes it clear that applicants will also need to fully fund both the provision and indefinitely the future maintenance indefinitely of flood mitigation and defence works required by their proposals. These are to include any consequential works to prevent additional flood risk at any other properties. These requirements may well be justified, but they undoubtedly impose additional burdens and tests on both planning authorities and developers. They also provide considerable opportunity for challenge and test through both the planning process and the courts. The potential for challenges under the Human Rights Act in this regard should not be under-estimated.
- 2.4 The practical implications of the introduction of such Guidance are therefore likely to be that the process of defining and releasing land for development in some parts of the region will prove even more difficult and sensitive. Local politicians and the public and, in particular, groups inherently opposed to further development, may well use the new Guidance as a basis for challenge and test. The evidence of the Department’s own initial analysis of flood sensitive areas in relation to the Guidance suggests the potential impact of this Guidance may be most significant in respect of previously developed land. A significant portion of that land occurs in relatively low-lying areas with a

degree of sensitivity to flooding. 10% of the population of England currently live in flood risk areas (as identified in the 1999 indicative flood plain maps, the current basis for judgement) a slightly lower figure, and 9%, for new dwellings built within the South East region between 1995 and 1999 were located within such areas. By contrast the recently completed National Land Use Database, which provides information on the location of previously developed sites considered suitable for housing development, shows that 19% of this land in the south east region falls within the indicative flood plain areas. In simple terms, therefore, the potential “brown field” land identified in the national survey in the region is twice as likely to be affected by potential flood risk as other land. Given the emphasis which national policy and Regional Planning Guidance places on the increased use of such land for housing development, the potential implications are clear.

- 2.5 It will be essential therefore to be sure that the sequential test now proposed, and the criteria adopted, are both necessary and appropriate in a wider development and sustainability context. On the available information set out in the Guidance, it is not entirely clear to your Officers that this is the case. We are, however, seeking further comment and advice on this matter, prior to the Committee. We need to know, for example, whether the Department has undertaken any pilot exercises which would allow it to judge how far land availability, particularly on previously developed land, might be constrained in practice by the new Guidance? If the answer is negative, then such tests should be carried out as a matter of considerable urgency in the South East region.
- 2.6 There are also the implications for local authority resources and skills to consider. Local authorities are already hard pressed in applying the sequential tests required under the new housing guidance (PPG 3) relating to the use of previously developed land and buildings. The Department has announced that the flood risk sequential tests can be simply added to that process. Is this in fact practical and have local authorities the appropriate staffing to cope with this requirement? If not, then the implications for the phased release of development land could be serious over the next few years.

3. The Wider Context

- 3.1 As well as these points of practical concern, it is also disappointing that the Guidance does not put the planning and development dimension sufficiently into a wider context. The Department has closely monitored planning decisions over recent years to establish how far planning authorities have departed from Environment Agency advice in their planning approvals. It is understood that the overall conclusion of this analysis is that the number of cases where local authorities have clearly ignored Environment Agency advice and have permitted more development are relatively few in number. Two thirds of these cases were also for applications which the Department defined as relatively minor, in other words extensions to existing buildings, conservatories, single dwellings and changes of use from barns, stables, etc., etc. to residential. Whilst this does not suggest that we should be

complacent about the cases where authorities ignore Agency advice and permit significant developments, it does underline the need to put the scale of these concerns into context. Public perceptions are that the planning system is substantially responsible for much of the recent flooding and Ministers have unfortunately done little to counteract that impression.

- 3.2 It is also important to understand and analyse how far some of our current problems are the result of a failure to put in place prudent planning provisions which have been well understood for many years. On an anecdotal analysis, for example, it is interesting to note that some parts of the South East region which have seen substantial development, and might have been considered susceptible to flooding, have seen relatively little problem. Notable examples are parts of the Thames Valley and the Milton Keynes area. It seems likely that the relative absence of problems in these areas is at least in part because proper planning measures were put into place through a rigorous process of provision and development control. Further detailed analysis of a number of such cases would be useful to determine whether this impression can be fully substantiated. If so, then these successes are examples which could be used to give public confidence about our ability to successfully handle the drainage implications of new development.
- 3.3 The wider perception that the planning system is primarily responsible for current problems is also not helped by the draft Guidance Note's almost exclusive focus on new development in or on the edge of urban areas. Although a prime concentration on development is hardly surprising in a Planning Guidance Note, it would have been more balanced if the Note had set in context the development issue in urban areas by referring to both wider urban drainage considerations and comparable issues relating to rural areas. A number of commentators have recently pointed out that drainage problems need to be addressed by an overall sustainable management process, which involves looking at the way in which we manage water resources, quite as much in rural areas as in the urban. In the urban areas too, consideration of wider water management patterns, unconnected with immediate development, need further urgent consideration. Agricultural practices, the management of urban green spaces, the physical means used to deal with existing water flows and to maintain them, all have a part to play. This context should be much more clearly stated so that, as has been the case with affordable housing, the wider public do not perceive that the planning system is alone charged with ensuring adequate management and supply.

4. Conclusion

- 4.1 A further tightening of planning procedures for dealing with planning applications in areas where there may be flood risk is clearly prudent and welcome. The draft Guidance gives some useful new steers and a sharpening of focus in this respect. But in its present form it fails to put the scale of the planning issue in proper context or perspective. As such it runs the risk of creating a serious reaction to development proposals in significant areas of

the South East, which may be unjustified by the overall balance of risk and other considerations.

- 4.2 The Environment Agency's advice, although of considerable importance, cannot be more than one factor to be taken into account in the balancing process that planning authorities must seek to perform. An over-reaction to new development could have serious implications for the availability of land for housing and other uses in the South East, particularly in respect of land formerly used for development. It is not evident that Ministers have given sufficient consideration to the implications of the new Guidance for this wider provision and there may well be a need for a wider review of policy towards development, and reconsideration of the resources that are to be made available from the public purse for flood prevention measures. These aspects do not appear to have been given sufficient consideration in the draft Guidance, and it is not evident that they will be considered elsewhere. The Committee should therefore only give a cautious welcome to the draft Guidance and press Ministers further on the points set out in the Recommendations at the front of this report.

Mike Gwilliam
Director of Planning and Transport

26 February 2001