

**IN THE MATTER OF LAND ADJOINING OAK HILL HOUSE, UPPER SEAGRY,
CHIPPENHAM, WILTSHIRE**

ADVICE

INTRODUCTION

1. I am asked to advise Copperfield Ltd which is objecting to a planning application PL/2025/06615 (“the application”) in respect of Land Adjoining Oak Hill House, Upper Seagry, Chippenham, Wiltshire (“the land”). The local planning authority is Wiltshire Council (“the Council”).
2. I am instructed that the proposed access lies within “medium” surface-water flood risk in accordance with the EA RoFSW mapping. However, no Sequential Test (“ST”) or exception test have been undertaken.
3. I am asked to advise on a single question: the proper approach to be taken by the Council in respect of flood risk and the ST in light of published changes to the PPG made by the Secretary of State on 17 September 2025 (“the revised PPG”). I am happy for a copy of this advice to be provided to the Council to assist it in lawfully determining the application.

THE DISPUTE

4. I am instructed that it is the Council’s position that in light of the revised PPG, it retains a broad discretion to disapply the ST if a site-specific FRA “*demonstrates clearly that the proposed layout, design, and mitigation measures would ensure that occupiers and users would remain safe from current and future surface water flood risk for the lifetime of the*

development (therefore addressing the risks identified e.g. by Environment Agency flood risk mapping), without increasing flood risk elsewhere”.

5. It is the view of Colin Danks MRTPI that the Council’s interpretation is wrong: the PPG wording does not grant unfettered discretion, and the test remains mandatory unless those criteria are demonstrably satisfied.

THE POLICY CONTEXT FOR THE ST

6. The starting point is national policy.
7. Paragraph 172 of the NPPF states:

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

8. Paragraph 175 of the NPPF states:

The sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk).

9. The PPG provides further guidance. The crux of the revised PPG is as follows:

How should the sequential test be applied to planning applications?

The sequential test should be applied to ‘Major’ and ‘Non-major’ development proposed in areas at risk of flooding, as set out in paragraphs 173 to 174 of the National Planning Policy Framework. Paragraphs 175, 176 and 180 set out exemptions from the sequential test.

In applying paragraph 175 a proportionate approach should be taken. Where a site-specific flood risk assessment demonstrates clearly that the proposed layout, design, and mitigation measures would ensure that occupiers and users would remain safe from current and future surface water flood risk for the lifetime of the development (therefore addressing the risks identified e.g. by Environment Agency flood risk mapping), without increasing flood risk elsewhere, then the sequential test need not be applied.

The absence of a 5-year housing land supply is not a relevant consideration in applying the sequential test for individual applications. However, housing considerations, including housing land supply, may be relevant in the planning balance, alongside the outcome of the sequential test.

10. It goes on to say:

Ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe throughout its lifetime and not lead to increased flood risk elsewhere.

Paragraph: 029 Reference ID: 7-029-20220825

Revision date: 25 08 2022

11. There is a well-publicised decision of Inspector Prentis dated 18 March 2025 (Persimmon Homes v North Somerset Council). It does, however, pre-date the revised PPG. Nonetheless, it illustrates how a decision maker grapples with the implications of a failure to comply with the ST. The Inspector found:

174. I have concluded that the proposal does not pass the sequential test required by paragraph 173 of the Framework. The Framework states that the exception test may have to be applied where that test is passed. PPG states that the exception test is not a tool to justify development where there are reasonably available lower risk sites.⁴⁴ However, it is clear that the matters set out in paragraph 178 of the Framework are important material considerations in the planning balance. Those matters are:

- whether the development would provide wider sustainability benefits to the community that outweigh the flood risk; and*
- whether the development would be safe for its lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, would reduce flood risk overall.*

175. Moreover, the judgment in Mead makes clear that a failure to comply with the sequential test is not automatically fatal to a planning application. 45 Other material considerations, including housing need, may outweigh such a failure. It seems to me that, whether or not the exercise is described as an “exceptions test,” the matters set out in paragraph 178 need to be taken into account.

12. The Inspector went on to find that “*significant weight should be attached to the failure of the sequential test, together with the residual risks...identified*” [para 185].

13. This informed the Inspector’s overall judgment on flood risk:

187. The Framework states that 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. As I have found that there are such sites, the proposal does not accord with the Framework in this regard. Nevertheless, I have found that the wider sustainability benefits outweigh the flood risk. For this reason, I conclude that the policies of the Framework relating to areas at risk of flooding do not provide a strong reason for refusing the development proposed.

188. Policy DMI states that exceptions to national policy on flood risk will not be permitted. The proposal is therefore in conflict with this policy. I have concluded above that the proposal is also in conflict with Policy CS3.

THE STATUS OF NATIONAL POLICY AND GUIDANCE

14. In Mead Realisations Ltd v SSLUHC [2024] EWHC 279 (Admin), Holgate J as he then was stated [para 68]:

In Bushell v Secretary of State for the Environment [1981] AC 75 Lord Diplock stated at p.98 that “policy” is a protean word covering a wide spectrum. At a national level it may relate to matters of strategy or high policy, typically the subject of debate in Parliament. But it can also cover technical matters, such as a decision to adopt a uniform method for assessing the need for different road schemes in different parts of the country competing for finite public resources. A statement that a particular technical method or guidance should normally be followed in decision-making can properly be described as policy. Indeed, such statements may be found in the policies of development plans.

15. In R (Asda Stores Limited) v Leeds City Council [2021] PTSR 1382, Sir Keith Lindblom SPT stated [para 35]:

National planning policy is not the work of those who draft statutes or contracts, and does not always attain perfection. The language of policy is usually less precise, and interpretation relies less on linguistic rigour. When called upon – as often it is nowadays – to interpret a policy of the NPPF, the court should not have to engage in a painstaking construction of the relevant text. It will seek to draw from the words used the true, practical meaning and effect of the policy in its context. Bearing in mind that the purpose of planning policy is to achieve “reasonably predictable decision-making, consistent with the aims of the policy-maker”, it will look for an interpretation that is “straightforward, without undue or elaborate exposition” (see R (Mansell) v Tonbridge and Malling Borough Council [2019] PTSR 1452 at para. 41). Often it will be entitled to say that the policy simply means what it says, and that it is the job of the decision-maker to apply it with realism and good sense in the circumstances as they arise – which is what local planning authorities are well used to doing when making the decisions entrusted to them (see R (on the application of Corbett) v Cornwall Council [2020] JPL 1277, paras. 65 and 66).

THE PROPER APPROACH TO THE ST

16. Given that the revised PPG is little more than a month old, there is no caselaw on its interpretation and application.
17. National policy and guidance is clear: *“The approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding”*. The revised PPG is explicit that the ST *“should be applied to ‘Major’ and ‘Non-major’ development proposed in areas at risk of flooding...”*.
18. National policy and guidance is highly prescriptive. It provides a clearly defined way in which LPAs must treat applications in respect of flood risk.
19. So: there is a presumption that the ST applies to the application. The only escape route from this mandatory requirement identified by the revised PPG is if *“a site-specific flood*

*risk assessment (“FRA”) demonstrates clearly that the proposed layout, design, and mitigation measures would ensure that occupiers and users would remain safe from current and future surface water flood risk for the lifetime of the development...without increasing flood risk elsewhere” (“**the exception**”).* This is highlighted in bold at para 9 of this Advice.

20. It can be seen that for the exception to be met, the site-specific FRA must demonstrate 2 elements. Namely:

- a) The proposed layout, design, and mitigation measures would ensure that occupiers and users would remain safe both now and for the whole lifetime of the development (“the 1st element”); and
- b) This can be achieved without increasing flood risk elsewhere (“the 2nd element”)

21. If the proposal does not satisfy both elements of the exception, the application is obliged to comply with the ST.

22. Does the exception apply, therefore forgiving the applicant from complying with the ST?

23. Whether the 2 elements of the exception are made out on the facts of a particular case is a matter of planning judgment rather than a hard-edged question of law for me. I am instructed that the design of the layout (and any mitigation measures) do not demonstrate that all occupiers would remain safe or that flood risk would not be increased elsewhere. If that is right, the exception would plainly not be satisfied such that the Council is obliged to insist upon a ST in accordance with the revised PPG.

24. In dispensing with the need for a ST, the Council does not have a free hand. It can decide that the ST is not required, but **only** if the 2 elements of the exception are satisfied. There is no free-standing ‘proportionality’ discretion. The discretion is highly constrained and limited to the exception. Accordingly: whilst the September 2025 revisions to the PPG have the effect, in global terms, of loosening somewhat the application of national flood

risk policy it does not mean that the Council should adopt anything other than a careful appraisal of the site-specific FRA to see whether it adequately demonstrates that both elements of the exception are made out so as to provide an escape route for the applicant to avoid having to satisfy the ST.

25. If the Council were to conclude that both elements of the exception were not made out by the site-specific FRA but nonetheless the ST was not required this would be an error of law. It would be plainly contrary to the revised PPG. Whether the failure to comply with the ST should lead to a refusal of the application is a matter of planning judgment when the Council comes to apply the s38(6) test – the planning balance.

26. Nothing else occurs.

JACK SMYTH
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21 October 2025