



North Somerset Council

Town and Country Planning Act 1990 Section 78

Appeal by Mead Realisations Ltd against the decision of North Somerset Council to refuse planning application 20/P/1579/OUT for a residential development of up to 75no. dwellings and associated infrastructure with access for approval, and appearance, scale, layout and landscaping reserved for subsequent approval on land at Lynchmead Farm, Ebdon Road, Wick St Lawrence, Weston-super-Mare

Planning Inspectorate reference: APP/D0121/W/22/3313624

Local Planning Authority reference: 20/P/1579/OUT

Proof of Evidence of Marcus Hewlett

April 2023

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1 STATEMENT OF QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Marcus Hewlett. I hold a BA (Hons) in Architecture and Planning from the University of the West of England. I have approaching 17 years' experience in local government, joining the planning policy team at North Somerset Council in 2006. My qualification and practice experience includes formulation of strategic and local planning policy, planning and delivery of strategic development through all stages of the planning system including plan making and development management, and preparation of technical evidence. I have extensive experience of land availability evidence including preparation of various technical studies, and consideration of evidence on land promotion through the plan making process.
- 1.2 My experience has also focused on residential site planning and delivery, and related evidence, and matters relating to flood risk both in terms of application of flood risk policy to specific development proposals, as well as preparation of Strategic Flood Risk Assessment.
- 1.3 My expertise in relation to flooding matters is in the interpretation, application, and preparation of flood risk planning policy. This includes application of specific policy mechanisms such as the sequential and exceptions test, but also consideration of the significance of flood risk in the wider context of sustainable development. Technical evidence on flood risk is given separately on behalf of the Council by Mr Bunn.
- 1.4 I currently hold the post of Principal Planning Policy Officer, dealing with development plan, policy development and also engagement with development management cases to advise on planning policy matters.
- 1.5 In the preparation of this proof of evidence, I have referred to the Government's 'Procedural Guide: Planning appeals – England' (Updated 21 Dec 2022), notably Annexe G. The facts stated in this evidence are true to the best of my knowledge and belief, and the views I express represent my professional opinion.

SUMMARY OF EVIDENCE

- 1 The development proposal is for residential development on an unallocated greenfield site located adjacent to the town of Weston-super-Mare (WsM), in an area of high-probability flood risk. Policy CS28 *Weston-super-Mare* of the North Somerset Core Strategy applies, and this policy provides the overarching policy approach to new development in the town. Policy CS28 sets out a dwelling requirement for the town and directs where this is to be met. This prioritises brownfield sites within the urban area (within the settlement boundaries). To date, completed and committed development has already exceeded the planned housing requirement for the town. There is no requirement in the plan for windfall proposals in areas at risk of flooding to meet planned housing requirements.
- 2 Given the flood status of the site, Policy CS3 of the Core Strategy applies which requires the sequential test, and if necessary, the exceptions test to be applied in line with national planning policy and guidance. The aim of the sequential test is to avoid development in areas at risk of flooding by ensuring that development is steered to areas at lower risk. The sequential test requires that applicants consider the availability of sites that are in a lower flood risk category that are capable of accommodating the development, and only when it is not possible to deliver the development on sites at lower risk, is the sequential test passed. In such circumstances, the exceptions test becomes engaged. To pass this test requires development proposals to demonstrate that it would deliver wider sustainability benefits to the community that outweigh the flood risk and that the development would be safe over its lifetime.
- 3 National and local guidance is in place to assist in the implementation of the sequential and exceptions test, and this has been shaped by the practical application of the policy over time including various appeal decisions.
- 4 An initial step in the application of the sequential test is to confirm the search area for alternative sites. For residential proposals in North Somerset, this is the entire authority area unless the proposal is within a main town. The appellant has proceeded on this basis using the prevailing housing distribution policies as a guide to the identification of sites i.e. at settlements where housing provision is supported as a matter of principle.

- 5 Regarding the search for sites, applicants are directed to review a variety of sources including sites with planning consent for the type of development proposed; allocated sites and draft allocated sites; sites identified in land availability evidence (SHLAA); and other sources. Sites in the Strategic Housing Land Availability Assessment (SHLAA) often benefit from being available as they are mostly sites that have been submitted to the call for sites or submission to the emerging local plan making process. Consideration should be given to whether multiple smaller sites are capable of delivering the proposal or larger sites in line with national guidance, so it is not appropriate to reject sites on the basis of their scale alone.
- 6 The appellant has considered a range of sites and subsequently rejected all of them as suitable alternatives and therefore considers the sequential test to be passed. However, in my opinion, the appellant has failed to demonstrate that there are no 'reasonably available' alternative sites capable of accommodating the proposal, that are at a lower risk of flooding.
- 7 My evidence confirms the position set out in refusal reason 1 that there are a range of other sites across North Somerset, including in close proximity to the appeal site at WsM, that are able to provide housing, and are indicated to be at a lower risk of flooding. My evidence indicates thirty-nine alternative sites including twenty-seven of which rejected by the appellant, twelve of which not considered by the appellant. These include sites where there is a resolution to grant planning permission, sites with planning permission, sites currently allocated in the development plan, sites in the emerging draft local plan subject to draft allocation, and sites identified as having potential in the latest land availability evidence. All of the sites conform to the definition of 'reasonably available' in the PPG and within the local flood risk advice note. Whilst they conform to the national definition of reasonably available, I have considered the 'reasonable prospect' of the sites being available for development and accordingly assigned a hierarchy indicating some of the sites to have greater certainty of delivery in the short-term compared to sites where delivery is subject to less certainty. However even in the case of the latter, these sites are still considered to have a reasonable prospect of delivery in the short-term.

- 8 The appellant seeks to restrict the consideration of alternative sites to those that could deliver to the same timeframe as the appeal proposal, that is completion by the end of 2025. I consider this to be overly restrictive and instead advance the view that alternative sites should be considered in terms of the prospect of delivery within 5 years.
- 9 Such alternative sites do not need to be owned by the appellant or be necessarily available to the appellant to form reasonably available alternatives. The test is to assess whether there are simply sequentially preferable alternatives that are capable of delivering the proposed development, at a lower risk of flooding and to a similar timeframe.
- 10 As a result, in line with national and local policy, the proposal should be refused due to failure of the sequential test. The proposal represents inappropriate development in a high-risk flood area and is therefore unsustainable and contrary to a key tenet of Government policy and guidance. It is not required to meet wider sustainability objectives. There is subsequently no requirement to progress to consider the exceptions test and this represents a clear reason for refusal in line with the NPPF.
- 11 Whilst it is common ground that the council are unable to demonstrate a 5-year housing land supply, this is not relevant to the consideration of the sequential test as confirmed by the PPG. Further, the 'tilted balance' is not engaged in this case, given the location of the site in an area at risk of flooding and the failure of the applicant to pass the sequential test. This is a clear reason for refusal as per NPPF paragraph 11 and footnote 7 and as such dis-engages the presumption in favour of sustainable development.
- 12 In the event that a different conclusion is reached on the sequential test, my evidence has considered the exceptions test, and the requirement to demonstrate wider sustainability benefits to the community that outweigh the flood risk. I do not consider there to be such wider benefits when considered against the flood risk with reference to evidence of Mr Bunn. I come to this conclusion having considered nationally and locally set examples of such wider benefits as well as locally identified sustainability objectives underpinning the current Core Strategy. Whilst the latter indicated alignment to some of the

objectives, I do not consider that these amount to the required 'wider sustainability benefits to the community'. Even if some weight were placed on these, I do not consider that they would outweigh the flood risk present. The evidence of Mr Bunn indicates the increasing risk of climate change and the implications for flooding in North Somerset and affecting the appeal site. I therefore conclude that, were the exceptions test to be engaged, it would be failed.

- 13 Therefore in line with the Framework, failure of these national tests provides a clear reason for refusal and the proposal should be dismissed. I have considered this in the context of the wider planning balance. I would attribute **significant weight** to the delivery of housing given Government's objective of boosting supply, when it is in the right location. However, I consider that this benefit in particular has to be viewed in the context that it is in an unsustainable location due to flood risk, and there is therefore a case for reducing this weight. I consider the same applies to the provision of affordable housing for the same reason.
- 14 To the temporary construction jobs I attribute **limited weight**, and to the additional spend in the area, **very limited weight**, although to date there is no information to consider supporting these benefits.
- 15 The conflict with Policy CS3 and the Framework (especially paras 162 and 164) with regards to failure of the sequential test is a matter of **very substantial weight**, and I give **significant weight** to the harms of flooding set out in Mr Bunn's evidence for the Council.
- 16 Weighing these factors together, I do not consider that the benefits outweigh the conflict with the development plan and the Framework in relation to flood risk policy. In line with these, I consider there to be a "clear reason" for refusal that dis-engages the 'tilted balance'. The planning balance falls in favour of refusing this proposal, when there are evidently 'reasonably available' sites at lower risk of flooding, available for residential development in the short-term.

2. INTRODUCTION AND SCOPE OF EVIDENCE

Location and site description

- 2.1 The location and site description are set out in the Statement of Common Ground (SofCG). Weston-super-Mare (Wsm) is located on the coast and the appeal site is approximately 2km from the coast at Woodspring Bay.
- 2.2 The parties agree that the site is located in the high-probability, tidal flood Zone 3a shown on the Council's Strategic Flood Risk Assessment (SFRA) and confirmed by the National Flood Map for Planning.

Description of the proposal

- 2.3 The proposal is described in paragraph 2.1 of the SofCG, and paragraph 3.4 of the same indicates that the appeal site has no relevant planning history. The proposal was refused planning permission under delegated authority on 8 July 2022.

Scope of evidence

- 2.4 My evidence is concerned with the first and second reasons for refusal, which state as follows:

Reason 1:

“Housing development should only be permitted in a 'High Probability' (3a) floodplain when it is necessary, and where it has been demonstrated through a flood risk sequential test that there are no 'reasonably available' sites in areas with a lower flood risk where the development can be provided. The Council consider that the applicant's Flood Risk Sequential Test fails to demonstrate this, and the proposed development is therefore unnecessary in a "High Probability" floodplain, which is contrary to Policy CS3 of the North Somerset Local Plan, paragraphs 159, 162 and 163 of the National Planning Policy Framework.”

Reason 2:

“The proposal would not provide wider sustainability benefits to the community that outweigh the flood risk. The application therefore fails the Exception Test. This is contrary to Policy CS3 of the North Somerset Local Plan, paragraphs 164, and 165 of the National Planning Policy Framework.”

- 2.5 Section 3 of my evidence identifies the policies of the Development Plan which are most important for determining the appeal. I also refer to locally produced advice notes on flood risk, which are material considerations and have been supported on appeal¹. In this section I also set out emerging relevant policy from the Regulation 18 ‘Preferred Options’ Draft Local Plan 2038.
- 2.6 In section 4 of my evidence I address the relevant paragraphs of the National Planning Policy Framework (NPPF) and the Secretary of States associated Planning Practice Guidance (PPG), analysing key elements that are relevant to the appeal.
- 2.7 In section 5 I identify and assess the main issues. Under Main Issue 1 I review the Appellant’s approach to the application of the Sequential Test, and the conclusions they reached, having regard in particular to the cumulative sequential assessment that was submitted by the Appellant with, during, and following the LPA’s assessment of the application and its determination.
- 2.8 Under Main Issue 2 I address the second reason for refusal and part (a) of the Exceptions Test – the requirement to demonstrate wider sustainability benefits that outweigh the flood risk. This should be read in conjunction with the proof of Mr Bunn for the Council who addresses the flood risk associated with the appeal site. I address this issue in two parts:
- Analysis of published examples of wider benefits
 - Examination of the Council’s Sustainability Appraisal as a reference point for locally derived sustainability objectives.
- 2.9 Under Main Issue 3 I assess the planning balance.
- 2.10 Finally in section 6 I provide my overall conclusions.

¹ See paragraph 3.16 of my proof for further detail.

2.11 My evidence should be read in conjunction with the proof prepared by Mr Bunn who will give evidence on flood risk matters.

3. STATUTORY DUTY, DEVELOPMENT PLAN, AND OTHER RELEVANT LOCAL GUIDANCE

3.1 S38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The starting point for consideration of this appeal must therefore be the development plan.

Adopted North Somerset Core Strategy

3.2 The Core Strategy (CS)² was originally adopted on 10 April 2012. Following a legal challenge some of the policies were remitted and re-examined. Policy CS13: *Scale of new housing* relating to the overall North Somerset housing requirement was readopted on 18 September 2015; the other remitted policies, including CS14: *Distribution of new housing* and CS28: *Weston-super-Mare* that are considered to be relevant to this appeal were re-adopted on 10 January 2017.

Policy CS3: Environmental Impacts and Flood Risk Management

3.3 CS Policy CS3: *Environmental impacts and flood risk management* is an overarching policy that requires compliance with the sequential approach to development in flood risk areas embedded in national planning policy. Policy CS3 reads:

“Development in zones 2 and 3 of the Environment Agency Flood Map will only be permitted where it is demonstrated that it complies with the sequential test set out in the National Planning Policy Framework and associated technical guidance and, where applicable, the Exception Test [...]” (my underlining)

3.4 This policy wording allows the application of the policy to keep pace with changing practice and updates to national policy and associated guidance as has

² CD4.1.

taken place, with the most recent update to the relevant PPG section *Flood Risk and Coastal Change* taking place in August 2022.

3.5 Policy CS3 specifies the search area to which the sequential test should be applied. Specifically, the policy specifies the search area will be the whole of North Somerset unless it can be demonstrated that there is a specific need within a specific area, or if the proposal is within the settlement boundaries of one of the four main towns, either Weston super Mare, Clevedon, Nailsea and Portishead. This approach is aligned to that set out in national policy and guidance.

3.6 Regarding the definition of 'reasonably available', the policy specifies those criteria by which decision makers should assess whether a putative alternative site should be considered to fall into this category. However, I observe that this definition has been superseded by that set out in the PPG and which has been followed by the Secretary of State and his inspectors in appeal decisions, and by local advice produced by the Council³.

Policy CS14: *Distribution of new housing*

3.7 Policy CS14 sets out the planned distribution of housing across North Somerset and reflects the Plan's underlying spatial strategy. It provides for a hierarchy of supply focusing residential development at the main towns, Service Villages and more limited development within infill villages. The CS provides an associated range of area-based policies⁴ that set out the approach to development for each category of settlement and various other locations.

Policy CS28: *Weston-super-Mare*

3.8 Policy CS28 is the relevant area-based policy setting out the overarching approach to development at WsM. Reflecting the allocation of housing in the town as set out in CS14, Policy CS28 emphasises that new development will be focused on two key locations – the town centre through the regeneration of a

³ CD8.4 is the Council's Flood Risk Advice Note. See paragraphs 3.20 of my proof of evidence where I extract the definition.

⁴ CD4.1: Policies CS28 to CS33 inclusive – Chapter 4 of the Core Strategy.

range of brownfield sites, and the Weston Villages. The latter is a large-scale new mixed-use development on the edge of the town comprising mainly of previously developed land that is under construction providing a significant pipeline of development for the town. The policy also enables speculative residential proposals up to around 75 dwellings outside the towns settlement boundary. The policy provides seven objectives that development proposals within or adjoining the town should take into account.

- 3.9 There is no requirement or expectation in the policy that windfall/ non-allocated sites at risk of flooding would be required to deliver the strategy whether within or adjacent to the town.

Adopted North Somerset Sites and Policies Plan Part 1: Development Management policies (2016)

Policy DM1: Flooding and drainage

- 3.10 Policy DM1 of the Development Management policies plan⁵ supplements Policy CS3. In particular, it emphasises the need to take into account the associated impacts of climate change.

Emerging planning policy - North Somerset Local Plan 2038

- 3.11 The emerging North Somerset Local Plan 2038⁶ was most recently subject to public consultation from 14 March to 29 April 2022 – the ‘Preferred Options’ Regulation 18 draft for consultation. The draft plan as a whole commands only limited weight at present, but some weight should be attached to the draft, which accurately reflects the importance which is to be given to avoiding the risk of flooding in meeting future housing requirements.
- 3.12 The draft plan also includes a Strategic Priority to “...safeguard areas at risk of flooding”⁷, and a sustainable development objective to “Minimise vulnerability to

⁵ CD4.2.

⁶ CD8.23.

⁷ CD8.23, page 6.

*tidal & fluvial flooding, without increasing flood risk elsewhere [...]*⁸. In the following paragraphs I set out relevant emerging policies.

Draft Policy SP1: Sustainable Development and other strategic policies

- 3.13 Policy SP1: *Sustainable development* is an overarching strategic policy with a requirement to “*Minimise development in areas at risk of flooding outside the towns and not increase flood risk elsewhere*”. Policy SP3: *Spatial Strategy* reflects the urban focus of the emerging plan that, “*focuses development at the towns and urban areas, maximising the use of previously developed land [...]*”. There is no requirement or expectation that windfall residential proposals will be required on land at risk of flooding to meet the authorities housing requirements.
- 3.14 The permissive policy provision⁹ within the current Development Plan allowing speculative development adjacent to settlement boundaries up to a specified threshold and subject to certain criteria is proposed to be removed.

Draft Policy DP9: Flood risk

- 3.15 Policy DP9 reconfirms that all development that is proposed on land at risk of flooding should be subject to a sequential test, and where required the exceptions test. The policy provides some additional detail to policy CS3 that reflects the latest national guidance in PPG.

North Somerset Flood Risk Advice Note (2019)

- 3.16 The Council produced an advice note (the Advice Note)¹⁰ in 2019 in conjunction with the Environment Agency to assist the practical application of flood risk policy including the sequential and exceptions test. This note is not a Supplementary Planning Document and is only a guidance note however it has been referred to and/or given weight in recent planning appeals¹¹. I would assign significant weight to the Advice Note given its consistency with the Framework. To maintain the effectiveness of the Advice Note, it reads, “*The advice contained within [...] may be subject to regular update and amendment in light of relevant appeal decisions and the establishment of case law.*”

⁸ CD8.23, page 7, objective 3.2.

⁹ CD4.1: relating to policies CS28, CS31, CS32.

¹⁰ CD8.4.

¹¹ E.g. CD9.4: APP/D0121/W/21/3279097; CD9.5: APP/D0121/W/22/3294760; and CD9.6: APP/D0121/W/22/3296247.

3.17 The note reads:

“It is the developer’s responsibility to assemble the relevant evidence in order to allow [officers] to consider whether the Sequential Test is satisfied. This evidence needs to be submitted with the planning application and demonstrate that there are no reasonably available alternative sites within an area of lower flood risk which can accommodate the proposal. If no such evidence is submitted with the application, then permission will normally be refused. It is therefore recommended that applicants apply the Sequential Test to site selection early in the process (before the application is submitted) to avoid unnecessary costs.”

3.18 This advice underlines the onus that is placed on the appellant to provide appropriate supporting information to support their proposal. The Advice Note specifies that evidence, which should include a map identifying all other sites considered and *“A written statement explaining why the alternative sites listed within lower areas of flood risk are not reasonably available. It is advisable to provide as much evidence as possible regarding statements made on other sites to avoid delays in the planning process.”*

3.19 The note also specifies how alternative sites ought to be identified, having regard (amongst other things) to land availability information and Strategic Housing Land Availability Assessment (SHLAA)¹², reflecting national guidance. I note in particular the advice that sites with planning permission for the proposed use should be considered reflecting Environment Agency guidance¹³.

Advice Note definition of ‘reasonably available’

3.20 The Advice Note updated the definition from that set out in Policy CS3 as a result of further Environment Agency guidance¹⁴. It states:

“Core Strategy Policy CS3 defines ‘reasonably available’, limiting it to sites that the applicant owns or could acquire, and excludes

¹² CD8.19 to CD8.22.

¹³ CD8.25: *Flood Risk Assessment: the sequential test for applicant’s* – available on Government website, last updated 28 February 2017.

¹⁴ CD8.25.

alternative sites that have a planning permission likely to be implemented. Since this policy was written, Environment Agency national guidance has been published that considers sites with permission to be ‘reasonably available’. This approach has also been supported on appeal. The council will therefore give greater weight to the national guidance than to Policy CS3. The following advice reflects that approach.

*A site is considered to be “reasonably available” if **all** of the following criteria are met:*

- The site is within the agreed area of search.*
- The site can accommodate the requirements of the proposed development. Applicants should consider the potential for splitting the development over more than one site. This will be particularly relevant to sites for housing.*
- The site is either:*
 - o the subject of a valid planning permission for development of a similar character and scale; or*
 - o identified as having development potential within the required timescale, either in the SHLAA or in a Local Plan policy or supporting evidence; or*
 - o in the case of small sites, for sale and not subject to known planning constraints.*

The Environment Agency has published detailed guidance on what is needed for the Sequential Test: www.gov.uk/guidance/flood-risk-assessment-the-sequential-test-for-applicants

3.21 The updated definition of ‘reasonably available’ anticipates the “potential for splitting the development over more than one site.”. This has the effect of allowing consideration of smaller sites than a proposed development site in the

search for alternatives, and not only sites of a scale broadly comparable to a development proposal.

Advice Note coverage of the Exceptions Test

- 3.22 In line with national guidance¹⁵ the Advice Note sets local criteria for the application of the Exceptions Test. It provides local examples of the potential benefits of development which may be deemed wider sustainability benefits, which are analysed in detail under Main Issue 2. It advises that there needs to be certainty that any such benefits could be delivered by the proposal, as required by national policy¹⁶.
- 3.23 Reflecting guidance in PPG on specifying benefits by reference to the particular circumstances of a locality, they may be linked to wider sustainability objectives set out in the Development Plan and the underlying Sustainability Appraisal. I elaborate on this more fully in Table 4, page 47.
- 3.24 The Advice Note concludes with further guidance on how the balancing exercise between wider benefits and flood risk will be carried out and provides examples of circumstances that are unlikely to justify sufficient benefit. The note reads:

“The Exception Test is about making exceptions. It is not possible to confirm that certain benefits will always outweigh the flood risk as this would undermine its purpose. Each case needs to be considered on its own merits taking into account the scale of the benefits compared to the scale of the development and the significance of the flood risk.”

4. NATIONAL POLICY AND GUIDANCE RELATED TO FLOOD RISK POLICY, AND THE APPLICATION OF THE SEQUENTIAL AND EXCEPTIONS TEST

¹⁵ PPG, Paragraph: 036 Reference ID: 7-036-20220825.

¹⁶ NPPF, paragraph 164 (a).

National Planning Policy Framework (the Framework)

- 4.1 The National Planning Policy Framework (the Framework) provides the Government's planning policies for England and forms a material consideration for decision making purposes.
- 4.2 Flood risk and minimising inappropriate development within areas at risk of flooding is fundamental to the underlying sustainability principles of national planning policy. Within the Framework, the environmental objective¹⁷, one of three overarching objectives driving sustainable development (along with social, and economic objectives), includes reference to mitigating and adapting to climate change. Flood risk and climate change are functionally linked, and generally, climate change means flood risk is likely to become increasingly problematic and unpredictable. The evidence of Mr Bunn provides this context at a greater level of detail. Avoiding development in areas at risk of flooding where it is not required is therefore an important strand of realising sustainable development objectives.
- 4.3 Chapter 14 of the Framework is headed *Meeting the challenge of climate change, flooding and coastal change*, and paragraph 159 underpins the approach to development and flood risk, directing that "*Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future).*" The reference to 'future' flood risk is important as it requires the consideration of changing flood risk over time including taking into account the effects of climate change. Paragraph 159 also requires the lifetime of the development to be considered and for residential this is at least 100 years¹⁸.
- 4.4 This policy is intended to be implemented via the sequential approach to development. Paragraph 162 reads:

"The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should

¹⁷ NPPF, see paragraph 8.

¹⁸ PPG, Paragraph: 006 Reference ID: 7-006-20220825.

not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.”

4.5 The appeal proposal comprises residential development which is categorised nationally as ‘more vulnerable’¹⁹. It is not required that sequentially preferable sites should be able to accommodate exactly the same scale of development. Therefore, the search for alternatives should not be constrained by a requirement to secure a site with the same capacity.

4.6 The Framework does provide for instances where it is not possible to locate development on lower flood risk areas. Paragraph 163 reads:

“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.”

4.7 This policy sets a ‘high bar’ for development required in flood risk areas. If it is possible to locate development on land at a lower flood risk taking into account the wider range of land available and capable of delivering residential development, development should be avoided in higher risk areas. Where it is found to be not possible to do this, national policy indicates that the sequential test should be passed, and for certain types of development, depending on its vulnerability, the Exceptions Test becomes engaged.

4.8 Paragraph 164 reads:

“[...] To pass the exception test it should be demonstrated that:

a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and

¹⁹ See NPPF, Annex 3: Flood risk vulnerability classification.

b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.” (My underlining)

4.9 Part (a) of paragraph 164, suggests a balancing exercise. Exception can be defined as anything not conforming to a usual rule or principle. In this context the usual approach is to avoid development in high-risk areas as it is inherently unsustainable due to the presence of that risk unless it is required and necessary to meet wider local sustainable development objectives. The requirement for ‘wider’ sustainability benefits, reflects the need to address the sustainability deficit. The deliverability of such benefits requires consideration as does the extent to which they outweigh the flood risk identified. The presence of benefits alone is not sufficient to pass the test if they do not outweigh the flood risk.

4.10 Paragraph 165 requires that both parts (a) and (b) of 164 should be satisfied for development to be permitted.

Paragraph 11 and the presumption in favour of sustainable development

4.11 Within the Statement of Common Ground an outstanding matter of dispute is whether the presumption in favour of sustainable development (the tilted balance) applies due to the agreed shortfall in housing land supply.

4.12 The Framework is clear²⁰ that in instances where the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, this overrides the presumption in favour of sustainable development. Footnote 7 identifies areas at risk of flooding or coastal change as being protected by policies in the Framework.²¹ As the appeal proposal fails to pass the sequential or, if it is judged to apply, the exceptions test, there is a clear reason for refusal based on the policies of the Framework and the ‘tilted balance’ is not engaged.

²⁰ NPPF para 11.di.

²¹ As above, footnote 7.

Planning Practice Guidance (PPG)

4.13 Planning Practice Guidance (PPG) provides advice on the application of national policy and includes a section on 'Flood Risk and Coastal Change', last updated in August 2022. This guidance superseded PPS25 and can be considered the relevant technical guidance with regards to flood risk²². This provides nationally prescribed guidance on the implementation of the sequential and exceptions test. Below I provide a summary and analysis of the relevant aspects to the appeal case.

4.14 Paragraph: 023 Reference ID: 7-023-20220825 adds some context to the importance of the sequential test explaining that:

“Avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features.”

4.15 This paragraph explains and underlines why the presence of defences is irrelevant when dealing with the priority to steer development to areas of lowest risk of flooding *“as the long-term funding, maintenance and renewal of this infrastructure is uncertain”*²³. PPG advises²⁴ that flood risk management infrastructure may be appropriately considered when the *“[...] variation of risk within high and medium flood risk areas”* is being considered. This only becomes relevant when it is not possible to locate development in lower risk areas; it is not a justification to favour higher risk areas over lower risk areas.

4.16 The PPG also reiterates ²⁵ the inherent link between avoiding higher flood risk areas and the achievement of sustainable development by stating:

²² PPS25 was withdrawn on 7 March 2014 and replaced by the PPG launched on 6 March 2014.

²³ PPG, Paragraph: 024 Reference ID: 7-024-20220825.

²⁴ As above.

²⁵ PPG, Paragraph: 023 Reference ID: 7-023-20220825.

“Application of the sequential approach in the plan-making and decision-making process will help to ensure that development is steered to the lowest risk areas, where it is compatible with sustainable development objectives to do so, and developers do not waste resources promoting proposals which would fail to satisfy the test” (underlining added)

- 4.17 The PPG provides guidance²⁶ on how to ascertain the initial search area for alternative sites in a way that is capable of being applied consistently with Policy CS3 and the Council’s Advice Note. Examples are provided of where a more refined search area may be justified based upon the specific needs in an area or relevant catchment for a given type of development e.g. a school. The Guidance admits a pragmatic approach to the definition of a search area, albeit in narrowly defined circumstances, as follows:-

“ [instances] where proposals involve comparatively small extensions to existing premises (relative to their existing size), where it may be impractical to accommodate the additional space in an alternative location.”

Considering ‘reasonably available’ alternative sites

- 4.18 The PPG guidance now provides a clear definition on what might represent a ‘reasonably available’ alternative site, and this effectively updates that set out in both Policy CS3 and the Council’s Advice Note. It states:

“‘Reasonably available sites’ are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.

²⁶ PPG, Paragraph: 029 Reference ID: 7-029-20220825.

These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available'.

The absence of a 5-year land supply is not a relevant consideration for the sequential test for individual applications.” (my underlining)

(Paragraph: 028 Reference ID: 7-028-20220825

Revision date: 25 08 2022)

- 4.19 This definition provides a framework for the evaluation of alternative sites. The benchmark for sites conforming to the test is similar but not the same as the test of deliverability for housing land supply purposes. In my opinion, the test for sequential test purposes is not as onerous. The above definition emphasises why it is not appropriate to merely consider alternative sites that are of the same or a similar size to a proposed site or capable of accommodating the same scale of development. It also clarifies that alternative sites do not need to be owned by the applicant. These clarifications reflect the application of this policy across the country. In an appeal²⁷ in Christchurch, Dorset in 2018, the Inspector wrote:

“To my mind there is no necessity for the Council to demonstrate the availability of sites of exactly equivalent size, or sites which are available to the Appellant, to show the availability of sites in areas of lower flood risk than the appeal site.” (para. 37)

- 4.20 Below I analyse this definition further providing my opinion on how it informs the application of the sequential test.

- 4.21 Other sites need to be in a 'suitable location'
This requires reference to the prevailing relevant planning policies regarding the distribution of residential development, and also emerging policy where there is

²⁷ CD9.7: Appeal Decision APP/E1210/W/17/3175948.

a reasonable prospect that emerging allocations may be delivered in the short-term, noting national guidance to consider draft allocations²⁸. It is accepted that alternative sites need to conform to policies controlling the broad distribution of housing, in the case of North Somerset Policy CS14: *Distribution of new housing* and the associated 'Area policies' – Policies CS28 to CS33 inclusive. Also, where there are emerging allocations there needs to be a reasonable prospect that these could come forward within the short-term. However, if (which I contest) the appellant's stance that the tilted balance is engaged is correct, the result would be that policy constraints associated with CS14 and CS28 to CS33 may be relaxed. This would indicate a much wider site search than that carried out by the appellant.

4.22 The PPG emphasises the role of land availability²⁹ evidence in identifying sequentially preferable sites. By their very nature these are sites that typically are not identified for development in a development plan and are emerging through or being promoted through the plan making process. In some cases, these sites may not be entirely compatible with the current policy framework but form a source of sites for consideration in the new local plan and such sites may be more relevant in the event that the tilted balance is engaged. Land availability evidence is thus an important source of evidence for decision-taking, and provides information on the range of sites available to meet the local authorities requirements³⁰.

4.23 Land availability information is largely assimilated through the Strategic Housing Land Availability Assessment (SHLAA)³¹ but is closely related to the call for sites exercise that provides an indication of land availability. An assessment of land availability identifies a future supply of land which is suitable, available and achievable for housing and economic development uses over the plan period³².

²⁸ CD8.25 guidance under heading *Potential alternative sites*.

²⁹ Paragraph: 029 Reference ID: 7-029-20220825.

³⁰ PPG, Paragraph: 001 Reference ID: 3-001-20190722.

³¹ CD8.19 to CD8.22.

³² PPG Section on *Housing and Economic Land Availability Assessment*, Paragraph: 001 Reference ID: 3-001-20190722.

Availability is informed by submission of sites through call for sites or through a consultation stage on the local plan.

4.24 Sites identified as having potential in the SHLAA provide a useful range of sites that can be considered for sequential test purposes and will generally meet the objective of being “in a suitable location for development” as required to conform to the definition of being ‘reasonably available’.

4.25 There are sites within the Council’s land availability evidence that have been identified as being suitable candidates for residential development, some of which are draft residential allocations within the emerging local plan³³. The PPG guidance³⁴ anticipates that sites beyond the current allocations can be considered:

“The applicant will need to identify whether there are any other ‘reasonably available’ sites within the area of search, that have not already been identified by the planning authority in site allocations or relevant housing and/or economic land availability assessments” (my underlining)

4.26 Therefore, given the importance of avoiding areas at risk of flooding and the risk-based approach required³⁵, the PPG evidently envisages a wider site search than immediate allocation sites. EA advice³⁶ on where to find alternative sites, refers to **adopted** or **draft local plan sites**; sites with **planning permission**; and **windfall sites** (not allocated or permitted).

4.27 Other sites need to be able to accommodate the ‘type of development’
In this case, the type of development alternative sites are being considered for is residential development. The guidance goes on to say that the proposal could be accommodated on a series of smaller sites or as part of a larger site. Consistent with the Councils Advice Note, this requires that there should be no site size threshold when considering alternative sites and alternative sites that

³³ CD8.23.

³⁴ Paragraph: 029 Reference ID: 7-029-20220825.

³⁵ PPG, Paragraph: 024 Reference ID: 7-024-20220825.

³⁶ CD8.25.

may otherwise be suitable candidates should not be ruled out on size ground alone.

A 'reasonable prospect' that the alternative site is available to be developed at the point in time envisaged for the development

- 4.28 The inclusion of the term 'reasonable prospect' highlights the inherent uncertainty in the process of development of any given site and the point at which units are ultimately delivered. Each site is subject to its own unique circumstances that ultimately drive its delivery, so it is not appropriate to unduly constrain any site search, or consideration of any alternative site, simply because it does not exactly fit the same delivery profile as the appeal site.
- 4.29 In practice this requires a reasonable timeframe to be applied for the delivery of any alternative housing site that should not be so restrictive as to rule out any suitable alternatives at a lower risk of flooding. In my view this should be driven by the need to expedite housing delivery where it is reasonable to conclude that any alternative site could broadly deliver housing to a similar timeframe or within the short-term.
- 4.30 A reasonable method would be to consider sites using a recognised approach already set out in national policy³⁷ – deliverable (years 1 to 5), developable (years 6-10), or longer term. Given the high priority to be given to flood risk, this would be a reasonable approach that provides most opportunity to bring in a wide variety of alternative sites at lower risk of flooding. In an appeal decision in Rye, from February 2022 the Inspector says sites in lower flood risk zones should not be discounted because they are not available now, and *"It would be short-sighted to exclude sites that might come forward in the near future given the primary purpose of the test."*³⁸. I agree with this conclusion. It is also helpful to consider the previous PPS25 technical guidance that addressed 'reasonably available' and equated this to being 'suitable, developable, and deliverable' aligned to PPS 3 in place at the time. Whilst I am not suggesting PPS25 carries any weight in

³⁷ NPPF para 68.

³⁸ CD9.8: Appeal decision: APP/U1430/W/21/3273344.

this appeal, I draw attention to it as a basis for considered how timescales for delivery might be approached.

4.31 In my consideration of alternative sites under Main Issue 1, I consider the reasonable prospect of alternative sites being available for development within 5 years. Sites with availability likely to extend beyond this I agree to reject. The emphasis in PPG is on sites being available for development hence the term 'reasonably available'.

Landownership of alternative sites

4.32 The PPG is clear that sites may still be reasonably available even if not owned by the appellant.

4.33 In my view this is because ultimately, the planning system is seeking to ensure that required development is taking place in appropriate locations irrespective of land ownership. If land ownership were a relevant factor, including matters that are likely to be unique to individual interests, it would likely frustrate the objectives of what the national policy is seeking to achieve by steering development to areas of least flood risk. For the sequential test to be failed there just needs to be 'reasonably available' alternatives at a lower risk capable of accommodating the proposed development.

Deciding whether the sequential test is passed

4.34 The role of evidence on land availability in helping to determine whether the sequential test has been passed is clear. Paragraph: 029 Reference ID: 7-029-20220825 of the PPG states that:

"Relevant decision makers need to consider whether the test is passed, with reference to the information it holds on land availability."

Part (a) of the Exceptions Test

4.35 PPG provides guidance on the implementation of the Exceptions Test, that is engaged, if the Sequential test is found to be passed.

How can it be demonstrated that wider sustainability benefits to the community outweigh flood risk?

4.36 The PPG advises³⁹ that LPAs should set their own criteria for the assessment of part (a) of the Exceptions Test “having regard to the objectives of their Plan’s Sustainability Appraisal.” But it also provides three examples of what might represent wider sustainability benefits to the community as follows:

- The re-use of suitable brownfield land as part of a local regeneration scheme.
- An overall reduction in flood risk to the wider community through the provision of, or financial contribution to, flood risk management infrastructure.
- The provision of multifunctional Sustainable Drainage Systems that integrate with green infrastructure, significantly exceeding National Planning Policy Framework policy requirements for Sustainable Drainage Systems.

4.37 As well as local examples, the national set provide a useful reference point for the consideration of this part of the test. The national examples can all be traced to relevant sustainability objectives as set out in the Framework and I address this more fully under Main Issue 2. Two of the examples relate to flood risk or water management, however it is clear from the first example that, non-flood/ water related benefits can also be considered. Importantly the benefits must be specifically “to the community” rather than any general benefit that may not be tangibly beneficial to the local community.

4.38 PPG paragraph: 036 Reference ID: 7-036-20220825 continues:

“Identified sustainability benefits need to be balanced against any associated flood risks, informed by the site-specific flood risk assessment. The impacts of flood risk on social, economic and environmental factors should be considered. Where wider sustainability benefits are absent or where they are outweighed by flood risk, the Exception Test has not been satisfied and the site

³⁹ PPG, Paragraph: 036 Reference ID: 7-036-20220825.

allocation in the plan should not be made or planning permission should be refused.”

4.39 From this, it is clear that even where wider benefits may be present, they may not be sufficient to outweigh flood risk associated with the appeal site. So, it is possible that a site can fail the exceptions test part (a) if it:

(a) does not demonstrate wider sustainability benefits, or,

(b) if it does demonstrate wider sustainability benefits but these are outweighed by the flood risk present following examination of the specific circumstances of the flood risk present.

4.40 In summary, the Framework provides clear policy tests and a direction that proposals should be refused when these are failed. PPG provides up to date national guidance on the application of these policies that is consistent with advice applied locally. The overriding objective is to steer development to land at lowest flood risk, and if there are sites capable of delivering the required development then there is no basis to accommodate development on land at higher flood risk.

5. MAIN ISSUES AND ASSESSMENT

1: Flood risk and the application and conclusions of the Sequential Test

5.1 I shall now assess the appellant’s approach to the sequential test as part of its planning application.

Original Sequential Test Report – June 2020

5.2 The appellant submitted its original Sequential Assessment⁴⁰ with the planning application dated June 2020. Based upon pre-application advice⁴¹, this only considered alternative sites in the WsM area.

⁴⁰ CD1.27.

⁴¹ CD3.4: Report provided to the applicant on 23 January 2018.

- 5.3 The officer's pre-application report on this matter included the following:
"The test needs to demonstrate that there are no reasonably available alternative sites within the area of flood risk (in this case, Weston-super-Mare) which can accommodate the proposal."
- 5.4 I was not involved in the pre-application advice but consider with hindsight the above lacks clarity. It does not explicitly say that the search area should be made only within the WsM settlement boundary and would have been incorrect to do so. The reference to 'within the area of flood risk' is uncertain – the area of flood risk associated with the appeal site is extensive covering a much larger area than WsM. By contrast, the relevant policy in place at the time, and now, is clear.
- 5.5 The submission includes a summary of SHLAA coverage of the appeal site, referencing the 2018 SHLAA⁴² that discounted the site due to the flood zone 3 status.
- 5.6 This assessment appeared to only use the 2018 SHLAA as a source of potential alternative sites in the WsM area. Paragraphs 4.9 to 4.12 address the alternative site assessment. However, the information provided was very limited and does not conform to the advice set out in the Council's Advice Note⁴³, for example, there was no map provided identifying all other sites considered, and this important element has to date been omitted from the sequential test information.
- 5.7 All alternative sites were subsequently discounted by the appellant with very little explanation or tangible assessment. Of note is the rejection of site HE18246 known as 'West of Anson Road'. This site is located approximately 1km to the southwest of the appeal site, is located within flood zone 1 (i.e. a lower flood risk area), and was submitted on the appellant's behalf under the site name 'Norton', in October 2020, to the North Somerset Local Plan call for sites. Regarding this site, the sequential assessment simply states: "[the site] was discounted from the process as a suitable site."

⁴² The 2018 SHLAA has been superseded by the latest SHLAA (CD8.19 to CD8.22).

⁴³ CD8.4 see page 5.

5.8 This particular alternative site was then the subject of an application for outline planning permission submitted⁴⁴ in December 2021.

5.9 Following review of this original assessment, the LPA responded requesting a North Somerset-wide search in line with policy CS3. Such a search would need to take in a wider range of the settlements covered by North Somerset's housing distribution policies⁴⁵.

Land at Lynchmead Farm, Weston-super-Mare (LPA Ref: 20/P/1579/OUT):
Sequential Test Addendum – April 2021

5.10 The appellant provided a supplementary response to the original Sequential Assessment in April 2021⁴⁶. This sought to justify the search area being WsM only on the basis of:

- The earlier pre-application advice,
- references from Core Strategy Policy CS3, the Council's Advice Note, and PPG, which deal with instances when a more refined search area may be justified based upon need within a defined area, to make the case that WsM has a specific 'need' for housing based upon Policy CS28 of the Core Strategy.

Weston-super-Mare as a focus for residential development

5.11 The LPA did not support this justification. Whilst there is a policy that allocates a specific number of new homes to WsM as summarised in Section 3, this is a product of the spatial strategy and not a 'need' as such as is intended by policy and the PPG. The Framework requires that strategic policy-making authorities identify housing requirements for their whole area, not specific geographic locations within⁴⁷. Further, it is not the case that land at risk of flooding is required for development outside of the main towns in order to deliver the required

⁴⁴ Application reference: 21/P/3529/OUT.

⁴⁵ See Core Strategy Policy CS14 and Area Policies CS28 to CS32.

⁴⁶ CD2.9.

⁴⁷ NPPF, para. 66.

housing. Notwithstanding that, even following the appellant’s rationale, at 2020 WsM was forecast to complete 13,281 dwellings by 2026 against the Core Strategy requirement for a minimum of 12,800. This included the following components:

Table 1: Housing delivery at WsM	
Completions to date	4,909
Permissions and allocations	7,934
Windfall expected 2020-2026	438

5.12 To update this position, on 1 April 2022, after allowing for completions, there was an additional 7695 dwellings to be delivered to secure the Core Strategy’s minimum requirement and, there was sufficient capacity committed to exceed this. Therefore, if Policy CS28 is to be equated to a policy-driven need, that need has been sufficiently addressed without the additional dwellings from the appeal site. An appeal decision in Newbury⁴⁸ from March 2020 addressed a similar issue where the appellant was basing part of their argument on there being a dwelling target for the specific settlement of Newbury. The Inspector wrote:

“[...] whilst Newbury is a larger urban settlement within the District and there is an indicative target for housing within this town, this does not mean that the benefits of housing development as part of a mixed use scheme cannot also be positive for other smaller settlements. From the evidence provided I am not persuaded that this proposed housing development is specifically needed in Newbury to support its communities or for redevelopment purposes, to the degree that all potential sites within the district outside of Newbury should be discounted.”

5.13 As part of this submission, no further site-specific evidence/ examination was provided.

⁴⁸ CD9.9: Appeal Decision APP/W0340/W/19/3243640.

Land at Lynchmead Farm, Weston-super-Mare (LPA Ref: 20/P/1579/OUT):
Sequential Test Addendum – July 2021

5.14 This note submitted by the appellant was an updated version of the previous note. Within it, they agreed to consider a wider range of sites across North Somerset taking into account the Development Plan policy requirements controlling the provision on housing across North Somerset. Within the note the appellant put forward the following parameters to guide the site search:

- *Sites subject of a valid planning permission for development of a similar character and scale ([the appellant has] set the parameters as between 65-85 dwellings, between 3-6 hectares or smaller sites adjacent to each other which could accommodate a similar level of housing development).*
- *Sites allocated in the Site Allocations Plan which could potentially be reasonably available and appropriate for the proposed development.*
- *A site (or combination of sites) adjacent to Weston up to 75 dwellings (anything else would not be policy compliant under CS28 and therefore not a reasonable alternative).*
- *A site (or combination of sites) adjacent to Nailsea, Clevedon and Portishead up to 75 dwellings, e.g a site of 50 dwellings next to a site of 25 dwellings (anything else would not be policy compliant under Policy 31 and therefore not a reasonable alternative).*
- *A site (or combination of sites) adjacent to service villages up to 75 dwellings, e.g 3 sites next to each other of 25 dwellings each (anything else would not be policy compliant and therefore not a reasonable alternative).*

5.15 On reviewing these parameters, I consider it an omission to fail to take account of larger sites; that would accord with the PPG⁴⁹. Further, despite what is said

⁴⁹ PPG, Paragraph: 028 Reference ID: 7-028-20220825.

in the first bullet point, the note appears erroneously to exclude consideration of sites with permission (note states that sites with permissions have not been included). This is contrary to national guidance⁵⁰. Rejection of sites with permission is also contrary to the Council's Advice Note⁵¹. Indeed, sites with permission may be more deliverable compared to the appeal site.

5.16 The note included a table of sites considered in further detail, and all were rejected. However, again the explanation is rather limited and includes questionable conclusions, for example:

- *“Site is too small.”* Given the above parameters and intention to consider the potential of multiple sites, this should not be a reason to reject a site. This is contrary to PPG and the Council's Advice Note.
- *“Site is too large for the proposed development.”* It should be considered whether the development could be accommodated as part of a larger proposal. This is contrary to PPG and the Council's Advice Note.
- *“Pending planning application.”* It is unclear why this is a reason to reject a site given that the methodology extracted in paragraph 5.14 states that sites with permission will be considered, notwithstanding the uncertainty on this that I highlight in paragraph 5.15.

5.17 The conclusion confirmed that no sequentially preferable sites had been identified, but also included the following statement:

“Even if there were other appropriate and reasonable available sites in an area at lower risk of flooding in WSM, Clevedon, Nailsea, Portishead or the Service villages it is important to note that the Council cannot currently demonstrate a five-year housing land supply and therefore additional development sites must be found to address

⁵⁰ CD8.25.

⁵¹ CD8.4.

the shortfall and meet needs. In this case as much of WSM is located in Flood Zone 3a it was always anticipated that sites such as this would be required to deliver housing requirements in the area.” (My emphasis)

- 5.18 This statement reveals the appellant’s incorrect interpretation of flood risk policy, especially the approach to development in flood risk areas set out in the Framework. As set out in my review of national policy and guidance in Section 4, the absence of a 5-year supply is not a relevant factor in the application of the sequential test, and there is no presumption in favour of sustainable development in this case. The suggestion that sites within flood risk areas such as the appeal site are required to deliver the housing requirement is not agreed as I have previously addressed in paragraphs 3.9 and 5.11.

Land at Lynchmead Farm, Weston-super-Mare (LPA Ref: 20/P/1579/OUT):
Additional Site Assessments 2022 SHLAA – May 2022⁵²

- 5.19 During the application assessment, the Council was progressing its new local plan supported by an emerging evidence base, including land availability evidence collated through the SHLAA⁵³. For reference I provide a chronology of the SHLAA key milestones and publications in Appendix MH1 along with some commentary on relevance to the appeal.
- 5.20 The appellant was invited to consider site potential from the latest SHLAA publication in January 2022, which they agreed to do. It is relevant that by this point, the Council had consulted upon its Regulation 18 Draft Local Plan – the ‘Preferred Options’ document⁵⁴ – that included a range of proposed allocations for residential development, some of which based upon potential sites considered through the SHLAA. These sites should be considered as a potential source of reasonably available sites in line with the Council’s Advice Note and

⁵² CD2.25.

⁵³ CD8.19 to CD8.22.

⁵⁴ CD8.23.

PPG, the latter advising to consider land availability information when considering whether the sequential test is passed⁵⁵.

5.21 The appellant's assessment of the land availability information encompassed sites that were also extant allocations⁵⁶ and sites that were draft residential allocations in the emerging local plan⁵⁷. This is in line with national guidance⁵⁸ and the Council' Advice Note to consider draft allocations in the emerging local plan especially where they relate to land availability information. I refer back to the Rye appeal decision referenced in para 4.30 that advised against rejecting sites that may come forward in the near future.

5.22 This should be taken against the latest PPG guidance to look beyond existing allocations in the search for sites⁵⁹. The Council have accordingly cited opportunities identified by the SHLAA which are also emerging through the new Local Plan 2038 as draft allocations (both in the case officers delegated report and my evidence for this appeal).

Sequential Test – December 2022

5.23 In December 2022 the appellant submitted a revised Sequential Test assessment⁶⁰ as an Appendix 1 to their Statement of Case. Para 1.10 of the document states that:

“The purpose of this current Sequential Test is to re-examine and refresh the site assessment evidence previously undertaken, including having regard to updated national guidance set out within National Planning Practice Guidance (PPG) published on 25 August 2022.”

⁵⁵ Paragraph: 029 Reference ID: 7-029-20220825.

⁵⁶ E.g. HE20187; HE20717.

⁵⁷ E.g. HE201034; HE20592; HE20591; HE202016; HE202017; HE2012; HE20375.

⁵⁸ CD8.25.

⁵⁹ PPG, Paragraph: 029 Reference ID: 7-029-20220825.

⁶⁰ CD5.3.

5.24 This latest submission appears to be the Appellant's definitive assessment of alternative sites.

5.25 For the remainder of this section I critique the appellant's sequential test methodology. I then set out my conclusions on the range of reasonably available alternative sites present. My overriding concerns are as follows:

Limited supporting justification for the rejection of sites

5.26 The format and explanation provided is limited and does not reflect the Council's Advice Note or the PPG. It fails to provide sufficient information to be able to effectively interrogate the suitability of each site viewed from the perspective of the appellant.

An unduly restrictive approach to site delivery

5.27 The assessment provides an interpretation (paragraphs 4.11 to 4.13) as to the PPG requirement for alternative sites to be delivered at 'a point in time envisaged for the development'⁶¹ that is different to the approach I advance in paragraph 4.30, and one which I consider is unduly restrictive.

5.28 In para 4.12 the appellants Appendix 1 provide a set of key milestones including obtaining approval of all other planning conditions by the end of 2024, and commencement of development in 2025. Then in paragraph 4.13 they say:

"This assessment therefore considers whether alternative sites are available to come forward for development in order to meet housing need in the same timeframe as the proposed development. As set out above it is envisaged that the proposed development will be available to be developed by the end of 2024, which is the 'point in time' for the purposes of this assessment. Therefore, any sites where there is no reasonable prospect that they will be available to be developed by the end of December 2024 (i.e. at the same point in time as the proposed development) are discounted on the grounds that they cannot be considered reasonably available." (my underlining)

⁶¹ PPG, Paragraph: 028 Reference ID: 7-028-20220825.

- 5.29 Notwithstanding my view that there are suitable alternatives that meet these prescribed milestones, I consider it is an unduly restrictive approach to assume all planning consents and discharge of conditions must be capable of being achieved by December 2024. By extension I would also consider it unduly restrictive to assume completion by end of 2025. There is no support for this approach in development plan or government policy, which adopts a 5-year timescale for deliverability. The appellant's approach does not reflect the multivariate nature of factors that can influence site delivery, and its application would likely rule out reasonable candidates that may not be deliverable by the end of 2025 but could be within 5 years. Alternative sites will always be subject to their own unique circumstances.
- 5.30 Whilst I agree that there would need to be a reasonable prospect of any alternative site delivering in the short term (i.e. within 5 years), my position is compatible with PPG advice to consider land availability evidence that by its inherent nature is largely considering the suitability of emerging or future sites. The PPG section on housing land availability evidence itself opens with the sentence "*an assessment of land availability identifies a future supply of land...*"⁶² Application of the appellant's timeframe would likely preclude consideration of land availability sites contrary to the PPG because for some of these sites it would be challenging to complete by the end of the 2025. The appellant's approach would suggest prioritising sites that already benefit from planning permission.
- 5.31 A preferable time period for consideration of alternative sites would be delivery within 5 years (short-term), although many such sites may be deliverable at a much shorter timeframe e.g. sites with planning permission or sites that are already allocated for residential development. This aligns to previous technical guidance⁶³, is more reflective of the potential timeframes associated with sites within land availability evidence, reflects the standard timescale for consideration of deliverable housing sites, and reflects appeal decisions where Inspectors have

⁶² PPG, paragraph:001 Reference ID: 3-001-20190722.

⁶³ PPS25.

concluded that emerging allocations and sites that may come forward soon should not be ruled out.

Site size and failure to consider/ acknowledge availability of smaller or larger sites

5.32 16 of the sites considered are rejected because they are considered too small or too large for the proposed development. This error is carried over from earlier submissions to the LPA and is contrary to PPG guidance. Despite this latest assessment being a review/ refresh of previous submissions in light of the latest PPG guidance, it has not taken the opportunity to consider the cumulative contribution of smaller sites or the availability of larger sites capable of accommodating the proposal.

Site availability

5.33 Many sites were rejected by the appellant due to the uncertainty as to whether the alternative site is available to the appellant. However, this is also not a requirement of PPG; the test is whether there are other sites that are reasonably available at a lower risk of flooding capable of accommodating the proposed development, the delivery organisation is irrelevant. PPG confirms that “*Such lower-risk sites do not need to be owned by the applicant to be considered ‘reasonably available’*”⁶⁴ In this sense such sites are simply available for the type of use proposed. In an appeal⁶⁵ in Lincolnshire, in 2022, the Inspector wrote:

“Whilst the PPG advises that it should be a pragmatic approach, any ST must respond to the specific issues of the district and its development needs and not the developers’ private interests, be it in ownership of the land or an ambition to deliver a precise number of dwellings. Moreover, flood risk should not be offset against housing need without very careful assessment of the risks and benefits.”

Inconsistencies in methodology and comprehensiveness of site search

5.34 Inconsistencies in the methodology largely relate to the sites that have been selected for consideration. In the appellant’s Statement of Case, para 6.3, they say that *the Sequential Test has been undertaken in accordance with relevant policy and guidance*. I disagree. The methodology applied has not considered

⁶⁴ PPG, Paragraph: 028 Reference ID: 7-028-20220825.

⁶⁵ CD9.10: Appeal Decision APP/Z2505/W/21/3273641.

comprehensively emerging/draft residential allocations from the new local plan although some such sites are included e.g. ST51, ST56, and ST57. Despite the method claiming that “*Sites identified as having development potential in the SHLAA (January 2022)...*” have been considered, many sites identified in the SHLAA have not been considered, and I include these within my assessment of sites.

5.35 The latest SHLAA⁶⁶ indicates 90 separate sites that are considered to have potential, 10 of which are in the WsM area⁶⁷.

Reasonably available sites

5.36 In my opinion, the appellant should have concluded that there are alternative ‘reasonably available’ sites at a lower risk of flooding able to accommodate the type of development, in this case housing. In Appendix MH2 I set out where I disagree with the conclusions reached on alternative sites considered by the appellant and why some of the sites ought to be considered as suitable alternatives. Early sight of this was provided to the appellant on 31 March 2023 as agreed at the Case Management Conference on 23 March 2023. I also indicate where I agree with the appellant’s rejection of an alternative site set out in Table MH2b of Appendix MH2. My agreement to the rejection of sites is for the following main reasons:

- where the site is under construction,
- where the site may be in conflict with the current Development Plan (in terms of locational strategy for housing as set out in Section 3), not proposed within the emerging local plan, and where its delivery may be longer term despite being identified in the SHLAA as a suitable candidate. Examples of such include sites **ST19** *North of Amesbury Drive, Bleadon*; **ST20** *Purn House Industrial Estate, Bleadon*; and **ST46** *Land north of Youngwood Lane*.

⁶⁶ CD8.19 to CD8.22.

⁶⁷ See CD8.20, Place Templates document.

- Where there are specific reasons to conclude that there is no ‘reasonable prospect’ of the site being delivered in the short-term.
- Where the site is the same or worse flood risk status.
- Sites within the Green Belt.
- Where the site is identified within the SHLAA however is not known to be available i.e. has not been submitted to the Council for consideration as part of the emerging local plan.
- Where a site is very small <10 units.

5.37 In addition, in Appendix MH2, Table MH2a I provide a schedule of sites considered to be ‘reasonably available’ alternatives that were not considered in the appellant’s latest assessment although were available for consideration⁶⁸. These were also provided to the appellant on 31 March 2023. These sites are identified from a review of land availability evidence, where I have identified sites considered suitable that are also emerging through the new local plan, sites that have planning consent for the type of development, and other draft allocations in the emerging local plan where there are indications of availability. It is worth noting that there are a larger range of sites within the SHLAA that are identified as being suitable for residential development, but I have not taken account of those which are not identified as potential allocations in the emerging local plan and are in conflict with the adopted development plan policies controlling the distribution of housing. This is because their delivery is less certain and may be longer-term. For the sites I do consider to be reasonably available, a set of plans and supporting information is provided as a series of Site Templates in Appendix MH2.

5.38 This evidence supports the conclusion that the appeal proposal fails the sequential test as set out in Policy CS3 and the Framework because there are

⁶⁸ Prefixed with site reference ‘AS’ – Additional Site.

other sites that are capable of accommodating the proposed development and at a lower risk of flooding. This failure has been given full weight in other appeals⁶⁹. I have categorised all sites (see Table 2 for category descriptions) I consider to be suitable alternatives in terms of their planning status, and this is helpful as it provides an indication of their delivery. I have prepared this analysis to assist with the consideration of the actual delivery time frames for the sites; it should be noted that a sites inclusion in land availability information alone, without consent or allocation, is sufficient in line with PPG to be considered a suitable alternative for the purposes of the sequential test⁷⁰.

Site category	Description of category
1. Consented sites	These sites are perhaps the most deliverable – sites with consent or resolution to approve for residential development.
2. Current housing allocation	These sites have the principle established by virtue of their allocation within the Development Plan.
3. Potential in SHLAA; in conformity with current Development Plan*; and proposed allocation in emerging local plan OR In conformity with current Development Plan and proposed allocation in emerging local plan.	These sites are identified in the SHLAA as having potential, are locationally consistent with the current Development Plan (in terms of their location not necessarily the size of the site) and are proposed for allocation in the emerging local plan.
4. Potential in SHLAA; in conformity with current Development Plan.	These sites are identified in the SHLAA as having potential. They are not proposed allocations in the

⁶⁹ CD9.11: Appeal ref APP/C3810/W/22/3291254.

⁷⁰ PPG, Paragraph: 029 Reference ID: 7-029-20220825.

	new local plan but are locationally consistent with the current Development Plan (in terms of their location not necessarily the size of the site)
5. Potential in SHLAA not in conformity with current Development Plan but proposed allocation in emerging local plan	These sites are identified in the SHLAA as having potential but are not currently consistent with the Development Plan. They are however emerging as draft allocations and where I have included sites in this category, I draw attention to specific circumstances that inform a reasonable prospect that the site could be available for residential development within 5 years.

5.39 To summarise my site assessment conclusions from Appendix MH2 I have specifically identified 39 alternative sites categorised as follows:

- **12** sites with planning permission in Category 1,
- **8** sites that are current housing allocations in Category 2,
- **8** sites that are locationally in conformity with the current Development Plan and are proposed allocations within the emerging local plan in Category 3,
- **2** sites are potential in the SHLAA and are locationally in conformity with the current Development Plan in Category 4,
- **9** sites that are potential in SHLAA not in conformity with current Development Plan but proposed allocation in emerging local plan in Category 5,

5.40 Whilst North Somerset has extensive areas at risk of flooding, land in lower flood risk locations, available for residential development is also extensive.

Main issue 2: Flood risk and the application and conclusions of the Exceptions Test – Part (a), demonstration of wider sustainability benefits to the community

5.41 Section 4 of my proof set out the national policy and guidance in relation to the Exceptions Test. The Framework makes progression to the Exceptions Test conditional on passing the sequential test⁷¹. In this case, the Exceptions Test is not engaged because alternative sites are available. However, in the event the test is deemed to apply, I turn to apply the Exceptions Test to this proposal.

5.42 Assessment of part (a) of the Exceptions Test requires examination of the principles of sustainability applied in the local context⁷², and for these to be weighed against the flood risk present in this case.

5.43 This part of my evidence is structured on the following:

1. Published examples of wider sustainability benefits, and
2. Examination of sustainability appraisal objectives as a basis for considering local benefits.

5.44 The evidence of Mr Bunn for the Council addresses the current level of flood risk including changing risk over time, and the implications of flooding for environmental, social, and economic sustainable development objectives. This establishes that the development of the appeal site is inherently unsustainable.

5.45 I reiterate the point I made in in Section 4⁷³ that firstly it needs to be considered whether there are wider benefits to the community present, and secondly whether these outweigh the flood risk -these are two separate exercises. It is also necessary to determine whether these are benefits specifically to the

⁷¹ NPPF, para 163.

⁷² PPG, Paragraph: 036 Reference ID: 7-036-20220825.

⁷³ Para 4.39.

community, and also the quantification and deliverability of such benefits given the need to ensure that the benefits would actually be provided.

Published examples of wider sustainability benefits

5.46 In this section I revisit the examples of wider benefits presented in national guidance and the Council’s Advice Note. I explore these examples, comment on the relevance of them in the local context, and in relation to the appeal proposal. I draw a distinction between the wider benefits required by the Framework’s flood risk policy⁷⁴ and the more general benefits considered as part of the planning balance exercise. I consider these to be separate exercises. For example, it is commonplace to consider the creation of construction jobs brought about by a given development proposal and these might be attributed a certain amount of weight in the planning balance. However, this particular benefit would not necessarily be sufficient as a ‘wider sustainability benefit’ as required in the application of the Exceptions Test. In their Statement of Case, the appellant does not advance any benefits required by this policy but says evidence will be presented to explain them.

PPG examples

5.47 As set out in Table 3, the PPG provides a set of specific examples of what may represent wider benefits. Having considered them, I find no alignment to these examples with the appeal proposal.

Table 3: Analysis of PPG examples of wider sustainability benefits		
Example benefit	Relevance to local context	Relevance to the appeal proposal
The re-use of suitable brownfield land as part of a local regeneration scheme	The objective of this example centres on the effective use of land, which is a well-established national and local sustainability objective, specifically as part of a local regeneration scheme.	The appeal proposal is not located within an urban area; not within such a regeneration area and is also not on brownfield land. It does not therefore have any alignment to this benefit.

⁷⁴ NPPF, para 164.

	<p>This could not be applied anywhere within an urban area and would require a specified regeneration area to be present e.g. identified by a relevant policy/ allocation within the local plan. A similar finding was concluded in an appeal⁷⁵ in Newbury, 2020 where the Inspector when addressing the regeneration benefits of the proposal wrote, “However, to my knowledge there is currently no adopted policy, master plan, or development plan document to provide a detailed regeneration strategy for this industrial estate.”</p> <p>Regarding specifically defined Regeneration Areas, Core Strategy Policy CS29 identifies a WSM Town Centre area that contains a package of key sites to support the regeneration of the town.</p>	
<p>An overall reduction in flood risk to the wider community through the provision of, or financial contribution to, flood risk management infrastructure</p>	<p>This example links to a national policy objective of reducing flood risk elsewhere through development⁷⁶. This is aligned to part (b) of NPPF para 164 and the aspiration ‘to reduce food risk overall’.</p> <p>Locally this benefit has significant relevance given the extensive range of a variety of flood risks.</p>	<p>The appeal proposal does not reduce flood risk elsewhere.</p> <p>The main flood risk source present at the appeal site area is a tidal risk. The proposal does not reduce this risk to the wider community.</p>

⁷⁵ CD9.12: Appeal Decision APP/W0340/W/20/3252212.

⁷⁶ NPPF, para 159.

<p>The provision of multifunctional Sustainable Drainage Systems that integrate with green infrastructure, significantly exceeding National Planning Policy Framework policy requirements for Sustainable Drainage Systems</p>	<p>Locally this benefit has significant relevance given the extensive range of a variety of flood risks, where sustainable drainage solutions are critical to managing surface water.</p>	<p>The appeal proposal makes provision for shallow swales and other SUDS features as noted in the officers Delegated Report.</p> <p>The SUDs proposals do not exceed NPPF requirements, are fairly standard in nature and meet minimum requirements.</p>
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Local examples – 2019 Flood Risk Advice Note

5.48 As set out in Table 4, the Advice Note provides a set of specific examples of what may constitute wider benefits. Again, having considered these I find no alignment to these examples with the appeal proposal.

Table 4: Analysis of Council's Advice Note examples of wider sustainability benefits		
Example benefit	Relevance to local context (policy and underlying objectives)	Relevance to the appeal proposal
<p>Provide affordable housing to meet an identified local need in a suitable location</p>	<p>Core Strategy Policy CS16: <i>Affordable housing</i> - North Somerset has a minimum policy requirement for 30% affordable housing.</p> <p>North Somerset also has a high affordable housing need.</p> <p><i>CS14: Distribution of new housing; (the words 'in a suitable location' means in line with the housing distribution policies of the plan and taking into account other relevant policies regarding the suitability of locations for housing – this would not include land at higher risk of flooding unless</i></p>	<p>The scheme provides for 30% AH, however this is the minimum required by policy and is not considered exceptional. It also needs to be considered against the position that housing in a high-risk flood zone is unsustainable, and thereby is not 'in a suitable location'.</p> <p>In addition, the PPG requires that the wider sustainability benefits are to the community, and it is reasonable to interpret this as being the community within which the proposal relates. There is no measure to ensure that the affordable</p>

	<p><i>expressly allowed for within the development plan)</i></p> <p>Linked to general objective of meeting housing needs (SC10) as well as narrowing the gap between income and house prices / rents (SC11)</p>	<p>housing proposed on the appeal site will actually benefit the local community and therefore the deliverability of this benefit is unlikely or at least uncertain.</p>
Remove pollution	<p>CS3: <i>Environmental impacts and flood risk assessment</i></p> <p>No direct corresponding SA objective but an indirect link to SC9: <i>Avoid exposure to pollution/ noise</i></p>	<p>No alignment.</p>
Assist in the regeneration of an area	<p>CS12: <i>Achieving high-quality design and placemaking.</i></p> <p>Also, CS29: <i>WsM Town Centre.</i></p> <p>Especially linked to objectives EC4: about maximising opportunities for regeneration and renewal within Weston-super-Mare; EC7 about making fuller use of urban spaces; SC4 about developing a positive sense of place.</p>	<p>No alignment. this example is similar to the first of the PPG examples.</p>
Visually enhance a site to the benefit of the character of an area	<p>CS12: <i>Achieving high-quality design and placemaking.</i></p> <p>Especially linked to objective SC4 about developing a positive sense of place.</p>	<p>No alignment. Currently the site forms part of the open and semi-rural character of the landscape to the north of Ebdon Road. The proposal will create some localised harm to the character and appearance of the landscape as identified in the Case Officers Report. Accordingly, the proposal</p>

		is not considered to visually enhance the area.
Relocate an existing use closer to public transport thus reducing the amount of traffic on the road.	<p>CS1: <i>Addressing climate change and carbon reduction</i> especially point (4); CS10: <i>Transportation and Movement</i>.</p> <p>EC11: <i>Reduce queuing and over-crowding on the road and rail networks;</i> EC12: <i>Locate new development on sites-and access them in ways – that will not add to traffic congestion.</i> SC2: <i>Improve accessibility to service, retail, educational, leisure and social provision.</i></p>	No relocation is involved in this appeal proposal.

Examination of Sustainability Appraisal objectives

5.49 This part of my evidence provides an overview of the relevant objectives of the Sustainability Appraisal⁷⁷ as a frame of reference for considering sustainable development at the local level, and how these influence how wider sustainability benefits might be identified. Directly underpinning the adopted Core Strategy, these are an appropriate reference point for assessing local sustainability objectives.

5.50 Appendix MH3 provides an analysis of the Sustainability Appraisal (SA) Objectives taken from the Council’s ‘Sustainability Appraisal Supplementary Report, Revised Other Remitted Policies’ (May 2016)⁷⁸. This analysis considered these objectives against the appeal proposal to identify any alignment between these wider objectives and the appeal proposal. For the purposes of this analysis, I assign the following categories:

- Poor/ no alignment to objective

⁷⁷ CD8.24.

⁷⁸ CD8.24.

- Negligible effect
- Uncertain
- Alignment to objective

5.51 Whilst this exercise identified some positive alignment by the delivery of homes close to an urban area where there are a range of services and facilities (and benefits associated with the delivery of housing) the appeal proposal does not align well with the majority of the SA objectives. The potential benefit of meeting housing requirements is compromised by the fact that it is housing proposed within a high-risk flood area and is unsustainable for that reason. Housing is a benefit if it is and will remain fit for purpose, and the flood risk present, and increasing over time, undermines this. Whilst housing provision should be considered as part of the wider planning balance, its consideration as part of part (a) of the exceptions test should be limited. This is why the national policy seeks 'wider' benefits, acknowledging that development in a higher-risk flood area is inherently unsustainable. Across the vast majority of the SA objectives, I consider that the appeal proposal does not align and in some cases conflicts with those objectives.

Conclusions on part (a) of the Exceptions Test

5.52 In conclusion, the proposal does not reflect any of the nationally, or locally set examples of what may constitute a wider sustainability benefit to make an exception to the Framework policy that inappropriate development in areas of flood risk should be avoided. I also do not consider the appeal proposal reflects any local sustainability objectives when considered through the lens of the Sustainability Appraisal.

5.53 I note Mr Bunn's conclusions, that the site is subject to increasing risk over the lifetime of the development, and significant hazard associated. There is no certainty over the implementation of future works to upgrade defences in place. It is clear therefore that even if the Sequential Test is passed, the development fails the Exceptions Test. On the latter, I find no clear wider sustainability benefits that weigh against the flood risk present.

5.54 I anticipate that the appellant may rely on more general benefits that are addressed under the planning balance as a means of justifying this particular policy, such as construction jobs or additional spend in the community. These may carry weight in the application of the tilted balance, when applicable but in my view fall short of the exceptional benefits required to justify development in an area at risk of flooding. The delivery of housing itself, whilst more appropriately considered under the more general planning balance, is not itself a reasonable benefit specifically with regards to wider sustainability benefits because the exceptions test is about achieving an exception to the norm.

Main issue 3: Planning balance

Benefits of the appeal proposal

5.55 The delivery of housing is ordinarily given substantial weight taking into account the Government's aspiration to boost housing supply. However, this is not an objective that is prioritised over all other objectives and the requirement for sustainable development enshrined in the Framework seeks to balance these factors. The delivery of housing is therefore required to be in a sustainable location. Whilst WsM is a sustainable location for housing, development of housing in a high-probability flood risk location is not a sustainable location unless it has been deemed to be required through plan making because of an absence of land at lower risk capable of accommodating those requirements. This is built into the way the Framework operates where flood risk is identified as a priority constraint, where the failure of flood risk policy disengages the presumption in favour of sustainable development because it does not represent sustainable development.

5.56 Therefore the benefit of housing provision is substantially reduced when the proposal is within a high-risk flood zone, where housing provision is unsustainable as a matter of principle. The Framework and PPG reflect this as the tilted balance is dis-engaged and 5YS is effectively set aside when

considering flood risk and the sequential test. Whilst it is common ground that the council is currently unable to demonstrate a 5-year housing land supply, this is not relevant to the consideration of the sequential test. Further, the ‘tilted balance’ or presumption in favour of sustainable development is not engaged in this case, because the failure of the sequential (and exceptions) test provides a clear reason for refusal in line with the Framework⁷⁹. I would attribute **significant** weight to the delivery of housing given Government’s objective of boosting supply, when it is in the right location. However, I consider that this benefit in particular has to be viewed in the context that it is in an unsustainable location due to flood risk, and there is therefore a case for reducing this weight. I consider the same applies to the provision of affordable housing for the same reason.

5.57 Whilst not quantified to date by the appellant, other benefits arising are temporary construction jobs during the construction stages and additional spend from increasing the resident population in the area, and thus demand for services and facilities. To the temporary construction jobs, I attribute **limited weight**, and to the additional spend in the area, **very limited weight**.

Harms identified with the appeal proposal

5.58 Turning to the impacts and conflicts with policy, the proposal is contrary to Core Strategy Policy CS3, and the Framework in relation to flood risk⁸⁰. It is the Council’s conclusion that the sequential test is not passed, and the development should accordingly be refused. Even if the sequential test were to be found to be passed, it is my evidence that the Exceptions Test, part (a) is also failed as there are not wider sustainability benefits arising from the proposal that outweigh flood risk. I attach **very substantial weight** to the conflict with these flood risk policies contrary to both local policy and the Framework, noting the Framework’s indication that development proposals should be refused where these tests are not met.

⁷⁹ See NPPF paragraph 11, footnote 7.

⁸⁰ Especially paras, 162 and 164 (a) of the Framework.

- 5.59 In relation to ecology and the potential for impact on protected species, subject to the implementation of required conditions at the Reserved Matters stage there is potential harm to those species. The appellant's main Statement of Case⁸¹ indicates ecology impacts including during the construction phase, however, proposes to "*avoid, mitigate and compensate negative effects and provide ecological enhancement.*"⁸². Overall, the impacts and proposed mitigation, indicate an overall neutral position, subject to the implementation of a landscape and ecological management plan (LEMP) as required by Draft Condition 17.
- 5.60 The evidence of Mr Bunn refers to a range of harms associated with the risk of flooding at the appeal site. Section 3 of his evidence provides a description of how the site would flood. Section 7 goes on to set out the associated negative impacts on the sustainability of the development. This includes economic impacts associated with flooding, social impacts including direct and longer-term impacts, and environmental impacts associated with flooding. In the planning balance I attribute these **significant weight**.
- 5.61 Weighing these factors together, I do not consider that the benefits outweigh the conflict with the development plan and the Framework in relation to flood risk. In line with these, I consider there to be a "clear reason" for refusal that dis-engages the 'tilted balance'. The planning balance falls in favour of refusing this proposal, when there are evidently 'reasonably available' sites at lower risk of flooding, available for residential development in the short-term.

6 CONCLUSIONS

- 6.1 The development proposal is located adjacent to Weston-super-Mare (WsM), in an area of high-probability flood risk and as such, Policy CS3 of the Core Strategy applies which requires the sequential test, and if necessary, the exceptions test to be applied in line with national planning policy. The fundamental aim of the sequential test is part of a wider policy of avoiding development in areas at risk of flooding by ensuring that development is steered to areas at lower risk. The

⁸¹ CD5.1.

⁸² CD5.1, para. 6.7.

sequential test requires that applicants consider the availability of sites that are in a lower flood risk category that are capable of accommodating the development, and only when it is not possible to deliver the development on sites at lower risk, is the sequential test passed. In such circumstances it can be demonstrated that it is required to use land at higher risk in order to accommodate the development needs of the area.

- 6.2 The appellant has failed to demonstrate that there are no 'reasonably available' alternative sites capable of accommodating the proposal, that are at a lower risk of flooding.
- 6.3 My evidence confirms the position set out in refusal reason 1 that there are a range of other sites across North Somerset, including in close proximity to the appeal site at WsM, that are able to provide housing, and are indicated to be at a lower risk of flooding. My evidence indicates a variety of alternative sites including many rejected by the appellant. These include sites where there is a resolution to grant planning permission, sites with planning permission, sites currently allocated in the development plan, emerging sites in the emerging draft local plan, and sites identified as having potential in the latest land availability evidence, all of which conform to the definition of 'reasonably available' in the PPG and within the local flood risk advice note.
- 6.4 As a result, in line with national and local policy, the proposal should be refused due to failure of the sequential test. In line with the Framework the proposal represents inappropriate development in a high-risk flood area and is therefore unsustainable and contrary to a key tenet of Government policy and guidance. Not only is it not required to meet wider sustainability objectives, it is in itself unsustainable development. There is subsequently no requirement to progress to consider the exceptions test. Whilst it is common ground that the council are unable to currently demonstrate a 5-year housing land supply, this is not relevant to the consideration of the sequential test as confirmed by the PPG. Further, the 'tilted balance' is not engaged in this case, given the location of the site in an area at risk of flooding and the failure of the applicant to pass the sequential and exceptions tests. This is a clear reason for refusal as per NPPF paragraph 11

and footnote 7 and as such dis-engages the presumption in favour of sustainable development.

6.5 However, in the event that a different conclusion is reached on the sequential test, my evidence has considered the Exceptions Test, and the requirement to demonstrate wider sustainability benefits to the community that outweigh the flood risk. I do not consider there to be such wider benefits when considered against the flood risk with reference to evidence of Mr Bunn. I come to this conclusion having considered nationally and locally set examples of such wider benefits as well as an exercise to review the proposal against locally identified sustainability objectives underpinning the current Core Strategy. I therefore conclude that, were the exceptions test to be engaged, it would also be failed.

6.6 Therefore in line with the Framework, failure of these national tests should lead to refusal of the proposal. I have considered this in the context of the wider planning balance. In my opinion, unless it is expressly identified within the development plan that is necessary to use land at higher risk of flooding to meet local sustainability objectives, and there are no alternatives, then housing in higher flood risk areas is inherently unsustainable in line with the objectives of the Framework not least the requirement to mitigate and adapt to climate change as set out in the overarching environmental objective⁸³. The evidence of Mr Bunn indicates the increasing risk of climate change and the implications for flooding in North Somerset and affecting the appeal site. Ordinarily the delivery of housing attracts significant weight especially where there is an agreed shortfall in housing land supply. However, because I do not consider that the proposal directs housing to an appropriate location when there are alternative sites at lower risk; I consider there to be a case for the weight that should be attributed to housing delivery in this case has to be less than significant in my opinion, when considered through the lens of the Frameworks sequential approach.

6.7 To the temporary construction jobs I attribute **limited weight**, and to the additional spend in the area, **very limited weight**, although to date there is no information to consider to support these benefits.

⁸³ NPPF, para 8.

6.8 I consider that the conflict with Policy CS3 and the Framework with reference to the sequential test provides a “clear reason” for refusal in line with the Framework. The conflict is a matter of very substantial weight. I also attach significant weight to the harms identified in Mr Bunn’s evidence associated with flooding. Having considered the balance of these factors, I consider that the appeal should be dismissed.

List of tables

Table 1: Housing delivery at WsM

Table 2: Categories of alternative ‘reasonably available’ sites

Table 3: Analysis of PPG examples of wider sustainability benefits

Table 4: Analysis of Council’s Advice Note examples of wider sustainability benefits

7 APPENDICES (UNDER SEPARATE COVER)

MH1: **SHLAA chronology** – *this analysis is relevant to Main Issue 1 and the consideration of whether there are suitable alternative sites at a lower risk of flooding.*

MH2: **Assessment of sites** – *this analysis is relevant to Main Issue 1 and the consideration of whether there are suitable alternative sites at a lower risk of flooding.*

MH3: **Analysis of appeal proposal against Sustainability Appraisal objectives** – *this analysis is relevant to Main Issue 2 and the consideration of whether there are wider sustainability benefits of the proposal that outweigh the flood risk.*