

## **Land at Rectory Farm North**

### **Inspector's ruling of 8 January 2025**

Following the discussion yesterday about the notes produced by Mr Cage and Mr Mirams (ID51 and ID52), it seems to me that the matters I need to rule on come down to 3 propositions:

1. That the speed of inundation of the site would be faster than as set out in the appellant's evidence,
2. That modelling of the undefended scenario, with the reduced amount of land raising, should have been carried out, and
3. That breach analysis should have been carried out for the defended scenario.

#### *Speed of inundation*

This is a new point that is not included in the putative RfR, SoC or the PoE. The Council says it arises from the Brookbank FRA which was not made available to them until 2 October. I don't intend to say any more about that now. It may be a matter for another day.

For whatever reason this is a new point. Moreover, it is an important point which goes to the effectiveness of the proposed mitigation. It is a point that I need to understand properly, regardless of why it has come up at a late stage. So, although the Council is not asking for any further evidence, I consider that it is in the interests of the Inquiry that the appellant has the opportunity to produce the technical note referred to by Mr Mirams. In any event, it is also right that the appellant should have that opportunity in the interests of procedural fairness.

#### *Modelling the undefended scenario*

The starting point is that it is common ground that the appeal site is at risk of tidal flooding in the undefended scenario. The original Hydrock FRA assessed the flood level that would occur in that scenario.

Subsequently, there was a discussion between the appellant and the EA regarding a reduced amount of land raising, with a view to reducing any impact on flood risk to adjoining land. Following those discussions, the EA agreed the approach to modelling which then took place. The EA has objected to the appeal on grounds set out in its Position Statement. Those grounds do not include absence of further modelling of the undefended scenario.

The EA is not the LPA. However, it is the statutory consultee on flooding and I am entitled to attach weight to its advice on these issues.

Moreover, the Council had drawn attention to the need for undefended tidal flooding to inform the sequential and exceptions tests in its comments of May 2023. This was not a point that arose for the first time as a result of the Council's reading of the Brookbank FRA.

The comments of the LLFA (as reported in the OR) note that information to support the defended 1 in 200 year plus CC scenario flood levels had not been provided but those comments do not say that absence of modelling of the undefended scenario was a concern. Nor did the conclusions of the OR itself raise this objection. There is no allegation that essential modelling had not been done in the putative RfR, the SoC or the PoE.

The allegation that the absence of modelling of the undefended scenario is a matter that should attract weight in the planning balance against the appeal is a new allegation.

In all the circumstances, I do not think it is necessary to delay these proceedings for further modelling of the undefended scenario.

Moreover, it is not fair to raise this as an objection now, when the appellant does not have the opportunity to provide further information (should it wish to do so).

*Breach analysis in the defended scenario*

There is a reference to breach analysis in the PoE, which states that “no recent breach modelling has been undertaken and none undertaken with sea level rise allowances ” (Bunn 2.6.9).

Mr Cage’s note states that, in a defended scenario, “a breach analysis should have been undertaken to address the impact of the failure of the defences”. It seems to me that those words in themselves do not go beyond what is already in the proof. Contrary to Mr Miram’s assertion, Mr Cage has not called for breach analysis to be carried out now. I do not see that anyone is prejudiced by Mr Cage merely mentioning a point that is already in the proof.

The question for the Inquiry is, how big a point is this in the overall scheme of things. On a fair reading of Mr Bunn’s proof as a whole, he does not think it is an important point. He does not say that it is an important point and he does not refer to it in his conclusions. That is consistent with the fact the absence of breach analysis is not part of the Council’s SoC. Nor is it mentioned in the EA comments, the LLFA comments, the OR or the putative RfR.

Mr Cage has adopted the proof of Mr Bunn. It will therefore be possible to ask him about how important this point is in the overall scheme of things when he gives his evidence, including by reference to the above points.

In conclusion, it is not unfair for Mr Cage merely to mention the absence of breach analysis. What would be unfair would be if the Council were to seek to elevate the point beyond what is in the proof and to make a case that the absence of breach analysis should be regarded as a free-standing objection that weighs against the appeal in the overall planning balance. That would be a significant change to the Council’s case.

In all the circumstances, I do not think it is necessary to delay these proceedings for breach analysis to be carried out.

Those are my rulings on the 3 propositions.

David Prentis

Inspector

8 January 2025