



**Peyto Law**

## Development in Flood Zones

The recent severe flooding events have put the spotlight on the risks associated with living and working in flood plains. Thus it is an opportune moment to reflect on the requirements for proposals for development in this respect.

Since October 2006, Local Planning Authorities (LPAs) have been required to consult the Environment Agency on all applications for development in flood zones 2 and 3 (as defined on Environment Agency maps), and for any development on land within an area of more than 1 hectare in flood zone 1.

However, this requirement to consult did not mean that LPAs always accepted the resulting recommendations. In 2006/2007, LPAs granted permission for 13 major developments against Environment Agency recommendations, 7 of which were located in flood zone 3 (high risk of flooding / functional flood plain).

**Planning Policy Statement 25 "Development and Flood Risk"** (PPS25), published in **December 2006**, requires that planning applications for development proposals of 1 hectare or greater in Flood Zone 1 and all proposals for new development located in Flood Zones 2 and 3 should be accompanied by a Flood Risk Assessment (FRA).

The FRS should identify and assess the risks of all forms of flooding to and from the development and demonstrate how these flood risks will be managed, taking climate change into account. For major developments in Flood Zone 1, the FRA should identify opportunities to reduce the probability and consequences of flooding.

A FRA will also be required where the proposed development or change of use to a more vulnerable class may be subject to other sources of flooding or where the Environment Agency, or other bodies have indicated that there may be drainage problems

According to paragraph E3 of PPS25, the minimum requirements for an FRA are that it should:

- be proportionate to the risk and appropriate to the scale, nature and location of the development;

- consider the risk of flooding arising from the development in addition to the risk of flooding to the development;
- take the impacts of climate change into account;
- be undertaken by competent people, as early as possible in the particular planning process, to avoid misplaced effort and raising landowner expectations where land is unsuitable for development;
- consider both the potential adverse and beneficial effects of flood risk management infrastructure including raised defences, flow channels, flood storage areas and other artificial features together with the consequences of their failure;
- consider the vulnerability of those that could occupy and use the development, taking account of the Sequential and Exception Tests and the vulnerability classification, including arrangements for safe access;
- consider and quantify the different types of flooding (whether from natural and human sources and including joint and cumulative effects) and identify flood risk reduction measures, so that assessments are fit for the purpose of the decisions being made;
- consider the effects of a range of flooding events including extreme events on people, property, the natural and historic environment and river and coastal processes;
- include the assessment of the remaining risk after risk reduction measures have been taken into account and demonstrate that this is acceptable for the particular development or land use;
- consider how the ability of water to soak into the ground may change with development, along with how the proposed layout of development may affect drainage systems; and
- be supported by appropriate data and information, including historical information on previous events.

The requirement to consult was also redefined by the **Town and Country Planning (Flooding) (England) Direction 2007**, which became effective on **1 January 2007**.

The Direction provides that if the Environment Agency objects to an application for major development in a flood risk area then:

- The LPA, Environment Agency and applicant should as soon as practicable discuss and agree a course of action to resolve the objection;
- If the Environment Agency will not withdraw its objection, but the LPA wishes to grant permission, the Secretary of State must be notified of the proposal;
- The Secretary of State will then determine whether to “call in” the application

Major development is defined as:

- residential development, where the number of dwellings to be provided is 10 or more, or the site area is 0.5 hectares or more; or
- non-residential development, where the new floorspace to be provided is 1,000 square metres or more, or the site area is 1 hectare or more

A flood risk area is defined as:

- land in an area within Flood Zones 2 or 3; or
- land in an area within Flood Zone 1 which has critical drainage problems and which has been notified to the local planning authority by the Environment Agency

Developers should be aware that the Environment Agency’s website states that it regularly revises the flood maps. Caution should therefore be exercised when negotiating options or pursuing planning applications. Revisions may increase the area of land designated as a flood zone or may affect the flood risk levels for current flood zones. Challenges to such amendments can only be undertaken on application for judicial review. In such cases, the application must be made promptly, with the maximum time limit of 3 months.

### Further Information

For further information on this topic or any local government law related matter please contact:

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This briefing note is intended merely to provide a summary of the law in this area and is not a comprehensive guide. It is not intended to provide legal advice for specific cases.