

OFA comments on revised Planning Statement Addendum Seacourt P&R Extension dated Nov 2017

Submitted 29 November 2017

Dear Mr Murdoch

Oxford City Council proposes to extend an existing Park and Ride facility (Seacourt Park and Ride) by 2 hectares onto a greenfield site in flood zone 3b on Green Belt designated land. The Oxford Flood Alliance maintains its objection to this planning application on the grounds that it breaches national planning policy, would set a very undesirable planning precedent if approved, and because the scheme would increase flood risk in the city.

Background

The plans were originally made available for public consultation in October 2016 and the proposals attracted a great deal of critical public comment, including objections on the grounds that the National Planning Policy Framework (NPPF) was being breached both on flooding and Green Belt concerns. Subsequently the consultants working for the City Council were asked to address the public objections, with a view to re-presenting the application. Supplementary documents were published on the Council planning website on 25 August 2017 for public consultation, with the consultation period set to end on 4 October. Further documents, including a slightly expanded Flood Risk Assessment, were posted on 13 October and the consultation extended to 3 November 2017. Still further documents were the posted on 8 November and a further (4th) round of public consultation initiated.

The original application and the supplementary documents still fail to provide a satisfactory explanation of how this development is compatible with the NPPF, and how it can be made safe and not contribute to increased flood risk. This planning application has national significance for planning policy in relation to flooding.

The development contravenes national planning policy regarding flood zones

The National Planning Policy Framework makes it very clear that planners should steer towards development in flood zone 1, or if that is not possible flood zone 2. Only in exceptional cases should development in flood zone 3 be considered, and in particular in zone 3b, the functional floodplain.

Following the 2007 floods the government set up an enquiry led by Sir Michael Pitt. All of the recommendations in his report, published in 2008, were accepted by government. Public Policy Statement 25 (PPS25) on flood risk, which was in force at the time of the Pitt Review, has since been absorbed into the National Planning Policy Framework. But the 2008 guidance document, which accompanied PPS25, remains in force. This says:

Sir Michael Pitt's review of the summer 2007 floods (Cabinet Office 2008) supported PPS25 planning policy and urged that it should be *rigorously* applied by local planning authorities. His final report recommended that the operation and effectiveness of PPS25 should be kept under review and strengthened if and when necessary. (Emphasis added.)

The stress in national policy is clearly that development in

flood zone 3b should be avoided unless *absolutely* essential. This proposal involves development of a car park on a greenfield site in flood zone 3b. This is clearly in contravention of the NPPF advice on avoiding further development in zone 3b, the functional floodplain.

In the original Flood Risk Assessment submitted in September 2016, the Applicant tried to suggest that because the NPPF did not designate car parks as any one specific vulnerability classification, there was therefore leeway to

consider this development acceptable, provided any resulting flood risk could be mitigated. The Applicant described the development in one place as 'Less Vulnerable', but also created its own category of 'Low Vulnerability', which does not exist under the NPPF.

Then, in its documentation submitted in August 2017, the Applicant stated that the development should be classed as 'essential infrastructure'. However, in its revised Flood Risk Assessment, posted on 13 October 2017, the Applicant maintained the position (unchanged from the original version) that the development should be classed as 'Less Vulnerable' according to the NPPF. The Addendum to the Planning Statement and the revised Flood Risk Assessment were therefore not consistent with each other.

The latest version of the FRA still classes the development as 'Less Vulnerable', see Table 1 on page 9. Elsewhere it claims that it is not possible to apply the NPPF categorisation schema to a car park, and the FRA says the Planning Statement (PS) Addendum 'explores the argument' that this is essential infrastructure. So again the documents contradict themselves.

NPPF Guidance Notes Table 3: Flood Risk Vulnerability Classification.

Flood Zones	Flood Risk Vulnerability Classification				
	Essential infrastructure	Highly vulnerable	More vulnerable	Less vulnerable	Water compatible
Zone 1	✓	✓	✓	✓	✓
Zone 2	✓	Exception Test required	✓	✓	✓
Zone 3a †	Exception Test required †	✗	Exception Test required	✓	✓
Zone 3b *	Exception Test required *	✗	✗	✗	✓*

Key:

- ✓ Development is appropriate
- ✗ Development should not be permitted.

* " " In Flood Zone 3b (functional floodplain) essential infrastructure that has to be there and has passed the Exception Test, and water-compatible uses, should be designed and constructed to:

- remain operational and safe for users in times of flood;
- result in no net loss of floodplain storage;
- not impede water flows and not increase flood risk elsewhere.

Paragraph: 067 Reference ID: 7-067-20140306

The PS Addendum of November 2017 reiterates the argument that it is not possible to apply the NPPF guidance on categorisation to a car park. The Environment Agency (EA) in its advice to the Applicant (including in the letter of 2/11/17) has made clear that it counts car parks as ‘less vulnerable’ development, together with other types of building such as offices and shops, which are used by the public but where people do not generally sleep. ‘Less vulnerable’ developments are not permitted in flood zone 3b. The Applicant has chosen to ignore this clear advice, and misrepresents the EA position by presenting the advice that this is ‘less vulnerable’ development as though the EA meant ‘low risk’. That is clearly not the point the EA is making in its letter of 2 November, or in its earlier advice.

The development is not ‘essential infrastructure’

The only permitted development in flood zone 3b is ‘essential infrastructure’ or ‘water compatible development’. The revised PS Addendum of November tries to suggest that the car park is ‘essential infrastructure’, because it is urgently required to meet projected increases in journeys by car into the city. At the same time they argue that the site is ‘low risk’ because it would not pose a major hazard to people if it flooded. This confuses two separate issues – risk to people from flooding of the site itself and compatibility with flood zone 3b. The Applicant wrongly conflates these issues when arguing that this is acceptable development. For example the Applicant asserts: ‘...it is considered that if the Exceptions Test were to be applied that the proposed development would pass as it has been demonstrated that flood risk to people and property will be managed satisfactorily, while allowing necessary development to go ahead in a situation where suitable sites at lower risk of flooding are not available (NPPF paragraph 102).’¹ The Applicant argues that the NPPF should not be applied mechanistically’.²

The full wording in NPPF guidance relating to essential transport infrastructure is: ‘Essential transport infrastructure (including mass evacuation routes) which has to cross the area at risk.’ The Applicant conveniently ignores the second half of the sentence when they refer to NPPF vulnerability. It is quite clear that NPPF is referring to roads and rail routes which have to cross floodplain. The proposed car park would not ‘cross’ the floodplain, it would sit within it. There is no sense in which a car park can be made to fit the NPPF guidance on ‘essential transport infrastructure’.

Furthermore, the NPPF clearly expects that essential infrastructure, *because it is essential*, will be required to operate in times of flood (see note to Table 3, above). The Council may wish to provide parking in the city, but this does not make this development ‘essential infrastructure’ in the sense that NPPF uses that term. If Oxford City Planning Department were to determine that this is compatible with NPPF, and the proposal were

Table 2: Flood risk vulnerability classification

Essential infrastructure

- Essential transport infrastructure (including mass evacuation routes) which has to cross the area at risk.
- Essential utility infrastructure which has to be located in a flood risk area for operational reasons, including electricity generating power stations and grid and primary substations; and water treatment works that need to remain operational in times of flood.
- Wind turbines.

¹ Revised Planning Statement Addendum page 8.

² Ibid.

approved, it would set a significant precedent nationally, greatly weakening the protection the NPPF currently provides in the area of flood related development.

In his original guidance to the Applicant, the responsible planning officer requested that they provide examples of similar developments to help him make a determination on the NPPF compatibility issue. To date no example of a similar development has been provided by the Applicant.

The Applicant applies the 'sequential test' incorrectly

The procedure of the 'sequential test' as defined by NPPF (given below) involves satisfying the Local Planning Authority that no suitable alternative site for a development exists, and detailed guidance is provided.

The Applicant attempted in their initial submission to apply an assessment that they described as 'akin to the Sequential and Exception tests'. The use of 'akin to' is interesting terminology. In the Supplementary material the Applicant now describes their process as a 'sequential test' (although the

101. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The Strategic Flood Risk Assessment will provide the basis for applying this test. A sequential approach should be used in areas known to be at risk from any form of flooding.

PS Addendum also talks about a 'holistic assessment' which incorporates 'the elements of the Sequential and Assessment Tests', fudging the issue of exactly what process is being followed). Initially 118 sites were reviewed in the 'akin to' process, and a further 29 sites are included in the Supplementary documents making a total of 147. As part of their justification for the expansion of Seacourt Park and Ride, the Applicant found that none of these other sites were suitable.

The problem with the Applicant's approach is that only sites already in the ownership of Oxford City Council, and therefore capable of being rapidly developed, are considered viable. The Sequential Test is supposed to be a tool for making strategic assessments of where best to locate development; it is not a tool for justifying the kind of short term, quick-fix process being proposed in this instance. The criteria for the application of the Sequential Test in this case are wholly inconsistent with NPPF guidance and example case studies.

The development fails to pass the 'exception test'

'Essential infrastructure' in flood zone 3b has to pass the Exception Test (see page 2 above, NPPF Table 3). The Applicant acknowledges this in the November PS Addendum, para 6.6. Rather oddly they claim, in that same paragraph, that an Exception Test would not have been required if the site were in flood zone 3a. This is not correct as can be seen in the NPPF table.

The details of the Exception Test are given at NPPF 102:

102. If, following application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied if appropriate. For the Exception Test to be passed:

- it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared
- a site-specific flood risk assessment must demonstrate that 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

Both elements of the test will have to be passed for development to be allocated or permitted.

In the supplementary materials submitted in November embellish earlier attempts to explain how the Exception Test is addressed. The Applicant seeks to demonstrate how the development's benefits outweigh any risk, and that it would be safe. The Applicant's arguments about sustainability benefit versus flood risk are general arguments about the importance of transport infrastructure to the City's future planned growth and a perceived need for more capacity at the proposed site. The Applicant originally argued that the car park was needed for a short term problem, now they seek to justify it as both urgent but bringing longer term benefits. The fact that the Applicant has been discovering new justifications for the development as the process has evolved speaks volumes.

In para 6.42 of the PS Addendum the Applicant says:

PPG's definition of Zone 3b states: *"Only the water-compatible uses and the essential infrastructure listed in table 2 that has to be there should be permitted in this zone. It should be designed and constructed to:*

- *remain operational and safe for users in times of flood;*
- *result in no net loss of floodplain storage;*
- *not impede water flows; and*
- *not increase flood risk elsewhere."*

In paras 6.60-6.65 the Applicant tries to argue that these criteria are all met by the application. In fact none of them are.

In 6.65 they make the ridiculous assertion: 'The proposed development has been designed and constructed to, amongst other things, remain operational and safe for users in times of flood.' This completely contradicts statements elsewhere in the document, and in the FRA, which make it clear the site will flood frequently and will not be operational when it is flooded.

The claim that there is no net loss of flood plain is also not supported by the application documents. The re-grading of the site results in net loss of flood storage capacity which has to be compensated for

by excavations in the flood plain north of the site. This is in land prone to groundwater flooding. Excavations will fill with groundwater before fluvial flooding occurs. The Environment Agency, in commenting on the compensation calculations appears not to have considered groundwater flooding issues. OFA's comments on the November FRA contains a detailed critique of the compensation calculations which contain internal inconsistencies.

Rather than not increasing flood risk, it is likely that the development will exacerbate Oxford's already serious flood problems by potentially compromising the effectiveness of the proposed Oxford Flood Alleviation Scheme (OFAS), a major new flood relief scheme for Oxford. The proposed car park is adjacent to the northern end of OFAS and will be in an area that will be used for water storage during a flood event; unlike the nearby houses the development will not receive any flood protection from the scheme. The Applicant assumes the scheme will likely be built, and claims that OFAS will reduce the risks of the car park flooding, but makes this assertion without providing any evidence as to why this would be the case. The proposed site is part of the functional flood plain and that will remain the case after OFAS is built. The Environment Agency team designing OFAS have said that no fence will be allowed which crosses the scheme – because of the risk of fences trapping debris and acting as dams. But the proposal for the Park and Ride includes a post and rail perimeter fence, which will impede water flow.

The presence of this car park in the flood plain will pose the risk of floating cars being washed into nearby rivers and under the adjacent Botley Bridge, obstructing a vital drainage route for the very large floodplain north of Botley Road. The perimeter post-and-rail fencing, mentioned above, is not a viable way of managing the risk of stranded vehicles being washed away, because any kind of fencing will collect debris and act as a dam and is incompatible with the location of the site. Even small disruptions to the proper functioning of streams and flood routes can have a significant impact. We know from experience that in Oxford even a few centimetres change in flood levels can make the difference between whether houses flood or not. The proposal therefore does not demonstrate that it can reasonably be expected to 'not impede water flows' or 'not increase flood risk'.

In para 6.60 the Applicant claims that 'the Environment Agency...are satisfied with the planning application.' This is a serious misrepresentation of the EA letter of 2/11 in which the agency says it is not objecting. The EA comment only on the flood plain compensation calculations. Most of the letter is 'advice' in which the EA points out that the development should in their view be classified as 'less vulnerable' development and that issues such as groundwater, the sequential test, SuDS, and safety procedures are not within their remit. The EA also makes no comment on the interaction of the proposed car park with OFAS. The EA letter is not an endorsement of the development.

Conclusion

The proposed development is incompatible with the NPPF's guidance about flood zone compatibility. The proposed car park is not intended to be operational in times of flooding, and does not 'cross' the floodplain. It therefore cannot be classed as 'essential infrastructure' in the sense that the NPPF uses that term.

The attempts by the Applicant to apply the Sequential Test and Exception Tests under NPPF are inappropriate, and inconsistent with both the spirit and the letter of planning regulations where flood risk is involved. These are tools to support strategic planning, not instruments for justifying a short-term solution to address a perceived emergency where options are constrained by lack of adequate strategic forethought.

Even if the 'essential infrastructure' argument were to be accepted - and it is so weak it was not even made in the original application - the proposal does not pass the Exception Test. We believe the development would reduce the flood plain capacity, and could significantly increase risk at times of major flooding, and even in times of lower-level floods, if cars are washed out of the car park and block the river channel underneath the nearby Botley Bridge, thereby obstructing water flowing out of the floodplain north of Botley Road.

Proper consideration has not been given to the compatibility of the car park with the proposed Oxford Flood Alleviation Scheme now in development. Oxford City Council as sponsor of both schemes needs to consider potential conflicts between the projects very carefully if OFAS is not to be compromised.

As Sir Michael Pitt urged, national planning policy needs to be applied 'rigorously'. The suggestion from the Applicant that NPPF need not be applied 'mechanistically' we find deeply worrying. Approval of this application would set an extremely serious national precedent.