

## Appendix 11.5 Planning Policy & Legislation

### *National Planning Policy Framework (as amended)<sup>1</sup>*

- 11.1.1 The Department for Communities and Local Government (DCLG) published the National Planning Policy Framework (NPPF) in March 2012 and subsequently revised in July 2018, June 2019, July 2021, and September 2023. The NPPF replaces the guidance previously contained within Planning Policy Statement 25 (PPS25): Development and Flood Risk.
- 11.1.2 All local development plans and neighbourhood plans must take account of the NPPF, and the NPPF is a material consideration in planning decisions. The NPPF contains numerous paragraphs concerning water resources, flooding, water quality and protection of the environment during development.

### *Planning Practice Guidance: Flood Risk and Coastal Change (as amended)<sup>2</sup>*

- 11.1.3 In March 2014, the DCLG published the Planning Practice Guidance (PPG), which replaced the Technical Guidance to the NPPF. The Flood Risk and Coastal Change PPG has been subsequently revised in August 2021 and August 2022. This document provides additional guidance to local planning authorities to ensure the effective implementation of the planning policies set out in the NPPF on development in areas at risk of flooding. It identifies that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Where development is necessary, it should be made flood resilient without increasing flood risk elsewhere.

### *Planning Practice Guidance (PPG): Water supply, wastewater and water quality, July 2019<sup>3</sup>*

- 11.1.4 In March 2015, the DCLG published the Planning Practice Guidance (PPG) Water supply, wastewater and water quality has been subsequently revised in July 2019. This document provides additional guidance to local planning authorities to ensure the effective implementation of the planning policies set out in the NPPF. It advises on

<sup>1</sup> Ministry of Housing, Communities & Local Government (2021) NPPF [online]. Accessed September 2023. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1005759/NPPF\\_July\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf).

<sup>2</sup> Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government (2022) Guidance Flood risk and coastal change [online]. Accessed September 2023. Available at: <https://www.gov.uk/guidance/flood-risk-and-coastal-change#full-publication-update-history>.

<sup>3</sup> Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government (2019) Water supply, wastewater and water quality [online]. Accessed November 2023. Available at: <https://www.gov.uk/guidance/water-supply-wastewater-and-water-quality>



how planning can ensure water quality and the delivery of adequate water and wastewater infrastructure.

*Emerging Overarching National Policy Statement for Energy (EN-1), November 2023<sup>4</sup>*

- 11.1.5 The energy National Policy Statements (NPS) set out the government’s policy for the delivery of energy infrastructure and provide the legal framework for planning decisions. They were first designated and published in 2011. A review of the NPS was announced in the 2020 Energy white paper: Powering our net zero future. This review was to ensure the NPSs were brought up to date to reflect the policies set out in the white paper. The Emerging Overarching National Policy Statement for Energy (EN-1) was prepared in March 2023 for consultation between 30<sup>th</sup> March and 23<sup>rd</sup> June 2023. EN-1 included a number of topics including ‘Pollution Control and Other Environmental Regulatory Regimes’, ‘Flood Risk’ and ‘Water Quality and Resources’.

*Emerging National Policy Statement for Renewable Energy Infrastructure (EN-3), November 2023<sup>5</sup>*

- 11.1.6 The Emerging National Policy Statement for Renewable Energy Infrastructure (EN-3) was prepared in March 2023 for consultation between 30 March and 23 June 2023. EN-3 including a number of topics including flooding and ‘Consideration Of Good Design For Energy Infrastructure’.

*Emerging National Policy Statement for Electricity Networks Infrastructure (EN5), November 2023<sup>6</sup>*

- 11.1.7 The Emerging National Policy Statement for Electricity Networks Infrastructure (EN5) was prepared in September 2021 for consultation between 30<sup>th</sup> March and 23<sup>rd</sup> June 2023. EN-5 includes a number of topics relating to the water environment including flooding, groundwater and ‘Consideration Of Good Design For Energy Infrastructure’.

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<sup>4</sup> Department for Energy Security & Net Zero (2023) Overarching National Policy Statement for Energy (EN-1) [online]. Accessed December 2023. Available at:

<https://assets.publishing.service.gov.uk/media/655dc190d03a8d001207fe33/overarching-nps-for-energy-en1.pdf>

<sup>5</sup> Department for Energy Security & Net Zero (2023) National Policy Statement for Renewable Energy Infrastructure (EN-3) [online]. Accessed December 2023. Available at:

<https://assets.publishing.service.gov.uk/media/655dc352d03a8d001207fe37/nps-renewable-energy-infrastructure-en3.pdf>

<sup>6</sup> Department for Energy Security & Net Zero (2023) National Policy Statement for Electricity Networks Infrastructure (EN-5) [online]. Accessed December 2023. Available at:

<https://assets.publishing.service.gov.uk/media/655dc25e046ed400148b9dca/nps-electricity-networks-infrastructure-en5.pdf>



*Adopted Local Plan: Central Lincolnshire Local Plan 2018 to 2040<sup>7</sup>*

11.1.8 The Central Lincolnshire Local Plan 2018 to 2040 was adopted in April 2023. The following policies from are applicable to the water environment:

11.1.9 Policy S21: Flood Risk and Water Resources states “*all development proposals will be considered against the NPPF, including application of the sequential and, if necessary, the exception test.*”

*Through appropriate consultation and option appraisal, development proposals should demonstrate:*

- a) that they are informed by and take account of the best available information from all sources of flood risk and by site specific flood risk assessments where appropriate;*
- b) that the development does not place itself or existing land or buildings at increased risk of flooding;*
- c) that the development will be safe during its lifetime taking into account the impacts of climate change and will be resilient to flood risk from all forms of flooding such that in the event of a flood the development could be quickly brought back into use without significant refurbishment;*
- d) that the development does not affect the integrity of existing flood defences and any necessary flood mitigation measures have been agreed with the relevant bodies, where adoption, ongoing maintenance and management have been considered and any necessary agreements are in place;*
- e) how proposals have taken a positive approach to reducing overall flood risk and have considered the potential to contribute towards solutions for the wider area; and*
- f) that they have incorporated Sustainable Drainage Systems (SuDS)/ Integrated Water Management into the proposals unless they can be shown to be inappropriate.*

*Development proposals that are likely to impact on surface or ground water should consider the requirements of the Water Framework Directive.*

*Development proposals should demonstrate:*

- g) that water is available to support the development proposed;*

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<sup>7</sup> Lincolnshire County Council (2018) Central Lincolnshire Local Plan 2018-2040 [online]. Accessed September 2023. Available at: [Local Plan for adoption Approved by Committee.pdf \(n-kesteven.gov.uk\)](#).



- h) that adequate mains foul water treatment and disposal already exists or can be provided in time to serve the development. Non mains foul sewage disposal solutions should only be considered where it can be shown to the satisfaction of the local planning authority that connection to a public sewer is not feasible;*
- i) that they meet the Building Regulation water efficiency standard of 110 litres per occupier per day or the highest water efficiency standard that applies at the time of the planning application (see also Policy S12);*
- j) that water reuse and recycling and rainwater harvesting measures have been incorporated wherever possible in order to reduce demand on mains water supply as part of an integrated approach to water management (see also Policy S11);*
- k) that they have followed the surface water hierarchy for all proposals:
  - i. surface water runoff is collected for use;*
  - ii. discharge into the ground via infiltration;*
  - iii. discharge to a watercourse or other surface water body;*
  - iv. discharge to a surface water sewer, highway drain or other drainage system, discharging to a watercourse or other surface water body;*
  - v. discharge to a combined sewer;**
- l) that no surface water connections are made to the foul system;*
- m) that surface water connections to the combined or surface water system are only made in exceptional circumstances where it can be demonstrated that there are no feasible alternatives (this applies to new developments and redevelopments) and where there is no detriment to existing users;*
- n) that no combined sewer overflows are created in areas served by combined sewers, and that foul and surface water flows are separated;*
- o) that development contributes positively to the water environment and its ecology where possible and does not adversely affect surface and ground water quality in line with the requirements of the Water Framework Directive;*
- p) that development with the potential to pose a risk to groundwater resources is not located in sensitive locations to meet the requirements of the Water Framework Directive;*

- q) how Sustainable Drainage Systems (SuDS)/ Integrated Water Management to deliver improvements to water quality, the water environment and to improve amenity and biodiversity net gain wherever possible have been incorporated into the proposal unless they can be shown to be impractical;*
- r) that relevant site investigations, risk assessments and necessary mitigation measures for source protection zones around boreholes, wells, springs and water courses have been agreed with the relevant bodies (e.g. the Environment Agency and relevant water companies);*
- s) that suitable access is safeguarded for the maintenance of watercourses, water resources, flood defences and drainage infrastructure; and*
- t) that adequate provision is made to safeguard the future maintenance of water bodies to which surface water and foul water treated on the site of the development is discharged, preferably by an appropriate authority (e.g. Environment Agency, Internal Drainage Board, Water Company, the Canal and River Trust or local Council).*

*In order to allow access for the maintenance of watercourses, development proposals that include or abut a watercourse should ensure no building, structure or immovable landscaping feature is included that will impede access within 8m of a watercourse, or within 16m of a tidal watercourse. Conditions may be included where relevant to ensure this access is maintained in perpetuity and may seek to ensure responsibility for maintenance of the watercourse including land ownership details up to and of the watercourse is clear and included in maintenance arrangements for future occupants.”*

**11.1.10 Policy S56: Development on Land Affected by Contamination** Development states *“development proposals must take into account the potential environmental impacts on people, biodiversity, buildings, land, air, and water arising from the development itself and any former use of the site, including, in particular, adverse effects arising from pollution. Where development is proposed on a site which is known to be or has the potential to be affected by contamination, a preliminary risk assessment should be undertaken by the developer and submitted to the relevant Central Lincolnshire Authority as the first stage in assessing the risk of contamination. Proposals will only be permitted if:*

- it can be demonstrated that the site is suitable for its proposed use;*

- *layout and drainage have taken adequate account of ground conditions, contamination and gas risks arising from previous uses and any proposed sustainable land remediation and*
- *there are no significant impacts on future users, neighbouring users, groundwater, or surface water.”*

*South East Lincolnshire Local Plan 2011-2036<sup>8</sup>*

11.1.11 The South East Lincolnshire Local Plan 2011-2036, which was adopted on 8<sup>th</sup> March 2019. The South East Lincolnshire Local Plan 2011-2036 was prepared by the South East Lincolnshire Joint Strategic Planning Committee. The Committee is a partnership of Boston Borough, South Holland District and Lincolnshire County Councils who are working together to plan the future of South Holland District and Boston Borough. The following policies are relevant to the Proposed Development:

- Policy 3: Design of New Development – *“the mitigation of flood risk through flood-resistant and flood-resilient design and sustainable drainage systems (SuDS)”*;
- Policy 4: Approach to Flood Risk – *“Development proposed within an area at risk of flooding (Flood Zones 2 and 3 of the Environment Agency’s flood map or at risk during a breach or overtopping scenario as shown on the flood hazard and depths maps in the Strategic Flood Risk Assessment) will be permitted, where:*
  1. *It can be demonstrated that there are no other sites available at a lower risk of flooding (i.e. that the sequential test is passed). The sequential test will be based on a Borough or District wide search area of alternative sites within the defined settlement boundaries, unless local circumstances relating to the catchment area for the development justify a reduced search area, i.e. there is a specific need for the development in that location. [...]*
  2. *It can be demonstrated that essential infrastructure in FZ3a & FZ3b, highly vulnerable development in FZ2 and more vulnerable development in FZ3 provide wider sustainability benefits to the community that outweigh flood risk.*
  3. *The application is supported with a site-specific flood risk assessment, covering risk from all sources of flooding including the impacts of climate change [...]*

<sup>8</sup> South East Lincolnshire Joint Strategic Planning Committee (2019) South East Lincolnshire Local Plan 2011-2036 [online]. accessed November 2023. Available at: <http://www.southeastlincslocalplan.org/adopted-plan/>



*Flood risk management infrastructure shall be provided at the strategic level, where development opportunities allow, to reduce the hazard and probability of flooding.”*

### **Legislative Framework**

*European Directive: The Water Framework Directive (2000/60/EC)*<sup>9</sup>

11.1.12 Directive 2000/60/EC of the European Parliament and Council (the Water Framework Directive (WFD)) came into force on 22<sup>nd</sup> December 2000 and established a framework for community action in the field of water policy.

11.1.13 This EU directive was transposed into English and Welsh law by The Water Environment (WFD) (England and Wales) Regulations 2017<sup>10</sup>. The WFD is designed to enhance the status and prevent further deterioration of aquatic ecosystems and associated wetlands, to promote sustainable water use, to reduce pollution of water and to ensure a progressive reduction in groundwater pollution. The WFD established a strategic framework for managing the water environment and requires a management plan for each river basin to be developed every six years. The competent authority (in England) for delivering the WFD is the Environment Agency (EA).

*European Directive: The Groundwater Daughter Directive (2006/118/EC)*<sup>11</sup>

11.1.14 Directive 2006/118/EC of the European Parliament and Council (the ‘Groundwater Daughter Directive’) came into force on 12<sup>th</sup> December 2006 and aims to protect groundwater against pollution and deterioration. The Groundwater (England and Wales) Regulations (2009) transposes The Groundwater Daughter Directive (2006/118/EC). The Groundwater Daughter Directive was developed in response to the requirements of Article 17 of the WFD (2000/60/EC) and specifies measures to prevent and control groundwater pollution (by providing criteria for the assessment of good groundwater chemical status, criteria for the identification and reversal of significant and sustained upward trends and for defining a baseline status).

*European Directive: The Priority Substances Directive (2008/105/EC)*<sup>12</sup>

<sup>9</sup> European Union (2020), DIRECTIVE 2000/60/EC of the European Parliament and of the Council of 23<sup>rd</sup> October 2000 establishing a framework for Community action in the field of water policy [online]. Accessed September 2023. Available at: <https://www.legislation.gov.uk/eudr/2000/60/contents>.

<sup>10</sup> UK Government (2017), Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 [online]. Accessed September 2023. Available at: <https://www.legislation.gov.uk/ukxi/2017/407/contents>.

<sup>11</sup> European Union (2006), DIRECTIVE 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration [online]. Accessed September 2023. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:372:0019:0031:EN:PDF>.

<sup>12</sup> European Union (2008), DIRECTIVE 2008/105/EC of the European Parliament and of the Council. Accessed September 2023. Available at: <https://www.legislation.gov.uk/eudr/2008/105>.

11.1.15 Directive 2008/105/EC of the European Parliament and Council (the Priority Substances Directive) came into force on 16<sup>th</sup> December 2008 and sets environmental quality standards in the field of water policy. The Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2015 transposes The Priority Substances Directive (2008/105/EC). The Priority Substances Directive was developed in response to the requirements of Article 16 of the WFD and requires the identification of priority substances to set Environmental Quality Standards ('EQSs') for the concentrations of the priority substances in surface waterbodies and to review periodically the list of priority substances.

*Environment Act 2021*<sup>13</sup>

11.1.16 The Environment Act 2021 was passed into law in November 2021. The purpose of this legislation is (amongst other things) to make provision about targets, plans and policies for improving the natural environment.

*The Environment Protection Act 1990*<sup>14</sup>

11.1.17 The Environmental Protection Act 1990 brought in a system of integrated pollution control for the disposal of wastes to land, water and air and covers statutory nuisances.

*The Land Drainage Act 1991*<sup>15</sup>

11.1.18 The Land Drainage Act 1991 requires the owner of a watercourse to maintain the watercourse in such a condition that the free flow of water is not impeded. The owner must accept the natural flow from upstream but need not carry out work to cater for increased flows resulting from some types of works carried out upstream, for example, a new housing development.

*The Water Resources Act 1991*<sup>16</sup>, *Water Act 2003*<sup>17</sup>, and *Water Act 2014*<sup>18</sup>

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<sup>13</sup> UK Government (2021), The Environment Act 2021 [online]. Accessed September 2023. Available at: <https://www.legislation.gov.uk/ukpga/2021/30/contents>.

<sup>14</sup> UK Government (1990), The Environmental Protection Act 1990 [online]. Accessed September 2023. Available at: <https://www.legislation.gov.uk/ukpga/1990/43/contents>.

<sup>15</sup> UK Government (1991), The Land and Drainage Act 1991 [online]. Accessed September 2023. Available at: <https://www.legislation.gov.uk/ukpga/1991/59/contents>.

<sup>16</sup> UK Government (1991), The Water Resources Act 1991 [online]. Accessed September 2023. Available at: <https://www.legislation.gov.uk/ukpga/1991/57/contents>.

<sup>17</sup> UK Government (2003), The Water Act 2003 [online]. Accessed September 2023. Available at: <https://www.legislation.gov.uk/ukpga/2003/37/contents>.

<sup>18</sup> UK Government (2014), The Water Act 2014 [online]. Accessed September 2023. Available at: <https://www.legislation.gov.uk/ukpga/2014/21/contents>.





11.1.19 The Water Resources Act 1991 aims to prevent and minimise pollution of water (surface and groundwater) and tasks the policing of this Act to the EA. The Water Act 2003 amended the Water Resource Act 1991 to improve long-term water resource management by making changes to licencing. The Water Act 2003 also aims to promote water conservation, increase competition, strengthen the voice of consumers, and promote the suitable use of water resources. The Water Act 2014 aims to reform the water industry to make it more responsive to customers and to increase the resilience of water supplies to droughts and flooding. It also brings in measures to address the availability and affordability of insurances in high flood risk areas.