

Case Name: *Martin, R (On the Application Of) v Folkestone And Hythe District Council* [2020] EWHC 1614 (Admin) (22 June 2020)

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Commentary: This case clarifies the approach to be taken where there is potential conflict between the Environment Agency ("EA") flood zone maps and the local authorities' Strategic Flood Risk Assessments ("SFRA"). It confirms that the SFRA should be relied on when applying the sequential test under paragraph 158 of the NPPF and separately what is required when assessing compliance with policies in a development plan.

The defendant granted planning permission for the development of land at Princes Parade, Hythe ("Site") comprising outline permission for up to 150 residential units and commercial uses and full permission for a leisure centre. The claimant brought her challenge on two grounds:

1. The committee report failed to reach a judgment in relation to the extent of compliance with particular elements of two local policies; and
2. The defendant failed to approach the question of flood risk correctly.

Ground 1 - Policy compliance

The claimant argued that members of the committee were misled in relation to the question of whether or not there was a breach of particular elements of two local policies because the officer's report to committee failed to adequately address certain elements of those policies. The claimant submitted that as a result the committee report failed to reach a judgment in relation to the extent of compliance or non-compliance with particular elements of local plan policy as part of the development plan.

In dismissing this ground of challenge, Dove J held that: "To be in accordance with the development plan it suffices for the proposal to accord with the development plan considered as a whole: it does not have to accord with each and every policy. In evaluating a proposal against the development plan not every policy will have precisely the same weight and some will have greater significance to the determination of whether the proposal accords with the plan than others. This is a reality which will be reflected in the approach taken by officers in preparing their committee report, focussing on the more central policies, and taking a lighter touch with others that are less directly engaged or of less moment in the decision at hand ... These are issues of planning judgment..."

Ground 2 - Flood risk

A Flood Risk Assessment ("FRA") was submitted with the planning application. The FRA noted that the starting point for the sequential test required under paragraph 158 of the NPPF was, generally, the EA flood zone maps. The EA flood zone map, at the time when the FRA was prepared, showed that the Site was located in zone 3a with identified source of flooding being the sea. The FRA also considered the Shepway District Council Strategic Flood Risk Assessment ("SFRA"), which accounts for flood risk defences and places the Site in an area with the lowest risk of flooding.

Following publication of the FRA, the EA flood zone maps were revised and updated in relation to the Site. The EA flood zone maps now show less of the Site within zone 3, with the remainder located within zone 1.

Dove J held that paragraph 158 of the NPPF identifies that the sequential test, the aim of which is to steer new development to areas with the lowest risk of flooding, should be applied based on the findings of the SFRA. Given that the conclusions of the SFRA were that the site was in an area with the lowest risk of flooding, the sequential test did not need to be applied in this case and Dove J dismissed this ground of challenge.

The claim for judicial review failed on both grounds and was dismissed.

Case summary prepared by Nikita Sellers