

Report of : Director of City Development
Report to : Scrutiny Board (Sustainable Economy and Culture)
Date: 23 April 2013
Subject: Outline of flood risk policies and procedures

Are specific electoral Wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, name(s) of Ward(s):		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

Summary of main issues

1. This report responds to the request from Scrutiny Board (Sustainable Economy and Culture) to provide a detailed explanation of how flood risk is taken into account in the development process in Leeds.

Recommendation

2. Scrutiny Board are requested to note the information contained within this report.

1 Purpose of this Report

- a. The purpose of this report is to provide a detailed explanation of how flood risk is taken into account in Plan-Making and in Development Management in Leeds. It gives some context on Government advice to planners in the National Planning Policy Framework and on the local flood risk policies that have been adopted by the Council. It goes on to explain the internal processes that are used to put the policies into practice.

2 National Planning Context

- 2.1 In England, the National Planning Policy Framework (NPPF) issued in March 2012 has replaced Planning Policy Statement 25 'Development and Flood Risk'. However, the policy principles remain unchanged, supporting Technical Guidance has been issued and the associated Practice Guide remains in place until the Government chooses to replace it.
- 2.2 Paragraphs 93 to 94 and 99 to 104 of the NPPF provide policy guidance relating to flood risk. The essential message is to **avoid** development in flood risk areas and where it cannot be avoided (because many towns and cities are located on rivers) then it is important not to increase **vulnerability** to the risks of flooding. This means making sure that development is safe, that inappropriate uses, such as residential, are directed away from the most risky areas and that development does not make flooding worse elsewhere.
- 2.3 The NPPF requires that the preparation of Local Plans is informed by a Strategic Flood Risk Assessment. In Leeds the Strategic Flood Risk Assessment was prepared in November 2007 and is discussed further in section 3.0 below. The Strategic Flood Risk Assessment should be used to enable a sequential, risk-based approach to the location of development so that new development is steered to areas with the lowest flood risk probability. This is called the Flood Risk Sequential Test. It is used at the plan-making level and also at the planning application level where applicants for development in flood risk areas are required to demonstrate that there are no other reasonably available sites, in an area with a lower probability of flooding, that could accommodate the development.
- 2.4 Providing the Sequential Test is passed, an Exception Test may also be required. The Technical Guidance to the NPPF explains when the Exception Test needs to be applied. The Technical Guidance explains the different flood risk probability zones, with Zone 1 being low probability and Zone 3a being high probability. It defines which uses are appropriate in different flood zones. Uses are classified according to their 'vulnerability', with residential development classed as 'more vulnerable' and shops and offices classed as 'less vulnerable'. Planners are expected to ensure that the vulnerability of the proposed development is compatible with the flood zone. For example, highly vulnerable uses are not compatible (or appropriate) in flood zone 3a. In some cases the uses may be incompatible but can be allocated or permitted providing the Exception Test is passed.
- 2.5 In order to pass the Exception Test the proposed development must:
- demonstrate that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by the Strategic Flood Risk Assessment; and
 - 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.
- 2.6 At all levels of development planning, the decision-making process should be informed by Flood Risk Assessments. This is the Strategic Flood Risk Assessment at the plan-making level and it is the site specific flood risk assessment at the planning application level.

- 2.7 The Government has recognised that there has been an increase in flood risk caused by the paving over of driveways. In October 2008 the General Permitted Development Rights Order was updated so that planning permission is now required to lay impermeable driveways between a building and the highway. This encourages people to use porous surfacing and has given the Council some leverage to be able to get flood risk management benefits, eg soakaways, provided on private drives.

3 Local policies

- 3.1 The Planning and Compulsory Purchase Act 2004 brought in a new system of plan-making under the Local Development Framework (LDF). This is a suite of policy documents rather than one big Plan. As such policies in the adopted Unitary Development Plan (Review 2006) are gradually being replaced by documents being prepared as part of the Leeds Local Development Framework.
- 3.2 The Core Strategy will be the principal over-arching document in the LDF and the other policy documents should be in conformity with it. In Leeds the Core Strategy has been through successive rounds of public consultation and is now at a point where it is ready for Submission to the Secretary of State for independent examination by an Inspector appointed by him. The Core Strategy includes the following flood risk policy:

POLICY EN5: MANAGING FLOOD RISK

The Council will manage and mitigate flood risk by:

- (i) Avoiding development in flood risk areas by applying the sequential approach and where this is not possible by mitigating measures, in line with the NPPF, both in the allocation of sites for development and in the determination of planning applications.
- (ii) Protecting areas of functional floodplain as shown on the Leeds SFRA from development (except for water compatible uses and essential infrastructure).
- (iii) Requiring flood risk to be considered for all development commensurate with the scale and impact of the proposed development and mitigated where appropriate.
- (iv) Reducing the speed and volume of surface water run-off as part of new build developments.
- (v) Making space for flood water in high flood risk areas.
- (vi) Reducing the residual risks within Areas of Rapid Inundation.
- (vii) Encouraging the removal of existing culverting where practicable and appropriate.
- (viii) The development of the Leeds Flood Alleviation Scheme.

- 3.3 Detailed flood risk policies are included within the Natural Resources and Waste Development Plan Document (DPD), which has been examined and found to be 'sound' and was adopted by the Council on 16th January 2013. The flood risk policies in this Plan were prepared through a special forum that was set up with the Environment Agency, Yorkshire Water and colleagues in the Council's Flood Risk Management, Forward Planning and Development Management sections. This meant that the policies had a very high level of consensus and went through the examination process unchallenged.

- 3.4 The flood risk policies in the Natural Resources and Waste DPD include policies on water efficiency and protection of water quality. They also ensure that we make space for water by protecting areas of functional floodplain (as defined in the Leeds Strategic Flood Risk Assessment) from development. Policy Water 4 in the Plan seeks to ensure that for all developments (commensurate with the scale and impact of the proposals) there is consideration of the effect of the development on flood risk, both on and off site. This means that where it is clear that there is unlikely to be any flood risk to the site and no possibility of impact on others, then a simple statement to that effect may be all that is required but where there is the potential for flood risk to the site or to others then a Flood Risk Assessment (FRA) is required. An FRA is also required for any site which has to pass the Exceptions Test as required by the NPPF.
- 3.5 The Local Plan policies take forward the provisions of the NPPF in requiring developers to pass the Sequential Test. In order to do this they need to provide a report with the planning application that demonstrates that there are no other reasonably available sites in a lower risk flood zone which could accommodate the development. The Sequential Test should be informed by the Leeds Strategic Flood Risk Assessment (SFRA) as this document not only shows the flood zones across the District but also provides a further sub-division of Zone 3a high probability into Zone 3a(i) and Zone 3a(ii). This is important for Leeds because the Council would not wish to abandon large parts of the urban area that are affected by potential flooding from the Rivers Aire and Wharfe. The refinement of Zone 3a provided by the SFRA gives a developer the opportunity to place uses within a site so that the open space and less vulnerable uses are in the more risky parts of the site and the more vulnerable uses are in the least risky parts of the site.
- 3.6 As well as managing the effects of river flooding, we also have to manage the effects of flooding from surface water run-off. With climate change it is expected that there will be more extreme weather events. Smaller watercourses and drains are more susceptible than the large river systems to flash flooding caused by localised intense rainfall. The Local Plan therefore requires all developments to ensure that there is no increase in the rate of surface water run-off. On previously developed sites peak flow rates must be reduced by at least 30%. The Council has operated this requirement for some time through the Minimum Development Control Standards for Flood Risk provided by the Flood Risk Management Section of the Council. Additionally, Supplementary Planning Guidance SPG22, Sustainable Urban Drainage, June 2004, provides advice to developers on how to comply with this requirement.

4 Other Relevant Flood Risk Documents

- 4.1 Plans prepared by the Environment Agency also have implications for flood risk and development. The Environment Agency has its own tier of plans for flood risk management. At the strategic level there are the Catchment Flood Management Plans (CFMPs) for the River Aire, River Calder and River Ouse (which covers the River Wharfe) and at the local level there are the Flood Risk Management Strategies. The CFMPs give an overview of the flood risk across each river catchment. They recommend ways of managing those risks now and over the next 50-100 years including recommendations for the most appropriate land uses. The Forward Planning section of the Council worked with the Environment Agency to ensure some alignment between these plans and our own spatial planning for growth.

- 4.2 The Water Framework Directive (WFD) is a substantial piece of European legislation that aims to achieve 'good ecological and chemical status' in surface waters and 'good chemical and quantitative status' in groundwaters by 2015. It introduces a system of regional River Basin Management Plans across England and Wales. Leeds comes under the Humber Basin River Management Plan, December 2009. Objectives of the WFD include water protection, improvement and sustainable use achieved by partnership working with many people and organisations. Leeds contributes to achieving these objectives through the water policies in the Natural Resources and Waste DPD.

5 Flood Risk and Development in Practice

- 5.1 Significant schemes are often subject to pre application discussions and the potential impact on flood risk is normally identified at this stage and the documents which will need to be submitted at planning application stage. This could include a sequential test and flood risk assessment as well as a detailed drainage strategy. Liaison with other agencies including the Environment Agency, Yorkshire Water and the Flood Risk Management section of the Council often takes place at this stage.
- 5.2 When an application is submitted validation checks are carried out to ensure all the required information in accordance with our validation criteria have been submitted. The application is then advertised, local people are notified and consultees informed about the submission. The Flood Risk Management section of the Council, Yorkshire Water and the Environment Agency are regular consultees on major applications and all are normally involved in drainage and flood risk issues. Any issues arising from local people in representations regarding flooding are normally referred onto consultees for comment.
- 5.3 A critical part of the application process is the assessment of the application by officers. Major and sensitive schemes will often be referred to Plans Panel for decision and flood risk will be one of the issues which will be considered. Decisions have to be made which are in accordance with the Development Plan unless material considerations indicate otherwise. The policy framework identified in this report in relation to the NPPF, the adopted policies of the UDP and the recently adopted policies of the Natural Resources and Waste DPD form the backdrop against which flooding issues are judged. Whilst flooding is just one issue and a complex scheme may raise many issues which need to be balanced and weighed in reaching a decision it is true to say that the impact of flooding is important and significant effort is often put in to find solutions on difficult or problematic sites.
- 5.4 The Environment Agency play a key role in the process as they are a Statutory Consultee and have powers to request the Secretary of State to call in an application for determination if their advice is not being followed. This power is rarely used however as agencies work together cooperatively and positively to address issues and bring forward sustainable development in the right locations and where it is safe to live and work.
- 5.6 On the approval of applications conditions are often imposed to cover the drainage details, the implementation of drainage improvements recommended in flood risk assessments and the level at which schemes can be built if they are in a flood risk zone. Conditions are then discharged as schemes progress working together with consultees. If conditions are not discharged properly or development is not proceeding in accordance with approved details then a range of enforcement powers are available for the Council to take.

- 5.7 Co-operative working between the relevant agencies dealing with flood risk has resulted in an up to date set of planning conditions which have been agreed and implemented in the last year.
- 5.8 Experience from development on the ground has also led to improvements being introduced. Problems experienced at a Greenfield housing site in Garforth have led to the introduction of a new planning condition to control interim drainage measures which may be needed in the development of a site before the main infrastructure is put in place.

6 Next Steps

- 6.1 The Forward Planning section will be submitting the Core Strategy to the Secretary of State at the end of April. It will then be the subject of an Examination in Public by an independent Inspector. Following that the Council aims to adopt the Core Strategy by the end of 2013. The Core Strategy will steer growth in the district over the next 16 years. Although the amount of growth that Leeds has to accommodate is significant, the Core Strategy has been prepared to take account of flood risk through the application of the Sequential Test. This means that, as far as possible, new development is largely planned to avoid the highest flood risk areas but with regard to the need to factor in other sustainability issues such as making the best use of brownfield land, reducing the need to travel by private car, ensuring that centres are vibrant and to minimize the need to take green belt land for development. Inevitably, these issues mean that some development will unavoidably be in areas with some flood risk and in these cases it is about ensuring resilience and safety as far as possible.
- 6.2 The Council is advancing a Flood Alleviation Scheme for the River Aire as it flows through the heart of Leeds and has received some significant Central Government money towards the first phase. The first phase of the scheme will provide a defence to the 1 in 75 year standard and consists of movable weirs and the removal of the Knostrop Cut. Planning and Listed Building applications for this first phase were considered by Members at the City Plans Panel meeting on 17th January 2013 when Members resolved to defer and delegate approval to the Chief Planning Officer following referral to the Secretary of State. The second phase of the scheme will be achieved through construction of hard defences and upstream storage / land management initiatives, such as woodland creation. Once the scheme is complete the Council could consider updating its Strategic Flood Risk Assessment to re-draw the flood zones to take account of the defences. If this is not done, the current flood zones will remain, meaning that there will be policy hurdles to overcome for developments even though they are now protected by the Flood Alleviation Scheme.
- 6.3 Funding of the complete Scheme remains an issue for the Council. One possible source of some funding could be secured through the introduction of the Community Infrastructure Levy (CIL). The Council has to produce a 'Regulation 123 list' before the next round of formal public consultation on the CIL (anticipated Autumn 2013), which sets out broadly what the Council intends to spend the CIL on. It is currently assumed that the FAS would be on the R123 List as it is clearly a strategic item of infrastructure. However, the apportioning of the CIL revenue both between projects and between strategic / local projects has not yet been decided. Consultation is due soon on the draft CIL charges but it is already clear that in the current market conditions CIL revenues will only generate a small element of overall infrastructure funding needed to support substantial future growth in the city .

- 6.4 Section 106 contributions will continue to be collected, as at present, for anything which is required in relation to a specific site in order to make it acceptable in planning terms.

7 Consultation and Engagement

- 7.1 This report provides background information only and therefore has not been subject to consultation.

8 Equality and Diversity / Cohesion and Integration

- 8.1 There are no direct issues arising from this report.

9 Council Policies and City Priorities

- 9.1 The Leeds Flood Alleviation Scheme is a priority project in the Council Business Plan 2011 to 2015. The Vision for Leeds 2011 to 2030 recognises that tackling climate change is a major challenge for Leeds and states that by 2030 Leeds will be a city that has adapted to changing weather patterns.

10 Resources and Value for Money

- 10.1 This report has no direct resource implications.

11 Legal Implications, Access to Information and Call In

- 11.1 There are no legal obligations associated with this report.

12 Risk Management

- 12.1 There are no risk management issues with this report.

13 Conclusions

- 13.1 This report describes the national and local policies that are in place to ensure that the flood risk implications of development are fully considered. It goes on to explain how the policies are applied in practice by planners through the development management process.

14 Recommendation

- 14.1 Members are asked to note and comment on the contents of this report.