

RE: APP/22/00746 - 8 Selsmore Avenue

Toole, Joseph <joseph.toole@havant.gov.uk>

Fri 21/10/2022 10:04

To:

Hi Gemma,

Thank you for your emails.

I will await your response in due course.

Kind regards,

Joseph

Joseph Toole

Planning Officer

Planning Services

Havant Borough Council

Public Service Plaza, Civic Centre Road, Havant PO9 2AX

Direct Dial Telephone Number: (023) 924 46284

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From:

Sent: 21 October 2022 09:51

To: Toole, Joseph <joseph.toole@havant.gov.uk>;

Subject: RE: APP/22/00746 - 8 Selsmore Avenue

CAUTION: This email came from outside of the council - only open links and attachments that you're expecting.

Hi Joseph

Please be aware that we have referred this application to Councillor Clare Satchwell and requested that it be taken to Planning Committee for decision. We are awaiting her response.

Best Wishes,

Gemma



Sent from [Mail](#) for Windows

From: [Toole, Joseph](#)

Sent: 21 October 2022 09:23

To: [Ian Murray](#)

Cc: [Gemma Griffiths](#)

Subject: RE: APP/22/00746 - 8 Selsmore Avenue

Hi Ian,

Apologies for the delay in responding to you.

I have discussed your email with the Development Manager, Steve Weaver, and would offer the following comments by way of response.

1. We acknowledge that the case at 11 West Haye Road was approved, notwithstanding that the site can be seen to lie within a future flood risk area. Having reviewed the case officer's report, it is clear that the future flood risk issue was not identified during the course of that officer's review of the case, which is regrettable as it has resulted in permission for a new dwelling being approved in an area at risk of future flooding.

Since that decision was taken in early 2021, officers have received further training, knowledge and access to the mapping system, and we are confident that such an oversight is unlikely to occur in future.

In the current case at 8 Selsmore Avenue, the future flood risk issue has been identified during the course of assessing the application, and is a material consideration which must be taken into account in the determination of the application.

2. The PDF policy maps <https://www.havant.gov.uk/policies-maps> show the policies in the Core Strategy (2011) and Site Allocations Plan (2014). Clearly this relates to circumstances which were the case some time ago, and as a result more recent national or local changes in policy, guidance or evidence are relevant to current decisions. For example, the PDF maps show the present day flood outline at 2014. In reality, the Environment Agency updates this mapping on a regular basis, and it would not be correct to assume that these updates are not relevant as a basis for decisions.

The same issue applies to the future flood maps, which were not shown on the policies map at the time, but have risen in importance in policy and guidance in the intervening period - being referred to directly in the NPPF since 2018, and in its clearest form to date in the August 2022 NPPG update.

In response to your comments, we have now the policies maps web page <https://maps.havant.gov.uk/havant.aspx> with a layer titled 'Strategic Flood Risk Assessment – expected flood risk area @2115' pointing users at the live version.

3. The reason you see different colours is that this mapping is made up of three different data sets (Future Fluvial FZ3, Tidal FZ2 and Tidal FZ3). Together they show the extent of the possible future risk. Therefore, any shade of pink shows that the site is likely to be at risk in the future. We have spoken to our GIS team about the lack of clarity of the information. We agree with you that the lack of explanation of the colours is unhelpful, and therefore they will be amending the way it is shown to a single colour, for ease of use.
4. It is important to understand that the Local List of Validation Requirements is not a policy document, but represents guidance to applicants as to what is required before a planning application can be registered. The decision to be taken on any individual application must be made in relation to local and national planning policies – principally the adopted development plan and the NPPF – and all other material considerations.

What this means for 8 Selsmore Avenue is that the risk of future flooding is a material consideration which is required to be taken into account by the NPPF, in respect of which Paragraph 159 of the current version plainly states:

“Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future).” (my emphasis)

Paragraph 162 goes on to state:

“The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.” (my emphasis)

5. We are currently in the process of updating the Local List to make it more clear. As stated above, however, the List is not a definitive expression of policy, but a list of what is required to register an application. Decisions on individual cases are taken having regard to the considerations set out above.
6. I am sorry you are having difficulties accessing the mapping on the PCC website. We do not share an IT system with PCC and can access the mapping without a login. There are contact details on the PCC web page if you continue to have access issues. In any case, the information on our own live maps with regard to future flood risk should be sufficient to identify areas at future risk.

With regard to your summarised comments:

My email of 27 September 2022 set out in some detail the national requirement for a sequential approach to development proposals in order to steer them away from areas at risk of current or future flooding. Whilst the Local List of validation requirements necessary to make your application valid at the time of submission only referred to flood risk assessments being required for areas at risk of flooding based on Environment Agency current day flood mapping, this does not absolve the local planning authority from the need (as set out in the NPPF) to have regard to the risk of future flooding in reaching its decision on your application. In that regard

application of the Sequential Test would clearly indicate that there will be many sites elsewhere in the Borough which are better placed to accommodate a new dwelling in flood risk terms than 8 Selsmore Avenue.

With regard to the revised NPPG guidance, the Council were not aware of the new NPPG guidance coming out until it arrived; and national policy and guidance more often than not arrives with no prior warning to Local Authorities. Notwithstanding this: (a) In any case, applications must be determined on the policy position at the time of determination, not submission of the application; and (b) the need to have regard to future flood risk is a matter of national policy as set out in the NPPF and requires a Sequential test to be undertaken by the authority in respect of your proposals, even though they do not fall within current day flood zone mapping.

You should also note that the 2021 NPPF, at paragraph 167 and associated footnote say that FRAs are required as follows:

A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more; land which has been identified by the Environment Agency as having critical drainage problems; land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use. As such, the new guidance is a clarification of policy that already existed.

In conclusion, we do recognise that for you and your client the process of identifying areas at risk of future flooding is complicated by the fact that the Environment Agency current day flood maps hosted on the Gov.uk website does not show this information. This is a matter that the Council have raised with the Environment Agency in recent liaison meetings, as it does not promote transparency of information that is relevant to the determination of planning applications. It is the fact however that the risk of future flooding is a material consideration which is required to be taken into account by the NPPF; that there is a clear SFRA evidence base which identifies 8 Selsmore Avenue as being at such risk; and that the application of the Sequential Test by the local planning authority is therefore necessary in order to direct new development away from such areas of flood risk.

All of these matters would be placed before the Inspector should your client exercise their right to appeal any refusal of planning permission.

I trust that the above responses are of assistance to your understanding of the Council's position in this matter, but remain happy to discuss if you have any questions.

Kind regards,

Joseph

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From: Ian Murray [REDACTED]
Sent: 28 September 2022 18:42

To: Toole, Joseph <joseph.toole@havant.gov.uk>

Cc: Gemma Griffiths [REDACTED]

Subject: Re: APP/22/00746 - 8 Selsmore Avenue

CAUTION: This email came from outside of the council - only open links and attachments that you're expecting.

Joseph,

There are a number of floors in this argument,

1. If you have taken future flood risk into account since 2019, why was my application for back land development at 11 west haye road approved in April 21 when the site is in exactly the same future flood risk zones according to the maps you have guided me towards.
2. The map you have pointed me towards hidden in the backwaters of the HBC website is not referred to as planning policy maps unlike the ones provided at front end of the website
3. There is no key provided with the future flood risk map. The map appears to show a range of 4 different levels of pink the lightest two of which appear to be on the application site, how can this information be seen as a clear indication when we are not even given a key to what each shade means (please could you provide this information or point me to where it is as I would like to confirm what the different shades mean, it would seem logical that the darkest is high the next is medium and the lighter two are thus acceptable???)
4. The HBC website shows the local requirements introduced in October 2020 (and still advertised as current) which states the following for flood risk

Flood Risk Assessment and Flood Risk Statement

In accordance with Local Plan (Core Strategy) policy CS15, a Flood Risk Assessment (FRA) will be required for

- *development proposals of 1 hectare or greater in Flood Zone 1*
- *all proposals for new development located in Flood Zones 2 and 3 as designated by the Environment Agency*
- *any development other than minor development in a designated critical drainage area which has been notified to HBC by the Environment Agency.*

The environment agency data referred to shows the following

Flood risk information for this location

1 You may need to carry out a flood risk assessment.

Your development is in flood zone 1. This means it has a low probability of flooding from rivers and the sea.

[More information about your results](#)



Therefore on the basis the HBC current requirement documentation, it is very clear that this application does not require a flood risk assessment as it is not in a flood risk area 2 or 3 on the map you clearly refer to in your own policy

5. HBC have put the future flood risk element of planning decisions into a consultation process <https://www.havant.gov.uk/local-requirements-list> It should also be noted that this consultation is ongoing till November and will then I assume be required to go through a formal process before becoming policy. Therefore I do not believe it can be applied to this application
6. It is also notable that in the consultation requirement list (and not yet policy) the following is stated

Flood Risk

Revised text to clarify and explain the requirement and includes updated considerations for climate change and future flood risk. See accompanying text on Flood Risk at the bottom of this page and a link to the Flood Risk Information for Applicants.

The information referred to by the above statement points at three sources. The government flood risk map above, a site on Portsmouth city council website that takes the user to dynamic maps and requires a login and password (so not accessible to the public at all) and finally the where I live website that does not even give a key to explain the data.

To summarise,

I think point 4 makes it completely clear that this application does not require a flood risk assessment according to current HBC guidance and as such this discussion should end at that point. Should the application be refused based on a new requirement that is in consultation and is not yet policy my client will take this to appeal and challenge the councils decision.

Finally, in terms of the national guidance you refer to bought in August 2022 you will notice that this application was submitted in July 2022. It would be natural to assume that HBC were aware of this guidance yet they didn't and still have not adjusted their policies and guidance to make applicants aware of this or given them notice in anyway whatsoever, the first we are aware via HBC comes from a consultation for future policy change. Could I please again ask that you provide or point me towards the key to explain the data in the where I live map

Best Regards

Ian Murray

BA (Hons) Architecture MCIAT

I J Murray Associates Ltd



From: "Toole, Joseph" <joseph.toole@havant.gov.uk>

Date: Tuesday, 27 September 2022 at 16:09

To: Ian Murray [REDACTED]

Subject: RE: APP/22/00746 - 8 Selsmore Avenue

Hi Ian,

I have spoken to my Manager about your most recent emails. I have also checked with our policy team with regard to your question regarding the timings of this policy.

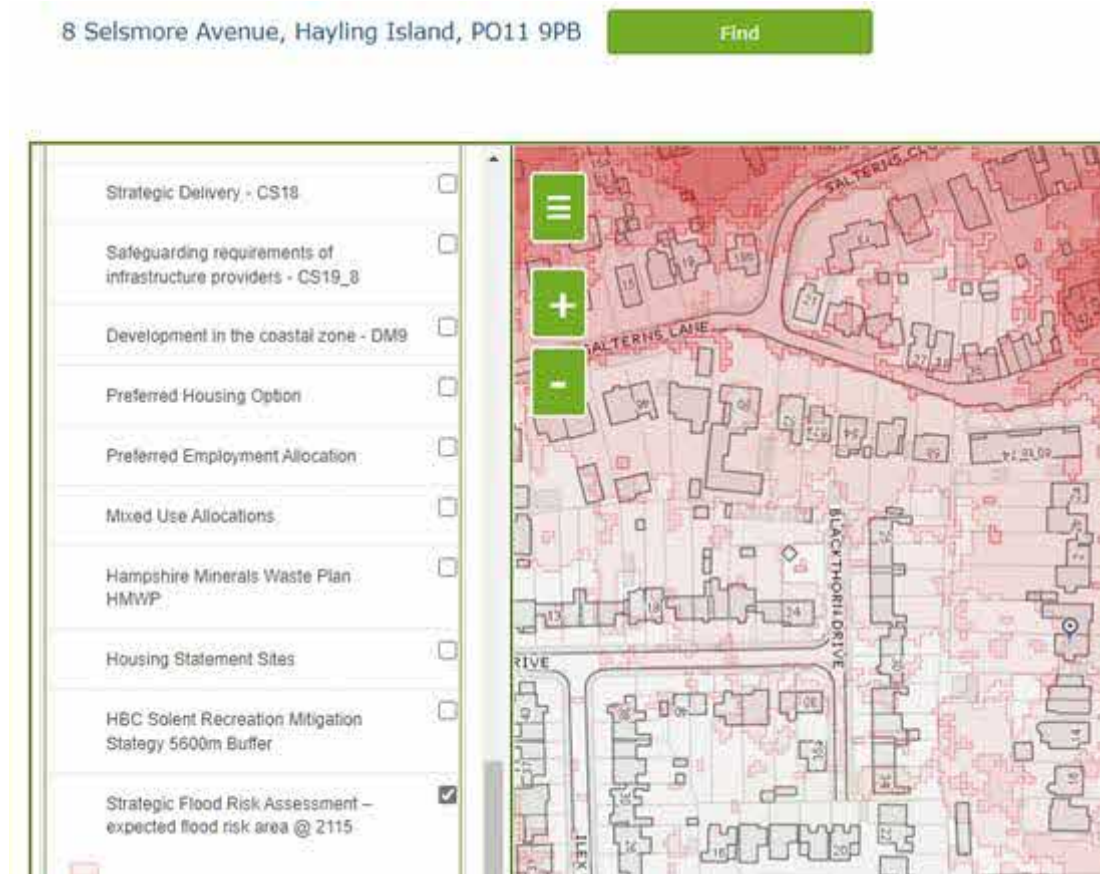
Within the 2018 revision of NPPF, paragraph 155 states inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Since, this time we have been required to consider future flood risk as a material planning consideration.

We have been considering future flood risk in this way since 2019, when the emerging Havant Borough Local Plan 2036 reached pre-submission stage and subsequently carried some weight in decision making. Policy E19 in that plan clearly referred to the need to consider future risk in site specific FRAs (NB I acknowledge that that plan was withdrawn in March 2022).

In terms of the sequential test, this has been a national requirement for a considerable time. In acknowledgement that national guidance was spread over a number of websites and not always 100% clear, the Council published a guide to the sequential test on its [SPD page](#) in October 2020, which clarifies at section 3.2 that future flood risk, as defined by the Strategic Flood Risk Assessment (SFRA) is a trigger for the sequential test.

I have applied this assessment to a previous application at Pepperpot CoS age – APP/22/00339.

As a Partnership for South Hampshire study, the SFRA mapping has for many years been hosted on behalf of all PFSH authorities [on the Portsmouth City Council website](#). In acknowledgement that this is not ideal, we added this climate change layer to our public facing interactive mapping in February 2022. The live HBC policy map found here: [Where I Live | Havant Borough Council](#) has a layer called 'Strategic Flood Risk Assessment – expected flood risk area – 2115'. Please see the screenshot below showing the application site within the future flood zone.



In response to your query we will arrange for text to be added to [the policy web page you have pointed to](#) clarify that the PDFs on that page relate to the Core Strategy and Allocations Plan at the time of their adoption (in 2011 and 2014 respectively).

I acknowledge that the position around flood risk, and the information available has been changing over the past few years and could have been clearer in parts, I should end by adding that [the new national guidance](#), published in August 22 is absolutely clear about future flood risk, and I am obliged to take this into account in determining the application. Please see below a few key paragraphs:

- Paragraph: 001 Reference ID: 7-001-20220825: "Flood risk" is a combination of the probability and the potential consequences of flooding. Areas at risk of flooding are those at risk of flooding from any source, now or in the future. Sources include rivers and the sea, direct rainfall on the ground surface, rising groundwater, overwhelmed sewers and drainage systems, reservoirs, canals and lakes and other artificial sources. Flood risk also accounts for the interactions between these different sources. This term is key to the application of the presumption in favour of sustainable development in [paragraph 11 of the National Planning Policy Framework](#).
- Paragraph: 023 Reference ID: 7-023-20220825: 'What is the aim of the sequential approach? - The approach is designed to ensure that areas at low or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding.
- Paragraph: 027 Reference ID: 7-027-20220825: How should the Sequential Test be applied to planning applications? - The Sequential Test should be applied to 'Major' and 'Non-major development' proposed in areas at risk of flooding, but it will not be required where....The site is in an area at low risk from all sources of flooding, unless the Strategic Flood Risk Assessment, or other information, indicates there may be a risk of flooding in the future.

Therefore, assessing future flood risk is not a new requirement. In terms of the local list consultation the aim is to signpost the maps more clearly in light of the Government's recent strengthening of policy guidance around flood risk.

With regards to an appeal and costs, this would be a matter for the Planning Inspector to decide. However, the Council does not consider a decision to refuse the application on flood risk grounds to be unreasonable as the site is within a future flood zone and no pre-application was sought which might have enabled this issue to be highlighted.

I hope this clarifies the position.

Kind regards,

Joseph

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From: Ian Murray [REDACTED]
Sent: 24 September 2022 10:10
To: Toole, Joseph <joseph.toole@havant.gov.uk>
Cc: Gemma Griffiths [REDACTED]
Subject: FW: APP/22/00746 - 8 Selsmore Avenue

CAUTION: This email came from outside of the council - only open links and attachments that you're expecting.

Hi Joseph,

Following my email yesterday (copied below) I await your response with regards to the provision of the flood map you have used to reach your decision and a link to its location on the internet

In the meantime I point you towards the HBC policy maps you have on your website which clearly show HBC policy in terms of flood risk areas to be considered as part of a planning application

<https://www.havant.gov.uk/policies-maps>

Map 14 (attached) currently states the policy map for South East Hayling. The information HBC are currently advertising on the HBC website as policy quite clearly states your organisations position.

As previously stated, if this is to be changed following the current consultation (which I believe finishes on 1st November) I assume this would involve giving notice of new planning criteria and changing the information, guidance and policy maps on the HBC website.

Please note I will pursue this as far as I can with HBC and then the planning inspectorate and will look to recover costs for doing so as I believe it is unfair that my client should suffer based on a decision I believe to be completely unjustifiable and unreasonable.

Best Regards

Ian Murray

BA (Hons) Architecture MCIAT

I J Murray Associates Ltd



Joseph,

I wish to object strongly to this and would like a dialogue with your line manager.

This criteria, as I understand it, is out for consultation at present and therefore, I assume, is not standard practice at present. So why is it been applied in this case and not in recent previous cases.

What is the point of government guidance for flood risk for planning being publicly available when you apply a different criteria. A criteria which has been introduced randomly and with no prior notice.

To be clear, I will not be withdrawing the application and will challenge the process by which you have achieved your decision with the planning inspectorate if necessary.

I would be grateful if you could provide a link to the flood risk data you have mentioned together with a screen shot of the site area at risk, so I can consider my actions.

I must also say it is so frustrating, when a logical and reasoned argument is put up, to be given no reasonable and thought out response as to why that decision is made and just to be told that the 'line manager' has spoken.

Ian Murray

BA (Hons) Architecture MCIAT

I J Murray Associates Ltd



From: "Toole, Joseph" <joseph.toole@havant.gov.uk>

Date: Friday, 23 September 2022 at 15:02

To: Ian Murray [REDACTED]

Subject: RE: APP/22/00746 - 8 Selsmore Avenue

Hi Ian,

I have discussed the application with my manager.

As the site falls within a future flood zone when taking climate change into account the application is considered to be in unsustainable location contrary to the NPPF. Therefore, we are minded to refuse the application as a sequential test would not be met due to the number of alternatively available sites within the borough.

I do appreciate this information is not easily visible and this will be made more accessible in the future.

Please let me know whether you wish to withdraw the application or proceed with a refusal.

Kind regards,

Joseph

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From: Toole, Joseph
Sent: 22 September 2022 13:47
To: Ian Murray [REDACTED]
Subject: RE: APP/22/00746 - 8 Selsmore Avenue

Hi Ian,

I hope you are well.

I have checked our GIS system and found that the site would fall within flood zone 2 and 3 in the future when taking climate change into account.

Therefore we would need a full Flood Risk Assessment which must demonstrate that the development is safe for its lifetime, which is assumed at 100-year lifetime. In addition, a Sequential Test would be needed which aims to guide development to the areas at least risk of flooding. It must be adequately demonstrated that there are no reasonably available alternative sites appropriate for the proposed development in areas with a lower probability of flooding. Should the Sequential test be

passed then it would also be necessary to provide an Exception Test which must demonstrate that the development would provide wider sustainability benefits to the community that outweigh the flood risk; and the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere.

I hope this makes sense and I look forward to hearing back from you.

Kind regards,

Joseph

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From: Ian Murray [REDACTED]
Sent: 09 September 2022 11:14
To: Toole, Joseph <joseph.toole@havant.gov.uk>
Subject: Re: APP/22/00746 - 8 Selsmore Avenue

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Ian Murray
BA (Hons) Architecture MCIAT
I J Murray Associates Ltd



From: "Toole, Joseph" <joseph.toole@havant.gov.uk>

Date: Friday, 9 September 2022 at 08:19

To: Ian Murray [REDACTED]

Subject: APP/22/00746 - 8 Selsmore Avenue

Hi Ian,

I hope you are well.

With regards to your above applicaØon please can you enter the date of occupancy within stage 1 of the Nutrient budget calculator.

This would be much appreciated.

Many thanks,

Joseph

Joseph Toole