

Examination of the Tunbridge Wells  
Borough Local Plan

**Tunbridge Wells Borough Council  
Hearing Statement**

**Matter 15: The Natural  
Environment (Policies EN9,  
EN10, EN12, EN13, EN14, EN20,  
EN21, EN22, EN23, EN24, EN25,  
EN26, EN27 and EN28)  
Issue 4: Water and Flood Risk**

Document Reference: TWLP/082



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# Matter 15 – The Natural Environment (Policies EN9, EN10, EN12, EN13, EN14, EN20, EN21, EN22, EN23, EN24, EN25, EN26, EN27 and EN28)

## Issue 3 – Water and Flood Risk

### Inspector's Question 1: [re. appropriateness of Policy EN 24]

*Does Policy EN24 provide an appropriate mechanism to ensure that infrastructure is put in place to support new developments as and when required?*

### **TWBC response to Question 1**

#### Introduction

1. Policy EN 24 – Water Supply, Quality and Conservation provides the policy approach towards the supply of water, ensuring water quality and the conservation of water resources.
2. It is considered that this policy provides an appropriate policy for planning applications to be determined against in terms of ensuring the appropriate water supply and wastewater treatment infrastructure is in place to serve proposed developments. The requirements of Policy EN 24 ensure that there is adequate water supply and wastewater treatment facilities in place to serve all new development and sets out measures to ensure water conservation throughout the plan period.
3. The Council has carried out extensive engagement with the statutory providers in relation to water infrastructure - both Southern Water and South East Water, as part of the preparation of the Local Plan, as required through the PPG (paragraph 59 [Reference ID: 61-059-20190315](#)) to identify what waste and water supply infrastructure is required to deliver the growth proposed for within the Local Plan.

4. This has been carried out as an iterative process throughout the formulation of the Council's Infrastructure Delivery Plan October 2021 (IDP) [[CD 3.142](#)] and the various stages of the Local Plan. Section 4 of the IDP details the existing provides an overview, the 'existing provision', any 'current planned provision' and 'Additional future requirements needed to deliver growth proposed in the Local Plan'. The information that has fed in to the IDP has been as a result of the continuous engagement with the relevant service providers in relation to water infrastructure who have been consulted with throughout the formulation of the Local Plan. This has been in relation to current capacity and supply and future requirements. This has then fed in to their relevant business plans to secure improvements and investment into the infrastructure to support additional needs over the plan period and to support the growth proposed.
5. The details of the engagement that has taken place between Tunbridge Wells Borough Council and the relevant infrastructure providers is detailed within the prescribed bodies engagement logs and SoCG [[CD 3.132cv](#)].
6. As detailed in the signed Statement of Common Ground between TWBC and Southern Water [[CD 3.132bv](#) page 321], Southern Water welcomes the inclusion of Policy EN 24 within the Local Plan, and considers that it is appropriate in supporting the delivery of the utilities infrastructure required to meet the needs of current and future residents and businesses within Tunbridge Wells Borough. Southern Water also considers this policy will support strategic infrastructure delivery where this is required.
7. The Inspector will note that there is a clause within Policy EN 24 which requires, where necessary, occupation of development is to be phased to align with the delivery of sewerage infrastructure, in liaison with the service provider. The timing of the occupation of development is a detailed matter to be determined at the planning application stage and this policy requirement enables the phasing of development to be controlled, if necessary, by a condition.

## Inspector's Question 2: [re. consistency of Policy EN25 with the NPPF]

***Is Policy EN25 consistent with paragraph 168 of the Framework, which states that applications for some minor developments and changes of use should not be subject to the sequential and exception tests, but in some cases should still meet the requirements for site-specific flood risk assessments?***

### TWBC response to Question 2

#### Introduction

8. Policy EN 25 - Flood Risk provides the Council's approach towards development and flood risk. This has been produced in line with the requirements of the NPPF in this regard as set out between paragraphs 152-173.
9. The Council is committed to managing flood risk from all sources across the borough and has liaised with the relevant bodies in this regard – primarily the Environment Agency and Kent County Council (as the lead Local Flood Authority).
10. The Council notes the requirements set out in the NPPF in relation to assessment of flood risk matters at planning application stage. Specifically, paragraph 168 makes clear that some minor development and changes of uses (as defined by footnote 56) should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments.
11. The Council considers the wording of Policy EN25 clearly reflects the requirements of the NPPF in relation to the application of the sequential and exceptions test where, at the second paragraph it states:

*“The sequential test and exception tests **established by the NPPF** will be strictly adhered to across the borough “(Council's own emphasis).*
12. It considers this wording reflects the requirements as set out in the NPPF which makes exclusions to some minor development and changes of use from the need for consideration against the flood risk tests. However, if the Inspector is minded to make this clearer the Council would be comfortable in working together to propose a modification to the Policy to ensure this point is clarified.

## Inspector's Question 3: [re. justification for Policies EN25 and EN26]

***Are the requirements in Policies EN25 and EN26 justified, effective and consistent with national planning policy?***

### **TWBC response to Question 3**

#### **Introduction**

13. Paragraph 36 of the NPPF advises that consideration of the tests of soundness of non-strategic policies should be done in a “*proportionate way, taking into account the extent to which they are consistent with relevant strategic policies for the area*”. In this regard, Policies EN 25: Flood Risk and EN26: Sustainable Drainage (see pages 390 to 394 of the Submission Local Plan (SLP) [CD 3.128](#)) fall under Strategic Policy STR 5: Infrastructure and Connectivity, and the Water section on page 55 of the policy wording is of relevance:

*“Water*

*Providing an adequate supply of fresh water and dealing with the removal of foul water is essential across the whole borough as part of any planned growth, and Southern Water and South- East Water as the regulatory bodies have been fully consulted as part of the plan preparation process to ensure that the necessary provision is delivered in a timely way in accordance with Policy EN 24: Water Supply, Quality, and Conservation. Taking account of flood risk and the implications of proposed growth in areas that are at risk of flooding, and ensuring that any risk is not exacerbated but in fact improved, is a key priority of the Local Plan. Close liaison is required with Kent County Council as the lead local flood authority and the Environment Agency to ensure that adequate consideration is given to any development in flood prone areas and that appropriate mitigation and compensatory measures are put in place where necessary in accordance with Policies EN 25: Flood Risk and EN 26: Sustainable Drainage.”*

14. It is considered that the provisions of Policy STR 5 above reflect national policy and that Policies EN25 and EN26 (along with EN 24 under Question 1 above) go on to provide the further detail that is required with regards to the implementation of the required

infrastructure and mitigation measures relating to flood risk and sustainable drainage as set out in more detail below.

15. The Policies are also underpinned by the advice as set out in the Council's Strategic Flood Risk Assessment [[SFRA, CD 3.44a](#) paragraph 12.2 ]. The SFRA clearly sets out recommendations for flood risk policies for development sites located in Flood Zones 1, 2, 3a and 3b, following NPPF advice and Planning Practice Guidance [PPG - Flood risk and coastal change](#).
16. The specific tests of soundness (in this case whether the policy is justified, effective and consistent with national policy) as set out in paragraph 35 of the NPPF for Policies EN 25 and EN 26 are considered below:

### **1) Justified**

17. Policy EN 25: Flood Risk - Whilst reflecting national policy, the details within Policy EN 25 also reflect local circumstances and guidance, in particular the SFRA (referred to above). Given the high importance of protecting areas at risk from flooding, it is considered appropriate and justified for the policy to set out what information and assessments are required for any development proposals with flood risk implications.
18. Policy EN 26: Sustainable Drainage - Again, whilst reflecting national policy, the details within Policy EN26 also reflect local circumstances and guidance, in particular the [Kent County Council Drainage and Planning Policy Statement](#) and local references to Royal Tunbridge Wells and Paddock Wood, where development would discharge to combined sewer systems. Given the significant difference sustainable drainage can make to reducing flood risk by managing the quantity of surface water runoff from development, as well as retaining water and reducing harm and pollution to valuable water systems, it is considered appropriate and justified for the policy to set out what information and measurements are required for development proposals.

### **2) Effective**

19. Policy EN 25: Flood Risk – this policy provides a clear strategy for the consideration of flood risk matters in the assessment of planning applications. It sets out the overarching requirement as set out in the NPPF that planning applications will be required to

demonstrate that there would not be an unacceptable risk of flooding on the site itself, and that there would be no increase to flood risk elsewhere.

20. During the course of the local plan preparation, advice was sought and received from the Environment Agency (EA), and the wording of policy EN 25 in relation to flood risk was considered to be effective and welcomed by them, and then taken forward into the SLP. This agreement of the wording is set out in a Statement of Common Ground between the Council and the EA as set out in Appendix H2, pages 8 to 30 of [CD3.132c \(v\)](#).
21. Policy EN 26: Sustainable Drainage – this policy is effective in that it promotes the use of sustainable drainage systems for all developments and sets out that the schemes should be multi-functional and include details of appropriate long-term management and maintenance.
22. During the course of the local plan preparation, advice was sought and received from Southern Water (SW), and the wording of policy EN 26 in relation to sustainable drainage was considered to be effective, agreed and welcomed by them, and then taken forward into the SLP. This agreement of the wording is set out in a Statement of Common Ground between the Council and SW as set out in Appendix I 10, pages 309 to 341 of [CD3.132c \(v\)](#)
23. In addition, during the course of the local plan preparation, advice was sought and received from Kent County Council (KCC) as the Lead Local Flood Authority on the wording of both policies EN 25 and EN 26. In agreement with KCC, minor modifications were made to the supporting text for both policies to make the wording more effective, and then taken forward into the SLP. This agreement of the wording is set out in a Statement of Common Ground between the Council and KCC set out in Appendix I 7, pages 225 to 301 of [CD3.132c \(v\)](#)

### **3) Consistency with National Policy**

24. Firstly it should be noted that policies EN 25 and EN 26 are not intended to directly repeat NPPF advice or national Planning Policy Guidance [PPG - Flood risk and coastal change](#) as it is expected that national guidance would be followed alongside SLP policies in the submission and assessment of development proposals with any flood risk implications and/or involving the provision of sustainable drainage.



25. However, policies EN 25 and EN 26 are to be consistent with the thrust of national policy, as follows:

**Policy EN 25: Flood Risk**

26. Paragraph 159 of the NPPF 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). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.”*

27. It is considered that paragraph 6.280 of Policy EN 25 makes provision for this as follows:

*“The Council will therefore discourage inappropriate development in areas at known risk from flooding and, as the Local Planning Authority, will take account of flooding risks in all matters relating to development management/control, including within the Local Plan and individual planning applications, in accordance with the NPPF.”*

28. As well as the first paragraph of the policy wording:

*“Proposals for new development should contribute to an overall flood risk reduction, and development will only be permitted where it would not be at an unacceptable risk of flooding on the site itself, and there would be no increase to flood risk elsewhere.”*

29. Paragraph 160 of the NPPF states that:

*“Strategic policies should be informed by a strategic flood risk assessment, and should manage flood risk from all sources. They should consider cumulative impacts in, or affecting, local areas susceptible to flooding, and take account of advice from the Environment Agency and other relevant flood risk management authorities, such as lead local flood authorities and internal drainage boards.”*

30. It is considered that paragraph 6.277 makes provision for this:

*“In accordance with the NPPF, the Council is committed to managing flood risk from all sources, including wastewater, in the borough, taking account of advice from the Environment Agency, Kent County Council (as the Lead Local Flood Authority), and*

*the Medway Internal Drainage Board. In accordance with the NPPF, the Council commissioned the Tunbridge Wells Strategic Flood Risk Assessment (2019), which assesses the extent and nature of flood risk across the borough and the implications for land use planning, taking into account the anticipated impacts of climate change. The strategy and policies of the Local Plan have been informed by the Strategic Flood Risk Assessment Level 1 and Level 2 (2019) and discussions with the key stakeholders.”*

31. Paragraph 161 of the NPPF states that:

*“All plans should apply a sequential, risk-based approach to the location of development – taking into account all sources of flood risk and the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by:*

*a) applying the sequential test and then, if necessary, the exception test...”*

32. It is considered that paragraph 6.279 of Policy EN 25 makes provision for this as follows:

*“The Council will also apply a sequential test to new development, supported by the Flood Risk Assessment: The Sequential Test for Applicants Planning Practice Guidance (65) (or subsequent revision), to direct development away from areas that are at the highest risk of flooding. These will include all proposed areas that are within Flood Zones 2 and 3, as well as sites in Flood Zone 1 that are larger than one hectare and/or have critical drainage problems, as identified by the Environment Agency and within the Council’s latest Strategic Flood Risk Assessment, such as in parts of Paddock Wood and Five Oak Green/Capel”*

33. As well as in the second paragraph of the policy wording:

*“The sequential test and exception tests established by the NPPF will be strictly adhered to across the borough. Where it is demonstrated that development is unable to take place in an area of lower flood risk, essential transport or utility infrastructure or other appropriate development may be allowed as per an exception test if the development is designed to be compatible with potential flood conditions, also taking into account wider sustainable development objectives”*

34. Paragraph 167 of the NPPF states that:

*“When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment.”*

35. It is considered that the fourth paragraph of the policy wording makes provision for this:

*“Site-specific Flood Risk Assessments will be required for the following development proposals:*

*a. Sites within Flood Zones 2 and 3; and/or*

*b. Sites in Flood Zone 1 that:*

*i. are larger than one hectare; or*

*ii. have been identified by the Environment Agency as having critical drainage problems; or*

*iii. have been identified in a Strategic Flood Risk Assessment as being at increased flood risk in the future; or*

*iv. may be subject to other sources of flooding”*

36. As mentioned under Question 2 above, paragraph 168 of the NPPF states:

*“Applications for some minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 55.”*

37. Provision is made for this in the last part of paragraph 6.279 of Policy EN 25:

*“The approach taken within Policy EN 25 is in accordance with the NPPF; however there may be instances where it may be appropriate to require a Flood Risk Assessment for smaller developments and it would therefore be appropriate to consult with KCC as the lead local flood authority on a case-by-case basis.”*

## **Policy EN 26: Sustainable Drainage**

38. The provisions made by the policy are integrated into the wording of paragraph 169 of the NPPF as follows:

*“Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:*

*a) take account of advice from the lead local flood authority;*

Provision is made for this at paragraph 6.288 of the policy which includes reference to KCC as the lead flood authority and the Environment Agency.

*b) have appropriate proposed minimum operational standards;*

Provision is made for this in the final part of paragraph 6.285 of the supporting text to the policy – *“Developers should refer to ‘non statutory technical standards for sustainable drainage systems’ published by Defra, which provides guidance on minimum standards for design, maintenance, and operation of SuDS systems, and sits alongside the Planning Practice Guidance. Ciria’s SuDS Manual 2015 also includes advice on suitable development design.”*

*c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and*

Provision is made for this in the final paragraph of the policy wording *“Approval of the design and long-term management and maintenance of SuDS will be required prior to the development commencing.”*

*c) where possible, provide multifunctional benefits.*

Provision is made for this in the second paragraph of the policy wording *“SuDS should be designed and implemented to be ‘multi-functional”*

## **Summary**

39. In summary, the Council considers that both policies EN 25 and EN 26 are justified, effective and consistent with national policy in providing appropriate wording to ensure that flood risk and sustainable drainage is properly considered in development management decisions.