

---

*DCLG Circular 04/2006*

*Department for Communities and Local Government  
Eland House, Bressenden Place, London SW1E 5DU*

---

December 2006

## THE TOWN AND COUNTRY PLANNING (FLOODING) (ENGLAND) DIRECTION 2007

1. Planning Policy Guidance Note 25: Development and Flood Risk (PPG25), which was published in 2001, set out policies regarding proposed development in flood risk areas. Despite the advice contained in PPG25, some inappropriate development in flood risk areas has been granted planning permission by local planning authorities, against advice from the Environment Agency. The Town and Country Planning (Flooding) (England) Direction 2007 (the Direction), introduces a new arrangement to act as a safeguard in such cases.
2. A recent review showed that PPG25 has succeeded in raising the profile of flooding matters in the planning process, that its core policies remain valid, but that more needs to be done to fully implement them. In response, a revised and strengthened Planning Policy Statement (PPS25), has been issued as part of the Government's overall approach to managing future flood risks, set out in *Making Space for Water*<sup>1</sup>. PPS25 is focussed on core policies that are clearer and easier to understand. It clarifies the sequential test that matches types of development to degrees of flood risk and strengthens the requirement to include flood risk assessments at all levels of the planning process.
3. On 1 October 2006 the Environment Agency was made a statutory consultee for planning applications where flood risk is a key issue. The consultation requirement was introduced by Statutory Instrument 2006/2375<sup>2</sup>. Local planning authorities now have a duty to consult the Environment Agency on all applications for development in areas of flood risk or where critical drainage problems exist, other than minor development (as defined in the Statutory Instrument), and for development of sites of more than 1 hectare elsewhere.

---

<sup>1</sup> "Making Space for Water - Developing a new Government Strategy for flood and coastal erosion risk management in England", a Defra consultation, July 2004, and the "First Government Response to Making Space for Water", March 2005.

<sup>2</sup> Statutory Instrument 2006 No. 2375: The Town and Country Planning (General Development Procedure) (Amendment) (No.2) (England) Order 2006 is available at the website of the Office of Public Sector Information at [www.opsi.gov.uk/si/si2006/uksi\\_20062375\\_en.pdf](http://www.opsi.gov.uk/si/si2006/uksi_20062375_en.pdf)

4. The Direction, which is made under the Town and Country Planning (General Development Procedure) Order 1995 (Statutory Instrument 1995/419), comes into force on 1 January 2007. A copy of the Direction forms the annex to this Circular. The Direction requires a local planning authority to notify the Secretary of State of any application for major development in a flood risk area (as defined in the Direction), where it is minded to grant permission, against advice on flood risk grounds from the Environment Agency.
5. The Government considers that where a local planning authority is minded to approve an application for major development in a flood risk area, but the Environment Agency, after consultation, has objected on flood risk grounds, all parties (the local planning authority, the Environment Agency and the applicant), should as soon as practicable, discuss and agree the course of action which would need to be taken to enable the Environment Agency to withdraw its objection. The discussions should be commenced as soon as possible after the objection is made known by the Agency. There should be effective and on-going liaison between the parties, so that each is aware at all stages in the process, of the position of the others with regard to the application. The discussions are likely to be helped if the Agency sets out its reason(s) for objecting to the application, and the local planning authority/applicant set out their reason(s) for supporting it. If, following such discussions, the Environment Agency concludes that it is unable to withdraw its objection, it should advise the local planning authority of this as soon as possible.
6. Major development is:-
  - residential development, where the number of dwellings to be provided is 10 or more, or the site area is 0.5 hectares or more; or
  - non-residential development, where the new floorspace to be provided is 1,000 square metres or more, or the site area is 1 hectare or more.
7. A flood risk area is:-
  - land in an area within Flood Zones<sup>3</sup> 2 or 3; or
  - land in an area within Flood Zone 1 which has critical drainage problems and which has been notified to the local planning authority by the Environment Agency.
8. Where a local planning authority is minded to grant permission for major development in a flood risk area, despite there being an objection from the Environment Agency on flood risk grounds that it has not been able to withdraw, even after discussions with the local planning authority and the applicant, the Direction requires the local planning authority to notify the Secretary of State of the application. This provides the Secretary of State with an opportunity to check the application's general compliance with the policies in PPS25 and to consider whether it would be appropriate to call it in for determination. As part of this consideration the Secretary of State will wish to be

---

<sup>3</sup> Maps showing the various Flood Zones are available from the Environment Agency at [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)

assured that all reasonable steps have been taken by the local planning authority, the Environment Agency and the applicant through discussions, to examine ways in which the application might have been amended or further information provided to support it, which would have allowed the Environment Agency to withdraw its objection. In line with current policy, the Secretary of State will continue to be selective about calling in planning applications.

MR L.B. HICKS CBE

Head of Planning - Resources and Environment Policy Division  
Communities and Local Government

Addressed to:

The Chief Executives of  
County Councils            )  
District Councils         )       in England  
Unitary Authorities       )  
London Borough Councils  
Greater London Authority

The Town Clerk, City of London

The National Park Officer, National Park Authorities in England  
The Chief Planning Officer, The Broads Authority

## THE TOWN AND COUNTRY PLANNING (FLOODING) (ENGLAND) DIRECTION 2007

The Secretary of State, in exercise of powers conferred by articles 10(3) and 14(1) of the Town and Country Planning (General Development Procedure) Order 1995 (“the Order”) directs local planning authorities in England as follows:

1.- (1) This direction comes into force on 1 January 2007 and applies in relation to England only.

(2) In this direction-

“major development” means-

- (a) in respect of residential development, a development where the number of dwellings to be provided is 10 or more, or the site area is 0.5 hectares or more; or
- (b) in respect of non-residential development, a development where the new floorspace to be provided is 1,000 square metres or more, or the site area is 1 hectare or more;

“flood risk area” means-

- (a) land in an area within Flood Zones 2 or 3; or
- (b) land in an area within Flood Zone 1 which has critical drainage problems and which has been notified for the purposes of article 10 of the Order (a) to the local planning authority by the Environment Agency;

“Flood Zones” has the same meaning as in article 10(2) of the Order;

“PPS25” means Planning Policy Statement 25: Development and Flood Risk.

2. This direction applies in relation to any planning application:

- a) which is received by the local planning authority–
  - i. on or after 1 January 2007, or
  - ii before 1 January 2007 and in respect of which the local planning authority has not given notice of a decision or determination before that date;

---

(a) The Town and Country Planning (General Development Procedure) Order 1995 (as amended), Statutory Instrument 1995 No.419.

- b) which is for major development in a flood risk area; and
  - c) to which the Environment Agency has made an objection that it has not been able to withdraw even after discussions with the local planning authority and the applicant.
- 3. Before granting planning permission on any application in relation to which this direction applies, a local planning authority shall consult the Secretary of State.
- 4. Where a local planning authority is required to consult by paragraph 3, it shall, as soon as reasonably practicable, send to the Secretary of State at the appropriate Government Office for the Region:
  - (a) a copy of the application (including any appropriate flood risk assessment and accompanying plans or drawings);
  - (b) a copy of any representations made to the local planning authority in respect of the application, including the representations of the Environment Agency;
  - (c) a copy of any report on the application prepared by an officer of the local planning authority;
  - (d) unless contained in a report supplied pursuant to subparagraph (c), a statement providing sufficient information to demonstrate that, in reaching a decision on the application, the local planning authority has assessed the application in the light of the policies contained in PPS25; and
  - (e) a statement of the issues involved in the decision, including the outcome of the discussions between the local planning authority, the Environment Agency and the applicant, and of any views expressed on the application by a Government Department or another local planning authority.
- 5. Subject to paragraph 6, where a local planning authority is required to consult by paragraph 3, it shall not grant planning permission on the application until the expiry of a period of 21 days, beginning with the date advised in writing by the Secretary of State to the local planning authority, as the date the material specified in paragraph 4 was received.
- 6. If, before the expiry of the period of 21 days referred to in paragraph 5, the Secretary of State has notified the local planning authority that it is not intended to make a direction under section 77 of the Town and Country Planning Act 1990 in respect of the application, the local planning authority may proceed to determine the application.

Signed by authority of the  
Secretary of State

Mr L.B. Hicks CBE  
Head of Planning-Resources and Environment  
Policy Division  
Department for Communities and Local  
Government

1 January 2007

Published by TSO (The Stationery Office) and available from:

**Online**

**[www.tsoshop.co.uk](http://www.tsoshop.co.uk)**

**Mail, Telephone, Fax & E-mail**

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

E-mail: [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)

Textphone 0870 240 3701

**TSO Shops**

123 Kingsway, London, WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

**TSO@Blackwell and other Accredited Agents**

© Crown copyright 2006

*Copyright in the typographical arrangements rests with the Crown.*

*Published for the Department for Communities and Local Government, under licence from the Controller of Her Majesty's Stationery Office.*

*Extracts of up to 10 per cent of this publication may be photocopied for non-commercial in-house use, subject to the source being acknowledged.*

*Application for reproduction should be made in writing to  
The Copyright Unit, Office of Public Sector Information,  
St Clements House, 2-16 Colegate, Norwich NR3 1BQ.*

*Printed by The Stationery Office Ltd under the authority and superintendence of the Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.*

ISBN-10 0 11 753973 2

ISBN-13 978 0 11 753973 0

**£6**



**[www. tso.co.uk](http://www.tso.co.uk)**

ISBN 0-11-753973-2



9 780117 539730 >