

**CD 2.14**

# Rebuttal Evidence - Flood Risk and Sustainable Drainage Brian Parker BA MSc MRTPI

Bricket Wood Sports and Country Club, Paintball Site and Bricket Lodge, Lye Lane, St Albans AL2 3TF

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Outline application (access sought) for the demolition of existing buildings, the construction of up to 115 dwellings, the creation of a new access and associated highways improvements.

SADC Ref: 5/2022/2443

PINS Ref: APP/B1930/W/24/3338501

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## 1.0 **INTRODUCTION**

1.1 This Rebuttal Proof of Evidence is submitted in response to the Proof of Evidence of Ms Katherine Waters (CD 9.3). It should be read alongside my Rebuttal Proof on Planning Balance and the Rebuttal Proofs of Nick Ferguson (Highways) and Paul Hartfree (Highways Engineering).

1.2 This Rebuttal Proof does not address technical matters: the technical Flood Risk and Sustainable Drainage concerns raised previously by Hertfordshire County Council (“HCC”) as the Lead Local Flood Authority (“LLFA”) are fully addressed in the Addendum to the FRA and SDS by Mr South of GeoSmart (CD 2.4.6) which concludes as follows:

*“In conclusion, the Flood Risk Assessment and Sustainable Drainage report provided are considered sufficient for Outline Planning and it is considered reasonable to conclude that flood risk would not be increased elsewhere as a result of the development, provided suitable conditions, including 3rd party permissions if required, are applied.”*

1.3 Instead, this Rebuttal focuses on the correct application of planning policy and the need for consistency in decision-making. The main matters which require rebuttal evidence in these regards are:

- a) The nature of an Outline application;
- b) The different approach to similar Outline schemes;
- c) Culverting on Lye Lane; and
- d) Conditions.

1.4 The lack of comment on other matters should not be construed as agreement.

1.5 Reference is made below to an Outline planning decision made by St Albans Council (Ref: 5/2023/0983), which was informed by a submission from HCC as the LLFA. This decision was made on 13<sup>th</sup> May 2024 and was brought to my attention on 15<sup>th</sup> May 2024 (the day after the Proofs were submitted). The LLFA is not prejudiced by reference to an application upon which it was consulted, and which is clearly relevant to the Appellant’s case.

## 2.0 **THE NATURE OF AN OUTLINE APPLICATION**

- 2.1 This is an Outline proposal with all matters reserved save access. Consequently, matters of layout, scale, appearance and landscaping are all for the future.
- 2.2 At (CD 9.3 [4.19 and 5.1.5]), Ms Waters makes the case that the infiltration rate will impact the amount of attenuation needed, which (in turn) will impact the number and density of housing. That summary precisely illustrates the Appellant's point: that these issues are inter-related and cannot be finalised until the design is complete at the Reserved Matters stage. This is made obvious by the alternative indicative proposed layout (CD 2.4.5), which would require an entirely different Proposed SuDS Scheme Layout than that submitted by GeoSmart (CD 1.9 [p.6]).
- 2.3 The PPG acknowledges this 2-stage process<sup>1</sup>, but Ms Waters appears to misunderstand the stage at which the Appeal Scheme is. For example, at (CD 9.3 [3.1.8]), Ms Waters quotes from paragraph 055 of the PPG<sup>2</sup> which explains that the drainage systems need to be considered "*at the start of the design process for new development ...*". However, in respect of scale, layout and landscaping, the design process is yet to begin.
- 2.4 At (CD 9.3 [3.1.21]), Ms Waters confirms that paragraph 59 of the PPG<sup>3</sup> expects the design strategy to contain "*proportionate information*" including for Outline applications. That is precisely what GeoSmart submitted. In the context of an Outline scheme, it provided proportionate information setting out possible strategies that could be pursued at the Reserved Matters stage which, with the application of suitable Conditions, would provide the assurance required.
- 2.5 Like Mr Hughes in respect of his concerns about landscaping, Ms Waters is requiring more at this Outline stage than is necessary.

### 3.0 **THE DIFFERENT APPROACH TO SIMILAR OUTLINE SCHEMES**

- 3.1 I was the promoter of the North of Chiswell Green Lane site, also within the St Stephen Parish of St Albans (CD 5.2 [Appeal B]). I commissioned GeoSmart to produce an FRA and SDS of similar proportionality to the ones produced for this Appeal Scheme. Like the current SDS, the SDS for

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<sup>1</sup> See, for example: PPG Paragraph: 005 Reference ID: 14-005-20140306 (quoted in my Main Proof at (CD 2.4 [2.12])); and PPG Paragraph: 006 Reference ID: 14-006-20140306.

<sup>2</sup> PPG Paragraph: 055 Reference ID: 7-055-20220825.

<sup>3</sup> PPG Paragraph: 059 Reference ID: 7-059-20220825.

that site proposed a multi-level strategy to be properly determined at the Reserved Matters stage. The LLFA's response was to recommend permission be granted subject to Conditions similar to those I proposed in my Statement of Case (CD 2.1 [62]).

3.2 On 15<sup>th</sup> May 2024, it was brought to my attention that the Council approved an Outline scheme for 190 dwellings at Copewood (Ref: 5/2023/0983). In Fig. 1 below, I have indicated the location of Copewood on Fig. 2.3 of Ms Waters' Proof (CD 9.3 [p.8]): it is where Lye Lane meets the A405, less than 750 metres from the Appeal Site. As the map shows, the site includes an area at High Risk for Surface Water events.

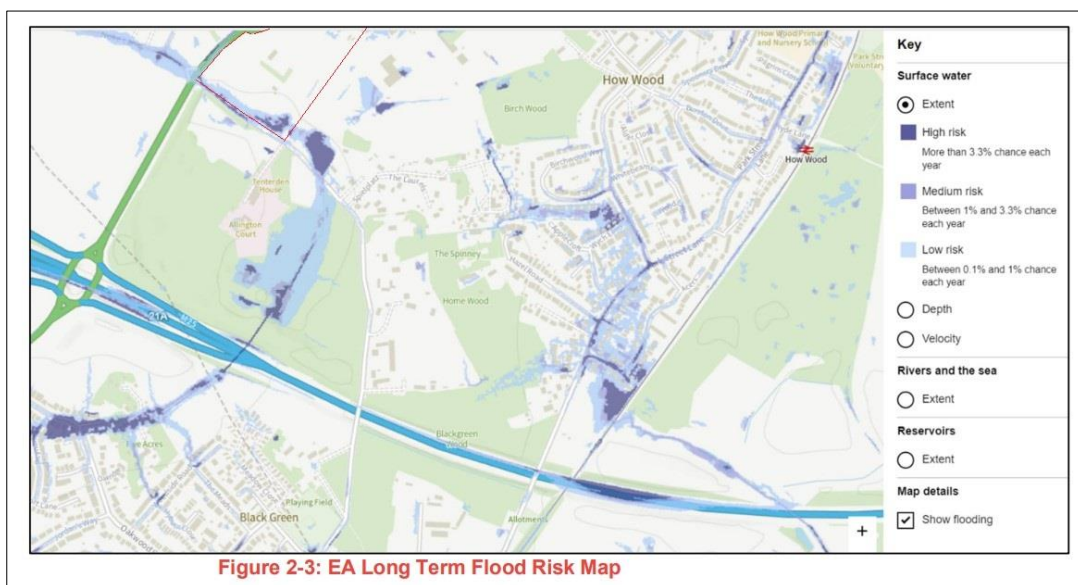


Fig. 1 The Copewood Site outlined in red (top left corner) includes areas at High Risk of Surface Water Flooding

3.3 At this Outline stage, the Sustainable Drainage Strategy for the Copewood Scheme is for on-site infiltration (Appendix A to this Rebuttal (CD 2.14.2 [6.2])). However, at (CD 2.14.2 [6.3.1]), the report explains:

*“An alternative drainage strategy is also proposed, to be implemented should testing indicate that the ground conditions are not suitable for infiltration (areas of low infiltration near the proposed basins or a high water table).”*

3.4 The submission of alternative sustainable drainage strategies being submitted at the Outline stage is commonplace and is dealt with by way of Conditions to provide reassurance at the Reserved Matters stage. That is precisely, the approach supported by the Appellant.

3.5 In the Officer Report (Appendix B to this Rebuttal (CD 2.14.2 [8.15.6-8.15.13])), the Council deals positively with the specific challenges faced by the Copsewood site, even explaining why its failure to satisfy the sequential test can be excused. In part, this is because of the very brief response of the LLFA (Appendix C (CD 2.14.3)). As with the Outline scheme at the North of Chiswell Green Lane site, the LLFA's response to the Outline scheme at the Copsewood site was to recommend Conditions to provide confidence at the Reserved Matters stage.

3.6 The principle of consistency in decision-making (CD 2.4 [p.60, footnote 10]), equally applies to the evidence required for consistent decision-making.

#### 4.0 **CULVERTING ON LYE LANE**

4.1 In response to the suggestion that culverting has never previously been raised with HCC as the LLFA (CD 9.3 [6.1.1]):

a) The proposal for a footpath along the side of Lye Lane has been discussed with HCC as the Highways Authority since March 2022;

b) A proposed footpath covering the ditch was included in the Application documents (CD 1.20), on which the LLFA was formally consulted by the Council;

c) In January 2023, the Appellant expressly raised the need for the footpath to be permeable to aid drainage (CD 1.40); and

d) In June 2023, the Appellant expressly referred to culverting of the ditch (CD 1.41 [pp.10-11]).

4.2 The requirement for culverting was, therefore, not hidden from HCC.

4.3 Further, and importantly in light of the Appellant's candour in this regard, the use of culverting was not included as a Reason for Refusal.

4.4 At (CD 9.3 [6.1.5]), Ms Waters states that "*culverting of watercourses is only allowed for access ...*". However, no statute, policy or guidance is cited to support this claim.

#### **Statute**

4.5 In terms of statute, Ms Waters cites the Land Drainage Act 1991. Section 23 (1) of the Act states only that culverting requires “the consent of the drainage board”<sup>4</sup>: it does not limit culverting for the purposes of access only.

**Policy**

4.6 In terms of policy, at (CD 9.3 [3.1.24-3.1.25]), Ms Waters cites Policy L29 as the relevant Local Plan policy. It is not. Policy L29 is an unadopted policy in a draft Plan that carries very limited weight in decision-making. The relevant Development Plan policy is Policy 84 of the 1994 Local Plan as correctly cited in Putative Reason for Refusal 3. Item (iii) of Policy 84 states as follows (CD 4.1 [p.125]):

*“... all works in, under, over and adjacent to watercourses shall be appropriately designed and implemented and alternatives to culverting should be explored where possible”.*

4.7 Again, there is no restriction on culverting for access only. Instead, the requirements of the policy are two-fold:

- a) First, and entirely reasonably, alternatives to culverting are to be explored wherever possible; and
- b) Secondly, all works potentially affecting watercourses are to be appropriately designed and implemented.

4.8 In these regards, and for all the following reasons, the proposal to culvert in order to provide a safe pedestrian footpath can be approved in accordance with relevant policy:

- a) There is no engineering alternative to culverting in order to deliver the footpath along Lye Lane;
- b) There is a compelling public interest in providing a safe pedestrian access to Bricket Wood for both current residents of Lye Lane and future residents of the Appeal Site;
- c) The footpath can be delivered without narrowing the highway or impacting any trees; and

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<sup>4</sup> Now the LLFA

d) The footpath, including the culverting, has been “appropriately designed” and can be successfully “implemented”.

### **Guidance**

4.9 In terms of guidance, Ms Waters cites from the PPG and refers also to paragraph 66<sup>5</sup> of “Redrow Homes v SOS LUHC (12 February 2024)” (CD 9.3 [3.1.9]). Crucially, however, at (CD 6.14 [59]), the judgment confirms that guidance “*does not displace the primacy given by s.38(6) of the Planning and Compulsory Purchase Act 2004 to the statutory development plan*”. Accordingly, Policy 84 retains primacy.

### 5.0 **CONDITIONS**

#### **Culverting Condition**

5.1 Ms Waters is correct to say, at (CD 6.1.1), that separate permission for the culverting must be applied for from HCC as the LLFA. Accordingly, it is appropriate to apply a Pre-Commencement Condition to achieve such permission, which application will include flood risk and drainage assessments.

#### **Agreed Conditions**

5.2 The above condition can supplement the Conditions already agreed between the Appellant and the Council to provide the reassurance typically sought for sustainable drainage schemes at the Outline stage.

### **Appendices**

- CD 2.14.1 Appendix A – LFR and SDS for Copsewood site (Part 1), JNP (date).
- CD 2.14.2 Appendix B – Officer Report for Copsewood, Ref: 5/2023/0983.
- CD 2.14.3 Appendix C – LLFA Submission for Copsewood Application.

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<sup>5</sup> Thought to be paragraph 65.