

Simon Hawkins
Director Operations South East and East
Anglian Region
Environment Agency
Kingfisher House
Peterborough

By email [REDACTED]

Dear Mr Hawkins

Re: The Foundry, Stevenage Road, St Ippolyts, Hitchin SG4 7NX
Environment Agency objection to discharge of condition 17 of permission 22/00754/FP

We are the owners and developers of the land known as The Foundry, Stevenage Road, St Ippolyts, Hitchin SG4 7NX (the Site) under planning permission 22/00754/FP granted on 4 September 2023 by North Hertfordshire District Council.

This planning permission authorises the development of seven residential homes at the Site, and condition 17 deals with flood storage compensation. This condition has not yet been discharged.

We write to request a review of the Environment Agency's decision to oppose the discharge of condition 17. We believe the Environment Agency's approach to condition 17 does not follow the EA's own internal guidance in Operational Instruction 178_05 and is unreasonable in light of all of the evidence.

Summary of our concerns

1. Planning permission 22/00754/FP and an earlier planning decision 14/02200/1 both authorise residential development of this Site. Both permissions recognise that level-for-level floodplain compensation could not be achieved at all site levels.
2. Maintaining the cumulative floodplain storage capacity instead of providing level-for-level floodplain compensation up to the design flood level (namely the 1 in 100 year with (+19%) climate change fluvial flood level) was proposed as the only viable option for both permissions.
3. When the EA removed its objection to our planning application 22/00754/FP on 18 July 2023, it requested four additional planning conditions, including condition 17. The EA stated in writing that it accepted the principle of floodplain compensation set out in the FRA, namely that level-for-level compensation could not be achieved above 70.74~m AOD.
4. At that time, the Environment Agency knew that level-for-level floodplain compensation could not be achieved (more specifically for the highest elevation band). In removing its objection to the grant of permission, the EA had agreed to depart from level-for-level compensation for the highest band.

5. Our FRA demonstrated that there was no reduction in the total/cumulative floodplain storage volume of the site and no increase in flood risk elsewhere.
6. During the detailed design phase, changes in the height of development roads led to a further reduction in floodplain storage at the highest band. The revised Floodplain Compensation Scheme submitted to discharge condition 17 provides level-for-level floodplain compensation up to 70.74~m OAD (as before) together with increased flood storage within the lowest elevation bands, to compensate for a reduction within the highest elevation band. The revised proposal generates an overall increase of 5m³ in on-site floodplain storage up to the 1 in 100 year with climate change flood level.
7. The EA Operational Instruction 178_05 states that the EA is generally opposed to indirect schemes *“unless a planning decision has already been made and/or it is the only remaining option”*. This is not a indirect scheme, but both of these apply to this development.
8. In EA correspondence to the LPA around the discharge of condition 17 (floodplain storage compensation), the EA has maintained an objection because the Scheme does not demonstrate *“there will be no loss of floodplain storage at the site, at all levels. This is required to ensure no increase of flood risk elsewhere”*.
9. In the most recent correspondence to the LPA, the EA has stated that if it is not possible to provide all of the compensation within the highest 200m³ band, a *“significant net gain in floodplain storage”* needs to be provided at lower levels in accordance with the NPPF and Planning Practice Guidance (the Planning Policy Documents).
10. This is not a correct interpretation of the Planning Policy Documents, which require us to demonstrate the development does not cause a risk of flooding on site or elsewhere. This is also a departure from the EA’s approach when it removed its objection to the grant of planning permission 22/00754/FP, which provided a net gain in cumulative (1 in 100 year with climate change) floodplain storage volume of 0.8m³.
11. The EA have suggested that the loss of 200m³ floodplain at the highest band has the potential to increase flood risk both on site and elsewhere. We believe that we have demonstrated that no such risk exists, and the development will not result in a risk of flooding on the site or elsewhere. Additional hydraulic modelling evidence compiled by JBA has been available since September (attached) but the EA has stated that hydraulic modelling is not evidence of a lack of flood risk elsewhere.
12. The EA’s refusal to accept the modelling information is not an appropriate approach to dealing with this matter, and inconsistent with how these matters are normally considered.
13. There is no available land (on or off site) on which to provide flood storage compensation at the highest band and we cannot proceed with the development as permitted, because the LPA will not discharge condition 17 in the face of an objection by the EA.
14. We are in grave difficulties if we cannot find a solution, as we have no capacity to provide additional flood storage within the confines of the existing permitted development. We cannot afford the scheme to simply stall.

15. Due to the current stalemate, and our inability to reach an agreement regarding this matter, we find ourselves in a position that we have seven partially constructed properties with a combine sales value of Approx £7.25Million which are currently unsalable because we cannot discharge condition 17.

Action requested

We request a very urgent review of this matter at a senior level, by someone with technical expertise in flood risk compensation schemes. This is set out in more detail at the end of this letter, but due to the impact this is having on us, we ask that the review be conducted with urgency, and as soon as possible.

We hope this review will lead to the removal of the EA's objection to the discharge of condition 17 or a clear route to addressing any remaining concerns so the condition can be discharged.

Documents provided with this letter

No.	Date	Author	Document description
1.			Application for planning permission 22/00754/FP
2.	4/4/2022	EA	Objection to planning application (FRA unacceptable)
3.	4/8/2022	EA	Objection to planning application (FRA does not adequately address flood risks)
4.	13/10/2022	EA	Objection to planning application (FRA does not demonstrate no increase in flood risk)
5.	24/2/2023	EA	Objection to planning application (FRA does not demonstrate viable floodplain compensation scheme or how it will be maintained)
6.	2/2023	JBA	Revised FRA A1-C09 dated February 2023
7.	27/6/2023	Jarvis Homes	Location & Site Plan P/DV0093/01G rev G
8.	27/6/2023	DLA Town Planning	Letter from DLA Planning re voids
9.	18/7/2023	EA	Removal of objection if four conditions are imposed
10.	4/9/2023	NHDC	Decision Notice 22/00754/FP
11.	09/2023	Jarvis Homes	Site Section and Levels plan PC/DV0093/L17
12.	8/5/24	JBA	Emails regarding ground levels
13.	7/6/24	DLA Town Planning	Letter providing floodplain storage volumes
14.	28/6/24	EA	Response to planning application 23/02620/DOC
15.	25/7/24	JBA	Additional information on Flood Comp scheme
16.	19/8/24	EA	Response to additional information, maintaining objection to discharge of condition 17

17.	5/9/24	EA and JBA	Email exchanges between JBA and EA in relation to discharge of condition 17.
18.	11/10/2024	EA and NHDC	Email exchanges between NHDC and EA about the EA's objection to discharge of condition 17.
19.	5/11/24	EA	Operational Instruction 178_05

To assist the EA in a review of the matter, we provide further information and draw your attention to relevant parts of the attached documents.

Jarvis Homes

Site background and planning permission

1. Jarvis Homes Ltd is part of the Jarvis Group, which is a family-owned Limited company, which was founded in 1905, and has been based in Harpenden in Hertfordshire throughout its entire trading history. Jarvis Homes Ltd is small local development company that operates in the Herts, Beds and Bucks region, and undertakes takes three development projects per calendar, with a typical project size of around ten units per scheme. As a company we look take on these more complex projects as we are unable to compete with the large regional development on more simple schemes. However this ethos is currently under review given the difficulties encounter regarding this scheme.
2. The site at Brookend Lane St Ippolyts, was formal occupied by a metal work foundry, we have dealt with the legacy surface contamination issues, which can be seen due to the discharge of planning condition number 15 a, b and c in April 2024, the final section 15 d relating to the topsoil capping layer has already been submitted and has a decision date of early December. The development design strategy for the project is that whilst the houses themselves have been lifted above the flood plan, the rear gardens for these properties are designed to flood and they remain in the flood plan. All of your consultants flood modelling clear show that there is no increased risk of offsite flooding.
3. As detailed above, we are building seven homes on the Site pursuant to planning permission 22/00754/FP granted by North Hertfordshire District Council (the LPA) in September 2023 (document 10). The site layout is contained in document 11. An earlier permission 14/02200/1 was granted to a different developer, but did not proceed. The earlier permission did not provide level-for-level flood storage compensation at the highest band either.

Departure from level-for-level compensation in planning consents

4. Section 5.3 and Table 5.1 of the FRA dated February 2023 (document 6) submitted in support of planning application 22/00754/FP very clearly stated that level-for-level floodplain storage could only be provided up to 70.74~mAOD. Additional storage volumes at lower bands were proposed to ensure no loss of overall storage volume.
5. Section 6.2 of the FRA indicated that level-for-level floodplain compensation would be provided up to 70.74~m AOD, with an extra 86.1m³ storage capacity (i.e. 471.1 - 384.9

rounded down to 1 decimal). The cumulative floodplain storage volume would be increased by 4m³ by providing this compensatory storage at lower bands.

6. The FRA and hydraulic modelling also concluded that there would be no increase in flood risk off site due to the proposed development. To support this assessment, the impact of the proposed groundwork (including the rest of the proposed development) was modelled using the ESTY-TUFLOW hydraulic modelling software and a comparison of the modelled flood depths (when compared with the pre-development/baseline scenario) showed no changes across third-party land. This hydraulic modelling approach and associated model results were validated by the Environment Agency on 3rd February 2023.
7. The Environment Agency response dated 24 February 2023 is an objection to the planning permission, but states at page 2 *“Although table 5.1 shows that there will be a small overall net gain in floodplain storage, there will be a loss of floodplain storage of 87m³ between 70.74mAOD and 70.94mAOD. We would like to see this higher flood band be considered again to ensure there is no increase in flood risk elsewhere by providing like-for-like floodplain compensation”*.
8. The points raised by the EA were addressed in further documentation produced on our behalf.
9. On 18 July 2023 the EA withdrew its objection to the planning application (document 9) albeit with reservations about the approach taken by the LPA. Four conditions recommended by the EA were incorporated into the planning consent. The planning consent was granted on 4 September 2023 (document 10).
10. When the EA's objection was removed, the FRA stated at section 5.3 that level-for-level floodplain storage compensation could only be provided up to 70.74~m AOD, and we would ensure that cumulative floodplain storage volume was maintained so the overall flood storage capacity was like for like. It also demonstrated that the development did not cause an increase in flood risk elsewhere.
11. Therefore, the combination of level-for-level compensation up to 70.74~mAOD and ensuring no loss of overall volume was accepted by the EA when the objection was removed and the permission was granted.

Site development

12. During site works, site levels changed, as is often the case. As part of the detailed design working the external road levels had to be altered to allow the storm drainage design to work. This resulted in more intrusive side slopes along the proposed highway and the level accesses to garages and residential properties.
13. The Site Levels Plan was revised in September 2023 (document 11). This change needed to be reflected in the floodplain storage compensation scheme.
14. On 9th of November 2023 we submitted our Flood Compensation Scheme as part of an application to discharge condition 17 of the planning permission.

15. The revised floodplain compensation calculations show that the cumulative floodplain storage has increased by 5m^3 as a result of changes in site levels. Level-for-level flood storage compensation is still provided up to up to 70.74~mAOD, and this has not been affected by changes in site levels.
16. In a letter from JBA to the LPA (document 15) Table 1 shows that the development will provide level-for-level flood storage compensation up to 70.74~mAOD, with significant addition storage at levels 70.54~mAOD (137m^3) and 70.74~mAOD (71m^3). As with previous FRAs submitted, there is reduction in storage at 70.94~mAOD (-200) but an overall increase in cumulative volume of 5m^3 . This is 1m^3 greater than anticipated by the February 2023 FRA.

No risk of flooding on site or elsewhere

17. The hydraulic model that we used complied with the EA flood risk modelling and mapping requirements, was validated by the EA's risk and evidence team in February 2023 and thus is suitable for a site-specific flood risk assessment for this site.
18. Our model is able to represent changes in ground levels and their impacts on floodplain storage flows and water levels in compliance with the EA's flood risk mapping and policies.
19. Following a detailed review of flood risk mechanisms across the site, our flood risk consultants designed a scheme which:
 - a. Maintains the conveyance of food flows through the site and across Brookend Lane (which regulate the flow leaving the site).
 - b. Maintains the cumulative floodplain storage capacity of the site, and actually improves it by 5m^3 .
20. In this case, these are the two key factors which ensure that this proposed development will not increase flood risk elsewhere.
21. The indirect consequence of transferring floodplain volumes from the upper elevation band into the lower elevation bands (i.e. to maintain the cumulative floodplain storage capacity) also means flood water will take longer to overtop Brookend Lane.
22. In addition to this, the impact of the revised proposal was modelled by JBA Consulting in September 2024 (using the hydraulic model version validated by the Environment in February 2023). Results from this impact analysis shows similar results to those documented in the FRA and (still) indicate that the proposal will not increase flood risk across third-party land.
23. The absence of any detrimental impact is not due to modelling limitations but because there is, in fact, no detrimental impact. The modelling is fit for purpose and reliably demonstrates that there is no additional flood risk off site.
24. Whilst the application of the level-for-level floodplain compensation approach is relevant to natural floodplains where flood water overtops the river channel and recedes back into it,

flood mechanisms across the applicant's site are driven by the site's ability to convey these flows across Brookend Lane (away from the channel). As such, the application of the level-for-level floodplain compensation approach is not essential for this site.

The Environment Agency's position

25. Since November 2023, the EA has maintained its objection to the discharge of condition 17.

26. In a letter dated 28 June 2024 (document 14) the EA stated there was insufficient information to demonstrate that there will be no loss of floodplain storage or increase in flood risk elsewhere due to the proposed change in ground levels. The EA requested a table to show volume losses and gains within each 200mm level band.

27. Notwithstanding the limitation of the level-for-level approach, this table was provided by JBA in the letter dated 25 July 2024 (document 15). In reply, the EA's letter dated 19 August 2024 (document 16) maintained the objection to discharge of condition 17 and said:

"the updated floodplain storage table as detailed in JBA's letter... shows that insufficient floodplain compensation is being provided at the highest level, with a shortfall of 200m³."

*"We require a table showing the floodplain storage volume losses and gains within each 200mm level band **that demonstrates there will be no loss of floodplain storage at the site, at all levels.** This is required to ensure no increase of flood risk elsewhere" (emphasis added).*

"We would like to reiterate that we did not consent to the floodplain storage volumes as part of the planning application 22/00754/FP."

28. In a subsequent email dated 5th September 2024 from Elizabeth Clements to JBA (document 17), the EA stated that hydraulic modelling is not likely to be sensitive enough to show the impact of a relatively small-scale loss of floodplain storage and hence is not evidence that there will be no increase in flood risk elsewhere. This statement directly contradicts the outcome of the model review carried out by the Environment Agency's own Evidence and Risk Team in 2023. It also implies that the EA planning team now require a level of precision so small that it cannot be confirmed with standard modelling software. This is completely untenable.

29. The same email of 5 September 2024 states *"we are unable to accept hydraulic modelling as evidence that there will be no increase in flood risk elsewhere"*. The EA routinely accept hydraulic modelling to test the impact of a scheme, and this statement is at odds with the EA's common practice and Operational Instruction 178_05 which states *"if a more complicated proposal is made by a developer, the developer will need to provide a more detailed analysis to demonstrate that the proposals are acceptable. For example, linked 1D-2D hydraulic modelling of pre and post development scenarios"*. This is exactly what we have done.

30. A further email from Elizabeth Clements to the LPA dated 11th October 2024 (document 18) references the letter of 19 August 2024 as a reason for maintaining the objection to discharging condition 17. This effectively requires us to demonstrate level-for-level compensation at all levels, although the email suggests that if this is not possible, “*a significant net gain in floodplain storage needs to be provided at lower levels to ensure there will be no increase in flood risk elsewhere, in accordance with the requirements of the NPPF and associated Planning Practice Guidance*”. We do not agree that this is the correct approach.

Our position

31. For the reasons set out in the section headed **No risk of flooding on the site or elsewhere**, we have demonstrated that the proposal does not create a risk of flooding either elsewhere on this site, or anywhere off site.
32. We and our consultants believe the information we have already provided demonstrates no flood risk as a result of this development. The EA seem to point to a theoretical risk of flooding without any explanation of where that risk comes from, or why the cumulative volume of storage on site will not be sufficient.
33. The NPPF and the Planning Practice Guidance requires us to demonstrate that the development will not create a flood risk. We do not believe there is a requirement to provide “significant net gain in floodplain storage” at lower levels if the overall development does not pose any material risk.
34. The test for discharging a planning condition is whether the solution is satisfactory, rather than ideal. While an ideal solution may be to provide “significant net gain”, a satisfactory solution is to provide an addition 5m³ of flood storage compensation and no flood risk off site.
35. We cannot provide level-for-level compensation at the highest band, due to site constraints. As outlined above, we believe this was accepted by the EA when it withdrew the objection to the planning permission.
36. Condition 24 of the planning permission was included at the request by the EA. This requires the development to be carried out in accordance with the FRA dated February 2023. The FRA makes it clear that volume for volume compensation is the only viable option for the highest band, but cumulative volume will be maintained, or even improved.
37. It is manifestly unfair for the EA to retrospectively require level-for-level compensation, when the consent was issued on the basis it was not possible to provide this.
38. The Operational Instruction 178_05 (document 19) at page 5 indicates that where a planning decision has already been made and/or it is the only remaining option, the EA will not be opposed to an indirect scheme. Both scenarios apply here, but this is not an indirect scheme, and all flood compensation will be provided on site. That document also states that developers must ensure there is no loss of flood flow or flood storage capacity for

floods up to the 1% annual probability fluvial flood, which we have done. We also comply with the section entitled "Basic requirements".

39. We believe the EA's approach in this case requires us to do more than we are obligated to do to adequately address flood risk.

Our next steps

40. The LPA has said it will not discharge condition 17 against the advice of the EA. This means our development has stalled.
41. Due to the topography of the site, we cannot provide any further on-site flood storage at the highest band, without making changes to the approved scheme. Any such changes, if they were possible, are likely to result in the removal of consented built environment under the planning Ref 22/00754/FP and a variation of the current planning permission, to address a theoretical flood risk elsewhere, which is not demonstrated on the evidence.
42. We have exhausted our enquiries with adjacent and nearby landowners, so cannot provide any off-site floodplain compensation in the vicinity.
43. We, and our advisors, cannot understand the EA's concerns. Where additional flood storage volume is created at lower bands, in this case 206m³ at 70.74~mAOD and below, it is going to provide flood storage sooner than it would at 70.94~mAOD. It is therefore going to operate for both the 1 in 100 year with climate change event, and lower amplitude flood events. It is a direct on-site replacement for flood storage at that higher band.

Impact on Jarvis Homes Ltd

44. This is a financial disaster for us as a modest sized developer, and we currently find ourselves in a very uncomfortable position on this scheme with seven partially constructed properties with a combined sales value of around £7.25M which are unsalable due to not being able to discharge condition No 17.
45. The EA will be aware of the Growth Duty. We understand it should not be applied to short circuit regulation or authorise that which is unlawful, but it isn't clear to us that the EA has had regard to this duty in its decision making about our site.
46. We have requested meetings with those at the EA making the decision for our site, but these have not been accepted. We and our advisors have at every stage addressed the concerns of the EA where we have been able to do so. At present, we are in a stalemate position; we do not understand the EA's concerns about flood risk elsewhere, we have no ability to provide additional flood storage compensation based on the site and the current design, and we know the development does not pose any flood risk elsewhere.
47. We understand that the EA does not support development on this site and has had concerns with the approach that the LPA has taken. It is clear in the correspondence that the EA would prefer that flood storage compensation was dealt with in advance of permission being granted. However, the principle of development and cumulative volume

flood storage are both established, and we need to work together to find a solution that is achievable and deliverable.

Environment Agency Review

We request a very urgent review of this matter at a senior level, by someone with technical expertise in flood risk compensation schemes.

We hope that the review will confirm that this site is suitable for development as it is, notwithstanding level-for-level compensation cannot be achieved at the highest band.

We are also hopeful that the review will confirm that current proposals and flood compensation arrangements are satisfactory to demonstrate compliance with the NPPF and Planning Policy Documents and demonstrate that the development does not pose a flood risk on site or elsewhere, and there is no need to insist on level-for-level compensation at the highest band.

Applying the Growth Duty and the EA's obligations as a fair regulator, we are hoping the review will lead to the removal of the objection to discharge of condition 17, or allow the parties to agree an evidence based outcome which is deliverable.

If EA concerns about flood risk are not addressed as a result of this review, we really need them to be clearly set out, so we and our consultants can address them, or we can obtain an opinion on what to do next.

I really hope you can assist. I look forward to hearing from you as soon as possible.

Yours sincerely