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HIGH LEVEL TARGET 5 DEVELOPMENT AND FLOOD RISK 2005/06

Joint Report to Department for Environment, Food and Rural Affairs (Defra) and the Department for Communities and Local Government (DCLG) by the Environment Agency and Local Government Association



November 2006

DEVELOPMENT AND FLOOD RISK

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HIGH LEVEL TARGET 5 DEVELOPMENT AND FLOOD RISK 2005/06

EXECUTIVE SUMMARY

High Level Target 5 (HLT5) reporting.

This report monitors the impact of the technical advice on flood risk provided by the Environment Agency on planning decisions made by English local planning authorities (LPAs). It is the sixth annual HLT report on development and flood risk, and is a joint report to the Department for Environment, Food and Rural Affairs (Defra) and the Department for Communities and Local Government (DCLG), by the Environment Agency and the Local Government Association (LGA). The report covers the period April 2005 to March 2006 and concentrates on development plans, planning applications and appeals where the Environment Agency sustained its objections through to a **known** decision¹.

Summary

- All development plans adopted during the reporting period contained flood risk policies and statements
- The number of planning applications requiring detailed consideration on flood risk grounds continues to decline as a result of the use of Environment Agency Standing Advice.
- The total number of applications permitted against Environment Agency advice continues to fall.
- Where the Environment Agency knows the outcome of its objections to individual planning applications, the percentage of cases where the final outcome was in line with its advice rose to 95% of cases.
- LPAs only permitted 10 major cases against Environment Agency advice.
- Only 1 appeal decision was determined contrary to Environment Agency advice.
- The Environment Agency sought Judicial Review in the case of 1 planning permission granted against Environment Agency advice on flood risk, and was successful. The High Court quashed the planning permission.
- LPA performance in providing the Environment Agency with relevant decision notices continues to improve (70% of cases objected to).

However, it is not all good news.

- Environment Agency's monitoring of development and flood risk, on behalf of the government, is still impeded by the fact that LPAs do not inform it of their decisions on 30% of the cases where it has objected.
- The requirement for flood risk assessments to accompany planning applications is still being ignored by many developers. In addition, the proportion of FRAs submitted, but considered unsatisfactory by the Environment Agency, increased in 2005/06. The lack of a satisfactory FRA now accounts for 68% of all objections.

¹ 'Known' decisions are those where a LPA has sent the Environment Agency a copy of an adopted development plan, a decision notice for an individual planning application, or an appeal decision by the Planning Inspectorate. During the last monitoring period the Environment Agency received 17 adopted development plans, and recorded decisions on 2,922 planning applications and 124 appeals on which the Environment Agency had objected on flood risk grounds. Although the Environment Agency is unaware of any plan being adopted on which it has not been consulted, or any Appeal on which it does know the outcome, it is only aware of the outcome of 70% of its objections to individual planning applications.

- Re-consultation by LPAs, when they are minded to override Environment Agency advice, although improving slowly, is still happening in too few cases (20%).

The Policy Outlook.

This HLT5 monitoring report is published at a time of significant change in the English planning system including its approach to flood risk matters. The 2005-06 report will be the last to monitor LPAs performance on Development and Flood Risk over a full year on the basis of the government's *Planning Policy Guidance Note 25 (PPG25) -Development and Flood Risk*².

Following the passing of the Planning and Compulsory Purchase Act 2004, major revisions to the planning system in England have taken place. As a part of these changes, the Government has replaced PPG25 with a new Planning Policy Statement (PPS25) on 'Development and Flood Risk'³. PPS25 is a new style PPS reflecting the expectations of the Government's Planning Green Paper *Planning: delivering a fundamental change*⁴. The new PPS will shape local authority development plan policies on development and flood risk in the new style Local Development Frameworks. In addition, the PPS will guide LPA decisions on individual planning applications. The accompanying *Practice Guide*⁵ will provide advice on practical implementation.

PPS25 has been developed to reflect the general direction set out in *Making Space for Water*⁶, the government's strategy to shape flood risk management policy over the next 10-20 years. It is set therefore in the context of new Government priorities for sustainable development, and drivers for change such as climate change and increased development pressures, including those in areas at risk of flooding.

The new PPS contains many elements that the Environment Agency and the Local Government Association have called for in earlier HLT reports. The new PPS:

- provides a stronger and clearer requirement for Flood Risk Assessments (FRA) to accompany individual proposals, plus the need to carry out Regional Flood Risk Appraisals at the regional level, and Strategic Flood Risk Assessments at the LPA level (Annex E)
- stresses the importance of taking account of the consequences, and not just the probability, of future flooding events.
- clarifies the Sequential Test as a risk based approach to be applied at all stages of the planning process, to steer new development to areas at the lowest probability of flooding (Annex D)
- where new development is exceptionally necessary in other areas, introduces an Exceptions Test as a method of managing flood risk while still allowing necessary development to occur (Annex D), and
- clarifies the relationship between policy on flooding and other planning issues.

In addition, following a review of the role of statutory consultees, the Government has amended the Town and Country Planning (General Development Procedure) Order (GDPO) 1995, to

² DTLR. Planning Policy Guidance note 25: Development and Flood Risk. July 2001.

³ PPS25. Development and Flood Risk. DCLG December 2006.

<http://www.communities.gov.uk/index.asp?id=1143803>

⁴ DTLR (2001). <http://www.communities.gov.uk/index.asp?id=1143142>

⁵ PPS25 Practice Guide. DCLG December 2006. <http://www.communities.gov.uk/index.asp?id=1143803>

⁶ Defra consultation dated 29th July 2004. <http://www.defra.gov.uk/corporate/consult/waterspace/index.htm>

extend the Environment Agency's statutory role to include flood risk on certain developments⁷. The GDPO amendment also amends its role in relation to development in close proximity to Main Rivers and any proposals involving culverting. The Environment Agency has long called for this change, which will ensure that the Environment Agency is able to offer advice on all development proposals where there is a risk of flooding.

The Government has also introduced a new standing Flooding Direction⁸. This will enable it to call-in cases where a LPA is minded to grant planning permission for a 'major'⁹ development proposal against the Environment Agency's advice on flood risk. The Direction requires a LPA, when minded to approve an application for major development against sustained Environment Agency advice and where negotiation cannot resolve the objection, to refer the application to the relevant Government Office to decide whether to call-in the application for decision by the Secretary of State.

Finally, the Government is well advanced in its plan to introduce a Standard Planning Application form, 1App, in 2007. It has already consulted on such a proposal¹⁰, and has recently consulted on the Validation of Planning Applications¹¹. The proposed standard form will include 'gateway questions' in order to assist LPAs in determining whether a FRA is required.

These changes will together ensure that current and future flood risk is taken into account at all stages of the planning process - at the strategic level in Regional Spatial Strategies, at the local level in Local Development Frameworks, and in individual applications for development. They will ensure that the Environment Agency has the opportunity to offer advice on any development proposal where there is a risk of flooding. In addition, in 'major' cases, the final decision will be scrutinised by the Secretary of State if a LPA is minded to overrule flood risk advice and may be called in. The Environment Agency believes that these are positive changes, which will reduce the amount of new development at risk from flooding or likely to exacerbate flooding elsewhere.

Key points from 2005/06

Development Plans

- **All newly adopted development plans now include flood risk statements or policies.** In addition the wording of PPG25 is now finding its way into more plans, with many plans supporting the use of SUDS (sustainable drainage systems), the need to carry out a sequential test, and for developers to carry out a FRA (flood risk assessment) to accompany applications. No new style Local Development Frameworks were adopted during the monitoring period but these are not intended to repeat national policy in the future.

Planning applications

- **The number of planning applications on which the Environment Agency is consulted which require detailed consideration on flood risk grounds has continued to decline.** The number of consultations referred to the Environment Agency's Flood Risk Management

⁷ The Town & Country Planning (General Development Procedure)(Amendment)(No.2)(England) Order 2006: SI 2006, No 2375.

⁸ Town & Country Planning (Flooding)(England) Direction 2006

⁹ For the purposes of this report, the Environment Agency uses the DCLG definition of 'major' development as one in which the number of dwellings to be constructed is 10 or more, or the site area is equal to or greater than 0.5 Ha. Non-residential developments are defined as major if they involve a floor space equal to or greater than 1000 m², or a site area equal or greater than 1 Ha.

¹⁰ 'Consultation Paper – Standard Application Form' – ODPM. March 2005.

¹¹ DCLG July 2006. <http://www.communities.gov.uk/index.asp?id=1501848>

function for detailed consideration reduced from 14,000 in 2004/05 to 11,400 in 2005/06. This coincides with the continued national roll out of the Environment Agency's Flood Risk Standing Advice, which allows the Environment Agency to concentrate its planning resources on 'higher' risk applications, while LPAs receive responses to 'lower' risk applications via Standing Advice.

Environment Agency objections

- **The number of objections made by the Environment Agency on flood risk grounds has continued to reduce slightly**, from 4,600 in 2004/05 to 4,200 in 2005/06. **The proportion of applications to which the Environment Agency objected on flood risk grounds increased slightly** from 33% to 37%, partly reflecting its concentration on higher risk cases.

Decision Notices

- **LPA performance in providing decision notices to the Environment Agency has continued to improve.** The number received in 2005/06 (2,922) represents 70% of the 4,201 applications initially objected to (43% in 2002/03, 55% in 2003/04 and 66% in 2004/05). This is a notable improvement, which needs to be sustained if the Environment Agency is to monitor its involvement in the planning system effectively and report on this to Government. The Environment Agency is still unaware of the final outcome of 30% of the planning applications on which it objected.

Environment Agency influence

- Of the 70% of objections where the Environment Agency received a decision notice, **the final outcome was in line with the Environment Agency's advice in 95% of cases**, (compared to 92% in 2004/05). For all applications where the Environment Agency sustained an objection, **LPAs permitted only 136 applications against Environment Agency advice**, which is a significant reduction on last year (248 in 2004/05), particularly considering the higher risk nature of the applications being dealt with.

Major development proposals

- **The Environment Agency sustained an objection on flood risk grounds to a reduced number of 'major' development proposals** (284 in 2005/06 compared to 353 in 2004/05) - **129 of these were for residential development** (201 in 2003/04).
- **LPAs gave planning permission contrary to Environment Agency advice for 10 of these 'major' developments**, a reduction from 29¹² reported last year. This represented 7% of all developments permitted contrary to Environment Agency advice. Of these, 6 cases relate to development in areas of the highest flood risk (flood zone 3), while 3 were in flood zone 1, where development may give rise to flood risk elsewhere.

Flood Risk Assessments

- Five years after the publication of PPG25, large numbers of consultations are still being submitted to LPAs and then the Environment Agency without an appropriate/satisfactory flood risk assessment (FRA). **The lack of a FRA (97 cases) or failure to provide a satisfactory FRA (21 cases) increased further in 2005/06 and accounts now for 68% of all Environment Agency sustained objections** - a continuing increase since PPG25 was published. This deprives the Environment Agency of important information it needs to determine its response to flood risk issues. In addition, **some LPAs still appear not to**

¹² Errors were later found in the reporting of 3 cases, which were removed from the total.

recognise the lack of a FRA as a valid reason for refusing planning permission. As more FRAs are received it is expected that the numbers found to be unsatisfactory will increase.

Re-consultation

- **Where LPAs are minded to permit developments contrary to Environment Agency advice, few still re-consult the Environment Agency as required by PPG25¹³.** Although there has been an improvement re-consultations, as a percentage of all permissions granted against Environment Agency advice, remain low (20%).

Appeals

- Although the number of planning appeals where flood risk was an issue has remained at a high level (124 in 2005/06), **the proportion of appeal decisions contrary to Environment Agency advice has continued to fall** (from 9% in 2003/04 to 1% in 2005/06). **The outcome of only 1 appeal was contrary to its advice.**

Judicial Review

- **The Environment Agency sought Judicial Review in the case of 1 planning permission granted against Environment Agency advice on flood risk, and was successful.** The High Court of Justice quashed the planning permission for 63 sheltered apartments in the flood plain, and awarded full costs against the LPA.

Environment Agency performance

- **There was continued improvement within the Environment Agency in meeting LPA consultation deadlines.** LPAs cited ‘missing the LPA deadline for responding to consultations’ as the reason for permitting development contrary to Environment Agency advice in only 13 cases (36 last year).

Duty to consult.

- The Government amended planning regulations in October 2006¹⁴ to extend the Environment Agency’s statutory role in relation to flood risk. **During the 2005/06 monitoring period, LPAs did not have a statutory duty to consult the Environment Agency in respect of flood risk.**

See over page for a summary of the number of planning application consultations considered by the Environment Agency, and objections made.

¹³ DTLR. PPG25: Development and Flood Risk. Paragraph 65.

¹⁴ The Town & Country Planning (General Development Procedure)(Amendment)(No.2)(England) Order 2006: SI 2006, No 2375.

Table 1: Total number of planning applications considered and objections made

	2001/02	2002/3	2003/4	2004/5	2005/6
Planning consultations on which the Environment Agency responded on all issues (includes responses via Visitor System ¹⁵)	89,562	90,164	N/A	N/A	N/A
Planning consultations on which the Environment Agency responded on all issues (excludes responses via Visitor System)	N/A	41,039	52,379	41,481	32,142
Consultations which required detailed consideration on flood risk grounds	24,138	20,452	22,067	13,937	11,403
Total Environment Agency objections made on flood risk grounds	2,500	4,523	5,077	4,634	4,201
LPA decision notices received by the Environment Agency relating to Environment Agency objections on flood risk grounds ¹⁶	1,712	1,952	2,811	3,047	2,922
Sustained objections on flood risk grounds where the outcome is known, ¹⁷ of which	758	1,047	1,437	1,438	1,160
▪ Applications refused, or approved with conditions, by LPAs in line with Environment Agency advice ¹⁸	475	658	931	998	889
▪ Applications refused by LPAs for other reasons	N/A	168	183	192	135
▪ Applications permitted by LPAs contrary to Environment Agency advice ¹⁹	283	221	323	248	136

¹⁵ For details of 'Visitor System' refer to Fig 2 footnote in main report.

¹⁶ Decision notices received from LPAs during the monitoring period do not correlate with objections made. Many decisions will relate to objections made in the previous accounting period, while LPAs will not yet have made a decision on those objections made late in the monitoring period.

¹⁷ Sustained objections do not include applications withdrawn by developers or Environment Agency objections resolved through negotiations, before a formal decision is made by the LPA.

¹⁸ This includes applications refused in line with Environment Agency advice plus those approved with conditions attached that fully mitigate Environment Agency concerns.

¹⁹ Including those with conditions only partly mitigating/meeting Environment Agency concerns.

DEVELOPMENT AND FLOOD RISK

1. INTRODUCTION

1.1 HLT5 Background

This is the sixth annual report to be published on the High Level Target for ‘Development and Flood Risk’ (High Level Target 5, formerly High Level Target 12). It provides information on the results of Local Planning Authority/Environment Agency interaction on development and flood risk. It has been prepared by the Environment Agency with input from local authorities and the Local Government Association, and is published as a joint Environment Agency/Local Government Association report. It covers England for the period from 1 April 2005 to 31 March 2006 (‘the monitoring period’). A separate Welsh Assembly Government High Level Target (HLT13 Wales) is reported annually.

This report is submitted to the Department for Environment, Food and Rural Affairs (Defra) and the Department for Communities and Local Government (DCLG) in line with obligations under the High Level Targets for Flood and Coastal Defence²⁰. **High Level Target 5 requires the Environment Agency, in partnership with local authorities, to report annually on:**

- **those local authority development plans upon which the Environment Agency has commented, identifying plans which do, and do not, have flood risk statements or policies; and**
- **the Environment Agency’s response to planning applications, identifying cases where:**
 - (i) **the Agency sustained objections on flood risk grounds and**
 - (ii) **final decisions, by the local planning authority or on appeal, were in line with or contrary to Environment Agency advice.**

High Level Target 12 (HLT12) was issued in November 1999, and came into effect on 1 April 2000. Following minor amendment it was reissued in March 2005 as High Level Target 5 (HLT5)²¹. Previous HLT12 and HLT5 reports produced for April 2000/March 2001 through to April 2004/March 2005, are available from the Environment Agency website.²² This report follows a similar format to earlier HLT reports in order to allow comparisons to be made.

1.2 The Data

The information in this report relates to development plans and planning applications on which the Environment Agency was consulted by local planning authorities and where flood risk was an issue. The quality of data is crucial for the annual HLT reports. In the monitoring period of 2005/2006, some decisions were made on applications that were objected to by the Environment Agency in the 2004/2005 period. Similarly, some objections made in 2005/2006 will not result in a decision until 2006/2007. Because of this, the total number of applications decided and

²⁰ <http://www.defra.gov.uk/enviro/fcd/hltarget/oldhlt.htm>

²¹ <http://www.defra.gov.uk/enviro/fcd/hltarget/default.htm>

²² <http://www.environment-agency.gov.uk/aboutus/512398/908812/1351053/571633/952531/?version=1&lang=e>

objections made cannot be directly correlated. Nevertheless, the figures provide useful year-on-year evidence of performance.

In order to facilitate real understanding of the Environment Agency's effectiveness and of local authorities' performance under the high level targets, most of the information used in this report relates to **known planning outcomes**. That is, development plans which have been adopted, and planning applications and appeals which have been decided and **where the Environment Agency has been informed of the outcome** (LPA decision notices) during the monitoring period. For completeness, this report contains background data on **all** objections made by the Environment Agency during the monitoring period on flood risk grounds. These are included in Appendix 4.

1.3 LPA Involvement

Every effort has been made to ensure the highest level of accuracy of information used in this report. All individual LPAs with applications covered by this report have been invited to check data relevant to their particular area through a quality assurance exercise agreed between the Environment Agency and the Local Government Association.

In addition, for the 10 'major' cases identified in appendix 3 as having been approved by LPAs against Environment Agency sustained objections on flood risk, the details of each of these cases has been further checked with the appropriate LPA to ensure they are accurate.

2. DEVELOPMENT PLANS

The Environment Agency received 17 adopted development plans during the monitoring period, on which it had been consulted (Appendix 1). It does not know of any case where a LPA has adopted a plan without consultation.

These 17 plans composed 13 Local Plans, 3 Unitary Development Plans, and 1 Waste Local Plan. Although the Planning and Compulsory Purchase Act 2004 brought in the requirement on LPAs to produce a new breed of development plan, - Local Development Frameworks (LDF) and Local Development Documents (LDD) - no LDF or LDD has been adopted within the monitoring period. However, the new Act has stimulated plan-making activity in many LPAs, and local Area Environment Agency Planning Liaison teams are currently in discussion with many LPAs, providing advice on flood risk and development for incorporation into LDF/LDD work.

All the 17 adopted plans contain a broad range of flood risk policies and/or statements, ranging from the general to the specific. (A list of flood risk policies included in the adopted plans is set out in Appendix 1.) All seek to protect areas at risk from flooding to varying degrees, prevent development that would create an unacceptable increase in the risk of flooding on site or elsewhere, as well as seeking to restrict development that would be subject to an unacceptable risk from flooding. As in previous years, several plans include fairly wide-ranging policies that include flood risk alongside other water issues such as protecting water quality and resources.

Over half of the adopted plans (10) included policies to encourage the use of sustainable drainage systems (SUDS) to deal with surface water drainage issues. This is an improvement on previous years. However, while several plans 'require' SUDS to be considered (e.g. New Forest, Broxbourne and Exmoor National Park local plans), other plans only 'encourage' their use (e.g. Kingston upon Thames UDP and Welwyn-Hatfield local plan). There were of course also a

number of plans that do not refer at all to the role of SUDS in reducing flood risk, despite the advice in PPG25 (paras 40-42 and appendix E) and PPS1 (para. 22).

It is also disappointing that 5 years after the publication of PPG25, only 1 plan (Broxbourne local plan) specifically refers to the precautionary principle in considering flood risk when determining planning applications, although it may be implied in several other plans. However, there is some evidence that the requirements, and wording, of PPG25 are finally working their way through to adopted plans, with 6 plans referring to the need for a sequential test, or at least a consideration of alternative sites, in determining the suitability of sites for development. (e.g. New Forest, Broxbourne and Taunton Deane local plans).

It is also encouraging to see 7 of the adopted plans (e.g. Warrington and Bolton UDPs, Southampton local plan) referring to the need to carry out a FRA to accompany an application. The lack of a satisfactory FRA accounts for over 60% of all Environment Agency objections to individual planning applications.

LPAs have the Environment Agency's Flood Zone maps available to assist them in applying the sequential test and should inform their Strategic FRAs. The requirement for Sustainability Appraisal of Local Development Documents, incorporating Strategic Environmental Assessment, should also provide an opportunity to apply the sequential test in an open and transparent way. The recently published PPS25 strengthens the requirement for LPAs to apply the sequential test.

3. PLANNING APPLICATIONS

3.1 Applications objected to on flood risk grounds

For the first time since 1998/99, the number of planning applications submitted to LPAs fell in 2005/06 (see fig.1 below). In 2005/06 LPAs received 646,000 planning applications²³, compared with 689,000 in 2003/04. This represented a fall of 6.2%. All four quarters measured a decrease in planning application numbers compared with the corresponding period in 2004/05. The decline affected all regions of England, although application numbers picked up in the fourth quarter (January to March 2006), and London and the South East reported a small increase in application numbers over that period.

²³ ODPM Quarterly Development Control Statistics. Planning Applications Jan-March 2005.
<http://www.communities.gov.uk/index.asp?id=1146962>

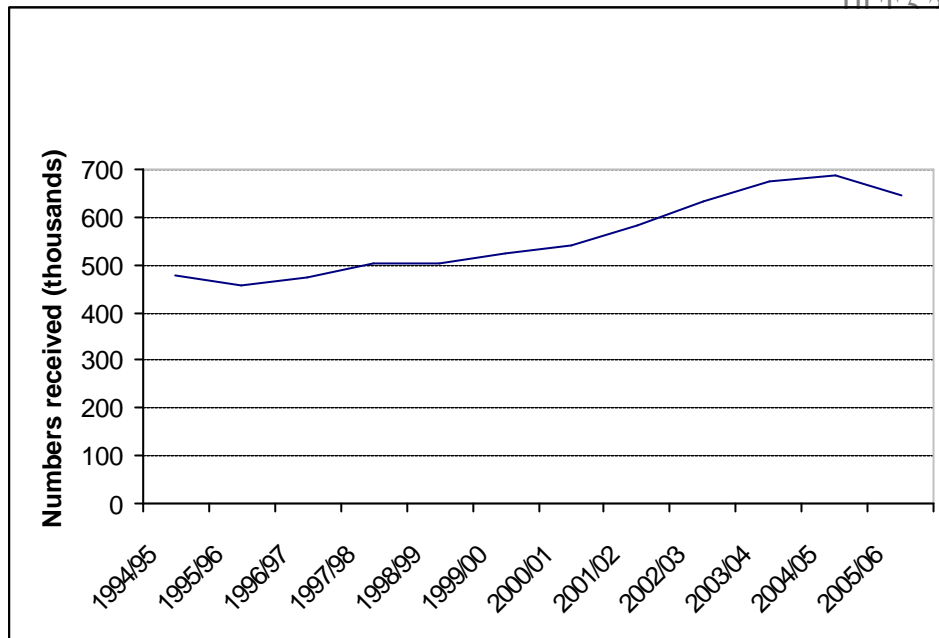


Fig 1. Planning Applications received by district planning authorities.

In 2005/06 the number of planning consultations received by the Environment Agency on all issues fell also, from 41,481 in 2004/05 to 32,142, a decline of 22%. This followed an equally large fall in consultation numbers from 52,379 in 2003/04 to 41,481 in 2004/05. (Table 2 and Fig.2. below). As well as the reduced number of planning applications a contributory factor was an 18% fall in the numbers of planning applications requiring detailed consideration by the Environment Agency’s Flood Risk Management function on flood risk grounds, from 13,937 in 2004/05 to 11,403. Planning consultations requiring **detailed** flood risk consideration have now declined by 48% between 2004-2006. This dramatic fall coincides with the national roll-out of the Environment Agency’s ‘Standing Advice’, and increasing uptake by LPAs. Although the fall in consultations cannot be directly attributed to Standing Advice, evidence from LPAs suggests it is a major factor. Standing Advice enables LPAs to respond directly to lower risk applications without formally consulting the Environment Agency, and for the Environment Agency to concentrate its planning resources on applications that pose higher risks in terms of flooding or causing flooding.

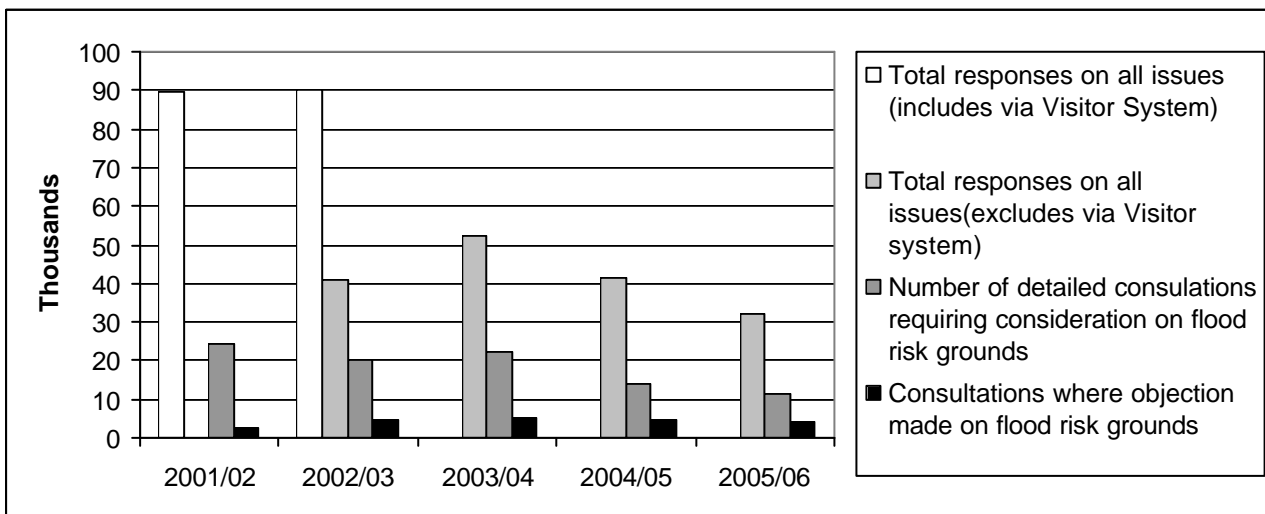


Fig. 2. Consultations received by the Environment Agency.

Note. See footnote²⁴ for an explanation of the Visitor System.

²⁴ The Visitor System. Prior to 2003, the Environment Agency responded to LPA consultations in two ways. Throughout most of the country LPAs consulted the Environment Agency directly on individual planning

The number of planning applications on which the Environment Agency has been consulted on flood risk grounds during this monitoring period therefore refers to those higher risk consultations submitted to the Environment Agency by LPAs. **In order to simplify and speed up the consultation process, no records are currently kept of those cases where LPAs have determined lower risk applications using Standing Advice provided by the Environment Agency.**

Despite the reduced number of direct consultations, the Environment Agency was required to respond on 11,403 applications which required detailed consideration on flood risk grounds, and objected to 4,201 (37%) of these applications. This represents a small increase over the 33% in 2004/05.

Table 2: Planning Consultations received and applications objected to by the Environment Agency.

	2001/2	2002/3	2003/4	2004/5	2005/06
Planning consultations on which the Environment Agency responded on all issues (includes responses via Visitor System)	89,562	90,164	N/A	N/A	N/A
Planning consultations on which the Environment Agency responded on all issues (excludes responses via Visitor System)	N/A	41,039	52,379	41,481	32,142
Consultations which required detailed consideration on flood risk grounds	24,138	20,452	22,067	13,937	11,403
Total number of applications where objection made on flood risk grounds	2,500	4,523	5,077	4,634	4,201

3.2 Decision notices

During the 2005/06 monitoring period the Environment Agency received 2,922 decision notices on planning applications from LPAs. Such decision notices inform the Environment Agency of the outcome of its objections.

It is clear that the performance of LPAs in informing the Environment Agency of planning decisions has steadily improved. The number of decision notices received by the Environment Agency in 2004/06 represented 70% of all applications it objected to on flood risk grounds, compared with 66% in 2004/05, 55% in 2003/04 and 43% in 2002/03. The Environment Agency's Area offices will continue to work closely with LPAs to increase further the number of decision notices sent to the Environment Agency. The move made by some LPAs to post decision notices on their web sites is very welcome, as is increased usage by LPAs of the Planning Portal.

applications, and the Environment Agency provided a written response. However in a number of areas the Environment Agency operated the 'Visitor System', whereby Environment Agency staff visited LPA offices to view submitted applications, and to provide an immediate response to those applications considered to be of a lower risk. For higher risk applications a considered written response was provided. With the introduction of 'Standing Advice' to deal with lower risk applications, the 'Visitor System' has been withdrawn.

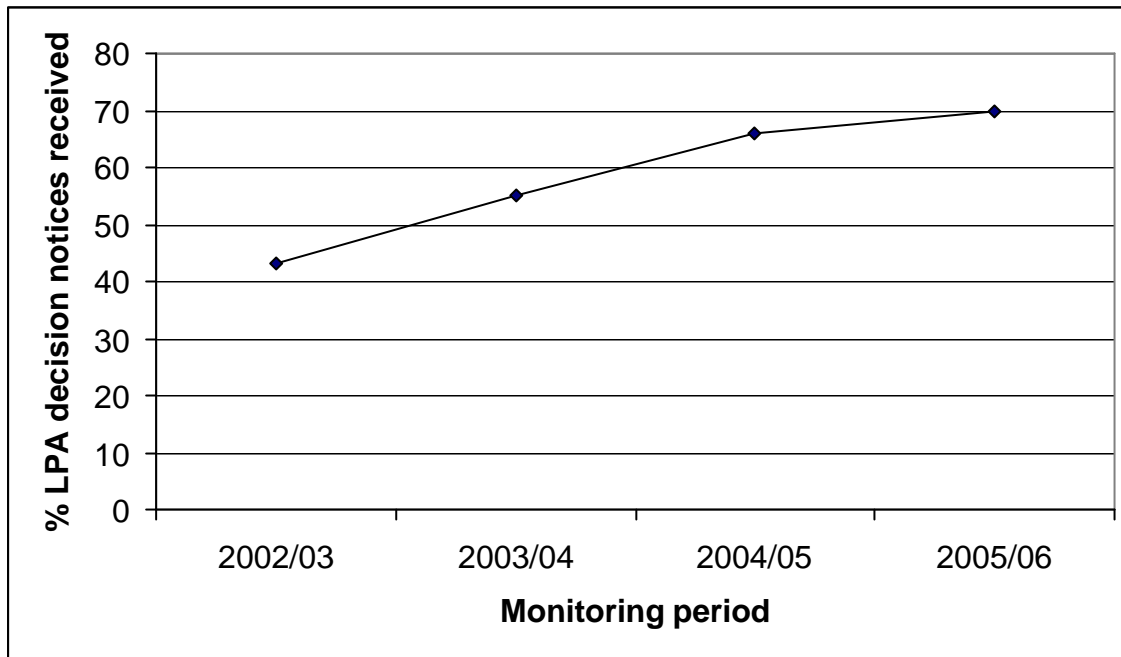


Fig. 3. Proportion of LPA Decision Notices received

Of the 2,922 decisions made by LPAs (where they notified the Environment Agency), the final outcome was in line with the Environment Agency’s advice in 95% of cases (a slightly higher proportion than the 92% in the previous year). In 608 cases applications were refused by LPAs directly in line with Environment Agency advice (Appendix 2), while in a further 135 cases applications were refused by LPAs for other reasons (table 3). In addition, 281 applications were approved by LPAs containing planning conditions which fully met/mitigated Environment Agency concerns (Appendix 2). 136 (5%) applications were permitted contrary to Environment Agency advice, or with conditions which only partially met/mitigated Environment Agency concerns (compared to 8% in 2004/05, and 11% in 2003/04 and 2002/03).

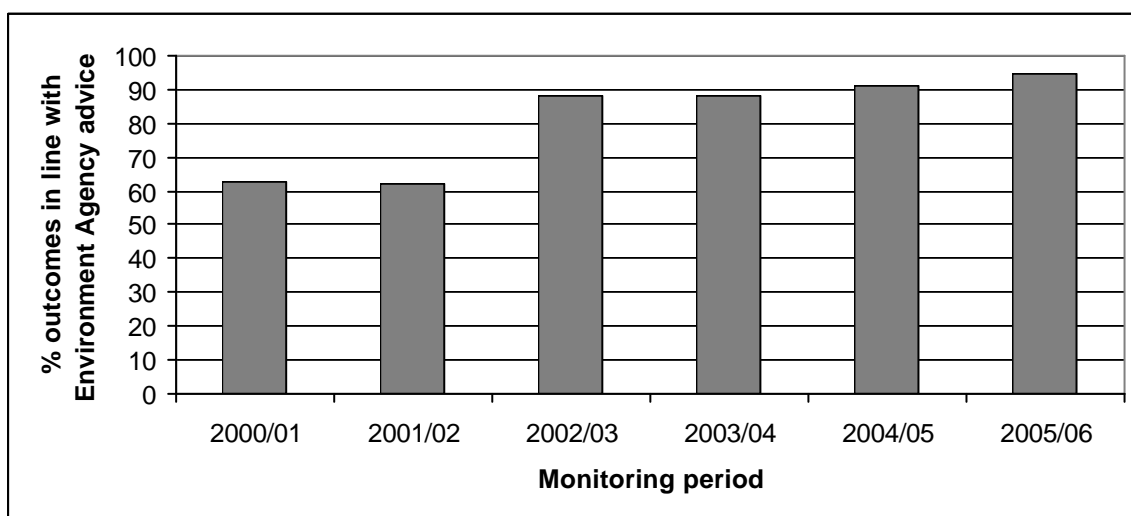


Fig. 4. Proportion of final outcomes on planning applications in line with Environment Agency advice (Note: slightly different accounting systems apply to 2000/01 and 2001/02).

Table 3: Environment Agency objections where outcome is known

	Objections 2005/06	% of total 2005/06	% of total 2004/05	% of total 2003/04	% of total 2002/03
Total number of objections where decision notice received and outcome known	2922	100%	100%	100%	100%
Applications withdrawn by developers before a formal decision made by LPA	662	22.7%	20.0%	14.5%	11.4%
Applications referred to Secretary of State due to non determination by LPA	8	0.3%	0.4%	0.2%	0.1%
Environment Agency objections resolved through negotiations before a formal decision made by LPA	1085	37.1%	32.5%	34.2%	34.9%
Applications refused by LPAs in line with Environment Agency flood risk advice *	608	20.8%	19.3%	19.0%	19.5%
Applications refused by LPAs for other reasons*	135	4.6%	6.3%	6.5%	6.0%
Applications approved by LPAs containing planning conditions that fully mitigated/met Environment Agency concerns*	281	9.6%	13.5%	14.2%	14.2%
Applications permitted by LPAs contrary to Environment Agency advice*	134	5.0%	7.8%	11.3%	11.2%
Applications approved by LPAs containing planning conditions that only partially mitigated/met Environment Agency concerns*	2	0.1%	0.3%	0.2%	0.2%
Applications where the Environment Agency SUSTAINED its objection	1160	39.7%	47.2%	51.2%	53.6%

* = sustained objections

The remainder of this report is based on known planning outcomes i.e. planning applications which have been decided by LPAs, and where the Environment Agency has been notified of the decision.

3.3. Reasons for Sustained Objections to applications

40% (1,160) of the 2,922 decision notices received by the Environment Agency were for applications where ‘sustained’ objections had been made. This is where the Environment Agency objection had not been resolved by withdrawal of the application or through negotiation to make the development acceptable to the Environment Agency before a formal decision was made by the LPA²⁵. The proportion of consultations where the Environment Agency has made ‘sustained’ objections has fallen significantly in recent years, from 51% in 2003/04 to 40% in 2005/06.

Some applications were objected to for more than one reason, giving a total of 1,469 objections against 1,160 applications (where objections were sustained). The Environment Agency classifies the reasons for its objection for those cases where a decision notice has been received under eleven headings (see Table 4 below).

PPG25 advises applicants to carry out “an assessment of flood risk and the run-off implications of their proposals that is appropriate to the scale and nature of the development and the risks involved” and provides guidance as to what is required²⁶. It is a matter of concern that 5 years after the publication of PPG25 a very large proportion of consultations are still being submitted to the Environment Agency without a satisfactory FRA as required by PPG25.

Lack of a satisfactory FRA as a proportion of all objections, has continued to rise since 2001-02 (see fig 5 below). During the 2005-06 monitoring period, the proportion of objections made on the basis of a lack of a FRA accompanying the application (48%) was similar to that for the previous two monitoring periods (table 4). However, there was a big jump in the proportion of cases where the Environment Agency judged a submitted FRA to be ‘unsatisfactory’, from less than 1% in 2003-04 to over 13% in 2005/06. Together these accounted for over 61% of all sustained objections (Table 4). In future, it is likely that as more FRAs are received there is likely to be an increase in those found to be unsatisfactory.

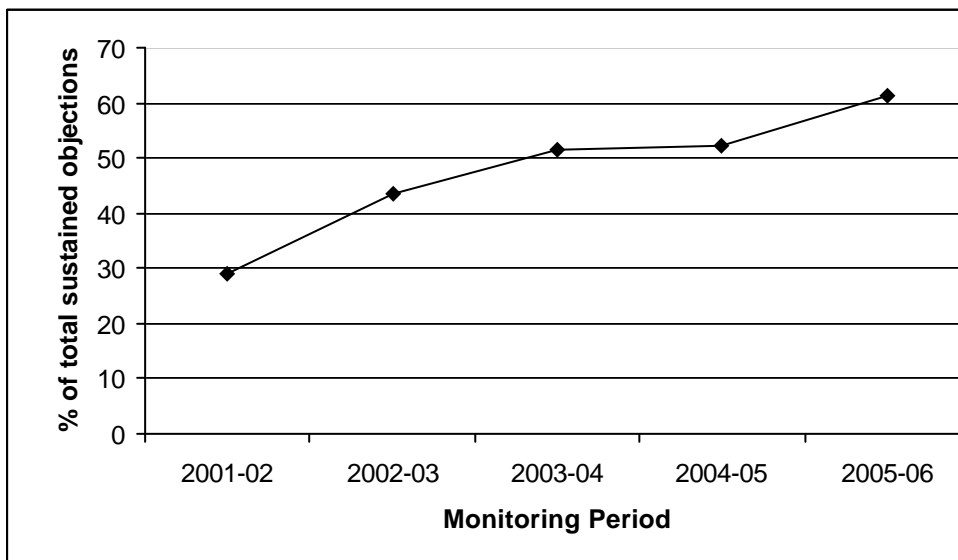


Fig 5. Number of sustained objections on the basis of lack of a satisfactory flood risk assessment

²⁵ Sustained objections do not include applications withdrawn by developers or Environment Agency objections resolved through negotiations, before a formal decision is made by the LPA.

²⁶ DTLR. PPG25, Para. 60.

This continuing rise suggests that many applicants are still unaware of the requirements of PPG25, and that LPAs are still not requiring applicants to submit a satisfactory flood risk assessment before consulting the Environment Agency. The proportion of sustained objections on the basis of a complete lack of a FRA however has probably reached its peak.

The ODPM work on ‘1APP’ - the standard planning application form²⁷ to be used by all LPAs, as well as tighter wording in the new PPS25, offers a significant opportunity to ensure that applications are not registered unless they are accompanied by appropriate documents, including FRAs. However, LPAs should not be penalised in terms of Best Value performance for delays in decisions that might be caused by insisting on the provision of such information.

It is worrying that as more FRAs are completed, an increasing proportion of them are judged as ‘unsatisfactory’ by the Environment Agency. 196 sustained objections were on the basis that a submitted FRA was unsatisfactory. This underlines the need for good practice in carrying out flood risk assessments, including a better mutual understanding of what constitutes an “appropriate” flood risk assessment for various types of development. The Environment Agency welcomes the inclusion of much greater detail on the preparation of FRAs in the recently published DCLG Practice Guide, which accompanies the new PPS25. It is important that applicants and LPAs make themselves aware of this guidance.

The second most significant reason for objection was because the planned developments were located in areas known to be at risk of flooding (22% of objections). A small but significant proportion of objections (5%) raised concerns over the potential impact on flood risk of increased surface water run-off from new development. The fact that all development has the potential to increase the risk from flooding needs stronger recognition in new developments. LPAs should ensure that those proposing development have taken account of the risks posed by increased run-off. Loss of flood storage, which can increase flooding problems further downstream, accounted for a further 3% of objections.

Table 4: Reasons for sustained objections to planning applications on flood risk grounds

Grounds for objection	Planning applications objected to	% of objections 2005/06	% of objections 2004/05	% of objections 2003/04	% of objections 2002/03
Lack of a FRA	704	47.9%	48.0%	51.0%	43.4%
- Unsatisfactory FRA submitted	196	13.3%	4.7%	0.4%	
Area at risk from flooding	326	22.2%	25.5%	26.7%	31.8%
Adverse impact of/on surface water run-off	70	4.8%	9.6%	9.4%	12.3%
Loss of flood water storage	49	3.3%	3.8%	4.6%	7.5%
Loss/restricted access to watercourse	45	3.1%	3.3%	2.5%	2.6%
Loss of access to the development	20	1.4%	2.0%	2.3%	<1%
No dry access route	20	1.4%	-	-	-
Culverting	19	1.3%	1.7%	1.3%	<1%

²⁷ <http://www.communities.gov.uk/index.asp?id=1147968>

Grounds for objection	Planning applications objected to	% of objections 2005/06	% of objections 2004/05	% of objections 2003/04	% of objections 2002/03
Risk to flood defences	14	1.0%	1.1%	1.7%	<1%
Site liable to erosion	6	<1%	<1%	<1%	<1%
Total Number Of Objections	1469	100%	100%	100%	100%

Note: some applications had more than one objection raised against them.

3.4 Objections to applications on flood risk grounds by type and size of developments

Of the applications where the Environment Agency received decision notices in 2005/06, it sustained an objection to 284 applications for ‘major’ development (down from 353 cases in 2004/05), representing 24% of all applications objected to (Table 5). The remaining objections (76%) were for ‘minor’ development. The split between ‘major’ and ‘minor’ reflected the 2004/05 split.

129 (45%) of the 284 ‘major’ applications were for residential development, a significant decrease over the 57% (201 cases) in 2004/05. Although the number of ‘minor’ cases on which the Environment Agency raised objections reduced from 1,085 in 2004/05 to 876 in 2005/06, the proportion of these for minor residential development (69%) remained the same as in 2004/05.

The Environment Agency also objected on flood risk grounds to 79 mixed development proposals (6% of applications objected to), of which 47 were ‘major’ proposals, 62 office/light industrial proposals (5%), 45 heavy industry/warehousing proposals (3%), and 37 caravan site proposals (3%, see Table 5).

Table 5: The number of applications by type and size of development against which the Environment Agency sustained an objection on flood risk grounds

Type of development	Major	Minor	All	2005/06	2004/05	2003/04	2002/03
Residential	129	605	734	63.3%	66.3%	71.3%	68.3%
Other	18	70	88	7.6%	6.2%	2.4%	7.7%
Mixed development	47	32	79	6.8%	5.6%	4.7%	1.7%
Offices / light industrial	12	50	62	5.3%	5.3%	5.6%	7.1%
Heavy industry / warehousing	18	27	45	3.9%	3.1%	1.3%	2.1%
Caravan sites	17	20	37	3.2%	2.6%	3.2%	2.2%
Infrastructure	6	16	22	1.9%	1.7%	3%	1.7%
Agriculture	7	15	22	1.9%	1.5%	1.9%	2.7%
Retail	9	12	21	1.8%	3.3%	2.6%	3.2%
Recreational schemes	9	11	20	1.7%	2.7%	2.6%	2.6%
Educational	7	11	18	1.6%	<1%	<1%	0.0%
Waste	3	4	7	<1%	<1%	<1%	<1%
Minerals	2	2	4	<1%	<1%	<1%	<1%
EA Project/scheme	0	1	1	<1%	<1%	0.0%	0.0%
Renewable energy schemes	0	0	0	0.0%	0.0%	<1%	0.0%
Cemeteries	0	0	0	0.0%	0.0%	0.0%	<1%
Total	284	876	1160	100%	100%	100%	100%
Major/Minor Percentage Split							
Major development proposals				24.5%	24.5%	14.9%	15.1%
Minor development proposals				75.5%	75.5%	85.1%	84.9%

3.5 Re-consultation

The principle of ‘re-consultation’ was introduced in PPG25 in July 2001. In cases where LPAs conclude that other material considerations outweigh Environment Agency objections on flood risk grounds, PPG25 advises them to “inform [the Environment Agency] that they are minded to grant permission and the reasons for doing so and give [the Environment Agency] the opportunity to make further representations”²⁸. After 5 years of operation LPAs are still not re-consulting the Environment Agency as envisaged in PPG25 (see Fig 6).

²⁸ DTLR. PPG25: Development and Flood Risk. Paragraph 65.

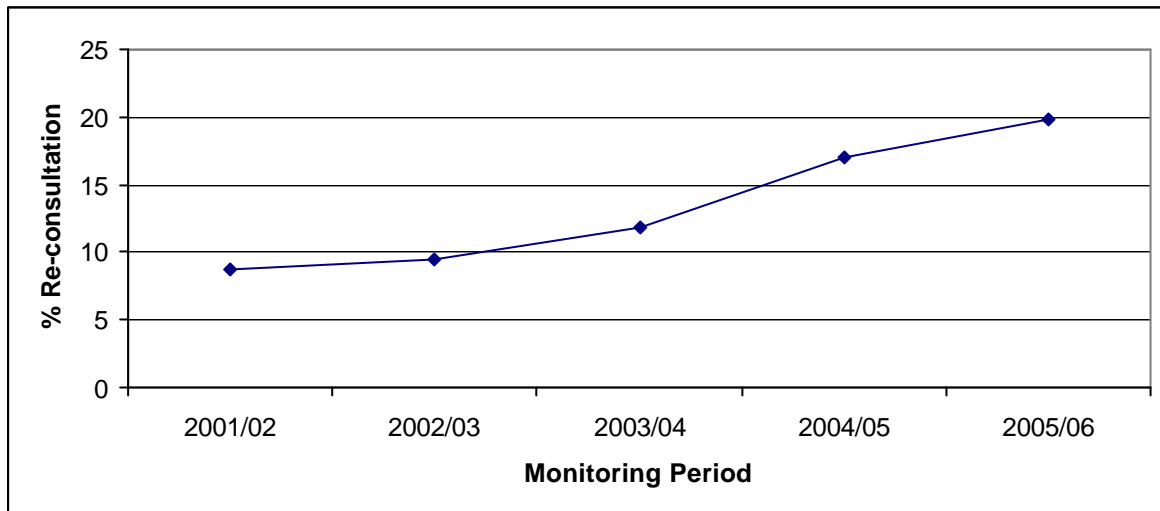


Fig.6 Percentage of cases where the Environment Agency is re-consulted when a LPA is intending to grant planning permission contrary to its advice

In the 2005/06 monitoring period, the Environment Agency was re-consulted on only 27 cases, where LPAs were minded to overrule Environment Agency advice. Although a slight improvement on previous years this still only represented 20% of planning decisions made by LPAs contrary to Environment Agency advice.

This does represent a continuing rise in the level of re-consultation (8% in 2001-02, 9% in 2002/03, 12% in 2003/04 and 17% in 2004/05) possibly due to greater familiarity with PPG25 and Environment Agency officers working more closely with LPAs. However, there still remains much room for improvement. The Environment Agency and LPAs must strive to ensure that the re-consultation process works and delivers the intended benefits. The Government must ensure that Best Value performance measures give time for local authorities to make such processes viable.

The new standing Flooding Direction²⁹, recently announced by DCLG, will be an important tool in ensuring that flood risk is fully taken into account in deciding 'major' development proposals. In future, if a LPA is minded to approve an application for major development against sustained Environment Agency advice, it will be necessary for the LPA to refer the application to the relevant Government Office to decide whether to call-in the application for decision by the Secretary of State.

3.6 Applications approved contrary to Environment Agency advice

Of the 1,160 applications against which the Environment Agency sustained an objection, and for which it received a decision notice from the LPA, 136 (12%) were approved by the LPA contrary to Environment Agency advice, or without conditions fully mitigating/meeting its concerns (table 3). This represents a continuing improvement on previous years. In 2004/05, 17% of decisions (248 cases) were approved contrary to Environment Agency advice; 22% of decisions (221) in 2003/04; 21% of decisions (221) in 2002/03) – see Fig.7.

²⁹ Town & Country Planning (Flooding)(England) Direction 2006

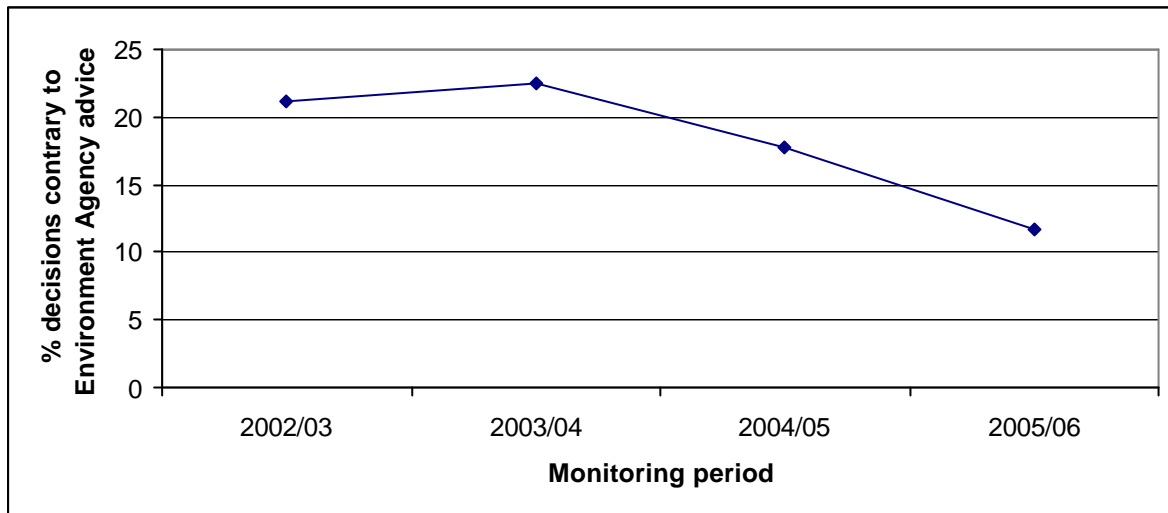


Fig 7. Percentage of applications where the Environment Agency sustained an objection, and which were approved by the LPA contrary to its advice

The Environment Agency had sustained an objection to these 136 applications for a number of reasons (174 - some applications had more than one objection raised against them). The largest number of objections (117 - 67%) were because the application lacked an appropriate/satisfactory FRA. This represents a significant increase over the proportion of applications finally granted permission by LPAs against Environment Agency advice in 2004/05 where the objection had been on the grounds of a lack of a satisfactory FRA (56% of reasons of objection) see Fig 8.

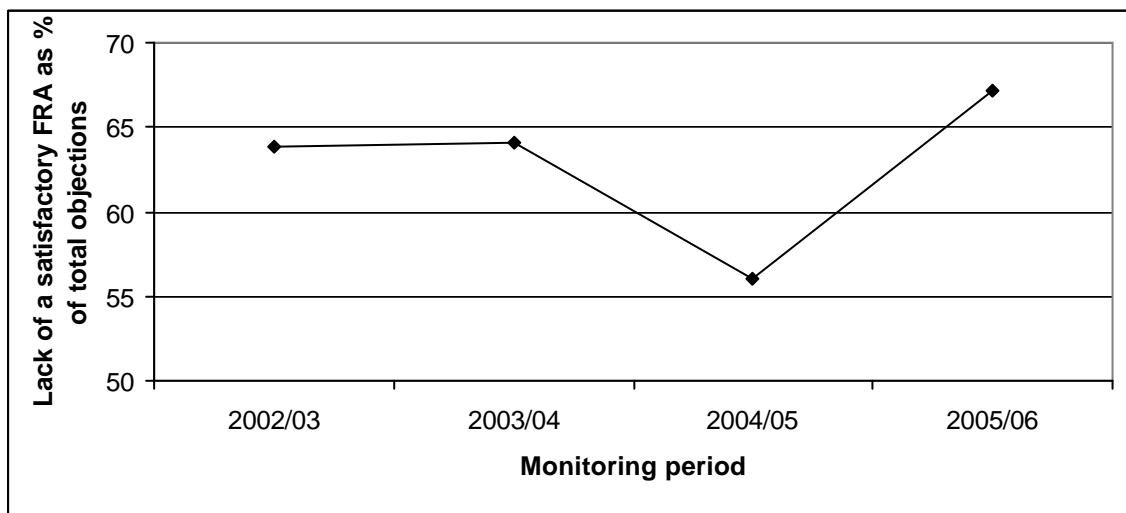


Fig 8. Applications granted contrary to Environment Agency advice, where the reason for objection was the lack of an appropriate/satisfactory FRA

This suggests that either LPAs do not appreciate the need for a FRA appropriate to the scale and nature of the development, or they are specifically not recognising the lack of a FRA as a valid reason for refusing planning permission. It is of concern that, despite the PPG25 guidance on FRAs, LPAs are prepared to override the Environment Agency’s advice on so many occasions (117, see table 6), and make decisions without the developer providing the necessary

information. The Government's proposals for a Standard Planning Application Form³⁰, and its recent consultation on the 'Validation of Planning Applications'³¹ should make it more difficult in future for LPAs to validate planning applications which require a FRA when they are not accompanied by one.

Of the remaining 57 reasons for sustained objections which had been overruled by LPAs, a significant number (34 - 19%) continue to be cases where the Environment Agency objected on the grounds that the proposed development was in an area known to be at risk of flooding. This proportion has fallen from 27% in 2004/05 (and 30% in 2002/03), perhaps reflecting greater awareness of PPG25, the Environment Agency's Flood Maps, and improved coverage of flood risk issues in development plans. As new Local Development Frameworks are prepared, the Environment Agency expects the general downward trend to continue. However, at the present time in just over a fifth of cases the Environment Agency believes that LPAs and developers are not giving sufficient weight to its advice on areas at risk from flooding.

Table 6: Flood risk objections to planning applications where the Environment Agency sustained an objection, but the application was approved contrary its advice

Grounds for objection	Number of planning applications objected to	% of total number of objections 2005/06	% of total number of objections 2004/05	% of total number of objections 2003/04	% of total number of objections 2002/03
Lack of a FRA	97	55.7%	51.8%	62.6%	52.8%
- Unsatisfactory FRA submitted	21	12.1%	4.6%	1.5%	
Area at risk of flooding	34	19.5%	27.0%	23.2%	30.3%
Adverse impact of surface water run-off	5	2.9%	4.9%	4.0%	6.4%
Loss of flood water storage	5	2.9%	3.7%	2.3%	5.6%
Loss of access to the development	5	2.9%	<1%	2.0%	1.5%
Loss / restricted access to watercourse	4	2.3%	3.4%	2.0%	1.9%
No dry access route	3	1.7%	-	-	-
Risk to flood defences	0	0.0%	1.2%	1.0%	<1%
Culverting proposals	0	0.0%	2.2%	1.3%	1.1%
Site liable to erosion	0	0.0%	<1%	0.0%	<1%
TOTAL	174		100%	100%	100%

Note: some applications had more than one objection raised against them.

3.7 Type and size of developments approved contrary to Environment Agency advice

In 2005/06, there was an overall reduction in the number of cases where LPAs gave planning permission contrary to Environment Agency advice (from 323 in 2003/04 to 248 in 2004/05 and 136 in 2005/06). In addition, the number of cases where 'major' development was given planning permission contrary to Environment Agency advice also declined (see fig.9) from 29³²

³⁰ 'Consultation Paper – Standard Application Form' – ODPM. March 2005.

³¹ DCLG July 2006. <http://www.communities.gov.uk/index.asp?id=1501848>

³² 3 cases were later found to have been reported in error and were removed from the list.

in 2004/05 to 10 in 2005/06 (table 7). Of these 10 cases, 6 cases were in areas of highest flood risk (flood zone 3), 1 was in an area of low to medium risk (flood zone 2), while 3 were in flood zone 1, where development may give rise to flood risk elsewhere. A list of all major and minor developments given planning permission against Environment Agency advice in 2005/06 is included as Appendix 3.

Major development proposals permitted against Environment Agency advice in 2005/06 accounted for 7% of all permissions against its advice, a decrease on the proportion 2004/05 (11%). However, even in major cases where developments have been approved against Environment Agency advice it is sometimes possible to reduce adverse effects through continued negotiations with the applicant, although this relies entirely on the goodwill of the developer.

The proportion, but not the number, of all development proposals granted planning permission contrary to Environment Agency advice which were for residential/hotel development increased slightly from 53% (132 cases) in 2004/05, to 56% (76 cases) in 2005/06. However, the number of major residential developments (of 10 or more houses or with a site area greater than 0.5 Ha.) decreased from 13 to 4 cases in 2005/06 (table 6).

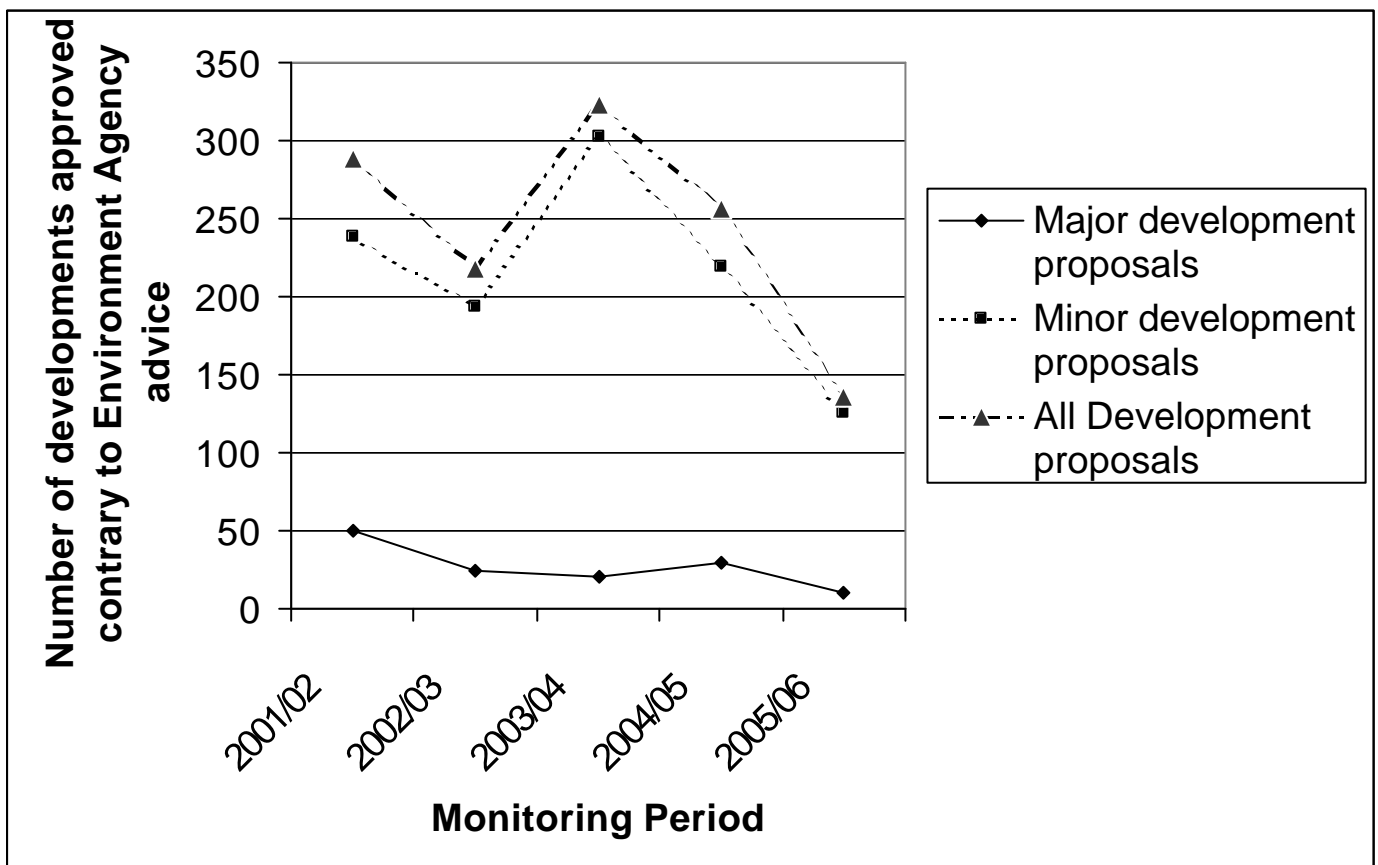


Fig. 9. Number of Development Proposals approved by LPAs contrary to Environment Agency advice

The fact that LPAs are still permitting a small number of major development proposals contrary to Environment Agency advice on flood risk could reflect pressures to permit new housing and the focus on brownfield land. PPS25 provides clear policy advice on the relative weight to attach to each of these Government policies, and the new standing Flooding Direction should ensure that flood risk issues are fully and properly considered before decisions are made.

Table 7: Type and size of developments approved contrary to Environment Agency advice

Type of development	Major	Minor	All	2005/06	2004/05	2003/04	2002/03
Residential/Hotels	4	72	76	55.9%	53.2%	71.2%	64.7%
Offices / light industrial	1	8	9	6.6%	9.3%	8.0%	11.0%
Mixed Use	2	7	9	6.6%	5.2%	4.3%	0.0%
Heavy industry / warehousing	0	5	5	3.7%	3.6%	<1%	3.2%
Infrastructure	0	5	5	3.7%	2.8%	4.0%	1.8%
Educational	1	4	5	3.7%	<1%	<1%	0.0%
Caravan sites	0	3	3	2.2%	2.4%	2.5%	1.8%
Retail	0	3	3	2.2%	2.4%	2.5%	2.3%
Recreational schemes	1	1	2	1.5%	4.4%	1.5%	1.8%
Agriculture	0	2	2	1.5%	2.0%	1.9%	2.3%
Waste	0	2	2	1.5%	<,1%	<1%	<1%
Minerals	0	0	0	0.0%	<1%	0.0%	0.0%
Renewable energy schemes	0	0	0	0.0%	0.0%	0.0%	0.0%
Cemeteries	0	0	0	0.0%	0.0%	0.0%	<1%
Other	1	14	15	11.0%	12.1%	2.2%	10.1%
Total	10	126	136	100%	100%	100%	100%
Major/Minor Percentage Split							
Major development proposals				7.4%	11.7%	6.5%	11.0%
Minor development proposals				92.6%	88.3%	93.5%	89.0%

3.8 LPA reasons for granting planning permission contrary to Environment Agency advice

In 2005/06, LPAs failed to provide the Environment Agency with their reasons for granting planning permission contrary to Environment Agency advice in over half (53%) of all cases. With so little feedback from LPAs it is difficult to monitor the effectiveness of Environment Agency technical advice on flood risk.

Although the proportion has declined, it is still a cause for concern that in 16% of cases (22, of which 3 were 'major'), LPAs gave 'doubts as to the veracity or reasonableness of the advice' as a reason for making a decision contrary to the Environment Agency's advice. In many cases LPAs considered it unreasonable or inappropriate to request a flood risk assessment from an applicant before reaching a decision, despite the guidance in PPG25³³. The implication of this is very serious, as PPG25 states that the Environment Agency 'has a supervisory duty for all matters relating to flood defence'. The proposal to include reference to FRAs in the standard planning application form should reduce this number, as should the guidance on the need for and applicability of flood risk assessments in DCLG's new Practice Guide.

³³ DTLR. PPG25: Development and Flood Risk. Para 18.

Only 9% of cases (13) were decided before the LPA received the Environment Agency's advice. This represents a continuing improvement in the Environment Agency's performance, as this proportion has fallen from 19% in 2002/03, to 17% in 2003/04, to 14% in 2004/05 and 9% in 2005/06. There is still room for improvement however, and the Environment Agency is committed to further improving its performance in this regard. The Government has amended the General Development Procedure Order 1995 to require statutory consultees to respond to LPA consultations within 21 days (or a mutually agreed extended period).³⁴ Although this new duty does not apply to flood risk consultations before the Government made the Environment Agency a statutory consultee on flood risk (1st October 2006), the Environment Agency has included flood risk consultations in its first annual report (2005/06) to DCLG on the timeliness of its responses to planning consultations³⁵. The report shows that the Environment Agency responded to 83% of all planning application consultations within 21 days or the negotiated extension.

LPAs also permitted a further 9% of cases (13 cases, 1 of which was 'major') contrary to Environment Agency advice because previous permissions had, they believed, set a precedent for development. A further 5% of cases (7) were permitted as the LPA considered that the economic need for the proposed development overrode the Environment Agency's flood risk concerns. In addition, a further 1% of cases (2, of which 1 was major) were permitted as the LPA considered that the social need for the proposed development overrode flood risk concerns. The Environment Agency accepts that in some cases economic and social factors may override flood risk concerns, but it hopes that the introduction of the new standing Flooding Direction will in future ensure that flood risk concerns are fully and properly taken into account in all cases.

Table 8: LPA reasons for granting approval contrary to Environment Agency advice

Reason	Planning applications approved	% of total number of reasons for approval 2005/06	% of total number of reasons for approval 2004/05	% of total number of reasons for approval 2003/04	% of total number of reasons for approval 2002/03
Reason not provided	72	52.9%	46.4%	52.5%	42.2%
Doubt about Environment Agency advice/ unreasonable advice	22	16.2%	18.6%	19.2%	17.9%
Application decided before LPA received Environment Agency advice	13	9.6%	14.5%	17.0%	19.7%
Previous permissions set precedent	13	9.6%	8.1%	5.0%	7.8%
Other	5	3.7%	4.0%	4.4%	9.2%
Alteration to scheme negated the objection	2	1.5%	2.8%	0.0%	0.0%
Objection never	0	0.0%	2.8%	0.0%	0.0%

³⁴ <http://www.opsi.gov.uk/si/si2005/20052087.htm>

³⁵ 2005/06 Annual report to the Department for Communities and Local Government ; The Environment Agency's timeliness on responses to planning consultations. Environment Agency July 2006. http://www.environment-agency.gov.uk/commondata/acrobat/21dayreport_july06_1449852.pdf

Reason	Planning applications approved	% of total number of reasons for approval 2005/06	% of total number of reasons for approval 2004/05	% of total number of reasons for approval 2003/04	% of total number of reasons for approval 2002/03
received by LPA					
Economic (need for jobs / business)	7	5.1%	2.0%	<1%	2.3%
Social (need for facilities e.g. hospital, infrastructure, housing)	2	1.5%	0.8%	1.3%	7.1%
All	136	100%	100%	100%	100%

3.9 Mitigating Environment Agency concerns

The Environment Agency sometimes objects to an application on the basis that conditions are essential to make the development acceptable. In 2005/06, LPAs approved 281 of the applications to which the Environment Agency had made sustained objections with conditions that **fully** mitigated its concerns over flood risk. This is a measure of success of negotiation and the effectiveness of the consultation process - such outcomes are in line with Environment Agency advice. This accounted for 67% of applications approved, an increase over past years (62% in 2004/05, and 55% in both 2002/03 and 2003/04 – Table 9).

In 32% of applications (134 cases) the Environment Agency sustained an objection which was subsequently permitted contrary to its advice and did not have appropriate conditions attached. In addition, a further 2 applications were approved with conditions that only partially mitigated/met Environment Agency concerns.

Table 9: Applications approved with conditions for mitigation of flood risk

	Number of approvals	% of approvals 2005/06	% of approvals 2004/05	% of approvals 2003/04	% of approvals 2002/03
Total approvals made	417	100%	100%	100%	100%
Approved with conditions fully mitigating Environment Agency concerns	281	67.4%	62.3%	55.2%	55.7%
Approved with conditions partially mitigating Environment Agency concerns	2	0.5%	1.5%	0.7%	0.6%
Approved against Environment Agency advice without conditions.	134	32.1%	36.2%	44.1%	43.7%

4. PLANNING APPEALS

This monitoring period saw a slight decline in the number of appeal decisions received where the Environment Agency objected on flood risk grounds, although they remain at a high level.

Appeal decision numbers declined slightly from the all time high of 133 decisions in 2004/05, to 124 in 2005/06 (Table 10).

The Environment Agency had to sustain its objection to 58% (72) of these appeals (72% (96) in 2004/05). Applicants withdrew 23 cases before the appeal took place (19 cases in 2004/05), while in a further 29 cases the Environment Agency concerns were overcome by negotiation (18 cases in 2004/05).

In the 72 cases where an objection was sustained, 67 or 93% were dismissed (a much higher proportion than the 75% in previous years) (Table 11). 57 of these cases were dismissed in line with Environment Agency advice (46 in 2004/05), while in a further 4 appeals (19 in 2004/05) Environment Agency objections were overcome through the application of conditions that fully mitigated its concerns.

In total 71 sustained objections that went to appeal were determined in line with the Environment Agency's advice. Only 1 appeal was decided contrary to Environment Agency advice (3 in 2004/05 and 9 in 2003/04). There were no cases where the appeal decision only partially mitigated Environment Agency concerns through the use of planning conditions (2 in 2004/05). This represents a significant reduction in appeal decisions going against Environment Agency advice 10 cases in 2003/04, 5 cases in 2004/05, and 1 case in 2005/06). A summary of the reasons why these consultations went to appeal is included in Appendix 5. In the one appeal case that was allowed contrary to Environment Agency advice, the Inspector considered that any flood risk could be successfully managed, and therefore did not consider the proposal to be contrary to the terms of the LPA's policies or PPG25.

Table 10. Planning Appeals.

	Number of appeal decisions	% of total 2005/06	% of total 2004/05	% of total 2003/04	% of total 2002/03
Total number of Appeal Decisions received where the Environment Agency objected on flood risk grounds.	124	100%	100%	100%	100%
Number withdrawn by applicant before appeal.	23	18.5%	14.3%	12%	4%
Number where Environment Agency concerns overcome through negotiation.	29	23.4%	13.5%	26%	10%
Number of appeals where Environment Agency sustained its objection	72	58.1%	72.2%	62%	86%

Table 11. Planning Appeal Outcomes where Environment Agency sustained an objection.

		% of sustained objections 2006/06	% of sustained objections 2004/05	% of sustained objections 2003/04	% of sustained objections 2002/03
Number of appeals where Environment Agency sustained its objection	72	100%	100%	100%	100%
- Of which number of Appeals dismissed (of which 57 dismissed in line with Environment Agency policy	67	93.1%	75.0%	76.1%	76.7%
- Number of Appeal decisions where the Environment Agency concerns were fully mitigated through planning conditions	4	5.6%	19.8%	9.0%	14.0%
- Number of Appeal decisions where the Environment Agency concerns were partly mitigated through planning conditions	0	0.0%	2.1%	1.5%	0.0%
- Number of Appeal decisions allowed contrary to Environment Agency advice	1	1.4%	3.1%	13.4%	9.3%

5. Judicial Review.

During 2005/06 the Environment Agency sought Judicial Review of 1 planning permission granted during the proceeding year. Tonbridge and Malling Borough Council granted planning permission for 63 sheltered apartments in January 2005 against Environment Agency advice on flood risk. The development site lay within the indicative 100 year flood plain, and the LPA did not re-consult the Environment Agency to advise that it was minded to grant planning permission contrary to its advice. The Environment Agency was granted leave to seek judicial review, and the High Court of Justice heard the case in December 2005, and decided in favour of the Environment Agency. The Planning permission was quashed, and full costs awarded against the LPA, and the LPA was refused leave to appeal. Since the decision, the LPA and Environment Agency have been working closely together on a Strategic Flood Risk Assessment for the borough.