



BETTER SAFE THAN SORRY



Robert Allen, senior policy and research manager at the cross-party thinktank Policy Connect, and the Conservative peer **Baroness McIntosh of Pickering**, on the worrying lack of FCERM in the Planning and Infrastructure Bill currently going through Parliament

The Planning and Infrastructure Bill is the government's landmark legislation to accelerate housebuilding and deliver economic growth. The bill aims to streamline the planning process to deliver 150 million new homes within this parliament, and to fast-track planning

decisions on major economic infrastructure projects.

Given that the Environment Agency estimates that one in four properties will be at risk of flooding by 2050, one would expect the bill to include provision for stronger planning policy on flood risk management. Sadly, the bill, as

introduced, did not include a single mention of flooding.

Around the time that the bill was introduced, back in July 2024, Policy Connect published its latest *Bricks and Water* report – a year-long cross-party inquiry. The work drew on evidence from stakeholders across the flood and coastal

erosion risk management (FCERM) sector and made several recommendations to the new government.

This September, the bill reached committee stage in the House of Lords. Baroness McIntosh submitted several amendments, based on the findings from our Bricks and Water inquiry. Sadly, none of these have been supported by the government. In this article, we discuss the need for these amendments, the government's position, and our response.

AMENDMENT 95 – COST RECOVERY FOR PLANNING ENFORCEMENT ACTIVITY

Clause 48, page 61, line 27, at end insert, “but may also include the cost of enforcement functions”

Why it's necessary:

Clause 48 enables local planning authorities to set their own planning charges to recover costs associated with handling planning applications. However, this does not include cost recovery for enforcement activity. This amendment would allow the cost of enforcement, such as ensuring that specified flood mitigation or resilience measures have been installed adequately to be included in planning fees.

The government's response:

The government's minister for housing in the House of Lords, Baroness Taylor of Stevenage, agreed that “well-resourced planning departments are essential in enabling the development that our communities need”. However, the minister concluded that it should be “for local authorities to allocate funds to support these services” and said that, “allowing planning authorities to raise planning fees to cover enforcement costs could result in disproportionately high fees”, which may deter development.

Our view:

We acknowledge that allowing planning authorities to recover costs associated with enforcement activity may lead to modestly increased planning fees. However, this is surely a small price to pay to ensure that development is completed in accordance with the details of the planning permission – especially as climate change leads to more frequent and severe flood events.

AMENDMENT 109 – PROPERTY FLOOD RESILIENCE MEASURES

After clause 51, insert the following new clause –

1. *Planning permission for the building of new homes at higher risk of flooding can only be granted if property flood resilience measures are implemented as part of the construction.*
2. *For the purposes of implementing subsection (1) and within six months of the passing of this act, the secretary of state must make regulations under section one of the Building Act 1984 to require that property flood resilience measures are included in any new homes at higher risk of flooding.*

3. *Property flood resilience measures under this section may include – (a) raised electrical sockets; (b) non-return valves on utility pipes; (c) airbrick covers; (d) resilient wall plaster; (e) any other measure as the secretary of state may specify.*

Why it's necessary:

Homes built after 1 January 2009 are not eligible for reinsurance under the Flood Re scheme and property flood resilience (PFR) measures are only being installed at a fraction of the pace required to make vulnerable homes insurable once Flood Re is withdrawn completely in 2039. Amending building regulations to require the use of basic property flood resilience measures would offer an affordable way to accelerate uptake and is a far cheaper option than retrofit.

The government's response:

The minister responded to say that although improving resilience in properties at risk of flooding is an important objective, “requiring flood-resilient construction for all new dwellings would be disproportionate, given that many are located outside areas of current or projected flood risk”.

Our view:

We disagree with the minister's conclusion that it would be disproportionate to install property flood resilience measures in all new dwellings. Firstly, many basic PFR measures are cost-neutral: for example, elevated electrical sockets, laying plasterboard horizontally instead of vertically, or the selection of quick-drying materials instead of water-absorbent ones. Secondly, given that around a quarter of all properties in England will be at risk of flooding by the middle of the century, installing basic flood resilience measures in all homes now will future proof our communities and reduce the need for costly retrofit later.

AMENDMENT 155 – THE SEQUENTIAL AND EXCEPTION TESTS

After clause 52, insert a new clause [which would bring all the wording on the sequential and exception tests from the National Planning Policy Framework into the bill].

Why it's necessary:

The sequential and exception tests are vital planning tools that help ensure that development is directed away from areas of high flood risk. In cases where development is unavoidable, these tests ensure that new buildings are safe throughout their lifetime, without increasing flood risk elsewhere. However, the sequential and exception tests are currently only guidance. Bringing them into statute would help ensure that local planning authorities place due regard on them when preparing local plans and considering individual planning applications.

The government's response:

The minister agreed with the importance of the sequential and exception tests as policy. She said that the National Planning Policy Framework plays a “powerful role” in the planning system and that “both plan-makers and planning decisions must have regard to it”. However, the government declined to support this amendment, and the minister said that it would introduce “unhelpful inflexibility” in its ability to keep policy under review.

Our view:

Evidence submitted to our Bricks and Water inquiries tells a different story. We have heard repeated accounts of developers providing unsatisfactory site-specific flood risk assessments and sometimes not performing the sequential or exception tests at all. In cases where planning permission has been refused based on failed sequential or exception tests, these applications have been subject to legal challenge. For example, a planning application in Yatton, North Somerset, was recently refused by North Somerset Council on the basis that it had failed the sequential test. However, the application was later granted upon appeal as the planning inspector concluded that failure of the test was not a strong enough reason for refusing the application, citing local housing need.

AMENDMENT 337 – SUSTAINABLE DRAINAGE SYSTEMS

*After clause 87, insert the following new clause –
The secretary of state must bring into force in England all uncommenced*



The government's Planning and Infrastructure Bill does not include any mention of flooding, a major oversight according to the authors of this article

parts of Schedule 3 of the Water Management Act 2010 (sustainable drainage) within three months of the day on which this act is passed.

Why it's necessary:

In England, developers have the automatic right to connect surface water arising from new homes to the public sewerage system, irrespective of whether there is capacity. Implementation of Schedule 3 of the Flood and Water Management Act would end this automatic right to connect and provide a framework for the approval and adoption of sustainable drainage systems (SuDS), paving the way for their widespread use.

The government's response:

Although the last government had committed to the implementation of Schedule 3, subject to a final consultation on scope, the new government seems less enthusiastic. It was encouraging to hear from the minister that the government is “committed to requiring standardised SuDS, in new developments”. However, the minister stopped short of supporting the amendment, saying that the government is still considering how best to implement its ambitions. Notably, it was interesting to hear the former environment secretary, Baroness Coffey, remark: “To lift the curtain a little bit on life in government, it is one of my disappointments that we did not get [Schedule 3] enacted. I perhaps have to do people in: it was the Ministry of Housing.”

Our view:

Almost 20 years on from the Pitt Review, which recommended the mandatory use of SuDS in all new development, it is incredibly disappointing that successive governments, of all colours, have failed to implement Schedule 3 of the Flood and Water Management Act. Following Baroness Coffey’s remarks, it would seem that lobbying efforts should be directed towards the Ministry of Housing in the future.

A SMALL PRICE TO PAY

In conclusion, the rhetoric from the government seems to be that, in general, it agrees with the principle of these amendments, but is concerned that they could lead to additional costs and delay the planning process. Despite the urgency of the housing crisis, surely this is a small price to pay for climate-resilient homes that will still be habitable come the end of the century?

Flooding not only carries significant economic costs, but it also has lasting physical and mental health impacts on individuals. Cutting costs now will only lead to more expense, and more importantly, hardship for residents in the future. We call on the government to make flood risk management a priority as the bill returns to the House of Commons this autumn. ●

 **Be Flood Ready is CIWEM's community of practice on property flood resilience**