

On 5 August Faversham Town Council lodged a s288 Planning Statutory Appeal against the Secretary of State following the appeal decision allowing the housing development on land at Ham Road, Faversham, Kent. The appeal followed the refusal by Swale Borough Council. The claim was served on the defendants on 6 August 2025 and we expect to receive their defence/response in 21 days and can update members and the public after that.

In summary, the grounds of claim allege the following errors:

- a. Error of law in effectively applying the Exception Test despite the Sequential Test not having been undertaken. The Inspector found, on the one hand, that a Sequential Test was required and that the Exception Test could only be carried out after the Sequential Test; while on the other hand he effectively applied the Exception Test to determine that neither the Proposed Development nor the failure to carry out a Sequential Test would cause “real world harm”;
- b. Irrational approach to mitigation measures in that the Inspector decided correctly that paragraph 175 of the 2024 National Planning Policy Framework (“**2024 NPPF**”) clearly states that “land raising”, with no qualifications as to the purpose of such land raising, should not be used as a means to avoid the Sequential Test and yet he allowed precisely that result through his approach to the lack of “real world harm” due to the proposed mitigation measures;
- c. Error of law in interpreting paragraph 11(d) of the 2024 NPPF where flooding risk is in issue, to require a substantive risk or harm in order for there to be a “strong reason” for refusal;
- d. Lack of consistency in decision making and/or failure to give clear and cogent reasons for coming to a different conclusion than seven other appeal decisions on whether failure to undertake a Sequential Test was sufficient to disapply the tilted balance.

Although the Faversham Neighbourhood Plan (FNP) is not specifically named in the appeal, the flooding grounds are defending the FNP, because that plan directs development away from areas of flood risk; so the claim is not disconnected.

The FNP is part of the statutory development plan and became a material consideration before the Inspector’s decision was made in June 2025. The relevant FNP policies are Policy FAV8: Flooding and Surface Water and FAV10: Sustainable Design and Character.

FNPP Policy Context

Ground 1: Error of Law – Applying the Exception Test Without the Sequential Test

The National Planning Policy Framework December 2024 (NPPF) and Planning Practice Guidance (PPG) require that:

- The Sequential Test must be applied first to steer development away from flood-prone areas.
- The Exception Test can only be used if the Sequential Test is passed.

Relevance to the FNP:

- The failure to undertake a Sequential Test before applying the Exception Test undermines the core intention of Policy FAV8, which is to avoid increasing flood risk.
- The Sequential Test ensures that sites like Ham Road (with partial flood risk) are not selected when less risky alternatives may exist.
- Allowing development without this test enables development without a clear understanding of the level of impact to new residents and potentially exposing the wider Faversham community to greater flood vulnerability, contrary to FAV8(1).

Ground 2: Irrational Approach to Mitigation Measures (Land Raising)

The Inspector accepted land raising as a mitigation measure and concluded there was no “real world harm” from the flood risk. This contradicts paragraph 175 of the NPPF, which states that land raising should not be used to avoid the need for a Sequential Test.

Relevance to the FNP:

- Policy FAV8(2) protects existing flood infrastructure. Altering land levels can disrupt floodplain functionality, drainage paths, or future resilience of defences.
- By accepting land raising as an adequate response to flood risk without verifying its long-term impacts, the Inspector's reasoning potentially conflicts with the intent of FAV8, which is cautious about any intervention that could compromise flood risk management infrastructure.
- Furthermore, Policy FAV10(2) relates to topography. As the Inspector acknowledges this site is relatively flat and ‘land raising’ does not take account of the local site context or surrounding landscape character. In addition FAV10(10) requires development to take account of the AECOM Faversham Design Codes (May 2021), which makes clear in the strategic principles and best design practice that *“new development must demonstrate an understanding of the landscape sensitivities and*

designations of the area...” including “Ramsar Sites, flood risk zones.. and respected in future development.”

Ground 3: Misinterpretation of NPPF Paragraph 11(d) – No “Strong Reason for Refusal” Without Real-World Harm

The Inspector ruled that failure to conduct a Sequential Test did not amount to a “strong reason for refusal” under paragraph 11(d) of the NPPF, because there was no “real world harm.”

Relevance to the FNP:

- This interpretation devalues the preventative nature of flood policies—including those in the FNP—by suggesting that policy breaches only matter if actual harm is proven.
- FNP Policy FAV8 is preventive, not reactive, taking account of climate change: it aims to stop developments that *could* increase risk, regardless of whether mitigation makes them technically “safe.” The FNP seeks to support new homes that are climate resilient and do not exacerbate issues such as flood risk for existing communities as set out in the policy statements referenced previously.
- The Inspector’s reasoning thus undermines the protective purpose of FAV8 and FAV10 by suggesting that, so long as a developer can mitigate visible harm, strategic policy can be sidestepped.

All three legal grounds relate directly to the climate resilient thread and the spirit and intent of the Faversham Neighbourhood Plan in relation to flood risk and creating communities that are climate resilient. Specifically:

- The Plan seeks to direct development away from flood-prone areas, reinforcing national planning policy and aligning with national Sequential Test requirements.
- It aims to safeguard infrastructure and reduce flood risk, objectives that are compromised by ignoring the proper sequencing of flood risk assessments.
- Support development that takes account of climate resilience.
- The Inspector’s reasoning runs counter to FNP Policy FAV8 and sets a dangerous precedent for bypassing Neighbourhood Plan safeguards.

Therefore, the legal grounds advanced by FTC are firmly connected to the FNP and defend its core strategy to avoid flood risk, rather than simply manage it after the fact.

Faversham Town Council

8th August 2025