



**Rebuttal of Disproportionate Flood Risk Access Requirements
Town and Country Planning Act 1990 (As Amended)
Appeal Under Section 174 Against an Enforcement Notice**

Planning Inspectorate (PINS) Ref: APP/P3040/C/26/3378910

LPA Enforcement Ref: 23/00034/BUILD

LPA Public Consultation Ref: 24/00569/ENAPP

LPA Prior Notification Ref: 23/02352/AGRIC

Appellant: Riverside Farm JK Limited

Site Address: Riverside Farm, Fairham Brook Lane, Bunny, NG11 6SQ

**STATEMENT OF CASE TO THE PLANNING INSPECTORATE
Rebuttal of Disproportionate Flood Risk Access Requirements**

Location: Riverside Farm JK, Fairham Brook Lane, Bunny, Nottinghamshire

Development: Forestry Storage Building (Non-Residential)

Subject: Rebuttal of Disproportionate Flood Risk Access Requirements

1. Executive Summary & Core Position

This Statement of Case is submitted to contest the disproportionate, unreasonable, and legally flawed requirements imposed by Rushcliffe Borough Council regarding the 200-metre rural access track along Fairham Brook Lane.

The structural footprint of the forestry storage building sits entirely within **Flood Zone 1 (Low Probability)**. Crucially, the development achieved **valid statutory Deemed Consent on 30 January 2024**. The Council's subsequent insistence on intensive, engineered road modifications or strict dry egress over a 200-metre access track fails to respect the principle of proportionality, ignores the explicit '**Less Vulnerable**' classification of forestry storage, and attempts to retrospectively claw back a legally established permitted development right. The Appellant proposes a comprehensive, conditional mitigation strategy that eliminates any residual risk to human safety, rendering the Council's reasons for refusal functionally and legally redundant.

2. Establishing the Legal Fallback: Valid Deemed Consent

- **Establishment of Lawful Right:** A critical material consideration in this case is that the development achieved valid **Deemed Consent on 31 January 2024** under the statutory frameworks governing permitted development. The Council failed to issue a negative determination within the strict statutory time limit, thereby establishing the principle of the development—and its associated access route—as legally compliant on that date.
- **Retrospective Constraint Imposition:** Having allowed the statutory period to elapse resulting in Deemed Consent, the Council's current attempt to impose severe, engineered infrastructure requirements across a 200m track represents an unjustified and inconsistent overreach. The lawful fallback position established on 31 January 2024 carries significant weight and demonstrates that the development should be allowed to continue operating unhindered.

3. National Planning Policy Framework (NPPF) Alignment

- **Policy F5 (The Sequential Test) & Annex F Alignment:** The forestry storage structure is located entirely within Flood Zone 1. Pursuant to **NPPF Policy F5**, the primary objective of the planning system is to steer new development to areas with the lowest risk of flooding. By positioning the permanent structural footprint securely within Flood Zone 1, the core directive of the national sequential approach has been fully satisfied.
- **Policy F7 (Safety and Proportionality):** While **NPPF Policy F7** dictates that development must be safe for its lifetime and include safe access and escape routes where appropriate, the Framework explicitly demands that safeguards must be proportionate to the scale, nature, and vulnerability of the development. Demanding engineered, year-round dry access assurances for a non-residential, unstaffed timber storage outbuilding creates an unjustified barrier to rural enterprise, conflicting with the wider sustainable development goals of the Framework.

4. National Policy Vulnerability Classifications

Under the statutory **NPPF Annex F (Vulnerability Classifications)**, land uses are intentionally tiered to reflect risks to human life.

- **'Less Vulnerable' Status:** Forestry and agricultural storage structures are explicitly designated as **'Less Vulnerable'** developments.
- **Misapplication of Risk Standards:** The uninterrupted 'dry safe access and egress' mandates typically sought by local authorities are heavily weighted toward 'More Vulnerable' uses—specifically residential dwellings where human life is at risk overnight or during prolonged entrapment. A forestry storage shed contains no office spaces, features no residential elements, experiences zero overnight occupancy, and presents no vulnerability to human life during extreme weather events.

5. Local Policy Compliance via Enforceable Planning Conditions

The Council's position relies on **Local Policies F5(2)(b)(i), F7(2), and CC3(1)(a)**, which seek to ensure that developments and their access routes do not expose users to unacceptable flood risks. To fully satisfy the objectives of these local policies without enforcing unviable structural mandates on an existing 200m track, the Appellant welcomes and invites the imposition of a time-limited, enforceable **Planning Condition**:

"Within three months of the date of this decision, a site-specific Flood Warning and Evacuation Plan (FWEP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development and the storage of all forestry equipment and tools shall be managed in strict accordance with the approved FWEP for the lifetime of the development."

The formalisation of this FWEP provides a binding legal mechanism to guarantee that:

1. The site operator remains registered with the **Environment Agency's automated Flood Warning Service**.
2. Upon the triggering of an official 'Flood Alert' or 'Flood Warning' for the Fairham Brook catchment, all active access to the storage building will immediately cease.
3. The site will be secured, and personnel will be strictly prohibited from entering Fairham Brook Lane until all alerts are officially rescinded by the Environment Agency.

This formalises the existing operational reality into a binding planning mechanism. Because the building functions purely as a secure lock-up for tools rather than an office or staffed workplace, no personnel are ever required to remain on-site, eliminating any residual reliance on emergency rescue services during a fluvial event.

6. Local Catchment Behaviour & Lack of Precedent Hazard

- **Slow-Onset Fluvial Profile:** Fairham Brook is not a rapid-response or flash-flood alpine environment. Historical flooding along this catchment occurs via slow-onset, predictable fluvial rise tracking prolonged regional precipitation over several days. This slow behaviour provides an extensive, highly reliable warning window to execute the FWEP protocols and secure the site long before water encroaches upon the lane.
- **Absence in Statutory Investigation Logs:** A review of the Lead Local Flood Authority's (Nottinghamshire County Council) **Section 19 Flood Investigation logs confirms no history of severe asset failure, hazardous flash events, or life-threatening entrapments at this specific point on Fairham Brook Lane**. The local data confirms the catchment is stable enough to be safely managed via warning and evacuation procedures rather than heavy engineering.

7. Conclusion

The Council's demand for physical, engineered dry egress across a 200m rural lane for a 'Less Vulnerable', unstaffed storage building is operationally, proportionally, and legally unjustified. The development positions its physical infrastructure safely within Flood Zone 1, meeting national sequential directives, and possesses a valid fallback of Deemed Consent from 30 January 2024.

When reinforced by a legally binding Planning Condition mandating a Flood Warning and Evacuation Plan (FWEP), the access road poses absolute zero threat to public safety or emergency rescue services. The Planning Inspectorate is respectfully requested to allow the appeal and grant planning permission subject to the suggested evacuation condition.