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Kirklees Metropolitan Borough Council
Development Management

By email: dc.admin@kirklees.gov.uk

**Our ref:** RA/2022/144798/02-L01
**Your ref:** 2022/90245

**Date:** 15 November 2022

Dear Victor

**ERECTION OF EXTERNAL SUBSTATION AND BOUNDARY TREATMENT. LAND AT, ABBEY ROAD NORTH, SHEPLEY, HUDDERSFIELD, HD8 8DY**

Thank you for re-consulting us on this application following submission of a revised FRA, which we received on 14 October 2022.

We have reviewed the FRA Addendum prepared by ARP Associates, reference 1305/11tn01 dated 12 October 2022.

**Environment Agency position**
In the absence of an acceptable flood risk assessment (FRA) we object to this application and recommend that planning permission is refused.

**Reasons**
The submitted FRA does not comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 20 to 21 of the Flood Risk and Coastal Change section of the planning practice guidance and its site-specific flood risk assessment checklist. The FRA does not therefore adequately assess the flood risks posed by the development. In particular, the FRA fails to:

- Demonstrate how the development will be kept safe from the identified flood hazards
- Flood risk mitigation measures to address flood risk for the development included in the design may be inadequate because it is not clear whether they make the development resilient to the flood levels by:
    - Raised finished floor levels
    - Resistance and resilience measures
    - Flood storage compensation to ensure the proposed development will not increase offsite flood risk.

**Overcoming our objection**
**Location of the substation within the site**
We understand this application is for the erection of the substation only which was not included in the planning application for the associated housing development.

The site lies within flood zones 1, 2 and 3 as shown on our Flood Map for Planning (FMfP). The substation is located within flood zones 3 and 2 on our FMfP. The substation location is close to Shepley Dike, an ordinary watercourse.

We normally expect a sequential approach is taken to the location of development within a site, locating development in areas at lowest flood risk (ie flood zone 1). Can the substation be located within flood zone 1 and further from the river?

An assessment was made under planning application ref: 2019/91638 indicating likely flood levels during the 1% AEP flood event to reassess the 1% flood level. It is not clear whether the proposed substation will be impacted by these levels and taking into account climate change.

**Finished Floor Levels**
For development within flood zone 1 we normally ask that finished floor levels are above the 1% plus climate change level as a minimum.

For more vulnerable development within flood zones 2 and 3 we expect finished floor levels to be above the 1% plus climate change level plus a further 600mm. We expect any flood sensitive equipment to be raised above the 1% plus climate change level plus a further 600mm.

The proposed finished floor level of the substation is lower than the finished floor levels conditioned for the residential development under application 2019/91638. It is not clear why the FFL is proposed at a lower level, or if the substation is above the 1% plus climate change plus 600mm level.

**Compensatory Storage**
The FRA needs to show there is no loss of storage up to and including the 1% plus climate change scenario (design event). It would be useful to map this extent on a site plan to show whether the substation is in this area.

Compensatory storage is provided to offset any loss in floodplain storage in any areas of the site up to and including the design event, and to demonstrate that there is no transfer of flood risk beyond the site boundary.

The FRA needs to indicate site ground levels pre and post any re-profiling and compare this to the 1% plus climate change level. Cross sectional drawings may be used to demonstrate this, to show the flood risk to the site or existing flood flow routes are not altered and no transfer flood risk to others up to and including the design level.

We conditioned the compensatory storage provided under application 2019/91638 however we indicated in the later Reserved matters application 2021/94721 the further information submitted did not demonstrate it met the condition under 2019/91638 on compensatory storage to the 1% plus climate change level.

**Development close to the watercourse**
The development is adjacent to an ordinary watercourse Shepley Dike. Appropriate consent needs to be sought from the Flood Risk and Drainage team at Kirklees Council for the works in relation to the watercourse.

Any damage to the watercourse or natural high ground alongside it is the responsibility of the riparian owner, ie the landowner, who is responsible for ensuring no transfer of flood risk to others as a result of any works. Inspecting the riverside is also a primary responsibility of the riparian owner for maintenance of the watercourse, so they also need to ensure access can be gained to fulfil their riparian obligations.

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**Sequential test - advice to LPA**

**What is the sequential test and does it apply to this application?**

In accordance with the National Planning Policy Framework (paragraph 162), development in flood risk areas should not be permitted if there are reasonably available alternative sites, appropriate for the proposed development, in areas with a lower risk of flooding. The sequential test establishes if this is the case.

Development is in a flood risk area if it is in Flood Zone 2 or 3, or it is within Flood Zone 1 and your strategic flood risk assessment shows it to be at future flood risk or at risk from other sources of flooding such as surface water or groundwater.

The only developments exempt from the sequential test in flood risk areas are:

- Householder developments such as residential extensions, conservatories or loft conversions
- Small non-residential extensions with a footprint of less than 250sqm
- Changes of use (except changes of use to a caravan, camping or chalet site, or to a mobile home or park home site)
- Applications for development on sites allocated in the development plan through the sequential test and:
    - the proposed development is consistent with the use for which the site was allocated; and
    - there have been no significant changes to the known level of flood risk to the site, now or in the future, which would have affected the outcome of the test.

Avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures such as flood defences, flood warnings and property level resilience.

**Who undertakes the sequential test?**

It is for you, as the local planning authority, to determine an appropriate area of search and to decide whether the sequential test has been passed, with reference to the information you hold on land availability. You may also ask the applicant to identify any other 'reasonably available' sites which are on the open market and to check on the current status of identified sites to determine if they can be considered 'reasonably available'. Further guidance on the area of search can be found in paragraphs 027-030 of the planning practice guidance here.

**What is our role in the sequential test?**

We can advise on the relative flood risk between the proposed site and any alternative sites identified - although your strategic flood risk assessment should allow you to do this yourself in most cases. We won't advise on whether alternative sites are reasonably available or whether they would be suitable for the proposed development. We also won't advise on whether there are sustainable development objectives that mean steering the development to any alternative sites would be inappropriate. Further guidance on how to apply the sequential test to site specific applications can be found in the planning practice guidance: Flood risk and coastal change - GOV.UK (www.gov.uk).

**Exception test – advice to LPA**

The exception test should only be applied as set out in flood risk table 2 of the Planning Practice Guidance (PPG) following application of the sequential test. The exception test should not be used to justify the grant of planning permission in flood risk areas when the sequential test has shown that there are reasonably available, lower risk sites, appropriate for the proposed development.

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In those circumstances, planning permission should be refused, unless you consider that sustainable development objectives make steering development to these lower risk sites inappropriate as outlined in PPG (ref ID: 7-031-20220825).

**Our role in the exception test**
The exception test is in two parts, described in the NPPF (paragraph 164). In order for the test to be passed it must be demonstrated that

1. The development would provide wider sustainability benefits to the community that outweigh flood risk; and
2. The development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Paragraph 165 of the NPPF makes clear that both parts need to be met for the test to be satisfied. It is for the applicant to demonstrate this.

We provide advice on the second part of the test, but it is for you, as the local planning authority, to consider the first part of the test, accounting for the findings of the flood risk assessment and our flood risk advice, and to determine whether the test, overall, has been satisfied. Development that does not satisfy both parts of the exception test should be refused.

**Where the flood risk assessment shows the development will be safe throughout its lifetime without increasing flood risk elsewhere**
Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, there will always be some remaining risk that the development will be affected either directly or indirectly by flooding. You will need to weigh these risks against any wider sustainability benefits to the community.

**Planning Advice Service**
Please advise the applicant that if they would like to get further specific advice on how to overcome our objection, they can take advantage of our planning advice service. We can offer services including meetings, telecons and reviews of revised information prior to formal submission. We encourage the applicant to contact us directly to discuss this further.

We currently charge £100 plus VAT per officer per hour. We will provide you with an estimated cost for any further discussions or review of documents. The standard terms for our charged for service are available here.

Should you require any further information or clarification please contact me.

Yours sincerely

**Bev Lambert**
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