

Richard Riggs
Kirklees Metropolitan Borough Council
Development Management

Our ref: RA/2022/145176/01-L01
Your ref: 2022/93306

Date: 05 December 2022

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

Dear Richard

ERECTION OF 11 DWELLINGS, FORMATION OF NEW ACCESS ROAD AND ASSOCIATED LANDSCAPING AND OPEN SPACE – LAND ADJACENT TO 894 HUDDERSFIELD ROAD, RAVENSTHORPE, DEWSBURY, WF14 9HS

Thank you for consulting us on this application which we received on 14 November 2022.

Flood risk standing advice - advice to LPA

The proposed development falls partly within Flood Zone 2, which is land defined in the [planning practice guidance](#) as being at risk of flooding.

We have produced a series of standard comments for local planning authorities and planning applicants to refer to on 'lower risk' development proposals. These comments replace direct case-by-case consultation with us. This proposal falls within this category.

These standard comments are known as Flood Risk Standing Advice (FRSA). They can be viewed at <https://www.gov.uk/guidance/flood-risk-assessment-for-planning-applications#when-to-follow-standing-advice>.

We recommend that you view our standing advice in full before making a decision on this application.

Environmental permit - advice to applicant

Para 6.2.3 in the Flood Risk Assessment (FRA) states surface water will be discharge via a new outfall to the River Calder which is a designated main river.

The Environmental Permitting (England and Wales) Regulations 2016 require a permit to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in the floodplain of a main river if the activity could affect flood flow or storage and potential impacts are not controlled by a planning permission

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506. The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

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 \(www.gov.uk\)](https://www.gov.uk/guidance/flood-risk-and-coastal-change).

Biodiversity Net Gain

New developments should not only protect watercourses and their riparian corridors but also provide overall net gain for biodiversity. Net gain for biodiversity is defined as delivering more or better habitats for biodiversity and demonstrating this through use of the Defra Biodiversity Metric. It encourages development that delivers biodiversity improvements through habitat creation or enhancement after avoiding or mitigating harm.

Paragraphs 174 and 179 of the National Planning Policy Framework (NPPF) recognise that the planning system should conserve and enhance the environment by minimising impacts on and providing net gains for biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, planning permission should be refused.

We recommend that development proposals protect and enhance the local environment and seek opportunities to enhance ecology and provide Biodiversity Net Gains (BNG). The enhancement of biodiversity in and around development should be led by a local understanding of ecological networks, and should seek to include:

- habitat restoration, re-creation and expansion;
- improved links between existing sites;
- buffering of existing important sites;
- new biodiversity features within development; and
- securing management for long term enhancement

The Environment Act 2021 looks to ensure that the overall impact from development on the environment is positive. The Act includes measures to strengthen local government powers in relation to net gain and a minimum requirement of 10% biodiversity net gain. Chapter 15 and Paragraphs 174, 175, 179 & 180 of [Nationally Planning Policy Framework \(NPPF\)](#) contain strengthened net gain policies. We encourage you to consider an approach to development that results in measurable net gains in biodiversity, having taken positive and negative impacts into account. [Planning Practice Guidance \(PPG\)](#) provides guidance on the application of net gain.

IEEM, together with CIRIA and IEMA have published guidance on how to deliver net gain in practice. These can be downloaded [here](#).

Historic Landfill - Advice to applicant/ LPA

The proposed development is located on or within 250m of a historic landfill site.

We deem these as historic landfills because these sites stopped operating prior to the Environment Agency (EA) coming into operation in 1995. All land that may be classed as contaminated under section 2A of the Environmental Protection Act (EPA) 1990 is looked after by the Local Authority. There is no EA environmental permit in place, but this does not mean that the land is not contaminated. The local authority might have more information regarding these sites.

The developer may wish to carry out, or the planning authority may wish to require, further risk assessment. This may want to include a stability risk assessment to consider any potential sediment issues or slope instability. There may also be the potential for landfill leachate to exist, which would need to be assessed and managed. Further guidance is available on gov.uk webpages.

Landfill Gas

You should check with your Environmental Health team to understand if further information is available and if landfill gas is a concern in this area. They should also be able to advise what assessments are required.

Landfill gas primarily consists of methane and carbon dioxide, along with trace amounts of other organic compounds. It is produced as the waste in the landfill site degrades. Methane can present a risk of fire and explosion. Carbon dioxide can present a risk of asphyxiation or suffocation. The trace constituents of landfill gas can be toxic and can give rise to long and short term health risks as well as odour nuisance.

The risks associated with landfill gas will depend on the controls in place to prevent uncontrolled release of landfill gas from the landfill site. Older landfill sites may have poorer controls in place and the level of risk may be higher or uncertain due to a lack of historical records of waste inputs or control measures.

Development on top of or within 50m of any site that accepted hazardous or non-hazardous waste should be considered very carefully, as even with appropriate building control measures in place, landfill gas can accumulate in confined spaces in gardens (e.g., sheds, small extensions) and can gain access to service pipes and drains where it can accumulate or migrate away from the site.

The following publications provide further advice on the risks from landfill gas and ways of managing these:

- Waste Management Paper No 27
- Environment Agency LFTGN03 'Guidance on the Management of Landfill Gas'
- Building Research Establishment guidance – BR 414 'Protective Measures for Housing on Gas-contaminated Land' 2001
- Building Research Establishment guidance – BR 212 'Construction of new buildings on gas-contaminated land' 1991
- CIRIA Guidance – C665 'Assessing risks posed by hazardous ground gases to buildings' 2007

Advice to applicant / LPA

Where a residential, commercial or industrial site involves the use of any non-road going mobile machinery with a net rated power of 37kW and up to 560kW, that is used during construction, and/ or operation, and/ or demolition at that site, we strongly recommend that the machinery used shall meet or exceed the latest emissions standards set out in [Regulation \(EU\) 2016/1628](#) (as amended). This shall apply to the point that the machinery arrives on site, regardless of it being hired or purchased, unless agreed in writing with the Local Planning Authority.

We also advise, the item(s) of machinery must also be registered (where a register is available) for inspection by the appropriate Competent Authority (CA), which is usually the local authority.

Non-Road Mobile Machinery includes items of plant such as bucket loaders, forklift trucks, excavators, 360 grab, mobile cranes, machine lifts, generators etc. This type of machinery may be used in most construction and demolition projects where plant is needed to assist the build. It may apply to new builds or changes to existing builds where this type of machinery may be needed. This type of machinery may also be used in the ongoing operation of a site. Operations such as logistical warehouses, industrial and manufacturing operations, dock yards or freight terminals, mining operations, mineral/concrete production, ground works for a variety of projects including

landscaping, utilities, road works etc. The applicant should be able to state or confirm the use of such machinery in their application to which this then can be applied.

The aim of this informative is to require developers and occupiers to use low emission technology to improve or maintain air quality in or near to areas of poor air pollution for pollutants from non-road going mobile machinery. This informative should be used for any new or existing commercial or industrial site.

This informative aims to support Local Planning Authorities in improving and maintaining local air quality standards and support their net zero objectives. It is particularly important for sites located in or within 2km of an Air Quality Management Area for oxides of Nitrogen (NO_x), and or particulate matter that has an aerodynamic diameter of 10 or 2.5 microns (PM₁₀ and PM_{2.5}). It will also help ensure developers minimise the impact of their development on air quality and support net zero objectives.

The requirement to include this may already be required by a policy in the local plan or strategic spatial strategy document. The Environment Agency can also require this same standard to be applied to sites which it regulates. To avoid dual regulation this informative should only be applied to the construction and demolition phases at sites that may require an environmental permit.

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

Yours sincerely

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