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Development Management

**Our ref:** RA/2023/145993/01-L01  
**Your ref:** 2023/91491

**Date:** 21 July 2023

By email: [dc.admin@kirklees.gov.uk](mailto:dc.admin@kirklees.gov.uk)

Dear Nick

**ERECTION OF 61 AGE-RESTRICTED APARTMENTS WITH ANCILLARY ACCOMMODATION INCLUDING SEPARATE RESIDENTS LOUNGE AND MANAGER FACILITIES AND ASSOCIATED EXTERNAL WORKS, INCLUDING THE ERECTION OF ACCESS BRIDGE AND RIVERSIDE WALK FEATURING TWO PEDESTRIAN BRIDGES (WITHIN A CONSERVATION AREA). PRICKLEDEN MILLS, WOODHEAD ROAD, HOLMFIRTH, HD9 2JU**

Thank you for consulting us on this application which we received on 19 June 2023.

**FLOOD RISK**

**Flood Risk**

Our Flood Map for Planning shows the site lies within Flood Zones 2 and 3, with a medium / high probability of flooding from rivers and/or the sea. The application is for a residential development, which is considered to be a 'more vulnerable' land use in [Annex 3](#) of the National Planning Policy Framework. It is therefore necessary for the application to pass the Sequential Test and Exception Test and to be supported by a site-specific flood risk assessment (FRA), which can demonstrate that 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'.

**Flood Risk Assessment**

An FRA and additional documents has been submitted in support of the application:

- Flood Risk Assessment prepared by JNP Group, reference B24120-JNP-XX-XX-RP-C-0001 P03 dated 30 April 2021
- Flood Risk Modelling Technical Note prepared by JNP Group, reference B24120-JNP-XX-XX-RP-C-1003 dated 30 November 2021
- Flood Risk Assessment Addendum prepared by JNP Group, reference B24120-JNP-XX-XX-RP-C-1005 P03 dated 16 December 2021
- Flood Evacuation Plan prepared by JNP Group, reference B24120-JNP-XX-XX-RP-C-1007 P01 dated 16 December 2021

**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 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:

- consider and base its assessment of flood risk and evaluation of mitigation measures on the current design

## **Overcoming our objection**

- The FRA and the addendums submitted relate to a different design which is misleading. The FRA needs to be updated in accordance with the newest design to assess flood risk and re-evaluate the mitigation measures.
- In addition, we provided conditions and comments for the previous application; you should review the conditions and identify any changes required.

To overcome our objection, the applicant should submit a revised FRA which addresses the points highlighted above.

If this cannot be achieved, we are likely to maintain our objection. Please re-consult us on any revised FRA submitted and we'll respond within 21 days of receiving it.

## **FLOOD RISK INFORMATIVES**

### **Environmental permit - advice to applicant**

The River Holme is designated as a 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 \(www.gov.uk\)](http://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.

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.

**BIODIVERSITY/ECOLOGY**

Works are proposed within 8 metres of a main river (River Holme). There is inadequate evidence that the risk / impact on nature conservation/fisheries/ecology and physical habitats has been assessed. Without this we are unlikely to be able to grant the necessary environmental permits.

In our response to the previous application we raised an objection relating to inadequate evidence that the risk and/or impact of the proposed development on the River Holme and its ecology had been assessed – specifically a Water Framework Directive assessment.

Following those comments, a meeting was held between the EA and developers/consultants. The need for the proposed development to consider and demonstrate compliance with the Water Framework Directive was discussed and agreed.

At present, a Water Framework Directive assessment has not been completed or submitted and so our original objection still stands.

For completeness, the wording of our original objection is provided below:

The site plan general arrangement shows a built development on a parcel of land immediately adjacent to, and over, the River Holme. The plans also appear to show new buildings within 8m of the waterbody, structures running parallel to the bank of the River Holme and x2 new bridge crossings. However, it is not clear if the existing river banks (and vegetation) are to be modified or left in-situ, and if modification is proposed, the detail (location & design) has not been provided.

From the information submitted it is not clear if the proposed development is likely to result in encroachment on the River Holme, and/or the channel banks becoming steeper, higher and 'harder' compared to the current conditions.

Until further information is supplied, we must work on the assumption that there may be works as part of the proposed development that could include river bank re-profiling, bank reinforcement and/or the significant loss of riparian semi-natural habitat (on the river banks and within the riparian zone).

These activities have the potential to adversely affect the '*Holme from Source to New Mill Dike (GB104027057600)*' waterbody and its ecology. Such works will require a flood risk activity permit (FRAP) under the Environmental Permitting (England and Wales) Regulations 2016, as detailed above.

In determining the FRAP for this development, we will assess its compliance with the Humber River Basin Management Plan (RBMP). We'll also consider how the development will affect water biodiversity and the wetland environment. The RBMP states that the water environment should be protected and enhanced to prevent deterioration and promote the recovery of waterbodies.

Based on the information submitted with this application, it is unclear if the proposed development will:

- cause deterioration of waterbody status
- prevent achievement of good ecological status
- prevent achievement of good ecological potential

and therefore fail to meet the requirements of the Water Framework Directive (WFD). At present, no WFD assessment has been provided.

Based on the above we do not have enough information to know if the proposed development can meet our requirements for nature conservation, WFD, and ecology because inadequate detail on the proposal, and no assessment of the risks, has been provided. We therefore object to the proposal and recommend that the planning application is refused.

This objection is supported by paragraphs 170 and 175 of the National Planning Policy Framework (NPPF) which recognise that the planning system should conserve and enhance the environment by minimising impacts on and providing net gains for biodiversity.

### **Overcoming our objection**

To overcome this objection, we request additional information is provided on the proposed development – specifically, information relating to the proximity of any built development to the River Holme and any proposals relating to the modification of the river bed and/or banks.

Based on the proximity of the proposed development to the '*Holme from Source to New Mill Dike (GB104027057600)*' waterbody, a WFD assessment is required to assess how the proposal will affect the ecology of the waterbody. The WFD assessment should identify any potential impacts the works will have on hydromorphology (and therefore ecological) quality elements and provide information on how these impacts will be mitigated or avoided. The waterbody here is classified as heavily modified and therefore has specific mitigation measures, set out in the Humber RBMP, to ensure it is able to reach 'Good Ecological Potential'. These include measures to improve fish passage over existing in-channel structures (e.g. weirs).

The proposed development should therefore also aim to deliver (and must not prevent

delivery of) these necessary ecological improvements. The WFD requires cumulative impacts of works to be considered in conjunction to the proposed works.

The WFD assessment must demonstrate that the proposed development does not:

- Cause deterioration in the status of any waterbody through deterioration in the status of the Biological Quality Elements (BQEs) or
- Compromise the ability of the waterbody to achieve its WFD status objectives (through improvement works if necessary); and should where possible,
- Indicate how the proposed scheme contributes to the delivery of WFD objectives.

Until a satisfactory WFD assessment is provided the risk posed by the proposed development is unacceptable.

We also recommend that a scheme for the provision and management of, at least, an 8 metre wide undeveloped buffer zone alongside the River Holme waterbody should be submitted to, and approved in writing by, the local planning authority. The buffer zone scheme should be free from all built development, including lighting and domestic gardens. As a minimum, the scheme should include:

- plans showing the extent and layout of the buffer zone;
- details of any proposed bank regrading / bank 'softening' / habitat improvement
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

We recommend that any proposed bridge crossings are clear-span (i.e. have no in-channel supports) and have abutments that are sufficiently set-back from the river bank.

## BIODIVERSITY INFORMATIVES

### **Biodiversity Net Gain**

Since our previous response, additional information, including the result of a Biodiversity Net Gain (BNG) assessment, has been provided.

The updated BNG assessment (submitted 16/06/23) reports a 6.30% net loss in Habitat Units and a 0.42% net gain in Watercourse Units. Neither of these satisfy trading rules, and off-site purchase of units is recommended within the submitted report. A LEMP is also recommended by the report to be conditioned as part of the planning process, to fully detail how these units will be achieved. Without this document and detailed plan, there is a risk that these units are not obtained within the project due to restrictions such as cost, and as such BNG is not achieved.

Reiterating previous comments from a meeting between the applicant and the Environment Agency, we also highlighted potential opportunities that the developer may wish to explore when designing river habitat improvements – e.g. weir removal, removal of existing hard engineered river banking, bank regrading, improvements to in-channel morphological diversity and riparian planting / buffer strip creation. Such interventions would likely help contribute to the achievement of WFD objectives for the water body. We must also stress that the baseline condition assessment (river condition assessment / MoRPh survey) results should also be used to identify and target the elements of the river habitat that would most benefit from enhancement.

We recommend that the BNG assessment is updated to demonstrate net gain in each of the habitat types present within the proposed development site, and that the

proposed development design (landscape plans etc.) are updated to reflect any changes. We also recommend that the LEMP and details of BNG delivery are submitted as part of this application.

This reasoning is in line with the latest Biodiversity Metric 4.0 guidance and is supported by paragraphs 170 and 175 of the NPPF guidance as well as Policy LP30 (Biodiversity and Geodiversity) of the Kirklees Local Plan – which “requires new development proposals to provide net biodiversity gains through good design by incorporating biodiversity enhancements and habitat creation”.

### **Additional information**

A number of weirs exist on the River Holme within (or close to) the proposed development site’s red line boundary. These in-channel structures create a barrier to the movement of ecology (e.g. fish) and interrupt the sediment transport regime of the river which has knock on effects for up and downstream aquatic habitats. We recommend that the proposed development considers addressing (removal, modification and/or provision of fish passage). Undertaking such works would contribute to the WFD objectives of the water body, by helping to address existing WFD Heavily Modified Water Body mitigation measure actions, as well as count towards the achievement of BNG. Further detailed investigation (feasibility and design) works would need to be undertaken to determine the best method / design to make the structures passable. This would need to be informed by a suitably qualified geomorphologist and aquatic ecologist.

## **GROUNDWATER AND CONTAMINATED LAND**

### **Land contamination**

This development site appears to have been the subject of past industrial activity which poses a high risk of pollution to controlled waters.

However, we are unable to provide site specific advice relating to land contamination as we have recently revised our priorities so that we can focus on:

- Protecting and improving the groundwater that supports existing drinking water supplies
- Groundwater within important aquifers for future supply of drinking water or other environmental use

We recommend that you refer to our published ‘Guiding Principles for Land Contamination’ which outlines the approach which should be adopted when managing this site’s risks to the water environment.

We also advise that you consult with your Environmental Health/ Environmental Protection Department for advice on generic aspects of land contamination management. Where planning controls are considered necessary, we recommend that the environmental protection of controlled waters is considered alongside any human health protection requirements. This approach is supported by paragraph 170 of the National Planning Policy Framework.

## Model Procedures

We recommend that developers should:

1. Follow the risk management framework provided in CLR11, Model Procedures for the Management of Land Contamination, when dealing with land affected by contamination.
2. Refer to our Guiding principles for land contamination for the type of information that we require in order to assess risks to controlled waters from the site. The Local Authority can advise on risk to other receptors, such as human health.
3. Consider using the National Quality Mark Scheme for Land Contamination Management which involves the use of competent persons to ensure that land contamination risks are appropriately managed.
4. Refer to the contaminated land pages on GOV.UK for more information.

## Use of waste on site

The CL:AIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste or have ceased to be waste. Under the Code of Practice:

- excavated materials that are recovered via a treatment operation can be re-used on-site providing they are treated to a standard such that they are fit for purpose and unlikely to cause pollution
- treated materials can be transferred between sites as part of a hub and cluster project
- some naturally occurring clean material can be transferred directly between sites.

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on-site operations are clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays.

We recommend that developers should refer to:

- the position statement on the Definition of Waste: Development Industry Code of Practice;
- The waste management page on GOV.UK

## Waste to be taken off-site

Contaminated soil that is (or must be) disposed of is waste. Therefore, its handling, transport, treatment and disposal are subject to waste management legislation, which includes:

- Duty of Care Regulations 1991
- Hazardous Waste (England and Wales) Regulations 2005
- Environmental Permitting (England and Wales) Regulations 2016
- The Waste (England and Wales) Regulations 2011

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 'Characterization of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays.

If the total quantity of hazardous waste material produced or taken off-site is 500kg or greater in any 12 month period, the developer will need to register with us as a hazardous waste producer. Refer to the [Hazardous Waste](#) pages on GOV.UK for more information.

**Further detailed planning advice to overcome objections**

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 additional information, or wish to discuss these matters further, please do not hesitate to contact me on the number below.

Yours sincerely

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