Consultation Response from KC, Policy

2023/91658 Jd Sports Gym, 260, Bradford Road, Batley, WF17 6JD

Erection of two-storey commercial/office unit

Date Responded:
Responding Officer: HR
Responding Ref:

This application proposes the erection of a two storey building located at the back of the existing gym on Bradford Road. The proposal seeks to include a retail unit on the ground floor and ancillary office on the second. The land within the redline boundary is located in EA flood zone 2 and SFRA flood zone 3a.

The Local Plan was adopted on 27 February 2019. The Local Plan Strategy and Policies should be fully considered; however the following response relates to specific Local Plan policies which are of particular relevance to the proposal, other policies that are not mentioned here may also apply. This response relates to LP27 only.

Flood Risk

The NPPG in relation to flood risk was updated in August 2022.

The site lies within Flood Zone 2 (EA) and Flood Zone 3a (SFRA) where there is a medium to high probability of flooding. Buildings used for retail and office are a less vulnerable use as set out in the flood risk classification in Annex 3 of the NPPF.

However, since the SFRA was carried out in 2015/16 the EA flood maps have been updated (as these are updated quarterly). The area of land to which this application relates is now shown as Flood Zone 2 on the EA maps for planning. Therefore, in this case it is appropriate to use the most up to date flood maps and assess this site as within Flood Zone 2, therefore, it is appropriate, only after the sequential test has been passed (Table 2, NPPG).

This area was not subject to a Sequential Test as part of the Local Plan process, as the land is not allocated.

The approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding.

The decision in relation to the assessment of sites (and justification for discounting them) as part of the test would be a Development Management decision. Therefore, these comments relate to the Sequential Test methodology only.

A sequential approach should be applied within the site to seek to locate the most vulnerable uses in the lowest flood risk area of the site and the least vulnerable uses in the areas of greatest risk within sites.

Sequential Test

A sequential test has been submitted as part of this planning application and the following comments apply.

Area of search (geographical area):
For individual planning applications subject to the Sequential Test, the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed (NPPG).

The Local Plan Policy LP27 (flood risk) states that the whole of the Kirklees district should be the starting point for the sequential test with applicants required to provide justification where a smaller area of search is proposed, each case will be assessed on its merits.

The Sequential Test submitted by the applicant states that a smaller area of search, the Batley and Spen Ward, has been used. The applicant has not justified why it is not appropriate in this case to search the whole of Kirklees. It is not explicitly clear what the proposed area of search is and what the boundary is, there is no ward within the Kirklees district called 'Batley and Spen'. It would be helpful to include a map showing a clearly defined boundary with a list of wards, along with justification for the proposed smaller area of search.

Sources of sites
Alternative 'reasonably available' sites will need to be considered as part of the Sequential Test, sources should include:

- Local Plan allocations
- Sites that haven't been allocated in the Local Plan, but have been granted planning permission for a development that is the same or similar to the proposed development (ELSR)
- Expired sites
- Windfall sites that aren't allocated in the Local Plan and don't have planning permission, but that could be available for development (information from local estate agents about sites for sale)

Guidance states that allocated sites, unallocated sites with planning permission and windfall sites should be searched for potential alternative sites and this should be as up to date as possible (Flood risk assessment: the sequential test for applicants - GOV.UK (www.gov.uk)).

The applicant has looked at employment allocations in Dewsbury, Mirfield, Birstall and Cleckheaton, available land in Priority Employment Areas, mixed use sites in Dewsbury and Cleckheaton, 3 sites on the open market and 10 sites identified from searches on Rightmove.

It appears the applicant has not looked at sites that haven't been allocated in the Local Plan but have granted planning permission for a development that is the same or similar to the proposed development or expired sites.

Site size
Reasonably available sites could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available'.

The NPPG has been updated in relation to flood risk (August 2022). The definition for 'what is a "reasonably available" site?' has been updated and now states:

'Reasonably available sites' are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. ***These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development****. Such lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available'. (our emphasis)*

A series of smaller sites may not be appropriate in this case based on the outcome of the High Court Judgement (Mead and Redrow v LUHC [2024] EWHC 279) (para 110) which states that the word "series" connotes a relationship between sites appropriate for accommodating the type of development. Sequential tests should not automatically fail because of the availability of multiple, disconnected sites across a local authority's area.

The applicant has looked at sites that are a similar size to the application site (+/- 15% of the developable area). This approach does not accord with national guidance as NPPG clearly states that reasonably available sites could include a series of smaller and/or be part of a larger site. If these would be capable of accommodating the proposed development.

The applicant would be required to consider sites that are both smaller and larger than the application site in accordance with NPPG (August 2022) not just the +/-15% as considered as part of the submitted Sequential Test.

Conclusion

In order to agree the methodology for the Sequential Test, a smaller area of search needs to be justified by the applicant with a map identifying the area and wards included for clarity. With regards to alternative sites, all sizes of sites will need to be considered in line with NPPG (August 2022). Whilst some sources of sites have been explored the applicant has not exhausted all sources. There is currently no information on sites that haven't been allocated in the Local Plan but have been granted planning permission for a development that is the same or similar to the proposed development (ELSR) or expired sites.