

Ellie Worth
Kirklees Metropolitan Borough Council
Development Management

Our ref: RA/2023/146232/01-L01
Your ref: 2023/92448

Date: 15 September 2023

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

Dear Ellie

OUTLINE APPLICATION FOR ERECTION OF B8 INDUSTRIAL UNIT – FORMER COOPER BRIDGE WATER TREATMENT WORKS, LEEDS ROAD, HUDDERSFIELD, WF14 0BT

Thank you for consulting us on this application which we received on 25 August 2023.

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 B8 Storage and Distribution, which is considered to be a 'less 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 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 by Wardell Armstrong referenced LD10590 RPT-001-V1.0 and dated August 2023, has been submitted in support of the application.

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:

- take the impacts of climate change into account by using the 1% AEP flood level plus climate for the assessment of flood risk and to infer necessary mitigation measures
- consider the requirement for safe access or egress, or flood emergency planning including flood warning and evacuation of people for a range of flooding events up to and including the extreme event

- demonstrate that the development will not increase flood risk to others off site for the lifetime of the development.

Overcoming our objection

Assessment of Flood Risk:

- The FRA does not consider and assess that the development is within flood zone 3ai as shown on Map K in the Kirklees Strategic Flood Risk Assessment.

Safe Access and Egress/ Flood Warning Evacuation:

- The FRA must demonstrate safe access/egress for site users, up to and including the design event. Wherever possible, safe access routes should be above design flood levels and avoiding flow paths (i.e. 'dry'). If 'dry' safe access/egress is not possible, the proposed routes can be 'wet' but must be 'safe'. This is defined by the UK flood hazard rating using the FD2320 methodology, calculated according to flood depth, velocity, and likely debris factor. If a 'wet' and 'safe' route is not possible, the FRA must provide an evacuation plan.
- We are not the competent authority on matters of safe access/egress or emergency planning. Our role is to ensure that enough data is available within the FRA for the LPA and their emergency planners to make an informed decision. As a minimum, the FRA should either demonstrate a dry access/egress route or an assessment of a proposed 'wet' route using FD2320. If no safe route is possible and the applicant intends to rely on an emergency plan, then sufficient data needs to be included in the FRA for the decision maker to understand whether emergency planning proposals are acceptable. For example, you should consider factors such as flood warning lead times, flood rate on set and your own conscious weather monitoring to demonstrate the emergency plan can be successfully actioned.

Compensatory Storage:

- We note that the ground levels around the site vary from 46.9 to 51.5 mAOD, and the design flood event levels are higher than most of the site. Therefore, the FRA needs to show there is no increase to others offsite by evidencing no loss of storage up to and including the 1% AEP plus climate change scenario (design event). Alternatively, the FRA must provide a floodplain compensatory scheme.
- Please note that Section 12.22 in Kirklees Local Plan - Strategy and Policies states that compensatory storage will be required for all schemes in flood zone 3ai and areas shown to be acting as functional floodplain by a site-specific flood risk assessment should be retained as undeveloped areas.

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.

Advice to LPA

If you are minded to approve this application for major development contrary to our flood risk objection, we request that you contact us to allow further discussion and/or representations from us in line with the [Town and Country Planning \(Consultation\) \(England\) Direction 2021](#).

This statutory instrument prevents you from issuing planning permission without first referring the application to the Secretary of State for Housing, Communities and Local Government (via the National Planning Casework Unit) to give them the opportunity to call-in the application for their own determination. This process must be followed unless we are able to withdraw our objection to you in writing. A failure to follow this statutory process could render any decision unlawful, and the resultant permission vulnerable to legal challenge.

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](#).

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 \(www.gov.uk\)](#).

Referring SW Proposals to LLFA

The [Lead Local Flood Authority](#) are responsible for providing advice on the management of surface water from new larger developments. Please consult them for their comments on your proposal.

Sustainable Drainage Systems (SuDs) should always be carefully considered in discussions with the lead local flood authority. However, any drainage system must not pose a risk to groundwater quality and must not be constructed in ground affected by contamination.

Land contamination

This development site appears to have been the subject of past industrial activity which poses a potential 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 174 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.

Non-road going mobile machinery

Where development 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 site preparation, construction, demolition, and/or operation, 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.

This is particularly important for major residential, commercial, or industrial development located in or within 2km of an Air Quality Management Area for oxides of Nitrogen (NOx), and or particulate matter that has an aerodynamic diameter of 10 or 2.5 microns (PM10 and PM2.5). Use of low emission technology will improve or maintain air quality and support LPAs and developers in improving and maintaining local air quality standards and support their net zero objectives.

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.

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 site preparation, construction, and demolition phases at sites that may require an environmental permit.

Non-Road Mobile Machinery includes items of plant such as bucket loaders, forklift trucks, excavators, 360 grab, mobile cranes, machine lifts, generators, static pumps, piling rigs 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.

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

Yours sincerely

Bev Lambert
Sustainable Places - Planning Advisor

Telephone 020 3025 7982

Mobile 07833 234623

Direct e-mail bev.lambert@environment-agency.gov.uk

Team e-mail sp-yorkshire@environment-agency.gov.uk