

Consultation Response from KC, Policy
2023/92490 Former Dowker Works, Dowker Street, Milnsbridge, Huddersfield, HD3 4JX
Erection of 38 dwellings with associated access and landscaping (within a Conservation Area)
Date Responded: 12 April 2024 Responding Officer: Hannah Morrison Responding Ref:
<p>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. This is a high-level response and other policies that are not mentioned here may also apply.</p> <p>The planning application relates to a residential development comprising 38 dwellings with associated access and landscaping at Former Dowker Works, Dowker Street, Milnsbridge, Huddersfield, HD3 4JX.</p> <p>The site is unallocated in the Kirklees Local Plan and comprises of previously developed land. The majority of the sites is within Flood Zone 2.</p> <p>These comments relate to Flood Risk Sequential Test (Rev A) February 2024.</p> <p>LP27 Flood Risk Assessment/Sequential Test</p> <p>The majority of the site lies within Flood Zone 2 (EA and SFRA), where there is a medium probability of flooding. Dwellings (excluding basement dwellings) are a more vulnerable use as set out in the flood risk vulnerability classification, Annex 3 of the NPPF, therefore, it is appropriate, only after the sequential test has been passed (Table 2, NPPG).</p> <p>This area was not subject to a Sequential Test as part of the Local Plan process, as the land is not allocated.</p> <p>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.</p> <p><u>The Sequential Test</u></p> <p>A Sequential Test has been submitted to accompany this planning application.</p> <p>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).</p> <p>The Local Plan Policy LP27 (Flood Risk) states that the whole 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.</p> <p>A smaller area of search has been proposed by the applicant, there is no justification for using a smaller area of search nor any reasons why this area of search has been used. However, the applicant has used our latest Strategic Housing Market Assessment (SHMA) to determine an area of</p>

search and has used the Huddersfield Local Market Area.

This is acceptable as an area of search as the SHMA sets out NHPAU housing market evidence showing three local market areas within Kirklees. Huddersfield Local Market Area been one of them.

Sources:

These should include:

- Local Plan allocations
- Sites that haven't been allocated in the local plan, but that have been granted planning permission for a development that's the same or similar to the proposed development (ELSR)
- Expired sites (ELSR)
- 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 \(www.gov.uk\)](https://www.gov.uk/government/publications/flood-risk-assessment-the-sequential-test-for-applicants)).

The submitted Sequential Test uses the following as sources of sites, which follows guidance and are acceptable sources:

Local Plan allocations

Sites with Extant Planning Consent

Recently Expired Applications

Sites Contained on the Brownfield Register

However, windfall sites (information from local estate agents about sites for sale) have not been considered and these would need to be explored as potential sources, as set out in the Policy comments dated 26 September 2023.

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'.

Therefore, all sizes of sites should be considered as part of the test and not just those that 'have a comparable yield to the subject site'.

However, a recent High Court Judgement (Mead and Redrow v LUHC [2024] EWHC 279) states at Para. 110:

'I note that the PPG refers to a "series of smaller sites." The word "series" connotes a relationship between sites appropriate for accommodating the type of development which the decision-maker judges should form the basis for the sequential assessment. This addresses the concern that a proposal should not automatically fail the sequential test because of the availability of multiple, disconnected sites across a local authority's area. The issue is whether they have a relationship which makes them suitable in combination to accommodate any need or demand to which the decision-maker decides to attach weight.'

Therefore, it is agreed that in this case if a series of suitable sites which have a relationship cannot be found then smaller sites do not need to be considered.

The application site is approximately 0.52ha in size, this sequential test considers potential alternative, sequentially preferable sites that could accommodate this size, and type of development.

From the list of sites considered in Appendix A, it appears that sites larger than 0.52ha have been considered. This is in accordance with national guidance, as PPG refers reasonably available sites including part of a larger site.

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

The NPPF requires alternative sites to be 'reasonably available'. 'Reasonably available sites' are defined as sites that are suitable, developable & deliverable. To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that employment floorspace will be delivered on the site within five years.

Local Plan allocations were shown to be suitable, developable & deliverable when the Local Plan was adopted and the principle of developing them has already been established, taking into account flood risk, access and TPO's, for example. The applicant would need to demonstrate that they are not suitable, developable & deliverable, for example planning permission could have been granted for an alternative use.

Sites with planning permission should be considered deliverable until permission expires. This applies, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites that have long term phasing plans.

A recent High Court Judgement (Mead and Redrow v LUHC [2024] EWHC 279) has shown that reasonably available doesn't necessarily mean that the alternative site should always align closely with the trajectory for the developers proposal.

Para 106 from the judgement reads:

'The PPG describes "reasonably available sites" as sites "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." The PPG provides for issues as to suitability of location, development type, and temporal availability to be assessed by the decision-maker as a matter of judgment in accordance with the principles set out above. In this context, the PPG correctly states that "lower-risk sites" do not need to be owned by the applicant to be considered "reasonably available." That is consistent with the need for flexibility on all sides.'

'Available to be developed' means just that. It does not mean that development of an alternative site would have to follow the same timescale envisaged for the proposed scheme. It is sufficient that there is a positive indication that the land is available to be developed. The start date for development and the rate of build out may be affected by many site-specific factors, such as the need to relocate infrastructure, but that does not alter the fact that the land would be available to be developed.

Sequential approach within the site

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 (such as open space) in the areas of greatest risk within sites.

Site-specific Flood Risk Assessment

The applicant should submit a Flood Risk Assessment to demonstrate to the decision-maker how flood

risk will be managed now and over the development's lifetime, taking climate change into account, and with regard to the vulnerability of its users.

The objectives of a site-specific flood risk assessment are to establish:

- whether a proposed development is likely to be affected by current or future flooding from any source;
- whether it will increase flood risk elsewhere;
- whether the measures proposed to deal with these effects and risks are appropriate;
- the evidence for the local planning authority to apply (if necessary) the Sequential Test, and;
- whether the development will be safe and pass the Exception Test, if applicable.