

Robert Halstead

Chartered Surveyors & Town Planners

N.C. Willock MRICS MRTPI

Office G of H, Bridge Mills, Huddersfield Road, Holmfirth, HD9 3TW

Tel: 01484 686322 e mail: nick@roberthalstead.co.uk

Planning Development

Flood Risk Sequential Assessment and Exceptions Test Land adjacent to Ledgard Bridge Mills, Back Station Road, Mirfield

Introduction

This Flood Risk Sequential Assessment accompanies a planning application for the erection of one block of 76 no. two bed apartments on the 0.84 ha ¹ brownfield former Ledgard Bridge Mill site. The main former mill building on the site has previously been extended and converted to residential apartments and has been a well-regarded and successful development. The new proposals would represent Phase 2 of this major brownfield regeneration project.

Therefore, the Sequential Test must continue to review the availability of Flood Zones 1 and 2 over Flood Zone 3 within the site, which should follow a similar process as the site selection.

The sequential test

The NPPF ² paragraph 162 states:

The aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The Strategic Flood Risk Assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.

Referring to the Council's Strategic Flood Risk Assessment, the areas where the development, access and car park would be located are in Flood Zones 2 and 3. Small strips of land down the river embankment, are located in 3ai, however these areas are not to be included as part of the proposed development.

A sequential assessment is required to determine if there are any reasonably available sites for the development within Flood Zones 1 & 2.

As per policy in NPPF paragraph 162 ³, the Council's Strategic Flood Risk Assessment (SFRA) recommends a three-stage approach to the sequential assessment: Stage 1 – Strategic application &

¹ Excluding Ledgard Bridge Mills Phase 1 apartment block

² National Planning Policy Framework

³ "The Strategic Flood Risk Assessment will provide the basis for applying this test"



Kirklees Strategic Flood Risk Assessment – Extract from Map W showing site location in FZ's 2 & 3

development vulnerability; Stage 2 – Defining the evidence base; and Stage 3 – Applying the Sequential Test.

Stage 1 – Strategic application & development vulnerability

The site is not allocated in the Local Plan for development and the development vulnerability is not appropriate to the Flood Zone. ⁴ As such, a full sequential assessment is required, and the assessment must move to Stage 2.

Stage 2 – Defining the evidence base

The SFRA requires the geographic area in which the test is to be applied to be defined.

Local Plan Policy LP27 states that the whole of the Kirklees District should be the starting point for the sequential assessment, with applicants required to provide justification where a smaller area of search is proposed.

A smaller catchment area centred around the Dewsbury and Mirfield areas as defined in the Kirklees Council Strategic Housing Market Assessment (SHMA) 2016 was considered to be justified in this case, relating to specific aspects of this development as set out in the pre-application enquiry (now updated as follows):

⁴ Planning Practice Guidance 'Flood risk and coastal change' Paragraph 034 Table 2

- Mirfield rail station (serving an area specifically within the Dewsbury and Mirfield catchment area) is the only station in Kirklees with direct trains to London.
- As the site is next to Mirfield rail station, the development of two bed apartments aims to attract young singles and couples, executive occupiers and growing families who may work in Leeds or Manchester (and London). The site therefore needs to be convenient to walk to the station (use of non-car modes of transport encouraged more widely by planning policy). Rents would also be more affordable in this location compared with Leeds or Manchester, for this type of residential development. There is also evidence of huge rental demand⁵ from growing families in Mirfield, and again, this development would provide more a more affordable category of housing, enabling young and growing families to remain in, or move to, the area. The apartments on offer would, for example, be suitable and more affordable for families with one child.
- The site is owned by the applicant (Binks Executive Homes Ltd) and is therefore more likely to be available and deliverable for housing development. The applicants are also in a relatively unique position in the Kirklees borough of being able to offer a Build to Rent scheme in this location. NOTE: the Council queried demand for Build to Rent in its pre-application enquiry response, however evidencing demand is not a planning policy requirement and we are not aware, in any case, that there has been any Build to Rent scheme granted planning permission (or built) in Kirklees, despite this being a type of development the Government is encouraging through the NPPF.
- The current apartment block at Ledgard Bridge has 125 apartments: 106 one bedroom apartments and only 19 two bedroom apartments. The applicant finds there is a significant demand for two bedroomed apartments in this location, with demand significantly outstripping supply.
- Significant employment opportunities exist in the Mirfield area (including the recent Cooper Bridge scheme) and the proposed development would therefore help supply local homes within easy (and sustainable) commuting distance.
- Mirfield has its own catchment area of residents who have been brought up in Mirfield and are often unable to afford to buy the traditional family homes that make up a great deal of this locality. They do however want to stay in the area they were born and brought up in. Therefore, this proposed Build to Rent development will offer of more affordable housing opportunities for those local residents wishing to stay in the area longer term.

However, in its pre-application response dated 14th April 2022 the LPA stated "... officers consider that using the Mirfield ward as a catchment area, and being based on the SHLAA, is not appropriate. Notwithstanding the questions asked, based on the information held at this time and giving due regard to the sequential assessment's requirements, it is considered doubtful that the Mirfield ward could be found to be an acceptable catchment."

The Council went onto state: "The methodology to reach these areas is outlined in chapter 3 of the SHMA. The site falls within the Dewsbury and Mirfield area. Using the SHMA it may be possible to agree a smaller area of search. However, an argument must be put forward by your sequential test as

⁵ According to local estate agents

to why Dewsbury and Mirfield area is appropriate for your development, to be assessed and agreed by the Local Planning Authority.”

The applicant does not agree with the Council in this regard, however the applicant is willing to proceed with the wider catchment area suggested by the Council on a without prejudice basis, as set out in subsequent sections of this report.

It is also noted that smaller catchment areas have been accepted by the Local Planning Authority in other recent residential planning applications in the Mirfield area over the past decade or so, including:

2009/93133 – Newgate, Mirfield for 36 retirement flats ⁶

2011/91930 - Back Station Road, Mirfield for 45 houses and 31 apartments

2014/92431 – Steanard Lane, Mirfield for three dwellings

2020/91860 – Calder Road, Mirfield for four dwellings ⁷

It is noted that planning practice guidance (with regard to the whole borough being the starting point for any sequential search area) has not changed since at least as far back as 2009 ⁸ and the applicant refers to established case law regarding consistency in decision-making on planning matters. ⁹

The Council responded to these points in its pre-application enquiry response by stating:

“It is noted that your submission proposes that accepting Mirfield as a catchment area would be consistent with other applications. While there is a need for the LPA to act consistently, conversely there is also a requirement to assess each application on its own merits. All the applications you have referenced are of some age, with the exception of 2020/91860 which was a modified proposal to an application from 2016 which therefore carried weight in the decision-making process. All these applications were assessed against the UDP and earlier iteration of the NPPF. Planning decisions must be made against modern planning policy, with officers outlined approach being in compliance with the Local Plan (LP27) and NPPF (inc. the NPPG).”

As we have said, the national policy approach to defining catchment areas (upon which Local Plan policies are usually based) has not changed since as far back as 2009, and it is therefore unclear how referencing “modern planning policy” changes the circumstances set out by the applicant, with regard to the Council’s acceptance of smaller catchment areas on cases since that time.

The applicant therefore reserves the right to scrutinised the Council’s approach to this matter in more detail, should the need to do so arise.

Stage 3 – Applying the Sequential Test

The SFRA states ¹⁰:

⁶ Decision 2013

⁷ No sequential assessment requested. Although a previous permission was for a conversion and extension of a pre-existing building, this was only part implemented and officer’s report acknowledges that the 2020 application for a new block of terraced properties was a “standalone application” (Page 5 of Officer’s report).

⁸ PPS 25 - 2009

⁹ R (Midcounties Co-operative Limited) v Forest of Dean District Council [2013] EWHC 1908 (Admin)

¹⁰ Page 40

Stage 3 focuses on applying the Sequential Test by comparing the reasonably available sites identified under stage 2 with the application site. Sites should be compared in relation to flood risk; Local Plan status; capacity; and constraints to delivery including availability, policy restrictions, physical problems or limitations, potential impacts of the development, and future environmental conditions that would be experienced by the inhabitants of the development.

The test should conclude if there are any *reasonably available* sites, in areas with a lower probability of flooding that would be appropriate to the type of development or land use proposed.

The PPG ¹¹ (Flood Risk and Coastal Change) states in paragraph 027:

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. For some developments this may be clear, for example, the catchment area for a school. In other cases, it may be identified from other Plan policies.'

The Flood Risk and Coastal Change PPG defines a 'reasonably available' site as:

'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.

Through its pre-application response, the Council offered its opinion on the methodology as follows:

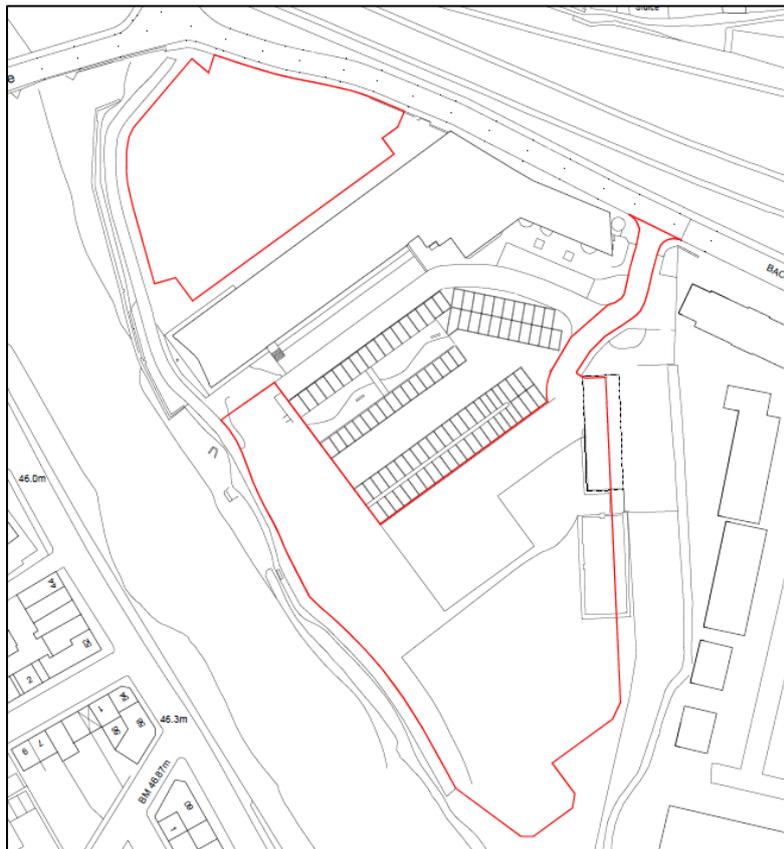
*"Other sites will have had various changes as well. Secondly this list does not include the wider range of sites which the PPG requires **, which are outlined below:*

- *Local Plan Allocations: First, check your adopted or draft local plan for sites that have already been allocated for development and could be suitable for the development you're proposing.*
- *Approved and Expired Windfall Sites: Also look at 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 development you're proposing. Your local planning authority will have details of sites with planning permission.*
- *Unidentified Windfall Sites: Windfall sites are sites that aren't allocated in the local plan and don't have planning permission, but that could be available for development. You can look for windfall sites yourself and you should also check if your local planning authority has information about possible windfall sites (e.g. urban capacity studies)."*

** Note: the PPG (Paragraph 029) actually states the following for clarity: "The applicant will need to identify whether there are any other 'reasonably available' sites within the area of search, that have not already been identified by the planning authority in site allocations or relevant housing and/or economic land availability assessments, such as sites currently available on the open market."

Notwithstanding the above, utilising the Dewsbury and Mirfield area as defined in the Kirklees Council Strategic Housing Market Assessment 2016 (SHMA), the sequential search has firstly focused on those sites allocated for housing in the Local Plan.

The proposed development requires a minimum site area of 0.84ha as per the reduced red line plan below (which excludes the existing parking area and incidental peripheral landscaped areas) but includes core landscaping areas, the building, parking and circulation space, and as such, any sites with available land smaller than this are not deemed to be generally suitable for the proposed development.



Referring to the Kirklees Local Plan Allocations and Designations, the following table includes allocated housing sites in the Dewsbury and Mirfield areas that have been identified as being over 0.84ha.

Housing Allocation	Site Address	Net Site Area (ha)
HS46	Magma Ceramics, Preston Street, Earlsheaton	1.16
HS47	Land to east of Leeds Road, Chidswell	7.98
HS48	Land to west of Scholl Street, Chickenley	1.92
HS49	Cliffe Street, Dewsbury	1.36
HS50	Providence Street, Earlsheaton	0.86
HS51	Land to east of High Street, Batley	1.76
HS52	Land to south west of Dewsbury Rams RLFC, Owl Lane	13.82
HS53	Land south and east of Rumble Road, Bywell, Dewsbury	4.52
HS55	Headfield Mills, Savile Road, Savile Town	1.02
HS56	Land north west of Forge Lane, Thornhill Lees	2.68
HS59	Lock Street, Thornhill, Dewsbury	2.72
HS60	Land to north of Hall Lane, Thornhill	1.11

HS61	Land to south of Ravensthorpe Road/Lees Hall Road	142.9
HS65	Land east of Heckmondwike Road, Dewsbury Moor	1.54
HS66	Land to south of Sheep Ings Farm, Granny Lane	2.02
HS69	Lane to east of Northorpe Lane, Mirfield	1.40
HS70	Flash Lane, Mirfield	2.03
HS72	Soothill Lane, Lower Soothill, Batley	15.19
HS74	Land to west and south of Lady Ann Business Park	2.77
HS76	Land at Squirrel Hill Reservoir, Staincliffe Road	0.88
HS78	Land adj. Mayman Lane, Mount Pleasant, Batley	1.19

Table 1: Allocated housing sites with a net site area greater than 0.84ha

The following sites taken from Table 1 are however being discounted as development has either already been completed or partially completed on site, or there are decisions on current planning applications or discharge of conditions applications that are still pending. The sites are therefore deemed as unavailable for the proposed development.

Housing Allocation	Site Address	Planning Reference(s)
HS47	Land to east of Leeds Road, Chidswell	2020/92331 (pending)
HS48	Land to west of School Street, Chickenley	2015/92628 (built)
HS51	Land to east of High Street, Batley	2021/91871 (partially built)
HS52	Land to south west of Dewsbury Rams RLFC	2014/90780 (built)
HS53	Land south and east of Rumble Road, Bywell	2017/91459 (built)
HS60	Land to the north of Hall Lane, Thornhill	2022/90227 (pending)
HS61	Land to south of Ravensthorpe Road/Lees Hall Road	2021/91759 (pending) ¹²
HS69	Land to east of Northorpe Lane, Mirfield	2023/91997 (pending)
HS74	Land to west and south of Lady Ann Business Park	2021/94280 (pending)

Table 2: Allocated housing sites where development has already taken place or planning decisions are pending

The remaining allocated housing sites are also being discounted, and the reasons for this can be found in Appendix 2.

The Council was then contacted regarding Approved and Expired Windfall Sites that may be available and suitable for the proposed development. The full table of sites within the Dewsbury and Mirfield areas can be found in Appendix 3. From this information, the majority of the sites are too small and therefore unsuitable for the proposed development.

Of the remainder, only three other sites require more detailed examination as follows.

- 1) Forge Lane, Dewsbury, WF12 9AA (LPA ref: 2013/92657 – Outline application for residential development including 191 apartments). The last application for residential development on

¹² This large housing allocation is also addressed separately at Appendix 2

the site was in 2013. The site wasn't however carried forward and allocated for housing in the Local Plan which suggests there are constraints associated with developing the site. The site is within Flood Zone 2 and contains a large amount of trees and vegetation. The site is currently not for sale and appears to be undeliverable within reasonable timescales. As such, the site is being discounted due to its unsuitability and unavailability for the proposed development.

- 2) Wheelwright Centre, Birkdale Road, Dewsbury, WF13 4HG (LPA ref: 2019/92587 – Alterations and partial demolition to convert existing building to form 65 residential units etc). The proposed scheme falls short in terms of the number of apartments compared with the proposed development (65 vs 76). The site also has a current S73 planning application with the Council which has yet to be decided (LPA ref: 2022/93538). The site is therefore deemed to be unavailable in the timescales required and is not entirely suitable for the proposed development.
- 3) Land off The Sidings, Savile Town, Dewsbury (LPA ref: 2010/92630). The site has already been partially developed and is a long, narrow site surrounded by two storey residential properties. It is unsuitable for the proposed development and does not appear to be available.
- 4) Land off Rumble Road, Dewsbury – permission granted in 2017 and the site is fully developed out.

Finally, a search of unidentified Windfall Sites has been undertaken within the search area. Eight sites deemed to be large enough to accommodate the proposed development were initially identified as potential sites for the proposed development in relation to size but have all been deemed as unsuitable for the proposed development for the reasons outlined in Appendix 4.

In summary, given the above it is considered that within the search area around Dewsbury and Mirfield, there appear to be no *reasonably available* sites for the proposed development.

It is therefore considered that the sequential test is passed in accordance with national planning policy and guidance.

Exceptions Test

Paragraph 163 of the NPPF states:

If it is not possible for development to be located in zones with a lower risk of flooding (taking into account wider sustainable objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in national planning guidance.

Paragraph 034, Annex 3 of the Planning Practice Guidance (Flood Risk and Coastal Change) outlines the flood risk vulnerability classification. The proposed development would fall into the 'more vulnerable' classification.

Table 2 (Flood risk vulnerability and flood zone compatibility) (para 034) classes 'more vulnerable' development in Flood Zone 2 as 'appropriate', but states that an Exceptions Test is required for development in Flood Zone 3.

NPPF paragraph 164 states:

The application of the exception test should be informed by a strategic or site specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. To pass the exception test it should be demonstrated that:

a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and

b) 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.

These two matters are addressed in turn below.

1) Wider sustainability benefits to the community

The relevant PPG ¹³ states at paragraph 036:

How can it be demonstrated that wider sustainability benefits to the community outweigh flood risk? Local planning authorities need to set their own criteria for this assessment, having regard to the objectives of their Plan's Sustainability Appraisal framework, and provide advice which will enable applicants to provide relevant and proportionate evidence.

Identified sustainability benefits need to be balanced against any associated flood risks, informed by the site-specific flood risk assessment. The impacts of flood risk on social, economic and environmental factors should be considered. Where wider sustainability benefits are absent or where they are outweighed by flood risk, the Exception Test has not been satisfied planning permission should be refused.

The Council produced a Sustainability Appraisal Report as part of the Local Plan process ¹⁴. This set out a 19 point framework. With regard to the *relevant* objectives set out, the proposed development would achieve the following (official objective quoted in bold):

- **Retain and enhance access to local services and facilities**

The development is within easy walking distance of Mirfield town centre, providing day to day shopping and service requirement for prospective residents. This will help maintain the vitality and viability of Mirfield town centre and support its role as the focus for shopping, commercial, cultural and social activity, in accordance with local and national planning policy.

- **Ensure all people are able to live in a decent home which meets their needs**

Planning guidance on Build to rent ¹⁵ says that *as part of their plan making process, local planning authorities should use a local housing need assessment to take into account the need for a range of housing types and tenures in their area including provisions for those who wish to rent.*

The guidance goes on to advise: *If a need is identified, authorities should include a plan policy setting out their approach to promoting and accommodating build to rent. This should*

¹³ Flood risk and coastal change

¹⁴ <https://www.kirklees.gov.uk/beta/planning-policy/pdf/sustainability-appraisal-2016.pdf>

¹⁵ Paragraph 001

recognise the circumstances and locations where build to rent developments will be encouraged – for example as part of large sites and/or a town-centre regeneration area.

As far as we are aware, although the Council's housing needs assessment assessed demand / need for rental properties, this did not translate into specific objectives within the Local Plan. Nevertheless, it is very important to acknowledge that providing homes for rent is a fundamental part of the modern housing market, helping to achieve the above objective in terms of providing homes to meet people's needs and of a tenure of their choice. This is acknowledged at paragraph 4.26 of the Kirklees 2016 SHMA report, stating that the private rented sector has five key roles:

- *A traditional housing role for people who have lived in the private rented sector for many years;*
- *Easy access housing for the young and mobile;*
- *Providing accommodation tied to employment;*
- *A residual role for those who are unable to access owner occupation or social renting;*
- *An alternative to social rented housing (for instance those wanting to move to a different area but unable to do so through their social housing provider).*

The proposed Build to Rent scheme is ideally situated on a large regeneration site, as encouraged by the aforementioned Government guidance.

The Kirklees 2016 SHMA report confirms:

- Table 4.11 (page 69) states that current housing stock with regard to two bed apartments does not meet market aspirations / expectations.
- Table 7.10 (page 101) confirms that 21.8% of newly formed households consisted of flats in the five years prior to the report.
- Table 7.1 (page 96) predicts there will be significant percentage increases in household change demand for single adults and older couples, emphasising the need for smaller house types.
- Table F5 (page 182) confirms that the overall housing need per annum for flats / apartments is 209 / 1730 (12.1%).

The proposed development would be a 'Build to Rent' housing scheme and this will help fulfil housing needs for different groups in the communities in terms of size, type and tenure of housing, in accordance with NPPF paragraph 62 and Local Plan Policy LP11.

Paragraph 8.32 of the Local Plan acknowledges the need to provide a mix of homes to allow people to access the housing ladder, together with a range of housing tenures and sizes.

The extracts from the SHMA report above also confirms greater needs accommodate smaller households going forward, as well as the need for flats / apartments, in particular two bed flats / apartments.

It is noted that the overwhelming majority of developments coming forward following the adoption of the Local Plan are for non-flat / apartment housing at present, as they are typically volume housebuilder developments of standard family housing.

- **Secure an effective and safe transport network which encourages people to make use of sustainable and active modes of transport**

The development would be located close to Mirfield train station and other bus services and would be a short walk or cycle ride to Mirfield town centre as well as other nearby centres. It would therefore encourage use of sustainable and active modes of transport.

- **Secure the efficient and prudent use of land**

Policy LP7 (efficient and effective use of land and buildings) encourages the efficient use of previously developed land in sustainable locations; that priority is to be given to despoiled/contaminated land; and with reference to Ledgard Bridge Phase 1, "will allow access for adjoining undeveloped land so it may subsequently be developed." NPPF paragraph 69 (d) "also encourages local planning authorities to work with developers to encourage the subdivision of large sites where this could help to speed up the delivery of homes." Policy LP7 also calls for higher densities in town centres and areas close to public transport interchanges, which this proposed development would successfully achieve.

- **Protect and enhance the character of Kirklees on the quality of the landscape and townscape**

The efficient use, subdivision and development of former industrial brownfield sites such as that Ledgard Bridge Mills will provide housing that would otherwise have to be built on Greenfield or Green Belt sites.

- **Reduce air, water and soil pollution**

- **Reduce the contribution that the district makes to climate change**

For both the above objectives, locating the development adjacent to Mirfield town centre and excellent public transport links will not only reduce the use of non-sustainable transport modes, but will also reduce the need to travel.

Further to the above, Section 6.1 of the Local Plan outlines the Spatial Development Strategy for the borough. 400 homes are estimated to be needed over the plan period for the Mirfield area, and yet allocations only add up to just over half this number.

The Council does not currently have a five year housing supply and therefore the presumption in favour of development applies as per NPPF Paragraph 14.

Related to this, the Council is also currently failing to deliver sufficient homes according to the most recent Government published Housing Delivery Test. This confirms that delivery has fallen below 95% of the Local Authority's housing requirement over the previous three years. In accordance with paragraph 75 in the NPPF, the Authority are required to prepare an Action Plan, to assess the causes of under delivery and identify actions to increase delivery in future years.

This emphasises the importance of facilitating windfall housing developments such as that at Ledgard Bridge Mill, helping to significantly boost housing supply for Mirfield in the light of current housing delivery shortfalls, and accord with the Spatial Development Strategy with reference to Policy LP3 (location of new development).

The site is owned by the applicant in this case and is therefore available and deliverable as a housing site. The applicant has a proven track record in delivering apartment led former industrial sites - e.g.

Blakeridge Mills in Batley. The NPPF places build to rent in a distinct (housing) asset class, and we are not aware of any other developer providing (or having provided) Build to Rent schemes in Kirklees.

2) The development will be safe for its lifetime

Detailed flood modelling has been undertaken as part of the development proposals. The accompanying Flood Risk Assessment demonstrates the development will be safe for its lifetime.

Conclusion

The proposed development is considered to pass both the sequential and exceptions tests, thereby complying with the planning policy objectives of Local Plan Policy LP27 and NPPF paragraph's 162 and 164.

Robert Halstead Chartered Surveyors & Town Planners

November 2023