

**Consultation Response from KC,
Policy**

2023/93539 Land adj, Ledgard Bridge Mill, Back Station Road, Mirfield, WF14 8NZ

Outline application, including the considerations of access appearance, layout, and scale, for the erection of a six-storey building to host 76 residential apartments (C3 use) and ancillary works comprising demolition of vacant building, formation of new access, parking areas, open space and landscaping; erection of cycle and bin refuse storage structures

Date Responded: 20/12/2023

Responding Officer: Helen Rice

Responding Ref:

The Local Plan was adopted on the 27 February 2019. The Local Plan strategy and polices should be fully considered, the following response relates to specific Local Plan policies which are of particular relevance to the proposal. This is a high-level response which relates to flood risk only, other policies that are not mentioned here will apply.

This proposal is for outline permission for the erection of a six storey building of 76 residential apartments both one and two bed, including ancillary works comprising demolition of vacant building, new access, parking, open space and landscaping.

LP27 Flood Risk Assessment/Sequential Test

The NPPG in relation to Flood Risk and Coastal Change was updated in August 2022. The pre-application advice was given prior to the changes to NPPG, therefore some aspects if the advice given then do not apply now.

The site lies within Flood Zone 2 and 3 (EA) and within Flood Zone 3a on the (SFRA), where there is a high probability of flooding. Housing is a more vulnerable use as set out in the vulnerability classification, Annex 3 of the NPPF, therefore, it is appropriate, only after the sequential test has been passed (table 2 NPPG).

An Exception Test would also be required for the parts of the site in Flood Zone 3a where development is proposed.

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

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):

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 id search is proposed.

The Sequential Test submitted by the applicant states that it a smaller area of search, the Dewsbury and Mirfield market area has been agreed through the pre-application process. This is not the case. The pre-application response states that a smaller area of search can be agreed on a case by case basis and will need to be justified by the applicant. 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. It would be helpful to include a map showing a clearly defined boundary along with justification for the proposed smaller boundary.

The reasons given for the smaller area of search are as follows:

- Mirfield rail station is the only station in Kirklees with direct trains to London
- The development aims to attract young singles and couples, executive occupiers and growing families who may work in Leeds or Manchester (or even London). The site needs to be convenient to walk to the station. Rents would also be more affordable in this location.
- The site is owned by the applicant and guaranteed to be available for housing development.
- The applicant finds there is a huge demand for two bedroom apartments in this location, with demand significantly outstripping supply.
- Significant employment opportunities exist in the Mirfield area 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, 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.

These reasons stated above are the same as those stated in the pre-application. As stated in the pre-application Policy response, some of the points above relate to the site itself and not a search area. The applicant would need to justify why a reduced area of search is appropriate.

The Kirklees SHMA (2016) showed that Kirklees is a largely self-contained housing market area hence the reference to using the Kirklees area as a starting point for the Sequential Test.

The SHMA sets out NHPAU housing market evidence showing three local market areas within Kirklees (Huddersfield, Cleckheaton and Dewsbury) which is used to evidence a smaller search area. These are split into sub-areas by SHMA with information set out by each of the sub-areas, in this case the following area would apply:

- Dewsbury Local Market Area – Dewsbury and Mirfield (comprising Dewsbury East, South and West; Mirfield wards)

Therefore, it may be possible to agree a smaller area of search with the applicant, but the reasons given above do not provide justification for this. The applicant has stated they would be willing to widen their original search area to the Dewsbury and Mirfield market area identified in the SHMA, no justification has been made as to why this is appropriate.

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

It appears the applicant has not looked at windfall sites that aren't allocated in the Local Plan. The applicant would need to provide information on sites that are for sale using information such as that from local estate agents.

Site size:

Since the pre-application advice 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).

The absence of a 5-year land supply is not a relevant consideration for the sequential test for individual applications.

The applicant has only looked at sites with a minimum site area of 0.84ha. Smaller sites will also need to be considered in accordance with NPPG (August 2022).

Exception Test

The Exception Test should only be applied following application of the Sequential Test. An applicant will need to show that both elements of the Test, as set out in Paragraph 170 of the Framework, can be satisfied before allowing development to be permitted in situations where suitable sites at lower risk of flooding are not available following application of the Sequential Test.

To pass the exception test it should be demonstrated that:

- a) development that has to be in a flood risk area will provide wider sustainability benefits to the community that outweigh 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

The Exception Test should only be applied when following application of the Sequential Test, it has been demonstrated that it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives). The applicant will need to provide the local planning authority with evidence to demonstrate how both elements of the Exception Test will be satisfied.

Wider Sustainability Benefits:

Evidence of wider sustainability benefits to the community should be demonstrated by the applicant to pass the Exception Test.

Any benefits must be of benefit to the wider community and not just to the people that may be living in the development.

Examples of wider sustainability benefits to the community could include:

- The re-use of suitable brownfield land as part of a local regeneration scheme;
- An overall reduction in flood risk to the wider community through the provision of, or financial contribution to, flood risk management infrastructure;
- The provision of multifunctional Sustainable Drainage Systems that integrate with green infrastructure, significantly exceeding NPPF policy requirements for Sustainable Drainage Systems;

Where wider sustainability benefits are absent or where they are outweighed by flood risk, the Exception Test has not been satisfied and the planning permission should be refused.

Safe for its lifetime:

The developer must provide evidence to show that the proposed development would be safe and that any residual flood can be overcome to the satisfaction of the local planning authority.

The applicant should submit a Flood Risk Assessment to demonstrate the development will be safe for its lifetime. The proposed development should not increase flood risk elsewhere and this will need to be demonstrated in the FRA.

Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- d) any residual risk can be safely managed; and
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

Developers should refer to the Strategic Flood Risk Assessments and site-specific Flood Risk Assessments to identify opportunities to reduce flood risk overall and to demonstrate that the measures go beyond just managing the flood risk resulting from the development.

Conclusion

For the Sequential Test to be passed the applicant would need to provide justification as to why a smaller area of search is appropriate and define it.

With regards to alternative sites, smaller 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 from local estate agents of windfall sites for sale.

At this stage it would be inappropriate for the applicant to proceed to the Exception Test as the Sequential Test has not been passed.