

Robert Halstead

Chartered Surveyors & Town Planners

N.C. Willcock 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 & Exceptions Test Addendum Dec 2024 Land adjacent to Ledgard Bridge Mills, Back Station Road, Mirfield

Introduction

This addendum report responds to the LPA's e-mail feedback dated 9th September 2024 on the applicant's Flood Risk Sequential and Exceptions Assessment (Rev A July 2024).

This response addressed each of the point raised in turn and should be read in conjunction with the applicant's July report.

Responses to points raised

Sequential Test

Nature of the development

“Much of your assessment discounting sites is predicated on the development being a high-density apartment building. While it is appropriate to consider the 'type of development' when undertaking the sequential test, very limited substantiated justification has been provided why high-density apartment should be accepted as a different type to a typical residential development. On this matter, the following was stated in the Mead and Redrow vs SSLUCHC case:

102: A developer may put forward a case that the specific type of development he proposes is necessary in planning terms and/or meets a market demand. It then becomes a matter of judgment for the decision-maker to assess the merits of that case and to decide whether it justifies carrying out the sequential assessment for that specific type or for some other, perhaps broader, description of development. Paragraph 162 of the NPPF does not exclude either approach, but leaves to the decision-maker the selection of the approach to be taken. For example, a decision-maker may consider in the circumstances of a particular case that more weight should be given to the objective of steering development towards areas with a lower flood risk.

You have not set out a case as to why officers should accept apartments / high density as a specific type. A single letter from a lettings agent is insufficient. While we accept there is a clear need for smaller units, this does not differentiate between 1 and 2 bed dwellings or apartments. While there is

a specific need, as identified by the SHMA, the LPA is looking to address this via the Housing Mix SPD identifying a need for residential development to deliver between 30 – 60% 1 and 2 bed units district wide.

Based on the details held, we do not necessarily accept that the development must take the form of a singular apartment block. Traditional housing and/or a number of smaller apartment blocks has not been suitably discounted.”

Applicant Response:

The applicant is a specific developer of apartment-based developers (one of very few housing developers in the region who do so) – both in terms of conversion and new build apartment schemes. The Binks family have specialised in this area for a quarter of a century and are not therefore developers of traditional housing per se.

The applicants’ previous developments, prior to Blakeridge, include:

- Boothroyds, Dewsbury - 40 apartments
- Sprinkwell Mill, Dewsbury - 99 apartments
- Millroyd Island, Brighouse - 130 apartments
- Ledgard Bridge Mill, Mirfield - 125 apartments

It is also important to note that the applicants already have significant experience in the area of Private Rented Schemes, as they developed and own the 284 PRS apartment scheme at Blakeridge Mill, Batley.

Savills have also provided input, and confirmed that the majority of BtR/PRS schemes are made up of apartments, principally in city centres and that generally. Also, because PRS housing schemes need to generate economies of scale, interest from investors need in terms of development scale is predominantly in the range of 75 to 150 units.

In terms of splitting the current development into smaller blocks, this would increase the site size requirement for the sequential search and the concerns from Savills and Michael Steel and Co. would be that the economies of scale issue would result in a need for a larger scale overall development in order to have any chance of being a viable development.

Furthermore, there is a dire housing supply shortage both locally and nationally, and average target net densities of 35 per hectare are not being delivered through planning consents for a variety of reasons across Kirklees, setting back existing housing targets in the current Local Plan, and providing a greater deficit of housing supply numbers going into the new Local Plan (whose housing targets will need to be increased in line with new Government planning policy).

As such, schemes such as the applicants would help to address this balance by providing a significantly higher net density above the 35 /ha target in the current Local Plan (Policy LP7).

As mentioned in the *Miller-Mead* case, and as per NPPF paragraph (now) 168, the wording is *available sites appropriate for the proposed development...*and then it is down to the decision-maker to assess

the merits of that case and to decide whether it justifies carrying out the sequential assessment for that specific type or for some other, perhaps broader, description of development.

Furthermore, the *proposed development* is described in this case as: “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”. The *Finney* case was concerned with S73 applications and rules that S73 applications could not be used to alter the description of developments. In this case, a materially different development and accompanying description is likely to take the case outside the scope of the current planning application. As such, the *proposed development* in this case is that described on the application form.

In summary therefore (and in conjunction with the previously submitted local estate agent letter regarding demand for 2 bed units in the area), this type, scale and density of development need (apartments of a minimum scale of 75 units), and as described as the *proposed development*, is considered to be justified in this particular case, and rules out many smaller sites in the sequential search, as previously and currently detailed in the site searches submitted.

Timeframe for implementation

“Part of being ‘reasonably available’ includes being available within a reasonable timeframe. Your submission does not put forward and justify what you consider to be a ‘reasonable timeframe’ directly, however a few of the site assessments reference 5 years.

While not necessarily disputing 5 years, we’d welcome a brief commentary on why your client’s reasonable timeframe is 5 years to deliver the development.”

Applicant Response: Given this project is one of large size and significant complexity, it is considered that 5 years is a reasonable timeframe, broken down for more clarity as follows:

- 1) Reserved matters application from preparation to a decision: 12 to 18 months.
- 2) Preparation, submission and discharge of relevant pre-commencement conditions: 3 – 6 months
- 3) Contaminated land remediation, site preparation / levels work: 3 – 6 months
- 4) Build programme: 24 – 30 months
- 5) Internal fit out, hard and soft landscaping etc : 12 months

Total: 4.5 – 6 years

Allocated Sites

1. *“Cannot accommodate the ‘nature of the development’, i.e., an apartment block, as set out above. Given the ‘nature of the development’ is not currently accepted, we must question why they (individually or grouped) cannot fit a typical residential development.”*

Applicant Response: see above responses in ‘Nature of Development’ section.

2. *“None of the sites have planning permission. While this would help and be a benefit, the absence of planning permission should not be taken to weigh against a site’s availability. It is expected and accepted that another site will need a planning permission, and it cannot be reasonably expected that your client can buy a site fit for their needs and ready to build. Conversely, if a site has planning permission, it would often have an attached developer (bar speculative outlines).”*
3. *“They are not for sale. No commentary has been given to confirm how this has been ascertained. All the housing allocations were promoted by land owners recently as part of the local plan process. It cannot be expected that all land owners intend to develop their respective allocations themselves, and it is therefore reasonable to assume they are open to the sale of the land. Land owners should be approached and it should be demonstrated that they are unwilling to sell within a reasonable timeframe (factoring into the to be determined overall project timeframe).”*

Applicant response to 2 and 3: Allocated housing land has been in the current Local Plan for just shy of 6 years now. As such, the fact that a number of these have no permission; have not come forward for development; and have not been actively marketed, demonstrates slim prospects of being ‘reasonably available’ in our view.

Whilst land for sale has been assessed on the basis of internet searches and advice from agents such as Michael Steel & Co, approaching landowners on an individual basis to see if land is for sale on a speculative basis would not sufficiently align with “the point in time envisaged for the development” because the applicants would need to account for a significant amount of time for the land sale process, resolving third-party legal rights/covenant issues, and obtaining planning permission.

Notwithstanding this point, we now consider we’re in a position where there is sufficient information on the remaining sites you have cited below, to obviate the need to write to individual landowners.

“The above apply broadly to the following allocations you have considered:

- *Headfield Mill (HS55) (f there are 45 tenants it may possible to demonstrate it could not come forward in a reasonable timeframe. However, we’d expect this to be evidenced via discussions with the land owner.”*

Applicant Response: As per the enclosed Michael Steel & Co letter at Appendix 2, this site is in multi-ownership and MS & Co. have recently sold the section owned by TTT Properties. This part of Headfield Mills is multi-occupied with more than 30 tenants all benefitting from security of tenure (under the Landlord & Tenant Act) – and therefore unavailable. The adjacent section of Headfield Mills is owner occupied and the remaining space is owned and utilised by Pet Brands (who have acquired the adjacent 1.39 acres to the rear of UK Greetings – accessed off Cardwell Terrace – to service their existing premises (part Headfield Mills). Again, these parts of Headfield Mills are therefore not reasonably available.

- *“Forge Lane (HS56)*

Comment regarding the site partly within a flood zone is not relevant, as this was considered and addressed within the Local Plan."

Applicant Response: Filtex (clients of ours in the past, and of Michael Steel & Co currently - see the MS & Co letter again) occupy the site and it remains their intention to utilise for employment purposes on a medium to long term basis. The site is therefore unavailable for residential development.

- *"Lock Street (HS59):*

Commented noted, but require them to be elaborated upon to be considered sufficient justification. I.e.,

- *Commentary on why PP not been implemented for 20 years.*
- *Why not deliverable in 5 years?*
- *Why is third party land an issue, have you approach them?"*

Applicant Response: We are unaware of the specific facts as to why the previous planning permissions have not been implemented for 20 years. There have been multiple unimplemented planning permissions dating back to 1996 according to the LPA's records. The site is clearly constrained by a number of issues including contamination, coal mining legacy, air quality, flood risk and noise amongst others. Lock Street is "an unmade and unadopted road in poor condition, and would be required to be constructed to adoptable standards" ¹, as well as the redundant bridge being removed (as per the previous permission in 2013).

It is noted through the last committee report (Ref: 2013/90249) that the applicant at that time had put forward viability concerns "given the costs associated with developing the site and the necessary improvements to Lock Street, the development would not be viable if the contributions above were required." S106 contributions were reduced as a result, however the site has still not come forward for development, indicating a problem (most likely viability).

With reference to the Michael Steel and Co. letter, they are aware the site continues to be utilised for employment purposes and, following further investigations, they understand there are significant contamination issues prejudicing the development of the site for residential purposes.

We are also aware the site is in multiple ownerships (there are eight separate parcels of land according to the Map Search facility on the Land Registry website), which is also likely to significantly complicate and slow down any plan to assemble the site as a whole for future residential development.

Given these circumstances, it is not considered reasonable or proportionate to approach the various landowners on an individual basis, because there is sufficient evidence to suggest the site would not be reasonably available within expected development timescales.

Approved and Expired Windfall Sites

- *"Forge Lane, Dewsbury, WF12 9AA: Insufficient detail provided, require points made to be elaborated. Any details on why 2013 app not brought forward? Why was it dropped from the*

¹ Words from previous committee report 2013

Local Plan? Flood Zone 2 is sequentially preferable to your partial Flood Zone 3 site, so carried little weight.”

Applicant Response: This site was de-allocated from the Local Plan, and whose planning permission has expired. In terms of the ‘de-allocation’ there are no details in the Local Plan evidence base (e.g. rejected site options) to provide reasons why the land was de-allocated from previous housing land. From my own previous involvement in the site up until 2014, I was informed that site viability issues were a problem for the site, and that the site received excessive drainage from old coal mine workings on the hillsides to the south of the site, contributing to the complicated drainage situation and adding to viability concerns.

Finally, Michael Steel & Co (see their letter) are aware a pre-application enquiry has been submitted with a view to employment use on the site, and they understand following discussions with the Local Authority over the last couple of years, that employment is the preferred use for this site.

As previously stated and confirmed by the above information, the site is currently not for sale and for various reasons outlined, appears to be undeliverable within reasonable timescales.

Unidentified Windfall Sites

Note: A map showing the location of these sites would have been helpful.

Applicant Response: See Appendix 1 showing overhead satellite views.

“An elaboration on your search criteria should be provided to assist readers and expand your narrative. Presumably you’ve looked for unallocated and safeguarded land, avoiding the Green Belt and Urban Green Space. A map with these displayed would be helpful.”

Applicant Response: All non-allocated, non-Urban Greenspace and non-Greenbelt sites are included in this category – i.e. unallocated land with no specific ‘protection’ in the Local Plan.

The two safeguarded sites in the agreed Dewsbury / Mirfield catchment area (SLS2 Land south of Tolson Street, Chickenley² & SLS3 Land off Balderstone Lane, Mirfield) were excluded from the search because the Local Plan Policy LP6 specifies that the status of safeguarded land sites will only change through a review of the Local Plan. As such, these sites are not reasonably available as per the PPG definition (i.e. there is a reasonable prospect that the site is available to be developed at the point in time envisaged for the development).

We have also searched online for land for sale within the sequential search area.

² See Page 188 of Kirklees Local Plan Rejected Site Options report 2017 which concluded: “No obvious access into the site. Possible access off Chickenley Lane however third party land would be required to achieve suitable access layout. Visibility splays at the Chickenley Lane / Access Road junction are substandard to the right of the access. Narrow strip connecting site to Chickenley Lane may be too narrow (approx 3.8m - 5.2m) to provide access to site.”

“Land east of Long Lane, Earlsheaton, Dewsbury and Land east of The Common, Thornhill Edge, Dewsbury: As set out, presumption of high rise only not accepted currently. Unless the LPA accept that the development can only be high rise, this will need to be reviewed and a more thorough assessment provided. Re. Long Lane and the trees, LP33 seeks to protect trees of ‘significant amenity’. If not of significant amenity, giving due regard to the lack of a 5 year housing land supply, it cannot be assumed that the trees would prohibit development.”

Applicant Response: Please see Michael Steel and Co. letter confirming that this site has planning permission for residential development, and has been sold by the vendor to the a developer (Wordsworths). The Wordworths have subsequently submitted a new planning application for greater density on the site, which has yet to be determined. It is therefore clear that the site is being actively promoted by an alternative developer with their own specific scheme, and is not therefore ‘reasonably available’ to the applicants in this case.

“From a review of the search area, I’d expect the following sites to be assessed (missed sites):

- *Land south of MXS6*
- *Land west of Heckmondwike Road (west of junction with Knowles Hill Road)*
- *No commentary is provided about Dewsbury town centre. This is a substantial brownfield area which numerous redundant buildings and sites. If an apartment style development is sought, due regard should be given to discounting sites within Dewsbury town centre.”*

Applicant Response: Please again refer to the Michael Steel and Co. letter at Appendix 2.

Land south of MXS6: This is an undeveloped site owned by the Local Authority and suffering from access complications. The land is not for sale and there are no signs the land is being actively marketed or promoted for development by the Council (i.e. there are no planning applications submitted and the Council has not put the site forward for allocation in the previous Local Plan - as it is not on the rejected sites list - and it has not been put up for sale at auction, as has been done with other sites recently).

Land west of Heckmondwike Road (west of junction with Knowles Hill Road): Michael Steel & Co confirm that the land is in various ownerships, dictating site assembly will not be straightforward and the site is immediately to the rear of Rhom & Hass chemical site, and therefore has blast zone implications. Of note also is the fact that the land was safeguarded (POL) land in the previous Local Plan (UDP) but has been removed from this designation in the current Local Plan. Upon closer examination, the Kirklees Local Plan Rejected Site Options report 2017 (Page 190) rejected the site on this basis, stating: “The site lies within HSE hazardous installation zones (Inner, Middle and Outer), close to an existing industrial complex therefore a buffer should be implemented.”

Dewsbury town centre: A further look at information sources including overhead satellite imagery (to look for vacant development sites); the Local Plan (to look for unallocated sites), and planning histories, there are no apparent areas of development-free land not already in active use (for example car parks fringing the edge of the town centre. There are no sites for sale of anywhere near the sufficient type and scale to accommodate the development.

The town centre itself is also heavily built-up with no obvious vacant sites, and with the majority of it being within a Conservation area and containing many listed buildings, it is unlikely the proposed development (or something similar) would be deemed to be compatible with this relatively low rise pattern of existing development.

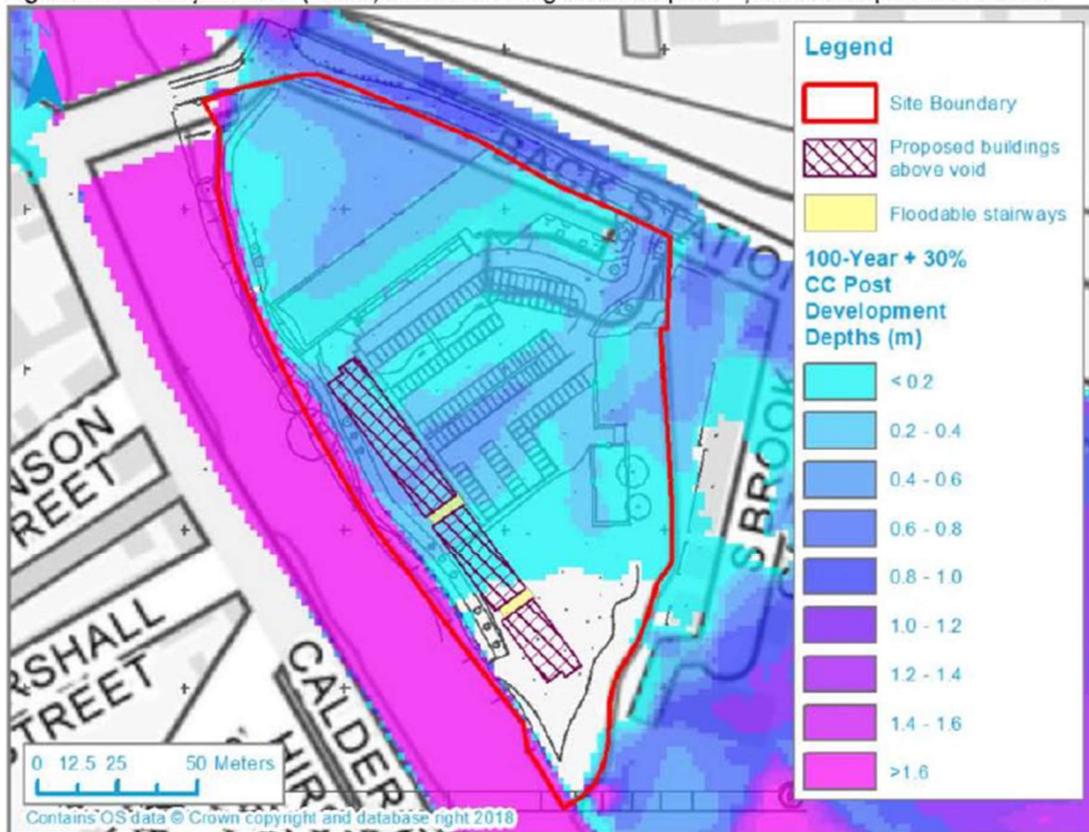
Sequential test within the site

“The Local Plan and PPG requires that, once other sites have been excluded, it should also be demonstrated that a sequential approach has been applied within the site. No such work has been undertaken and should be undertaken, even if just to discount alternatives.”

Applicant Response:

With reference to the extract of the 100 year +30% climate change flood depths from the applicant’s FRA below, it can be seen that the development does in fact take advantage of the lowest area of flood risk in the southern part of the site. The remainder of the site is a somewhat random mixture of flood depths of between zero and 0.6 m, and thereby not providing any obviously better alternative solutions in terms of where to best site the proposed development.

Figure 2-2: 100-year with (+30%) Climate Change flood depths – post-development scenario



Extract from Appendix 1 of FRA August 2024

Exceptions Test

Wider Sustainable benefits

“Your assessment against the Local Plans SA report is noted. However, most of the points you’ve made are ‘as expected’, and not necessarily a wider benefit. For example, ‘ensure all people are able to live in a decent home with meets their needs’. We expect all developments to achieve this, and don’t consider this to have wider sustainable benefits in this case.

Conversely, the site does recycle and make better use of brownfield land and will support local businesses. Whether it will promote sustainable travel will be down to securing a good travel plan and sustainable travel contribution to promote alternative methods of travel.

At this time, I cannot confirm whether these benefits would outweigh the flood risk.

As a thought, if the flooding could address the flooding at the two ends of Back Station Road somehow, not only would this negate that issue, but it’d amount to a large ‘wider sustainable benefit’. Can this be considered?”

Applicant Response:

Whilst not an exhaustive list, the PPG states:

“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 National Planning Policy Framework policy requirements for Sustainable Drainage Systems;”*

As an example, we also include an appeal (Appendix 3) where an Inspector considered that *wider sustainability benefits* included: housing supply, low cost nature of the market housing provided; sustainable location close to town and public transport; the social benefits of providing housing; the creation of construction employment opportunities; the local economy spending boost from the new residents; the New Homes bonus for the local authority; and linking adjoining areas of open space.

This demonstrates that Inspectors consider that reasonably ‘normal’ sustainability benefits in combination are sufficient in terms of the Exceptions Test.

The applicant’s Flood Risk Sequential and Exceptions Assessment utilises the Council’s own Local Plan Sustainability Appraisal report, and assesses the development against this 19 point framework (where relevant). We consider this to be a fair, proportionate and reasonable assessing wider sustainability benefits in this case, and unless the LPA has a more appropriate suggested alternative framework, the applicants consider that the methodology put forward is accepted in this case.

The PPG goes on to state: “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 and the site allocation in the plan should not be made or planning permission should be refused.”

As the LPA will be aware, matters of flood risk have been debated for a considerable period of time and the flood risk aspects of the case are now considered to be acceptable through the Environment Agency. Further discussions with the LPA and Local Lead Flood Authority with regard to flood warning and evacuation planning have evolved to what is provisionally agreed to be an appropriate solution for the site. Arising from the latest Flood Warning and Evacuation Plan, are wider sustainability benefits in terms of this development improving flood warning procedures and evacuation for the existing residents through the provision of:

- 1) A safe (dry) exit route for the whole site (new and existing apartment blocks)
- 2) An app-based, upgraded telemetry system (new and existing apartment blocks).
- 3) Possible other benefits to be discussed / agreed.

The other increasingly significant wider sustainability benefit in this case is that of housing supply, particularly within the catchment area identified for this assessment. It is clear from undertaking this sequential assessment just how many allocated sites have either not come forward, or show no signs of coming forward for development within North Kirklees. This includes a significant number of sites in Council ownership. These factors (together with the five year supply issue) all contribute towards a significant housing supply crisis across North Kirklees, and the need for proposed development is therefore even greater and more urgent now than when the application was first submitted.

In this case, given where the case is with flood risk (i.e. it is being viewed positively), it is considered that the ‘balance’ between the identified wider sustainability benefits and flood risk are now balanced in favour of the Exceptions test being passed.

Finally, although the PPG states that the absence of a five year land supply is not a relevant consideration for the sequential test for individual applications, the prominent barrister Zach Simons is of the opinion ³ that the five year supply remains relevant to the overall planning analysis, and that cases have demonstrated that a failure to exclude a few sites through the sequential assessment, is not necessarily fatal to a planning application. In other words, the sequential assessment can still be considered to be failed, and yet planning permission can be granted if other material considerations are judged to outweigh.

Conclusion

Taken together with the Flood Risk Sequential and Exceptions Assessment (Rev A July 2024), the supplemental information provided within this Addendum document is considered to pass both the

³ <https://www.youtube.com/watch?v=wfl2gdMpq1k> (Go to the 46 mins point – Zack Simons talk)

Sequential and Exceptions Tests, thereby complying with the planning policy objectives of Local Plan Policy LP27 and NPPF paragraph's 174 and 179.⁴

Robert Halstead Chartered Surveyors & Town Planners

December 2024

© 2024 Robert Halstead Chartered Surveyors & Town Planners. All rights reserved. No part of this statement may be copied, reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the authors.

⁴ NPPF December 2024 version