

Nicole Helliwell
Kirklees Metropolitan Borough Council
Development Management

Our ref: RA/2024/147524/01-L01
Your ref: 2024/90664

Date: 07 October 2024

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

Dear Nicole

CHANGE OF USE FROM OFFICES TO NURSERY, ERECTION OF FRONT PORCH, FORMATION OF PARKING AREA AND ASSOCIATED EXTERNAL ALTERATIONS (WITHIN A CONSERVATION AREA). UNIT C9A GROUND FLOOR, CARLINGHOW MILLS, 501, BRADFORD ROAD, BATLEY, WF17 8LN

Thank you for consulting us on this application which we received on 10 September 2024.

Flood Risk

Our Flood Map for Planning shows the site lies within Flood Zone 2, with a medium probability of flooding from rivers and/or the sea. The application is for a children's nursery, which is considered to be a 'more 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 GeoSmart Information Ltd, referenced 81803R1 and dated 29 April 2024, has been submitted in support of the application.

We have reviewed the FRA and associated drawings. The proposed development will result in an increase in flood risk vulnerability classification, from less vulnerable to more vulnerable and as a nursery will introduce vulnerable users onto the site.

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:

- Adequately assess the impacts of flooding to the site up to and including the design flood event (1%AEP plus Climate Change)
- Demonstrate that site users will remain safe from flooding up to and including the design flood event.
- Sufficiently address the residual flood risk associated with culvert blockage and demonstrate that site users will remain safe from flooding caused by blockage, up to and including the design event.

Overcoming our objection

To overcome our objection, the applicant should submit a revised FRA which addresses the points highlighted above. This should include, but not necessarily be limited to:

- Select the most suitable worst-case scenario up stream node point for the source of the design flood level.
- Provide evidence of site-specific topographical levels on site.
- Provide further details of the stage/discharge relationship used.
- Assess the impact of culvert blockage and demonstrate how site users will not be exposed to unacceptable flood risk as a result.

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.

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](#).

INFORMATIVES

Environmental permit - advice to applicant

The Environmental Permitting (England and Wales) Regulations 2016 require a permit or exemption to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in the floodplain of a main river if the activity could affect flood flow or storage and potential impacts are not controlled by a planning permission

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506 (Monday to Friday, 8am to 6pm) or by emailing enquiries@environment-agency.gov.uk.

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

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 168), 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 \(www.gov.uk\)](http://www.gov.uk).

Biodiversity Net Gain

Having read the application and supporting information, it sounds like the BNG de minimis exemption probably applies here as it appears there is no priority habitat and less than 25m² of area habitat and 5m of linear habitat impacted (ie lost). If this is the case and it does fall under the de minimis exemption, we agree BNG would not be a requirement.

Bats

The provision of the 'Bat Scoping Survey' was welcomed. However, it is unclear if the assessor was fully aware of what works are proposed as the report states *'The application seeks to alter a small section of the ground floor into a children's nursery and add a 2m safety fence outside the unit.'* with no mention of the associated porch development. It also seems to limit assessment to the internal works only as demonstrated here: *'As the works are internal and limited to a small section of the ground floor, there will not be any impact on bats and the building, in terms of this project, has negligible bat roosting potential'*. We are therefore unclear if this is an appropriate assessment in this instance. We recommend the LA ecologist is consulted on this matter, if not already done so, as it would be useful to have their view on this.

Overall, we are happy to leave the overarching decision to the LA ecologist. Bats are the remit of Natural England so if this falls in line with their standing advice on bats and the LA ecologist is willing to accept the report, we support this stance. Conversely if they feel the report falls short of what is acceptable and further assessment is needed, we also support this view.

If you need any clarification or further information, please contact me.

Yours sincerely

Bev Lambert
Sustainable Places - Planning Advisor

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