

Victor Grayson
Kirklees Metropolitan Borough Council
Development Management

Our ref: RA/2024/147506/01-L01
Your ref: 2024/92283

Date: 01 October 2024

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

Dear Victor

**REDEVELOPMENT OF MARKET WITH ADDITION OF MEZZANINE FLOOR.
DEWSBURY MARKET, 32 CLOTH HALL STREET, DEWSBURY, WF13 1QE.**

Thank you for consulting us on this application which we received on 5 September 2024.

Flood Risk

Our Flood Map for Planning shows the site lies within Flood Zones 2 and 3, with a medium / high probability of flooding from rivers and/or the sea. The application is for redevelopment of a market, which is considered to be a 'less 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 BDP Civil and Structural Engineering Group, referenced P3001350 Revision P02 and dated 12 August 2024, has been submitted in support of the application.

Environment Agency Position (1)

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:

- consider the impact on off-site flood risk
- assess the feasibility of safe access and egress in the 1% AEP plus climate change event

Notes to applicant

- It is unclear whether the proposal involves ground level raising within the site boundary.
- Please confirm and assess how any alteration of site levels will not introduce new off-site flood flow routes.
- The FRA must assess whether safe access/egress for site users up to and including the 1% AEP plus climate change event level (design flood level) is feasible. Wherever possible, safe access routes should be above design flood levels and avoiding flow paths (i.e. 'dry')". However, we assume in this case this is not possible. Therefore, if 'dry' safe access/egress is not possible, the proposed routes can be 'wet' but must be 'safe'. This is defined by the UK flood hazard rating using the FD2320 methodology, calculated according to flood depth, velocity, and likely debris factor. If a 'wet' and 'safe' route is not possible, the FRA must provide an evacuation plan.

The evacuation plan must include sufficient information for the decision maker to understand whether emergency planning proposals are acceptable. The Environment Agency are not the competent authority on matters of safe access/egress or emergency planning. Our role is to ensure that enough data is available within the FRA for the LPA and their emergency planners to make an informed decision.

Overcoming our objection

To overcome our objection, the applicant should submit a revised FRA which addresses the points highlighted above.

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.

Environment Agency Position (2)

We object to this application as it involves building within 8 metres of a main river culvert. As submitted, it is unlikely that we would grant a flood risk activity permit for this application.

Reasons

- The proposed development may restrict essential maintenance and emergency access to the culvert. The permanent retention of a continuous unobstructed area is an essential requirement for future maintenance and/or improvement works.
- The proposed development may adversely affect the construction and stability of the culvert, which will compromise its function. The proposal may therefore increase the risk of flooding nearby.

Overcoming our objection

- It is unclear whether any new vertical or horizontal loading will be placed on the culvert and if they would have a detrimental impact.
- Please assess whether any temporary works within 8 m of the will cause no detrimental impact during construction.
- Please confirm and explain how there will be no impact on existing access for essential maintenance as a result of the development.

INFORMATIVES

Missed opportunity for river restoration to support implementation of RBMPs Advice to LPA/applicant

Our mapping records show a culverted section of watercourse within the development footprint. However, currently the application, lacks a Biodiversity Net Gain (BNG) assessment that covers both terrestrial habitats and watercourse units.

In line with the Environment Act, NPPF guidance and Policy LP30 of the Kirklees Local Plan – new developments should seek to achieve biodiversity net gains.

The industry standard is to use the Defra Biodiversity metric to measure the overall net gain / loss that a development will achieve. Use of the Defra Biodiversity metric ensures that accurate predevelopment (baseline) and post development habitat value is accounted for and can help identify opportunities to inform the final design.

In the biodiversity metric, the riparian zone is defined as a 10m zone on top of the banks of a watercourse. The riparian zone is an intrinsic part of a watercourse and is assessed within the watercourse metric as such. The Biodiversity Metric guidance states: *“where the red line boundary of the development encompasses the riparian zone, either whole or in part, but excludes the channel of the watercourse, the rivers and streams metric (including the condition assessment must be applied”*.

Please also note it is an important rule of the metric that the three types of biodiversity units (area-based *Habitat Units*, linear-based *Hedgerow Units*, and linear-based *Watercourse Units*) are unique and cannot be summed, traded, or converted. When reporting biodiversity gains or losses with the metric, the three different biodiversity unit types must be reported separately and not summed to give an overall biodiversity unit value.

Based on the above, the BNG assessment would need to assess the baseline condition of the watercourse habitat, albeit culverted, within the site and should demonstrate, a 10% net gain for watercourse units.

Ideally, this would be done on-site, through improvements to this section (eg deculverting) but this may not be possible and therefore, off-site river habitat improvements can be used to offset any losses, and to demonstrate an overall net gain.

As, in this instance, the Biodiversity Net Gain assessment submitted has only considered habitat units and has not acknowledged the watercourse units. Therefore, we encourage the LPA to request an updated BNG assessment that encompasses watercourse units to adequately satisfy all requirements for biodiversity net gain as stated within the standard rules of the metric. Once submitted to the LPA, we request that we are re-consulted. We recommend not granting planning permission until this is suitably covered and agreed.

Biodiversity

The ‘Ecological Assessment, Doc No: DMTP-BDP-00-ZZ-SU-Y-92001, August 2024’ includes a series of recommendations to protect and enhance biodiversity of the site including native planting, inclusion of bird and bat boxes into proposed buildings and provision of a sensitive lighting scheme to maintain commuting routes for bats.

The EA FBG team would like to encourage the LPA to ensure these measures are incorporated into the scheme design by issuing an appropriate condition to facilitate adoption.

The EA FBG team would also like to be provided with a planting and enhancements plan to suitably demonstrate adoption of these recommendations. The planting plan should name species and quantities of plants that are proposed and no and locations of boxes. This should be submitted to the EA for approval prior to commencement of the proposed development.

Biodiversity Gain Plan and Habitat Management & Monitoring Plan

The detail of habitat creation and/or enhancements interventions to meet the BNG objective for terrestrial habitats (and watercourse units when suitably addressed and agreed) including details of the long-term management, should be included in the final Biodiversity Gain Plan and associated Habitat Management & Monitoring Plan. This information should be submitted and be approved prior to the commencement of the proposed development.

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:
 - o the proposed development is consistent with the use for which the site was allocated; and
 - o 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 \(www.gov.uk\)](#).

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](#).

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

Yours sincerely

Bev Lambert
Sustainable Places - Planning Advisor

Direct e-mail bev.lambert@environment-agency.gov.uk
Team e-mail sp-yorkshire@environment-agency.gov.uk