

# **Flood Risk Sequential Test, Exceptions Test and De-Culverting Analysis**

**New Mills, Marsden**

**Crowther Bruce and Company Limited**

**January 2026**

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# 1. Introduction

1.1 This report has been prepared in support of an application lodged by lodged by Crowther Bruce and Company Limited at New Mills, Marsden.

1.2 It considers a range of flooding and drainage related policy tests including:

- The Sequential Test
- The Exception Test
- De-culverting policy

1.3 New Mills is a key regeneration project for the village. It occupies a large and central area of Marsden. The site is around 1.7Ha and has been unused for some considerable time. It is currently falling into disrepair.

1.4 This site is allocated in the Adopted Plan (MXS11) and is the former premises of Colne Valley Spinning Co Ltd, a Marsden based business that was an important producer of woollen cloth in the late 19th and early 20th Centuries. The Crowther family, who owned the business, were also local philanthropists- dedicating both land and money towards local amenities and services in the town. The Mill was founded in 1897 but closed in March 2001. It has been vacant since that time, with some local frustration over a lack of action at the site.

1.5 The site allocation states that a flood risk assessment will be required, and that:

*The flood risk vulnerability of proposed uses will be considered and an exception test may still be required as part of a planning application as set out in national planning policy*

1.6 The Flood Risk Technical Paper prepared to support the Local Plan<sup>1</sup> shows that the site was subject to a sequential test when the Plan was prepared.

1.7 It is known that other allocations in the Plan were also subject to a sequential test at the point of allocation, but that a fresh assessment has still been required by the LLFA at the point of application. However, where that has occurred, the requirement for an additional test was made explicit in the allocation text. That approach has not been taken to New Mills in the Local Plan, but this report was requested as part of the re-application advice process.

1.8 However, it is clear that the Local Plan Sequential and Exception test work did not fully eliminate the possible need for an exception test for this site. This report examines both issues and addresses any remaining policy concerns the result from that analysis.

1.9 The site also sits over 2 main rivers, including the River Colne, and which were built over in the mid-19<sup>th</sup> Century and the early 20<sup>th</sup> Century. This report also considers the national and Local Policy tests which seek de-culverting where this is reasonably practical and feasible to achieve.

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<sup>1</sup> [Flood Risk Technical Paper](#)

1.10 This assessment considers the following topics:

- a) The background information that informed this allocation and subsequent application.
- b) The Local Plan Sequential and Exception Tests
- c) The Local Plan policy context
- d) The relevant Case Law,
- e) Sets search Parameters for this proposal,
- f) Analyses and considers the identified sites,
- g) Considers whether the necessary tests are passed

It then:

- h) Considers the policy context for de-culverting, and assesses the site proposals against those tests.

1.11 It is concluded that there are no suitable, available or viable sites at a less risk of flooding which can reasonably accommodate this proposed development. It also concludes that the development will bring significant benefits through de-culverting the River Colne, but that it is not feasible to also de-culvert the second watercourse, as this would remove necessary areas of the proposed development and would not be feasible or viable.

1.12 It concludes that these policy tests are met, and that there should be no impediment to granting planning permission on these grounds.

## 2. Site Location and Description

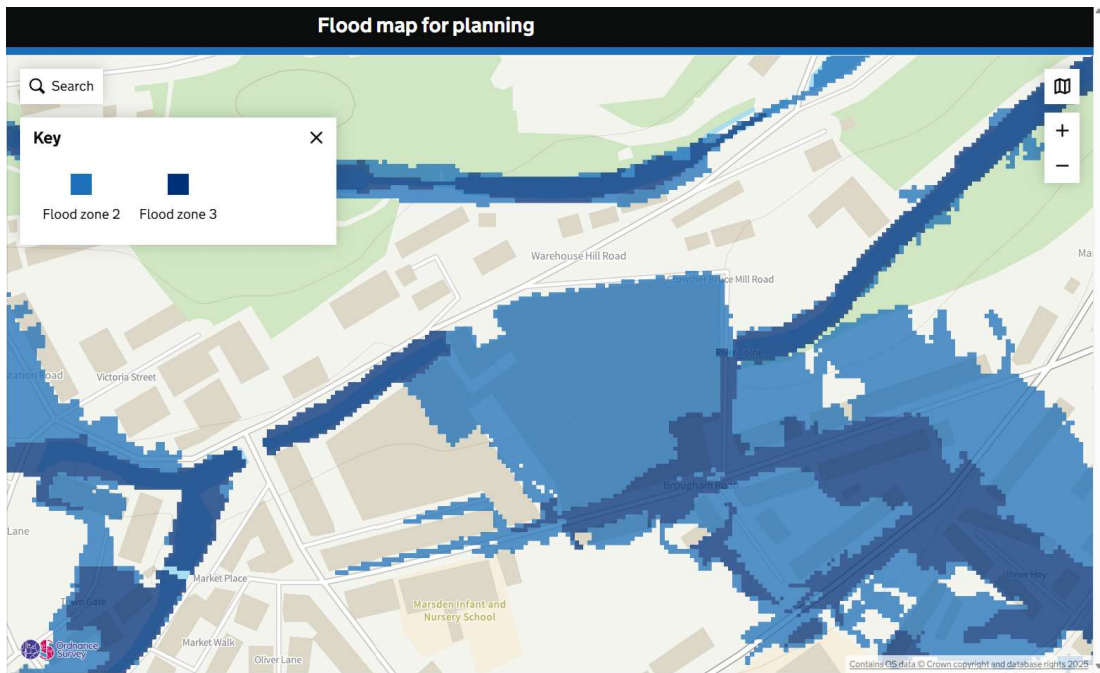
2.1 The site is located in the centre of Marsden, adjacent to (and partially over) the River Colne:



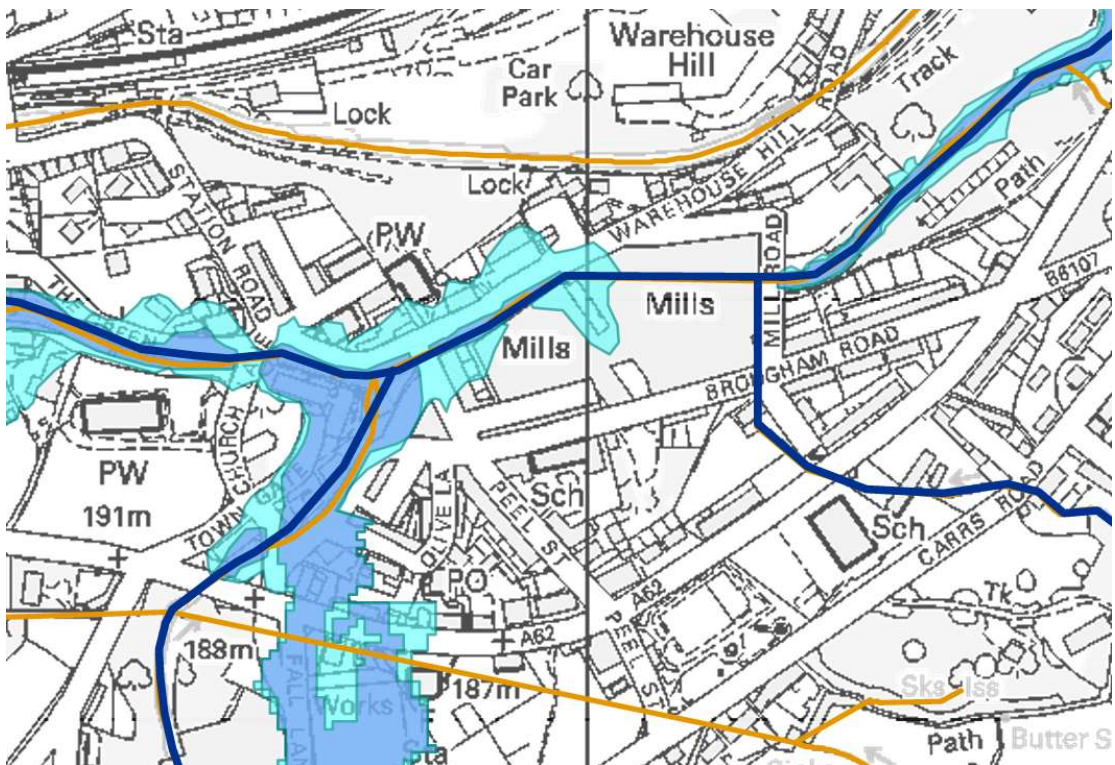
2.2 It comprises a dense stone built mixed mill complex, with some single storey, rising to grand 4 storey mill buildings. There are also two taller stair towers in the central area of the site- rising to the equivalent of around 6 storeys in height.

2.3 As can be seen from the aerial photograph above, this site is densely developed and there is little space within the mill complex. It is fully utilised, with access and servicing opportunities being extremely limited, and the buildings currently cover two “main rivers”- including the Colne, which was built over in the early 20<sup>th</sup> Century, and an unnamed watercourse which was culverted in the mid 19<sup>th</sup> Century, and was built over by some of the earlier buildings on site which have more heritage value- being considered to be non-designated Heritage Assets.

2.4 The site is in Flood Zones 1, 2 and 3, as shown on the Flood Map for Planning Extract below:



2.5 The Council’s SFRA was prepared in 2016 and is now dated. That assessment shows a much reduced area of flooding on the site, as shown in the extract below:



2.6 Given that the EA is regularly updating food maps based on available information, and the SFRA is nearly 10 years old, this report works to the latest available information. This I considered to be a the most robust approach available on which to consider these policy tests.

### 3. The Proposed Development

3.1 This application is submitted in hybrid format and seeks permission for a range of uses, focussed on employment generation, district centre expansion and providing new homes. The objectives of this application are to:

- a) Make the redevelopment of the Mill site viable and market attractive,
- b) Support the current function of Marsden as an important service provider for the local area- extending the provision of local needs services for existing residents, as far as reasonably possible, in an effort to make the settlement more sustainable and to reduce the need to travel to access key services and facilities; and to
- c) Create the opportunity for a range of employment types in a central area of the village – including both “traditional” job generating development (light industrial and office uses) and other employment opportunities- for example in retail, café and potentially in a range of health or community related uses, depending on what can be attracted to the site.

3.2 This application proposes redeveloping the site as a series of new buildings. It is “heritage led” as far as can be reasonably achieved and, in summary, it involves:

- Demolition of the low rise mill buildings that sit over most of the eastern and western areas of the site. The approach adopted has been to remove the more recent buildings, which have less heritage value and which present significant challenges for re-use by modern occupiers.
- Opening up the River Colne, through the removal of buildings that are currently built over the river. These are more recent and have less heritage value.
- Retention of the main two storey mill buildings that face Brougham Road. These are older buildings, and are in a reasonable state of repair. The eastern end is currently occupied by Labtex and space adjacent to this is currently capable of being occupied and is on the market. These sit over the second culverted watercourse and have both heritage value and require limited works to make them suitable for occupation.
- Retention of the two multi-storey mill buildings, and associated towers, that are located in the centre of the site. These buildings play a significant role in setting the character of Marsden and will be retained and converted.
- In order to achieve suitable vehicular access from Brougham Road, it will be necessary to demolish part of the 2 storey buildings fronting Brougham Road, as well as the southern part of the western mill building.
- The retained buildings will be converted to provide a mix of uses, including:
  - Converted light industrial units on the eastern part of the site
  - Residential uses on the upper floors of the multistorey mill buildings

- Mixed “town centre uses” on the lower ground and ground floors of the multi-storey mill buildings- generally focussed on retail and food uses in the western mill; and office / co-working / gym space in the eastern mill.
- New build elements to provide:
  - Light industrial units on the eastern part of the site;
  - Retail and restaurant / café spaces over a decked car park in the western part of the site

3.3 The treatment of the ground and lower ground floor uses are the most important to understand for this statement. A masterplan accompanies this application and the same building references have been used in the table to allow ease of cross-referencing, as follows:

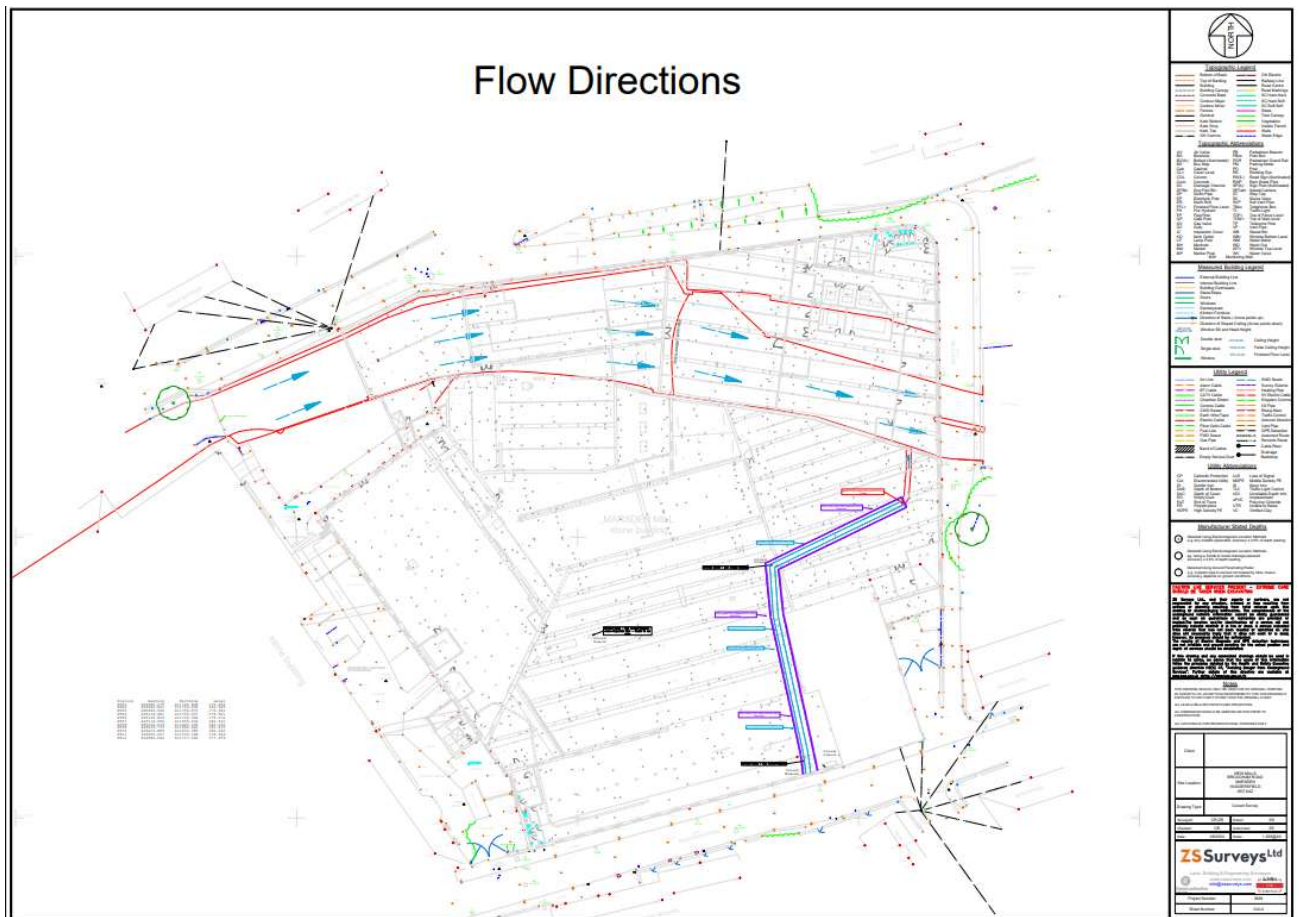
Building	Use	Area (sqm) (ground / lower floors only)	Flood Zone	Flood Vulnerability	Comments
A: Labtex, Brougham Road, Conversion	Office	374 sqm (ground floor)	3	Less Vulnerable	Existing Labtex building and occupier will be retained, or alternative office occupier.
B: Brougham Road, Conversion	Light Industrial	650 sqm (ground floor)	3	Less Vulnerable	Conversion of existing buildings, with operational uses on ground and offices above
C: New Build, East Courtyard	Light Industrial	581 sqm (ground floor)	2	Less Vulnerable	Operational uses on ground, with offices above
East Mill: Basement	Gym / Ancillary	181 sqm Gym	2	Less Vulnerable	Ancillary will be plant, cycle parking, bins, etc.
East Mill: Ground floor	Residential	1,055 sqm	2	More Vulnerable	Zone 2 on flood map for planning; mostly zone 1 in SFRA
West Mill: Basement	Ancillary	473 sqm	2	Less Vulnerable	Ancillary will be plant, cycle parking, bins, etc.

Building	Use	Area (sqm) (ground / lower floors only)	Flood Zone	Flood Vulnerability	Comments
West Mill: Lower ground floor	Retail / restaurant	860 sqm	2	Less Vulnerable	
West Mill: Ground floor	Residential	693 sqm	2	More Vulnerable	Zone 2 on flood map for planning; mostly zone 1 in SFRA
Car Park, West Courtyard	Car parking		1	Less Vulnerable	

3.4 Residential uses are proposed on the site. These are classified as “more vulnerable” in NPPF. There are two areas that will be at ground floor level. These are all in Flood Zone 2 where less vulnerable uses are considered to be acceptable, with no exceptions test required.

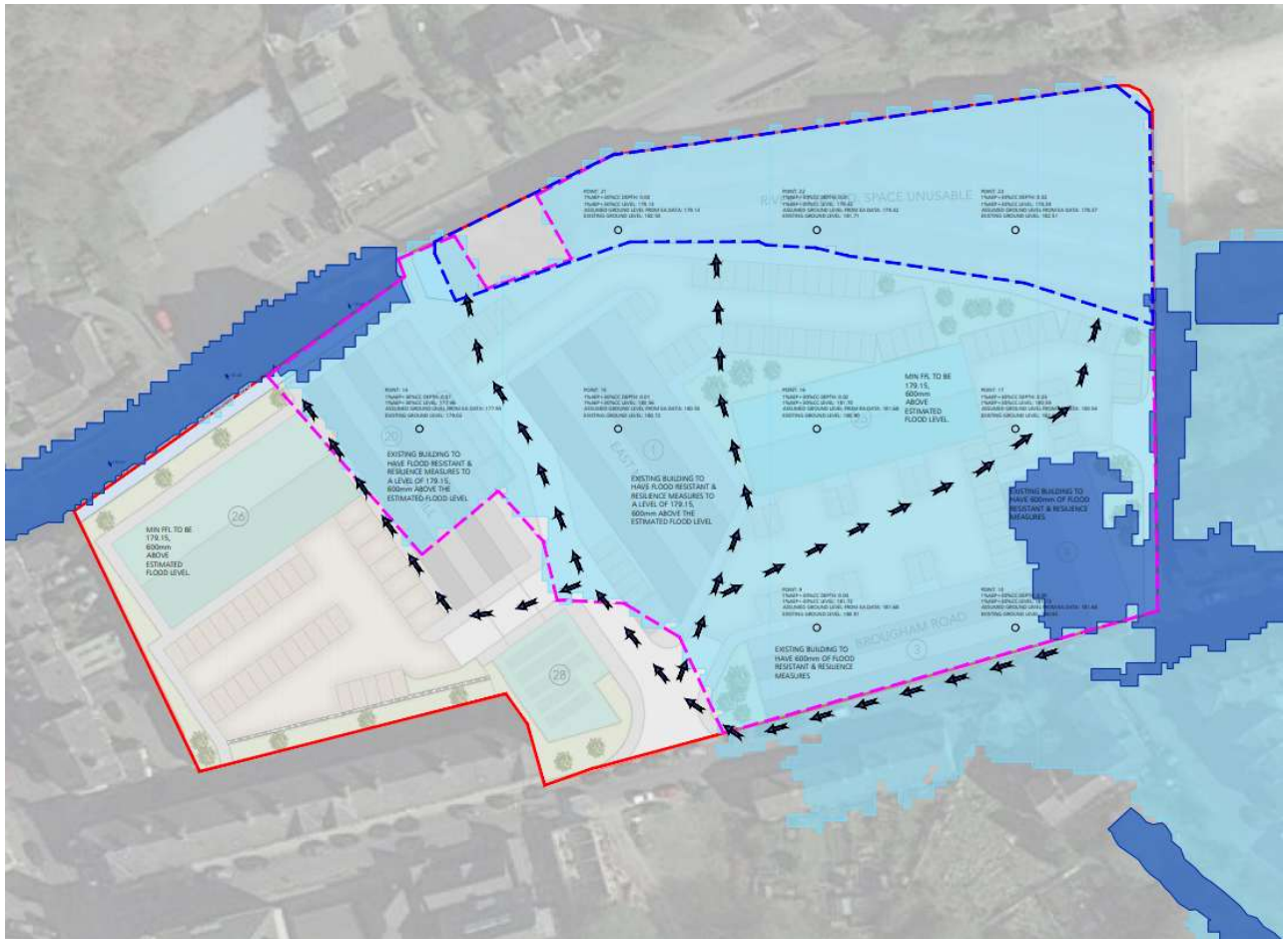
## 4. Relevant Flooding and Drainage Context

- 4.1 The site is partially built over the River Colne, which runs along the northern boundary of the site. Watercourse surveys show that there is a wier on the Colne underneath the site, and that a second culverted watercourse crosses the eastern part of the site, discharging to the Colne, under the existing buildings.
- 4.2 A plan showing the watercourse locations relative to the current site is provided below:



- 4.3 The application is accompanied by a Flood Risk Assessment and Drainage strategy, which should be read alongside this statement. This provides the necessary information to consider the flood risk and any mitigation required.
- 4.4 The site is in mixed flood zones, with the western area being in Zone 1, and the east in Zone 2. There are small areas of Zone 3 in the far south eastern and north western corners, focused on the open area of the Colne and the position of the culverted watercourse.
- 4.5 The ground floor uses are largely classified as being “less sensitive” although the ground floor residential at the East and West Mills are “more vulnerable”<sup>2</sup>. The areas of Zone 3 are small and in locations where existing buildings and uses will be retained, as shown on the flood routing and compensation plan below:

<sup>2</sup> NPP Annex 3 Flood risk vulnerability classification



- 4.6 New build elements will be set 600mm above estimated flood levels and flood resistant and resilience measures will be used where this can't be achieved for practical reasons. All conversion space will utilise flood resistance and resilience measures to ensure that if any flooding does occur the buildings are not extensively damaged.
- 4.7 Residents and business owners will be made aware of the risk of flooding and safe routes of egress will be made clear, as well as the potential for evacuation in the case of an extreme event.
- 4.8 Flood risk on this site is primarily from the culverted watercourse, rather than the River Colne. Overland flow routes for flood waters will naturally drain towards the Colne, and are illustrated above.
- 4.9 Whilst the SUDs hierarchy will be considered, it is not expected that infiltration will be suitable given the ground conditions, so the drainage strategy is to provide sub surface tanks under cleared areas of the site. This will attenuate flows to a suitable level with discharge to the Colne. Foul water would drain to the existing Yorkshire Water network.

## 5. Local Plan Sequential and Exception Tests

- 5.1 The site is an allocated mixed use site in a recent Local Plan (2019). Whilst that Plan is now acknowledged to be dated in terms of its land supply<sup>3</sup>, it is still relatively recent. It was prepared when national policy required the sequential test to be undertaken at Local Plan stage, and that test was undertaken as required.
- 5.2 The Local Plan Flood Risk Technical Paper<sup>4</sup> undertook the sequential and exceptions tests for allocated sites.
- 5.3 New Mills (site MX1920 in that report) is considered as a site “...partly in flood zone 2”<sup>5</sup> with the sequential test output as follows:

*For the proposed mixed use allocations listed below **there are considered to be no reasonably available alternatives in lower flood risk areas (Flood Zone 1)**. This is because land in the urban area is either proposed to be allocated, already has planning permission, supports established and stable uses or has been assessed as part of this plan making process and rejected for housing and employment use (see the local plan site allocations methodology). (our emphasis)*

- 5.4 For the exception test it also states:

*Not required (Housing element: More Vulnerable Use in Flood Zone 2; Employment element: Less Vulnerable Use in Flood Zone 2)*

- 5.5 The area of site included in Flood Zone 2 for the Local Plan assessment was based on the SFRA, and was 0.24Ha. The current area in Flood Zone 2 is around 1.01Ha, which is more than was assessed in the Local Plan test.

- 5.6 New Mills is also considered in the category of sites “...partly in flood zone 3a”<sup>6</sup> with the sequential test output as follows:

*For proposed mixed use allocations which overlap with parts of Flood Zone 3a (listed below), **the developable area has been reduced to remove the Flood Zone 3a from the housing element of the site** or where there is planning permission on the site, the planning permission housing capacity has been used.*

***As no housing uses will occur in Flood Zone 3ai, there is no requirement for a sequential test for the housing element of these sites in relation to Flood Zone 3a.***

***For the employment element of the mixed use sites there are considered to be no reasonably available alternatives in lower flood risk areas (Flood Zones 1 or 2)**. This is because land in the urban area is either proposed to be allocated, already has planning permission, supports established and stable uses or has been assessed as part of this plan*

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<sup>3</sup> [2023-10-17 Local Plan Review-Update Cabinet Report and App1 finaldocx.pdf \(kirklees.gov.uk\)](#)

<sup>4</sup> [Flood Risk Technical Paper](#)

<sup>5</sup> Page 19 of the report

<sup>6</sup> Page 22 of the report

*making process and rejected for employment use (see the local plan site allocations methodology). (our emphasis)*

5.7 For the exception test it also states:

*Not required (Housing: No new housing is proposed in Flood Zone 3a; Employment: Less Vulnerable Use in Flood Zone 3a)*

5.8 The area of site included in Flood Zone 3 for the Local Plan assessment was 0.06Ha. The extent of Zone 3 in the current site boundary has been measured at slightly more than this (0.08Ha around Labtex and 0.01Ha at the northern end of the western mill, where the Colne enters the culvert).

5.9 The site areas have changed due to the passage of time. However, this test is not focussed on areas- it is focussed on the principle of the use in the Zone. It is clear that the sequential and exceptions tests have been considered and passed for the application site at the Local Plan stage. However, Housing in Flood Zone 3a was excluded from the Plan's assessment, so that does warrant a review.

5.10 The current proposal accords with the advice at NPPF 180:

*Where planning applications come forward on sites allocated in the development plan through the sequential test, **applicants need not apply the sequential test again. However, the exception test may need to be reapplied if relevant aspects of the proposal had not been considered when the test was applied at the plan-making stage, or if more recent information about existing or potential flood risk should be taken into account.** (our emphasis)*

5.11 This site has been through, and passed, the sequential and exceptions tests when it was allocated. Based on current NPPF guidance, it remains to be considered:

- a) Whether there is any housing in FZ3a, as this was excluded from the assessment
- b) Whether the exceptions test needs to be applied- as this was noted as a possible requirement in the site allocation.

5.12 However, as the Council have asked for sequential an exception test work at pre-application stage, it is also considered to be prudent to review that exercise to determine whether the proposed development accords with the findings of that earlier exercise that undertaken in the Local Plan assessment

## 6. Review of Local Plan Tests

### Sequential Test

- 6.1 The SFRA and Local Plan Technical Paper considered the site with small areas of flood zone present, based on the SFRA mapping. The current Flood Map for Planning includes a large area of the eastern part of the site in Flood Zone 2, with a modest area of additional Flood Zone 3 in the south eastern corner. The flood zones are the same, but the areas are greater.
- 6.2 As the test was undertaken at the local plan stage and passed; and as the zones considered are the same; it is not strictly necessary to repeat that test to satisfy the policy requirements.
- 6.3 However, as the areas of existing flooding have extended, it is considered prudent to consider whether there are other sites locally that could deliver the same project objectives- including economic and housing outputs- without extending further into those flood zones.
- 6.4 This is provided in the following sections of this report. This demonstrates that the outcomes would be the same now, as they were in 2019 when the Plan was adopted.

### Whether there is any housing in FZ3a?

- 6.5 The exceptions test for the Local Plan specifically excluded housing from Zone 3, in order to pass that test. The site allocation also notes that this test may need to be repeated if the proposed uses change.
- 6.6 The additional areas of flood zone 3 are not in parts of the site where housing is proposed as part of this application.
- 6.7 Nonetheless, as the area of flood zone 2 has expanded across the site, this report does consider the relevant alternatives by applying the sequential test for those ground floor residential areas.

### Whether the exceptions test needs to be applied- as this was noted as a possible requirement in the site allocation.

- 6.8 Most of the housing is in the upper floors of Mill buildings, although there are ground floor elements which sit in areas of Flood Zone 2. Housing is a “more vulnerable” use, as classified in the NPPF.
- 6.9 Table 2 of the NPPG on Flood Risk and Coastal Change<sup>7</sup> is extracted below:

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<sup>7</sup> Paragraph: 079 Reference ID: 7-079-20220825

**Table 2: Flood risk vulnerability and flood zone ‘incompatibility’**

Flood Zones	Flood Risk Vulnerability Classification				
	Essential infrastructure	Highly vulnerable	More vulnerable	Less vulnerable	Water compatible
Zone 1	✓	✓	✓	✓	✓
Zone 2	✓	Exception Test required	✓	✓	✓
Zone 3a †	Exception Test required †	X	Exception Test required	✓	✓
Zone 3b *	Exception Test required *	X	X	X	✓ *

Key:

✓ Exception test is not required

X Development should not be permitted

6.10 This confirms that “more vulnerable” uses are acceptable in Flood Zone 2, and that an exceptions test is not required. This would only be required for this use if it were in Zone 3a. No housing is proposed in a building that sits in Zone 3.

6.11 Therefore, an Exception Test is not required.

### Local Plan Test Review Conclusions

6.12 This review of change since the Local Plan assessment suggests that the only relevant change that might affect the findings of the Local Plan sequential test and exception test is the extent of the flood zones across the site- which has extended considerably over the eastern part of the site.

6.13 It is considered that the principle of these tests has not changed, and there is no specific policy need to undertake that test again. However, as there is some housing in flood zone 2 and this report has been requested as part of pre-application advice, it is considered to be prudent to review the sequentially preferable options. This will demonstrate that the original conclusion has not changed.

6.14 As this test is not a policy necessity, this review will only be undertaken on a local level, rather than a District wide level. The test has already been passed, taking into account the presence of those flood zones on the site.

6.15 It is concluded that no exceptions test is required, as only “less vulnerable” uses are proposed in Zone 3 areas, most of which is existing space currently occupied by Labtex, with a small area of new light industrial uses. The “more vulnerable” housing uses are all located

in Flood Zone 2, which is does not result in a requirement for an Exception Test to be carried out.

## 7. Relevant Case Law, Guidance and Search Parameters

7.1 This section sets out the approach that will be adopted to this sequential test review, based on both the NPPF / NPPG. It also considers recent case law which clarifies how this should be undertaken.

7.2 The *R (Mead and Redrow) v SoS LUHC [2024] EWHC 279 (Admin)* case<sup>8</sup> clarified several important points around what constitutes a reasonably available site, and the relevance of “need” when undertaking the sequential test.

7.3 This recent case law suggests that it is appropriate for the applicant to consider a more limited catchment provided that there is a specific need to be met. The judgement, at paragraphs 101 and 102, states:

*...the relevant catchment area or area of search for some types of development will be affected by need considerations. On that basis, I do not see why all considerations of need must be excluded when considering the “appropriateness” of alternatives...*

*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.*

7.4 As this application seeks to address a particular need for regeneration, housing and employment delivery in Marsden, the search area will be limited to that settlement.

7.5 The judgement also shows that the Council should consider the nature of the project being assessed. At paragraph 103, it states:

*A need and/or market demand case could be based on a range of factors, such as location, the mix of land uses proposed and any interdependence between them, the size of the site needed, the scale of the development, density and so on. But the decision maker may also assess whether flexibility has been appropriately considered by the developer and by the local planning authority.*

7.6 There is clearly a case to limit the search parameters to those which are broadly comparable to the proposed development. However, as the options for development in Marsden are extremely limited, we have considered all available sites- other than those outside the settlement boundary. Sites outside the current Marsden boundary would be in the Green Belt, which bring an additional range of policy requirements into consideration. Those sites are discounted for the purposes of this exercise.

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<sup>89</sup> [Mead Realisations Limited v Secretary of State for Levelling Up Housing and Communities 2024 EWHC 279 Admin .pdf \(publishing.service.gov.uk\)](#)

- 7.7 The Mead judgement also suggests, at paragraph 106, that a site must be broadly available in a broadly similar timeframe:

*“Reasonably available” also has a temporal dimension. The start date and duration of the proposed development may be relevant considerations. But para. 162 of the NPPF does not require that the availability of an alternative site should always align closely with the trajectory for the developer’s proposal.*

- 7.8 The judgement, at para 108, also clarifies that:

*The PPG provides for issues as to suitability of location, development type, and temporal availability to be assessed by the decision-maker as a matter of judgment*

- 7.9 It also suggests that considering a series of smaller sites which could collectively accommodate the development (disaggregation), is a matter of judgement that depends on a number of factors:

*Whether such an arrangement is so capable **depends on the judgments to be made by the decision-maker on such matters as the type and size of development, location, ownership issues, timing and flexibility.** Taking into account his assessment of any case advanced by the developer on need and/or market demand, the decision maker **may consider smaller sites (or disaggregation) if appropriate for accommodating the proposed development.** [our emphasis]*

- 7.10 Clearly, disaggregation only applies if it is relevant to meeting the need identified. It further clarifies, at para 110, that:

*....a proposal should not automatically fail the sequential test because of the availability of multiple, disconnected sites across a local authority’s area. The issue is whether they have a relationship which makes them **suitable in combination to accommodate any need or demand to which the decision-maker decides to attach weight***

- 7.11 This case is helpful as it sets out the kind of judgements that are open to the decision maker when undertaking a sequential test.

- 7.12 In this case, the site is in a highly accessible and central location of a relatively small village. The proposed development aims to address visual, heritage and market need concerns, that are presented by the longstanding vacancy and increasing dereliction of a large Mill complex in the centre of Marsden.

- 7.13 The housing and economic outputs could feasibly be provided elsewhere in the town. However, that would remove the urban regeneration dimension which is the primary reason that sits behind the decision to allocate this site for development. It would also remove the benefits of some of the “main town centre uses” proposed, and generate policy issues under the separate sequential test which seeks to focus such development in and around defined centres.

- 7.14 On this basis, it is unlikely that the collective need could be met on a series of remote sites. Such an approach would not address the fundamental reasons for the application being made.

- 7.15 Policy and case law is clear that some flexibility should be demonstrated- by both the applicant and decision maker. In this case, the applicant will examine:
- Other allocated sites in Marsden,
  - Other land in Marsden which could achieve the same economic and regeneration outcomes
- 7.16 This approach shows a degree of flexibility and willingness to engage with the fundamental policy aim of reducing the amount of development in the flood zone.
- 7.17 The applicant will not consider sites outside the current urban are of Marden. This is because there are vast areas of land that could be made available for development, but that land is all constrained by a tight Green Belt boundary. This additional policy factor suggests that those sites would not receive planning permission unless there were significant positive factors weighing against the Council’s usual decision making processes. It is considered unlikely that this could be achieved for such sites, given the availability of large central sites that are allocated for development and without some specific location factors that need to be provided for. Equally, if those potential alternative sites are feasibly “grey belt”, then an exception to normal Green Belt policy could be made. However, identifying these potential opportunities is a considerable exercise which is not proposed to be undertaken as part of this assessment.
- 7.18 The applicant would also remind the Council about the wider benefits of this proposal, as set out in the Planning Statement, which need to be weighed in the wider planning balance- where the sequential test is just one material factor to be considered. These factors should also be weighed in favour of the application when the ultimate decision is being made.

## 8. Site Identification

8.1 This assessment considers allocated and non-allocated land in Marsden, which could potentially achieve the aims of the proposed development. These aims include:

- Regenerating a prominent derelict site;
- Providing space to enhance and extend the service provision in the District Centre;
- Meeting some local housing need;
- Generating jobs.

8.2 The target site area is 1.7Ha.

8.3 As the proposed development is particularly targeted at meeting regeneration, housing and employment needs in Marsden, the search area has been limited to Marsden. Green Belt areas have not been included due to the additional policy constraint this represents.

8.4 The identified sites are reviewed below.

Local Plan ID	Address	Size (Ha)	Flood Zone	Sequentially Preferable?	Assessment
HS130	South west of Victoria Terrace	1.05	1	yes	<p>This is a housing allocation that is owned by the applicant. This site is needed in addition to the application site, so is not an alternative.</p> <p>Whilst it would meet some housing need it would not meet other regeneration or employment needs. It is out of centre so should not provide town centre uses, as these wouldn't integrate with the district centre as well as the New Mills site.</p> <p>It was allocated at the same time as the application site, so was considered as part of that test.</p>
MXS10	Bank Bottom Mills	3.77	Part 3	yes	<p>This is a mixed use allocation that is owned by the applicant. This is needed in addition to the application site, so is not an alternative.</p> <p>Whilst it would meet some employment and housing need, it would not regenerate the New Mills site, and is out of centre so should not provide town centre uses that are</p>

Local Plan ID	Address	Size (Ha)	Flood Zone	Sequentially Preferable?	Assessment
					<p>designed to integrate with the district centre.</p> <p>This is not an alternative site as it is also needed. It was allocated at the same time as the application site so was considered as part of that test.</p>
MXS11	New Mills	1.71	2 and 3	-	This is the application site.
SLS9	West of 82-138 Mount Road	0.86	1	Yes	<p>This site is safeguarded, so it is outside the Green Belt. The interim housing policy may support its early release, while the new Local Plan is being prepared.</p> <p>However, it is remote from the central area of Marsden, would be most suited to housing development and therefore would not provide the employment and regeneration benefits of the application site. This site was safeguarded as it needed junction improvements requiring third party land<sup>9</sup>.</p> <p>This site is not deliverable at this time and therefore is not “available”.</p>
SLS11	North of Dirker Drive	1.67	1	yes	<p>This site is safeguarded. The interim housing policy may support its early release while the new Local Plan is being prepared.</p> <p>However, it is remote from the central area of Marsden, would be most suited to housing development and therefore would not provide the employment and regeneration benefits of the application site. This site was safeguarded as it has no frontage to adopted highway, and Spring Head Lane would need a significant upgrade to serve as an access<sup>10</sup>.</p> <p>This site is not deliverable at this time and therefore is not “available”.</p>

<sup>9</sup> See Local Plan Examination Document EX14 [Schedule of Safeguarded Land Sites](#)

<sup>10</sup> See Local Plan Examination Document EX14 [Schedule of Safeguarded Land Sites](#)

Local Plan ID	Address	Size (Ha)	Flood Zone	Sequentially Preferable?	Assessment
	"Lake Side"	0.26	Part 3	yes	<p>This site is unallocated brownfield land that is owned by the applicant. It is currently used as a nursery and car parking.</p> <p>It has potential for redevelopment and that is being considered as part of the Marsden Masterplan. It is available for development.</p> <p>Only small areas along the river bank are in Zone 3, so it is sequentially preferable.</p> <p>However, due to it's size, it would not deliver the same economic or housing outputs as the application site. It is also further removed from the town centre, so would not be suited to expanding the offer of the defined district centre in the same manner as proposed at New Mills. Equally, it would also not regenerate the New Mills site- although its future development could complement that wider regeneration aim.</p> <p>This site is not considered to be an alternative to the application site, but could add to the provision of new homes and jobs in Marsden in the future.</p>
	South of Brougham Road	0.11	Part 2 and 3	yes	<p>This site is unallocated brownfield land that is owned by the applicant. It is currently unused and vacant.</p> <p>It has potential for redevelopment and is being considered as part of the Marsden Masterplan. It is available for development.</p> <p>Only small areas at the site entrance are in Zones 2 and 3, so it is sequentially preferable.</p> <p>However, due to it's size, it would not deliver the same economic or housing outputs as the application site. It is also</p>

Local Plan ID	Address	Size (Ha)	Flood Zone	Sequentially Preferable?	Assessment
					<p>further removed from the town centre, so would not be suited to expanding the offer of the defined district centre in the same manner as New Mills. It would also not regenerate the New Mills site- although its future development could complement that wider regeneration aim.</p> <p>This site is not considered to be an alternative to the application site, but could add to the provision of new homes and jobs in Marsden in the future.</p>
	"Goods Yard" car park	1.15	1	yes	<p>This site is partially designated as urban green space, but it has large areas of hardstanding. It is currently used as a car park, skate park and "MUGA".</p> <p>It has potential for redevelopment and that is being considered as part of the Marsden Masterplan. It is available for development.</p> <p>It is slightly smaller than the application site, which suggests it would not deliver the same economic or housing outputs as the application site. It is much further removed from the town centre, so would not be suited to expanding the offer of the defined district centre. It would also not regenerate the New Mills site.</p> <p>This site is not considered to be an alternative to the application site, but could add to the provision of new homes and jobs in Marsden in the future.</p>

8.5 This analysis has identified 8 sites for consideration. All are sequentially preferable, and all are available for development.

8.6 The two allocated sites are also needed to meet development needs in Marsden. The two safeguarded sites suffer access issues that require third party land- this would limit their availability for development until those issues are resolved. The three additional brownfield sites are all suitable and available. The applicant considers that they should be developed

and are likely to form an important part of the Marsden Masterplan proposals- and potentially allocations in the next Local Plan.

- 8.7 However, none of these sites can deliver the same objectives as the proposal to regenerate New Mills. This is a significant brownfield site, with growing issues of safety as a result of increasing disrepair.
- 8.8 In common with the findings of the Local Plan test, the alternative sites are either needed in addition to the application site, or are not considered to be a suitable replacement for the application proposals- given the specific regeneration aims of this application and the central location of New Mills. The applicant considers that these sites are all suitable for development. However, none could replace what is being delivered at New Mills.
- 8.9 This analysis supports the formal assessment undertaken at the time of allocation, and indicates that the original analysis remains reliable, given the changes in flood mapping since that work was completed.
- 8.10 The summary position is set out below:

Local Plan ID	Sequentially Preferable?	Conclusion	Reason for discounting site
HS130	Yes	Not suitable	Needed in addition to Application Site
MXS10	Yes	Not suitable	Needed in addition to Application Site
MXS11	n/a	The application site	None
SLS9	Yes	Not suitable, not currently available	Access issues, size, location, inability to deliver comparable benefits
SLS11	Yes	Not suitable, not currently available	Access issues, size, location, inability to deliver comparable benefits
Lakeside	Yes	Not suitable	Size, location, inability to deliver comparable site specific benefits
Brougham Road	Yes	Not suitable	Size, location, inability to deliver comparable site specific benefits
Goods Yard	Yes	Not suitable	Size, location, inability to deliver comparable site specific benefits

- 8.11 The “suitability” reasons for discounting these sites are based on the ability of those sites to meet the fundamental outputs of this application. The recent case law, as discussed earlier in this report, states that:

*The PPG provides for issues as to suitability of location, development type, and temporal availability to be assessed by the decision-maker as a matter of judgment*

- 8.12 In this case, the applicant is seeking to deliver a major heritage led regeneration project in the centre of Marsden. It aims to deliver new homes, job outputs, and extended accommodation to expand the district centre. It also aims to address the visual harm caused by this long running and prominent derelict site in the central area of Marsden.
- 8.13 This project cannot be delivered on an alternative site. The fundamental aim of saving historic buildings (as far as reasonably possible) and regenerating this derelict site would

simply not be achieved on a remote site- regardless of it's current flooding status. If meeting these needs were required on a separate site, the fundamental objectives of the application would be undermined. This would result, ultimately, in the site becoming so unsafe that all existing buildings would need to be demolished. This would harm the character of the Conservation Area and the general "feel" of Marsden, removing one of the most prominent reminders of why the village exists in it's current form.

- 8.14 It is both lawful and appropriate for the Council to take the needs of the applicant and the objectives of the project into account when applying the sequential test.
- 8.15 It is suggested that securing the future of this important site, along with the economic benefits that it would deliver, is of considerable importance to the economy of Marsden. Government funding has been secured for this project in order to deliver that outcome. This is a significant material factor that should be positively considered when reviewing this sequential test.
- 8.16 On this basis, it is considered that there are no suitable or available sites at a lesser risk of flooding, that could also meet the fundamental objectives of this application.
- 8.17 It is concluded that the sequential test has been passed, and this policy should not impede consideration of the redevelopment proposal further.
- 8.18 However, it is acknowledged that there will be some housing at ground floor level in Flood Zone 2. The mitigation measures proposed to ensure that these properties are safe, is set out in the Flood Risk Assessment and Drainage Strategy.

## 9. De-culverting

- 9.1 The site straddles the Colne and a culverted watercourse entering from the south east.
- 9.2 The Local Plan encourages de-culverting where feasible and practical, through policies LP27 and LP34. The site allocation (MXS11) also requires that *“Deculverting should be considered through this re-development but environmental benefits may be limited.”*
- 9.3 The application proposes to open up the Colne, which is currently built over by the mills in the north eastern area of the site. This would satisfy the requirements of NPPF187, NPPF 193 and Local Plan Policies LP27, LP34 and allocation MXS11.
- 9.4 However, the culverted watercourse that enters the site in the south eastern corner will not be de-culverted. This requires consideration of the relevant policy tests.

### Local Plan Policy LP27

- 9.5 The relevant section of Policy LP27 states that:

*Proposals involving building over existing culverts or the culverting or canalisation of water courses will not be permitted unless it can be demonstrated to be in the interests of public safety or to provide essential infrastructure and that there will be no detrimental effect on flood risk and biodiversity. Where feasible, development proposals should incorporate re opening of culverts, modification of canalised water courses and consideration of mitigation measures to achieve a more natural and maintainable state.*

- 9.6 This policy is drafted to operate in two parts. The first part resists new culverting or canalisation of water courses, unless there is a public safety requirement or the proposal is to provide essential infrastructure. This application does not propose new culverting, so the first limb of the policy does not apply in this case. There will be no harm that arises to biodiversity or flood risk, as a result of retaining the existing culvert- and there will be notable benefits associated with deculverting the main section of the River Colne.
- 9.7 This project does involve building over an existing culvert, but this is currently covered in its entirety with existing buildings, some of which will be refurbished, and; replacing some existing buildings with yard and parking areas. This part of the policy seems to be primarily concerned with new development, and the situation over this culvert would be to improve the level of cover over this structure, allow better options to access the culvert if needed.
- 9.8 The second part of the policy says that, where feasible, the reopening of culverts should be incorporated- in order to achieve a more natural and maintainable condition for the watercourse.
- 9.9 Unfortunately, it is not feasible to achieve that aim for all culverted rivers in this instance.
- 9.10 Whilst the main section of the Colne will be deculverted, deculverting that short section of river that runs south / north through the site is not practical from a project cost or delivery perspective. It would deliver a very modest opening of river habitat that would be within an

operational site, and of limited width. This would also impede the delivery of the main job creating element of the project, by:

- Cutting through the yard of the industrial area
- Necessitating the demolition of further buildings which are of some heritage and townscape value
- Removing servicing and parking areas for the industrial parts of the site, which is where employment generation (a key output for which government funding has been secured) is primarily located.

9.11 The opportunity for habitat creation as a result of that deculverting this short section of river would be extremely limited, and any such habitat would be relatively isolated within the wider mill complex.

9.12 The benefits of deculverting the Colne, however, would be very considerable and this section of deculverting has been prioritised by the application. This requires giving up 2,976sqm / 0.3Ha of development area to new river habitat, and opens up a c.140m section of main river that was culverted in the early 20th century.

9.13 The retained culvert has been in place since the mid-19<sup>th</sup> Century. Removing both sections of historic culverting would further restrict job creating and income generating development that is required to achieve a broadly viable re-development project. This project already needs considerable Government funding, and worsening this position would likely leave the development unviable.

9.14 Leaving this culvert in a broadly neutral position is an opportunity cost, but it would not cause additional harm. This watercourse originates in the hills above Marsden and is only intermittently open on very short stretches around Manchester Road, Carrs Road and around Carrs Side Street No. 2. Maintaining a neutral position on this site would not cause any negative effect.

9.15 In this case, it is suggested that the requirements of policy LP27 have been met through the very positive enhancements to river habitat that come from opening up 0.3Ha of the Colne and its banks.

#### **Local Plan Policy LP34**

9.16 The relevant section of Policy LP34 states that:

*Proposals must:*

1. *Ensure no deterioration of water courses or water bodies (including groundwater) by conserving and, where practicable, enhancing:*
  - a. *the natural geomorphology of watercourses, including reinstating watercourses to their natural state through removal of modifications resulting from past industrial uses...*

*Proposals are encouraged to:*

*4. Make positive progress towards achieving 'good status or potential' under the Water Framework Directive in surface and groundwater bodies....*

- 9.17 Part 1 of this policy does not require enhancement of water courses through deculverting. It clearly states that no deterioration is an acceptable outcome. It also notes that enhancement should only be required where practicable. This is discussed in respect of Policy LP27, above, and the same conclusions are drawn in respect of this policy: It is not practicable to open up this short section of culvert due to impacts on the development and it's funding.
- 9.18 In this case, it is not considered to be practicable to open up this short retained length of culvert. If this policy desire were enforced in this case, it is likely that the project would either fail completely, or considerable additional external funding would need to be secured to replace the lost income and outputs from this additional work. This would be less likely to be achieved as opening the culvert would further limit the jobs to be created, which are the key output sought by the funding body. This would create a self-compounding problem: less development, meaning fewer jobs; leading to a greater funding gap, and less potential to secure additional funding due to reduced economic outputs.
- 9.19 This is a very finely balanced project. Requiring this further change would upset the delicate balance that has required considerable effort and compromise by both the applicant's team and the Council to achieve.
- 9.20 Part 4 of this policy simply encourages progress towards achieving a better status under the Water Framework Directive. The applicant recognises this goal but is not required to achieve an improvement by this policy. This policy simply "encourages" an improvement, so it is again acceptable to maintain a neutral position- This has been discussed in respect of Part 1 of Policy LP34, and also in respect of Policy LP27 above.
- 9.21 Whilst significant change is not expected, the applicant will improve drainage infrastructure on this site, re-naturalise areas of the mills and better manage the site when compared to the former mill use of the site. This is likely to result in positive improvements to the water environment.
- 9.22 In this case, the applicant cannot be required to open up this short section of culvert on the basis of this policy. It is suggested that the policy allows a neutral position and, therefore, the application proposals comply with this policy. Indeed, the significant benefit of opening up the Colne should be seen as a very positive enhancement under this policy.

## 10. Conclusions

10.1 This report has considered three flooding and drainage related policy tests including:

- The Sequential Test
- The Exception Test
- De-culverting policy

10.2 The findings of this report are as follows.

### **The Sequential Test**

10.3 This test was undertaken when the site was allocated. There have been changes in the extent of flood zones on this site since that time. On a precautionary basis, the applicant has undertaken a review of the sites in Marsden that could reasonably meet some of the objectives of this application.

10.4 There are a number of sites available that could contribute to development needs in the settlement. However, none are considered to be a suitable replacement for the New Mills project. Current allocated sites are needed in addition to this application. There are sites available which are safeguarded but cannot reasonably be accessed at this time- These are not considered to be truly available at the time of making this application. There are also several brownfield options within the urban area that are considered to be both available and suitable to meet future development needs. The applicant would support development on those sites. However, they cannot be considered to be a suitable alternative to this site specific regeneration project.

10.5 It is concluded that the local plan sequential test findings remain valid. There are no other sequentially preferable sites that could meet the objectives of this allocation, taking into account a reasonable level of flexibility.

10.6 This application is considered to pass the sequential test for flooding.

### **The Exception Test**

10.7 The exception test was applied at the time of allocating this site. However, it was not clear whether any more vulnerable uses would be located in higher flood zones at that time. The site allocation makes it clear that this test would need to be reviewed on the point of application in order to ensure that the test had been properly undertaken. At the local plan stage, housing was specifically removed from Flood Zone 3a in order to pass this test.

10.8 This application also keeps housing uses out of Flood Zone 3a. All housing is proposed in the upper levels of mills and in areas where the ground floor is in Zone 2. Most of the housing is, therefore, unlikely to be physically affected by floodwaters. The ground floor areas of housing will be subject to suitable design measures to ensure flood resilience and the safety of the occupants.

- 10.9 However, this test only requires that the buildings with more vulnerable uses are not located in Zone 3a, in order for the test to be passed.
- 10.10 All housing will be located in buildings that are clearly within Flood Zone 2. Guidance is clear that the exception test is not required under these circumstances and therefore the application passes this test.

#### **De-culverting policy**

- 10.11 The site has two areas of historic culverting. The current buildings are built over the River Colne, and also an unnamed watercourse which enters the site underneath Brougham Road.
- 10.12 This application proposes to open up a significant area of the River Colne. This offers significant flooding and environmental benefits and is considered to be in accordance with policy.
- 10.13 However, it is not feasible or practical to deculvert the second water course. This would create a major incursion into a proposed operational area of the site, and would also require the removal of historic buildings which are deemed to be significant enough to be retained.
- 10.14 The applicant considers that this proposal would remain neutral in policy terms. The policy also allows for the deculverting not to occur, where this is not practical or feasible. The applicant confirms that it is not practical or financially feasible to open up this second water course, and that doing so would remove key economic outputs, which would impede the applicant's ability to secure the additional government funding that might be needed to achieve this aim.
- 10.15 The applicant considers that the proposal as a whole will make a significant contribution to opening up and re-naturalising previously culverted water courses. Overall, this presents a significant positive impact, and the applicant considers that the policy objectives have been achieved.
- 10.16 On this basis, there are no reasonable grounds related to these policy tests on which Planning permission should be withheld.