

Planning Policy Comments

Application No	APP/22/01231
Address	Palk Road, Bedhampton
Development	90 dwellings and associated car parking, landscaping
Case Officer	AM
Comments By	JB
Date of Comments	12 July 2024

Full policy comments covering other matters were previously provided, dated 15 February 2023. The comments below focus on Flood Risk only, in particular the sequential test. The applicant submitted a sequential test in November 2023, followed by an update in December 2023. Policy comments on the test were first offered on 24 January 2024. This note supersedes the January 2024 comments.

Flood Risk on Site

The Hermitage Stream runs to the South East of the site. The vast majority of the site lies in present day Flood Zone 1, but a substantial part in the south east of the site is at risk of flooding once climate change is taken into account. Flood Risk is therefore a key consideration in determining whether development here is acceptable.

In line with local and national policy and guidance a site-specific Flood Risk Assessment and a Sequential Test are required to support the application. The applicant submitted a Flood Risk Assessment with the application. The Environment Agency has commented on the application and raised no objection. A sequential test has also been submitted, which is the subject of these comments.

Flood Risk Sequential Test

Policy comments were offered on 24 January 2024 on a number of aspects of the applicant's methodology. Having considered recent appeal and court judgements further, and anticipating an update to the council's sequential test guidance taking these into account, updated comments are offered as follows, covering:

- a) Whether all sites that could potentially be alternative sites at lower risk have been adequately considered
 - Brownfield vs greenfield land
 - Current applications
 - Land currently on the market
- b) Whether sites have been rejected for valid reasons
 - A series of smaller sites
 - Availability of sites

Sites considered

The way the applicant's flood risk consultants Ardent have laid out the test, with a table highlighting the risk from different sources and commentary is very helpful. It is easy to follow the approach taken and the conclusions drawn on each site.

Previous policy comments raised questions about the applicant's methodology of reviewing only brownfield sites and disregarding potentially available greenfield options, as well as disregarding a number of other potential sources of alternative sites.

The Council has reconsidered the approach of reviewing brownfield sites only, and accepts that this approach is appropriate, with some remaining caveats, discussed below.

For the avoidance of doubt, this change in position is not because the council accepts the applicant's argument that brownfield development is a 'development type' as referenced in paragraph 028 of the PPG, or because the applicant's description of development includes the words 'redevelopment of a brownfield site'. Rather, it is accepted that by its nature the land in question is brownfield land (whether this had been stated in the description or not). The council considers that the sequential test, in seeking to avoid flood risk, should not have unintended consequences which undermine the development strategy or other aspects of local or national policy in relation to what constitutes sustainable development, including the promotion of brownfield development over greenfield.

It remains the case that national guidance on the sequential test does not make any explicit recommendations for the treatment of brownfield versus greenfield land. The test is concerned with flood risk only, and therefore refers simply to steering development to lower risk areas. However, Paragraph 031 of the PPG states that in applying the sequential test, alternative sites should only be rejected through the test *'where, accounting for wider sustainable development objectives, application of relevant local and national policies would provide a clear reason for refusing development in any alternative locations identified.'*

To date the council has applied the reference to 'clear reason for refusing development' as meaning the footnote 7 constraints named in paragraph 11 of the NPPF. In that context, a site being greenfield does not provide 'a clear reason' in and of itself, in particular given the Council's 5 year housing land supply position. However, that footnote is not specifically referenced in the Flood Risk PPG, allowing the reference to 'accounting for wider sustainable development objectives' to be considered more broadly. In this case, there is a wider sustainability objective in giving priority to brownfield land over greenfield land. Further, the land in question lies within the defined urban area under policies AL2 and CS17 of the Local Plan. Development of brownfield land and of land within the urban area, over the development of greenfield land, is a clear sustainable development objective in local and national policy. It is considered that the application of the sequential test should not undermine this (albeit flood risk must still be fully considered and adequately addressed, even on brownfield or urban area sites)¹.

That being said, where allocated in a Local Plan, greenfield land development is also accepted in principle. Therefore, this remains a valid source of potential alternative sites that the applicant has not yet considered. It is suggested that the review of alternative sites remains incomplete until it has considered:

- As yet undeveloped greenfield sites allocated in the Local Plan
- Current undetermined planning applications on
 - brownfield sites,
 - sites within the urban area and

¹ While one could debate whether the applicant should have reviewed only brownfield sites, or only land with the area defined by AL2 and CS17, in reality there is a very high degree of overlap between these two categories of land, and it would therefore be disproportionate to seek a review of the applicant's sequential test on this basis.

- allocated greenfield sites

This has previously been raised with the applicant, and they have only confirmed that extant *permissions* have been considered, not applications under the categories above.

- Sites currently on the market need not be considered (insofar as they do not fall within the categories above), as previously agreed with the applicant; This is on the basis that such sites come with very little planning certainty and therefore are likely to fail the test in the PPG of being ‘available to be developed at the point in time envisaged for the development’.

Applicant's Conclusions on Alternative Sites

Momentarily setting aside the above points, the conclusions of the applicant's test as submitted in December 2023 are considered below:

Of the 10 sites taken forward to detailed review, 8 have been assessed as unsuitable alternatives as they are unable to accommodate the quantum of development proposed at the Palk Road site, either due to the fact they are physically too small and would not be practical or viable to build across multiple sites to make up the proposed 90 units and/or they are constrained for other reasons as set out in the spreadsheet.

Paragraph 028 of the PPG states that reasonable alternatives ‘*could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development.*’ The applicant's spreadsheet dismisses sites that are too small as not being a suitable alternative to the application site, without fully addressing this point.

Since the January 2024 policy comments, where the applicant's dismissal of these sites was highlighted as a failing in their sequential test, court judgements have clarified that ‘a series of smaller sites’ implies that there must be a connection between such sites for them to be considered alternatives. It is accepted that this is not the case on the smaller sites in Havant. This objection therefore falls away.

The remaining two sites are potential alternatives at lower risk of flooding that are large enough to accommodate the envisaged development. Both are allocated sites in the adopted Local Plan. Both are dismissed on the basis that it is not clear whether the site would come forward.

In the case of the Goodwillies site, this conclusion was initially accepted, since there had been no attempt to bring the site forward since that allocation was made in 2014, and the site was no longer being actively promoted. However, the site has recently become available following the closure of the business and should therefore be considered as an alternative at lower risk.

The SSE Site on Bartons Road has in recent years been the subject of an application for residential development (albeit refused on matters of detail in 2022) and is being promoted for development through the emerging Local Plan. It is therefore considered that the site is still likely to come forward. Paragraph 028 of the Flood Risk PPG defines ‘reasonably available’ sites as ‘those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed *at the point in time envisaged for the development.*’ Since there was no current permission or application, and no application was imminently expected, it was previously accepted that the site did not meet the PPG definition of a reasonably available site. However, the recent judgements referred to in other parts of these comments also concluded that ‘at the point in time

envisaged' does not imply a need for absolute alignment of timescales, and since the land it under active promotion, it could still come forward for development within a reasonable timescale.

Therefore both of the allocated sites which are considered to be large enough to accommodate the Palk Road development should be considered to be reasonable alternatives at lower risk.

Conclusion on the Applicant's Sequential Test

Although policy comments on the test have been reviewed, taking into account recent appeal and court cases, and anticipating resultant amendments to the council's own guidance to introduce a greater degree of flexibility, it remains impossible at this time to conclude that the sequential test has been passed.

The applicant may or may not wish to seek to address the remaining points. However, it is difficult to see how some of the points, in particular those on the availability of alternative sites may be overcome.

End Note

These comments are focussed on the flood risk sequential test only. It is considered that the sequential test has not been passed, and as such, the proposal cannot be fully supported in policy terms based on Policy CS15 of the Local Plan, and national policy and guidance on flood risk.

That being said, whether the proposal is considered acceptable overall, may and should also take into account the following key policy considerations:

- Whether the development, overall, is considered safe for its lifetime without increasing risk elsewhere, taking into account:
 - The fact that the applicant has applied the sequential approach on site, avoiding the more vulnerable uses (housing) / built form in the areas at risk;
 - The degree to which those elements of the development which are at risk (parking areas, open space and access routes) are likely to be affected in the event of a flood; these elements should not be subject to unacceptable flood depths or hazards to potential users in the event of a flood, and any such risks should be capable of being managed appropriately;
 - Comments received from the Environment Agency and the Local Lead Flood Authority
- The fact that the proposal is on brownfield land within the defined urban area and that part of the site is subject to an allocation for residential development
- The contribution the proposal would make to housing supply, given that the council cannot currently demonstrate a 5-year supply.