

TM/PF/5078/eds

John Longmuir
Planning Department
Stroud District Council
Ebley Mill
Stroud
GL5 4UB

19th March 2018

Sent via email only

Dear Mr Longmuir

Application reference: S.17/1987/OUT – Dudbridge Industrial Estate, Stroud

I am writing in reference to the above planning application for a new retail food store and residential development at Dudbridge Industrial Estate. The application is due to be considered by the planning committee on Tuesday 20th March.

Following review of the Officer's report to committee, we would like to raise concerns regarding the principle of residential development at the site and also the approach to the flood risk sequential test.

Principle of Development

The Development Plan is the starting point for the determination of the application and the National Planning Policy Framework also represents a material consideration of significant importance.

Local Plan Policy SA1 allocates the application site for canal related tourism development, retail and employment uses only. However, as acknowledged in the report to committee, the large majority of the proposals at the site are now for residential development. Therefore, the residential element of the proposals is in direct conflict with Local Plan Policy SA1 and the principle of development should be considered unacceptable, unless material considerations indicate otherwise.

In terms of whether there are any material considerations which indicate a departure from Policy SA1 can be made, the report to committee highlights at paragraph 8.3 that the site does not have "*good economic prospects*" and concludes in the planning balance at paragraph 20.3 that "*there is viability justification to depart from the allocation, especially bearing in mind the costs and complexities of treating the contamination*". However, we are concerned that no clear evidence appears to have been provided to support this as part of the application.

Furthermore, this conclusion seems to directly conflict with the viability work undertaken for the Local Plan which allocated the site for employment, tourism and retail uses only. The Council's Flood Risk Sequential Test Assessment of Proposed Development Sites (2014) stated in relation to the site's allocation:

*“The designation of this brownfield site as a key employment site indicates the importance of this area to the local community for employment in an accessible location. The sustainability appraisal accompanying the Local Plan indicated that whilst there was flood risk, it performed well in many other sustainability indicators. **The viability testing of the Plan did not indicate that the site was undeliverable.**” (our emphasis).*

We are therefore concerned that no clear viability evidence has been provided that would form a material consideration to allow a departure from development plan policies.

In addition to the above, we are also concerned that the proposals directly conflict with Local Plan Policy ES4 regarding flood risk, and the guidance contained in the Framework. This is considered further below.

Flood Risk Sequential Test

The application site is currently largely located in flood zones 2 and 3 (highest risk of flooding).

The guidance contained within the Framework and associated Technical Guidance makes it clear that development should be directed away from areas at highest risk of flooding. In doing so, a sequential test should be applied in areas known to be at risk of flooding to steer development to areas with the lowest probability of flooding. The sequential test is distinct from, and should be applied prior to, the exception test.

Paragraph 101 of the Framework states that **development should not be permitted if the Sequential Test demonstrates that there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.**

Paragraph 102 of the Framework states that if, following application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied if appropriate. The Framework requires both elements of the test to be passed for development to be allocated or permitted.

Local Plan Policy ES4 essentially reiterates the guidance of the Framework with regard to flood risk and also states: *“The Strategic Flood Risk Assessments (SFRA 1 and 2) will be used to inform the location of future development within the District.”* The starting point for applying the sequential test is therefore the Strategic Flood Risk Assessment (SFRA). The SFRA for Stroud District places the application site almost wholly in Flood Zones 2 and 3.

Whilst the Council undertook its own Flood Risk Sequential Test Assessment of Proposed Development Sites (2014) as part of the Local Plan, this only assessed the application site for retail, employment and tourism uses. It specifically states at page 11 of that document:

“The Council considers it is appropriate to allocate the site for Less Vulnerable and Water Compatible development only.”

Whilst the Applicant may have a fall-back position in relation to the retail food store element of the proposals, the large majority of the current application proposals are now materially different to the extant permission. The proposed development now looks to provide a large amount of residential development as confirmed at para 8.1 of the Officers report to committee. The Flood Risk Technical Guidance defines residential uses as a ‘more vulnerable’ use in flood risk terms. The site has not been

assessed in the Council's Flood Risk Sequential Test for residential development and the more vulnerable use conflicts with the conclusions of the Council's Sequential Test.

Given that the site has not been allocated for residential use, the sequential test should therefore be properly applied to the proposals for new development in accordance with the requirements of the Framework and associated guidance. However, no sequential test appears to support the application proposals. The Applicant's flood risk assessment concludes that there is *"no requirement to undertake the sequential or exception tests"* because the proposals will provide mitigation measures that will ensure that all residential and commercial development will be located in Flood Zone 1. However, as indicated by the Framework, the purpose of applying the sequential test is not to compare the existing risk of flooding with the risk of flooding after the development has been carried out, but to direct development away from areas where the risk is highest.

We note that the Officer's report to committee doesn't specifically reference the Flood Risk Sequential Test but does acknowledge at Para 9.4 that *"The Council has a 5+ year land supply and there are other sites in the District outside Flood Zones 2 and 3."* As a consequence, it is apparent that the housing proposed could be located in a zone with a lower probability of flooding. The Council can demonstrate a 5 year + housing land supply and therefore the weight to be given to the benefits of providing housing are lessened. Therefore, the Officer's report indicates that the application proposals do not pass the sequential test.

The Officer's report states at para 9.2 that *"If a development fails to meet this sequential preference, then the next stage is the "exception test highlighted in paragraph 103."* However, we are concerned by this Statement as the sequential test is distinct from, and is to be applied prior to, the exception test, which involves a different exercise. The aim of the sequential test, as paragraph 101 explains, is to *"steer new development to areas with the lowest probability of flooding"*. National guidance on Flood Risk states that only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required. Therefore, if the sequential test is not considered to be passed then the planning application should be refused in line with paragraph 101 of the Framework.

It is acknowledged that a site specific flood risk assessment for the site has been prepared and the EA/LLFA hasn't raised objections. Nevertheless, as the EA state in their letter of 10 October 2017 the authority must be satisfied that the requirement and application of the sequential test has been satisfied. As it is clearly noted in the Officer's report that such sites do exist in areas outside flood zones 2 and 3, it can be concluded that the proposed development fails the sequential test and therefore would be contrary to the Framework and Local Plan Policy ES4.

Conclusion

The proposed development clearly conflicts with Local Plan policies SA1 and ES4. It is also highlighted in the planning balance that the extent of demolition is *"substantial"* and that there is some harm to the Conservation Area to which there is a need to give considerable importance and weight to when carrying out the planning balance.

The report to committee weighs up the planning balance and identifies that there is viability justification to depart from the allocation as well as other benefits such as the delivery of new housing and hydrological improvements etc. However, whilst these benefits are acknowledged the viability justification remains unclear and whether the benefits of the proposals are significant enough to outweigh the harm is questionable.

Nevertheless, our fundamental concern relates to the Flood Risk Sequential test. We note Officer's consider that the Exception Test is passed and that the proposed flood mitigation measures can be considered a benefit. However, the sequential test is distinct from, and is to be applied prior to, the exception test, which involves a different exercise. The aim of the sequential test, as paragraph 101 explains, is to "*steer new development to areas with the lowest probability of flooding*". If the sequential test is not considered to be passed then the planning application should be refused. To do otherwise would render such a decision unsound.

I trust these comments will be taken into account. Please do not hesitate to contact me should you wish to discuss any of the issues raised.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Tara Maizonnier". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tara Maizonnier MRTPI
Hunter Page Planning