

**Question 1: Has the neighbourhood plan applied a sequential risk based approach to the identification of its residential development sites? Would it be possible for the plan to achieve its housing requirements without proposing homes to be built in areas at risk from flooding?**

The Sequential Test

It is evident from the Neighbourhood Plan's [Strategic Environmental Assessment](#) (pages 31/32 and 45/46) that account has been taken of flood risk in weighing sites against sustainability factors, but the LPA has expressed concerns in its representation (Ref. 32g) that this falls short of meeting the expectations for a Sequential Test and, where necessary, the Exception Test in Planning Practice Guidance (PPG). That advises (at paragraph 7-022) that where the Test is undertaken as part of the sustainability appraisal and: *'Where other sustainability criteria outweigh flood risk issues, the decision making process should be transparent with reasoned justifications for any decision to allocate land in areas at high flood risk in the sustainability appraisal report.'* Reference is also made to Diagram 2 in the PPG at paragraph 7.021, which identifies the "sequence" in looking at lower risk areas first.

On this basis, it is not considered that the NP provides sufficient evidence that the sequential test has been applied to site selection.

Housing requirements

The housing figure for Robertsbridge in the Local Plan Core Strategy stemmed from its "service centre" approach, tested in terms of potentially suitable sites, as identified through the Strategic Housing Land Availability Assessment (SHLAA).

Excluding small sites, this translates to a requirement for 147 dwellings, of which 17 dwellings, on land r/o Culverwells Station Road, have planning permission.

At this point, it is noted that the large majority of the Mill Site is not within an area at risk of flooding (see plan at Appendix 1 attached to letter to the Examiner dated 26<sup>th</sup> July 2017). This was reflected, alongside employment provision within the site, in the SHLAA's estimated capacity of some 30 dwellings.

The Robertsbridge section of the SHLAA is reproduced at Appendix 2 for reference. It can be seen that one SHLAA site, Grove Farm (part of which is a saved 2006 Local Plan allocation) is not proposed to be allocated in the NP.

Therefore, while it is for the PC to further consider the merits of the Grove Farm site, as well as of other sites not favoured through the SHLAA process, it is believed that there is the potential to achieve the village's housing target (and thereby contribute to meeting the District's requirement) even if the Mill Site were ultimately restricted for residential development.

**Question 2: Does the allocation of the Mill Site for 100 dwellings unnecessarily put people and properties at risk of flooding? What are the implications of the site access being through land in Flood Zone 3? Is the Mill Site in Flood Zone 3a or 3b? Is there information available about “the frequency, impact, speed of onset, depth and velocity of flooding with relation to this site” and what allowance should be given to existence of the flood defence scheme that has been completed? Can a safe access and escape route to the site be maintained in times of flood?**

Flood Zone (FZ) areas: While the definition of flood zones ignores the presence of flood defences, it is assumed that the land between the Robertsbridge and Northbridge Street flood defence embankments/walls, including the recreation ground and water meadows, operates as “functional floodplain”; hence, it is treated as FZ3b. On this basis, of the 3.63ha Mill Site allocation area, 1.06ha is in FZ3a and 0.27ha in FZ3b. A further 0.47ha is in FZ2 and 1.83ha in FZ1. (See Appendix 3) At a density of 25/30 dwellings/hectare, this would yield 46/55 dwellings on land in FZ1, or 58/69 dwellings if on land in FZ1/2, aside from any dwellings resulting from the conversion of existing buildings in FZ3.

Flood defences: The Environment Agency (EA) advises that the existing defences provide defence to a 1:75 year event; that is, it would still be overtopped if a 1:100 year (1% annual probability) event occurred. The FZ3 is therefore regarded as a fair reflection of the extent of flooding at a 1% probability.

Flood risk to properties: By virtue of the existing defences, the actual flood risk to the site is effectively limited to events with an annual probability of more than 1.5%. Properties in FZ3 would be subject to flooding, with waters lapping dwellings on the edge of the FZ. The depth of flooding clearly reduces away from the river. Advice on depth, flow and speed would be available from the EA or a detailed site FRA.

A measure of acceptability of risk is provided by the PPG. Table 2 at paragraph 7-066 defines residential development as a ‘*More vulnerable*’ land use, with business and commercial uses defined as ‘*Less vulnerable*’. Table 3 (7-067) adds that, subject to a sequential test, *more vulnerable* uses are appropriate in FZ2, but that an Exception test is required in FZ3, while *less vulnerable* uses are appropriate in both locations.

Access: Vehicular access to the Mill Site is from Northbridge Street. The existing junction lies within FZ3, but at a point in the road protected by flood gates which can be inserted to complete the 1:75 year defence. Hence, it is also defended to that level. However, it is relatively low lying and hence also liable to flooding. While it has been proposed to serve the site from the existing access, it is noted that an earlier proposal<sup>1</sup> incorporated an emergency access at the northern end of the road frontage. This was an acceptable solution then, but this is now also within FZ3. Subject to modelling, such an option may allow access/egress for pedestrians and emergency vehicles in flood events. (NB The question of whether properties are unnecessarily put at risk is addressed under Q3 below.)

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<sup>1</sup> See planning application RR/2007/2576/P and related Listed Building applications

**Question 3: Are the benefits of the redevelopment of a previously developed, brownfield site and the putting to beneficial use historic buildings sufficient to outweigh the presumption against locating what is classed as “more vulnerable” developments in Flood Zone 2 and 3? Is it appropriate to rely upon the Exception Test when it comes to site allocations in a neighbourhood plan if there is land available for residential purposes outside the flood area?**

#### Weighing flood risk against other factors

NPPF, paragraph 101 states: *The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.* Paragraph 102 adds: *‘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.’*

While there may be some tension between the references to *‘reasonably available sites appropriate for the proposed development’* and to *‘consistent with wider sustainability objectives’*, the LPA’s view is that, having regard to NPPF paragraph 100, the focus should be on *‘... directing development away from areas at highest risk, but where development is necessary, making it safe ...’*; hence, only locations that are clearly inappropriate for development on sustainability grounds, having regard to the strategic planning policies of the area should be excluded from sequential testing.

The NP’s SEA provides a useful overview of the relative sustainability merits of available sites, subject to the LPA’s qualifications in respect of some elements (see Rep. 32dd). However, it is not a simple balancing exercise. The NPPF clearly sets the bar high in terms of a justification for preferring higher risk sites, as confirmed by the EA in its letter of 30 August 2017 on the Mill Site current planning application, attached at Appendix 4.

#### The Exception Test and site allocations

The PPG refers to the need to *‘apply the Sequential Test and, where necessary, the Exception Test when determining land use allocations;’* (paragraph 7-010). Hence, in appropriate situations, the Exception Test should form part of the plan-making process.

The Exception Test has two parts; the first requires it to be shown that development will provide wider sustainability benefits to the community that outweigh flood risk, while the second requires demonstrating that development will be safe for its lifetime, without increasing flood risk elsewhere and where possible reduce flood risk overall.

In the context of the Mill Site, there is a case for arguing that it should be treated as having two components – (a) the area in FZ1/2 and (b) the area in FZ3a. However, as the only feasible access is from Northbridge Street, this effectively means the Exception Test should be applied to both components (see Q2 above). The NP reasonably argues sustainability benefits, which brings the debate back to the question of safe access (PPG paragraph 7-039 refers) and the need for further modelling and EA advice.

**Question 4: Is the use of SUDS an acceptable mitigation measures for river flooding as suggested by the Plan's Environment Report? Are there any site-specific mitigation measures to ensure the development remains safe throughout its lifetime?**

SuDS contribution

If SuDS are within FZ3, then they would clearly have no impact on mitigating flooding in a 1:75 years+ event. SuDS on higher (upstream) ground may make a small contribution in terms of the rate of flow into rivers, but this is likely to be inundated in such circumstances in any event.

Mitigation measures

Measures to ensure that a development will be safe for its lifetime would normally be part of a site-specific flood risk assessment for a particular development. The NP is not in a position to do this. While there is a current planning application for the Mill Site, it is still under consideration and more work is required of it in relation to flood risk.

Without prejudice to the determination of that application, it does show the potential to design buildings, including existing ones, to make living quarters above flood levels, to maintain floodable voids and provide routes to higher ground. At the same time, this is not seen as providing a justification for new building in FZ3.

**Question 5: The Local Planning Authority has stated in its representations that it is anxious to see some element of employment space within the Mill Site allocation. The Qualifying Body has stated that it is minded to agree to that? Is such a requirement necessary, and desirable? Are the provisions of paragraph 22 of the National Planning Policy Framework applicable to this site? This presumes against the long-term protection of sites allocated for employment uses unless there is no reasonable prospect of the site being used for that purpose". Is there a reasonable prospect of an employment use being provided if required by the plan policy?**

The LPA's position is set out in its Representations 32b and 32g and elaborated upon in its letter to the Examiner dated 26<sup>th</sup> July 2017.

In these, the LPA accepts that a wholly employment site is not feasible. However, seeking a quantum of business floorspace as part of a mixed use development is considered desirable, as well as consistent with Core Strategy Local Plan policy EC3.

As a 'Rural Service Centre', Robertsbridge offers an appropriate location for further employment space, while the Mill Site has a legacy of employment use and is readily accessible to both the A21 Trunk Road and the Hastings to London mainline railway.

The LPA has drawn on NPPF paragraph 22 in accepting a residential-led allocation but, in order to support the NP's vision which has a component of also being a working environment, it is believed that there is a strong basis for incorporating a modest scale (c1,000sqm) of business units within a policy for the Mill site – which would not reduce the scale of housing outside flood zones.

Moreover, this approach is supported by the statutory Local Plan which has a clear policy basis for retaining employment sites, but where this is not practicable, of pursuing mixed use developments. (Core Strategy policy EC3 refers.)

It is further highlighted that this policy post-dates and was found to be consistent with the NPPF. It is also being reviewed as part of the LPA's 'Development and Site Allocations (DaSA) Local Plan', where the evidence points to its maintenance.

In terms of deliverability, it can only be noted that the current planning application includes a quantum of business floorspace as part of it. Furthermore, the Council is confident that there would be a demand for small/medium-sized units with a total floorspace of c1,000sqm.

**Question 6: If I were to conclude that the Mill site allocation did not meet basic conditions in terms of it being sustainable development and the conflict with flood policy (and I stress I have not come to any conclusions on this point), how should I deal with the question of delivering the houses that need to be built. Should I seek to introduce other sites in the plan area and in which case which ones? What are the implications for taking the plan forward?**

The LPA has previously expressed the view that it was not in a position, on the basis of the available evidence, to come to a view as to the potential or capacity of the Mill Site for residential development due to flood risk issues. At this point, pending clarification of the flood risk, particularly in relation to the access, this situation unfortunately remains the case.

Even if residential development on the Mill Site were accepted in principle following proper assessments, the LPA is of the view that 100 dwellings is highly unlikely to be attainable if new building is limited to outside FZ3, even with the conversion of upper floors of the Mill building (in FZ3), assuming this could be undertaken so as to allow safe access and egress in times of flood. While recognising that proposing an allocation is not the same as determining a planning application, the LPA's wider concerns with the current scheme<sup>2</sup> can be regarded as indicative of those relating to the allocation.

Therefore, there are two basic alternative scenarios depending on the capacity of the Mill Site (which should be further assessed through application of the Sequential and Exception Tests, informed by a flood risk assessment). If the Mill site is found to be justified, then the village's housing target is expected to be met or virtually met. However, if it is ruled out on flood risk grounds, then further allocations of 80-85 dwellings would need to be met from other sites.

These scenarios, essentially providing a summary of estimated capacities of the respective sites, are set out in Appendix 5.

If the Examiner is minded to retain the allocation of the Mill Site, this should be clearly restricted to land outside FZ3 and the reuse of the existing heritage assets. Moreover, given the level of uncertainty at this point regarding access arrangements, then it should be subject to strong criteria in relation to ensuring that the development will be safe and will not increase flood risk elsewhere, covering access and egress, operation and maintenance, building design, flood warning and evacuation procedures, as appropriate. Depending on the level of uncertainty following advice from the EA, it may also be necessary to provide a mechanism for other sites coming forward.

If the Mill Site is not regarded as justifying allocation to any extent in the light of the latest information on flood risk, then it would be appropriate to identify the required capacity on other sites. Reliance on a criteria-based policy for sites is not regarded as providing the requisite certainty in the light of the housing needs of the Parish and District.

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<sup>2</sup> See letter to applicants reproduced at Appendix 6 of RDC letter to Examiner dated 26-7-17

**Question 7: Do the Site GS16 Bishop Lane Fields allocated as Local Green Space in the Plan meet the criteria set out in Paragraph 77 of the NPPF?**

This question is essentially directed at the PC in response to developer representations.

The LPA would only draw attention to its own representation (Ref. 32g) in relation to the extent of LGS designations and its suggestion that an alternative policy approach may be more fitting; namely by covering those areas that form part of the open valleys of the River Rother Valley and its tributaries, including the River Darwell Valley, in a separate policy that sets out the importance of protecting the landscape setting of the valleys through the village, possibly also making reference to the Rother, Brede and Tillingham Woods BOA.

The Bishops Lane Fields would appear to sit comfortably within such a policy framework.

**Question 8: Bearing in mind the differences in ground level between the Vicarage Site and Fair Lane, which is in a Conservation Area, can a satisfactory access be created that will allow full access to the site by the range of vehicles likely to be required to serve a residential development of the scale proposed. Can an illustrative plan be prepared to illustrate an acceptable solution?**

The LPA was alerted to this question through the Examiner's questions to it and the PC. Hence, attention is drawn to its comments on this issue in its response letter of 26<sup>th</sup> July 2017:

'Vicarage site: The QB will be able to advise on its contact with the Highway Authority in relation to access to this site, which is clearly constrained. It may be helpful to refer to East Sussex County Council's representations (ROB/R16/2017/22-22c) to which are attached its earlier comments on the Pre-Submission S&RNDP. In those, it comments on the Vicarage Land at paragraphs 2.3 – 2.8, concluding that "*at this stage the site is not ruled out from a highway perspective*".

From a Conservation Area perspective (see [Conservation Area Appraisal](#)), aside from the Listed Buildings in the locality, the LPA regard the Mission Hall as a non-designated heritage asset. A new access arrangement should not prejudice its retention. Given this, it is not considered that the boundary vegetation makes a significant contribution to the historic character and may be cut back to facilitate an appropriate access for some development. It would remain the case that the characteristics of Fair Lane strongly point to limiting the number of additional vehicle movements.'

It is difficult to add any more ahead of seeing the illustrative plan that has been requested.