Wyre Council Flood Risk Sequential Test: Advice for Applicants

V1.1

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Introduction

As a coastal authority containing major water courses and a large low lying rural area, flood risk is a significant concern for Wyre’s local communities and can act as a constraint to development.


This is supported by more detailed guidance in the form of National Planning Practice Guidance (NPPG) on Flood Risk and Coastal Change, available from http://planningguidance.planningportal.gov.uk/blog/guidance/flood-risk-and-coastal-change/

Both documents state that inappropriate development in areas of flooding should be avoided by directing development away from areas of highest risk through the application of the “sequential test”. This requires local planning authorities to refuse new developments if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.

In terms of the decision-making process, the sequential test is the first stage in addressing flood risk where this is an issue in the determination of a planning application. Both the NPPF and NPPG establish a two part exception test the aim of which is to ensure that wider sustainability benefits and the safety of users of a development are taken into account in the decision-making process.

Potential applicants are urged to satisfy themselves that their proposals are capable of passing both the sequential and exception tests before submitting an application. The Council will refuse applications that fail the sequential test even where the exception test has been passed.

This Advice for Applicants explains how the Council will apply the sequential test. It will be treated by the Council as a material consideration in the determination of planning applications. Applicants may also wish to consult the on-line advice provided by the Environment Agency which this Guidance reflects – see https://www.gov.uk/flood-risk-assessment-the-sequential-test-for-applicants

What is “flood risk”?

For the purposes of applying the sequential test, the definition of “flood risk” is taken from the NPPG and refers to:

A combination of the probability and the potential consequences of flooding from all sources – including from rivers and the sea, directly from rainfall on the ground surface and rising groundwater, overwhelmed sewers and drainage systems, and from reservoirs, canals and lakes and other artificial sources.

This mapping does not take into account the presence of flood defences nor does it account for the potential impact of climate change, including sea-level rise and extreme weather events.

Flood risk is mapped according to the probability of flooding which is expressed in three “Flood Zones”:

<table>
<thead>
<tr>
<th>Flood Zone</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Zone 1 Low Probability</td>
<td>Land having a less than 1 in 1,000 annual probability of river or sea flooding. (Shown as ‘clear’ on the Flood Map – all land outside Zones 2 and 3)</td>
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</table>
| Zone 2 Medium Probability | Land having between a 1 in 100 and 1 in 1,000 annual probability of river flooding; or  
                          | Land having between a 1 in 200 and 1 in 1,000 annual probability of sea flooding.  
                          | (Land shown in light blue on the Flood Map)                                      |
| Zone 3a High Probability | Land having a 1 in 100 or greater annual probability of river flooding; or  
                          | Land having a 1 in 200 or greater annual probability of sea flooding.  
                          | (Land shown in dark blue on the Flood Map)                                      |
| Zone 3b The Functional Floodplain | This zone comprises land where water has to flow or be stored in times of flood.  
                          | (Not separately distinguished from Zone 3a on the Flood Map)                    |

Planning applications within Flood Zones 2 and 3 (a and b) MUST always address the sequential test in line with the approach set out by government policy as elaborated upon in this guidance note.

It is important to note that where a development proposal falls within Flood Zone 1, in some circumstances the sequential test (plus the exception test) may still need to be addressed, for example where there are other flood risk issues within the site.

In some cases the “red-edge” boundary of a proposed development may fall across Flood Zone 1 and Flood Zones 2 or 3. Where this is the case, the application of the sequential test will depend on the nature and layout of the development proposed. In such cases, where “hard” development is proposed to be located in Flood Zone 2 or 3, then the normal approach is that the whole site would be subject to the sequential test. Where an outline application is submitted for a site that includes Flood Zone 1 and zones 2 or 3, the Council will expect an applicant to submit sufficient detail, for example through a site layout, to allow a judgement to be made on the need for a sequential test.

However, where it is proposed to locate “hard” development in the part of the site in Flood Zone 1 only, and assuming there are no other flood risk issues, then the sequential test would not be required.
**Are there exceptions to this rule?**

The NPPF allows for “minor development” to be excepted from the need for a sequential test. The NPPG defines minor development as:

- **Minor non-residential extensions**: industrial/commercial/leisure etc. extensions with a footprint less than 250 square metres.

- **Alterations**: development that does not increase the size of buildings e.g. alterations to external appearance.

- **Householder development**: For example; sheds, garages, games rooms etc. within the curtilage of the existing dwelling, in addition to physical extensions to the existing dwelling itself. This definition excludes any proposed development that would create a separate dwelling within the curtilage of the existing dwelling e.g. subdivision of houses into flats.

The sequential test does not apply to changes of use **except** for changes of use to a caravan, camping or chalet site, or to a mobile home or park home site.

If you have any doubt as to whether or not your proposal falls within this definition, you are strongly advised to contact the Development Management team at Wyre Council for clarification. This will save you the possibility of incurring additional or unforeseen cost and delay should you submit a planning application for a development which is subsequently judged to fall outside of the definition of “minor”, without addressing the sequential test.

**Vulnerability**

The NPPG identifies some uses as so vulnerable that they should not be permitted within Flood Zone 3. Applicants should ensure that their proposals do not involve these uses before undertaking the sequential test.

**Mixed –Use Schemes**

The sequential test for schemes for more than one use will be dealt with on a case-by-case basis. In doing so, the Council will consider:

1. Whether or not the proposal includes “minor development” as defined above or a change of use; and

2. Whether or not the proposed uses must sit together on the same site or whether or not they should be disaggregated for the purposes of identifying alternative sites.

**Who is responsible for the Sequential Test?**

The onus is on the applicant to demonstrate that the sequential test can be passed. The applicant’s responsibility is not limited by lack of information held by the Council.

It is for the Council to consider the extent to which sequential test considerations have been satisfied.
What does the Sequential Test involve?

In applying the sequential test, the NPPG establishes the following principles:

1. The geographical area across which the sequential test should be applied will be defined by local circumstances relating to the catchment area for the type of development proposed.

2. Where there are large areas in Flood Zones 2 and 3 and development is needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives.

3. When applying the sequential test, a pragmatic approach to the availability of alternatives sites should be taken.

There are three basic elements to applying the sequential test in Wyre:

1. The geographical area across which the test is applied.

2. The range of alternative sites to be considered.

3. The definition of “reasonably available”.

The geographical area

For developments that have a sub-regional, regional or national significance, the sequential test area of search will include the whole Borough and areas outside of the borough boundary in line with the catchment area for the development.

For all other applications the normal area of search is the whole borough.

Any departure from a “whole-borough” approach which seeks to apply a reduced geographical area in the search for alternative sites must be clearly and rigorously justified by reference to one or more of the following:

1. Evidence that there is a specific need for the proposed development in that locality;

2. Evidence that the proposed development is needed to sustain an existing community which is wholly or largely identified as lying within Flood Zone 2 or 3, or is otherwise subject to flood risk. This may include reference to Census figures and population decline or to surveys of the take-up of local services/facilities; or

3. The functional requirements of the proposed development as a whole or in part;

It is strongly recommended that applicants agree the geographical area to which the sequential test applies with the Council before submitting a planning application. In relation to (1) above, for the avoidance of doubt, the 2012 Core Strategy Preferred Options document does not constitute an up-to-date expression of the future distribution of housing or other development requirements and carries very little weight in this matter. The Council views residential development of all sizes as a strategic matter which will normally be considered on a whole-borough basis.

In all cases where a reduced area of search is accepted by the Council, the remaining elements of the sequential test need to be addressed and, if possible, agreed with the Council.

**The range of alternative sites to be considered (comparator sites)**

In order for applicants and the Council to be able to consider whether or not there are reasonably available alternative sites appropriate for a proposed development, comparator sites need to be identified and their availability assessed.

It is strongly recommended that prior to the sequential test being undertaken applicants agree with the Council a reasonable comparator site threshold.

For residential schemes, this may be based on site area or capacity. The Council will normally apply a +/-10% buffer to create a range within which comparator sites can be identified. For example, if site capacity is used as the basis for determining comparability, a residential scheme of 20 dwellings would generate a comparator site threshold of 18-22 dwellings.

On the same basis, a scheme on 0.6ha of land would generate a comparator site threshold of 0.54ha to 0.66ha. The method used will depend on the circumstances of the site and proposal. For higher density developments, for instance flats, the size threshold should normally be used. For lower density developments, for instance large detached houses, the site capacity should normally be used. For residential development, in some cases, the Council may wish to apply both site capacity and site size parameters.

For non-residential schemes, the Council will make a case-by-case judgement, having regard to the site area and type and scale of development proposed.

In all cases, the Council will consider whether or not the site size agreed should represent the net or gross developable area of the proposed scheme.

Comparator sites should be capable of accommodating the general objective of the proposed development (for example, the provision of housing) within the agreed thresholds but not necessarily the form or layout.

Where the Council considers that a comparator site is sequentially preferable, this does not necessarily imply that a planning permission for the development in question would be forthcoming on that site.

Applicants can use the following sources to identify comparator sites:
The Saved Policies of the Wyre Local Plan, available at:

The Fleetwood-Thornton Area Action Plan, available at:
http://www.wyre.gov.uk/info/200320/current_planning_policies/424/fleetwood_thornton_area_action_plan

Employment Land Monitoring Report, available at:
http://www.wyre.gov.uk/info/200318/evidence_base

The 2010 Strategic Housing Land Availability Assessment (SHLAA), available at:
http://www.wyre.gov.uk/info/200318/evidence_base

Housing land monitoring information. To assist applicants with the identification of potential reasonably available alternative sites, the Council has published a list of sites with planning permission as of May 2015. To make it more accessible the list has been separately sorted by size and by capacity and is available at:

- Housing sites at 12 05 15 BY CAPACITY
  http://www.wyre.gov.uk/downloads/file/3084/housing_sites_at_12_05_15_by_capacity

- Housing sites at 12 05 15 BY SIZE
  http://www.wyre.gov.uk/downloads/file/3085/housing_sites_at_12_05_15_by_size

Applicants will not normally need to consider undecided planning applications for the purposes of identifying comparator sites.

Please note that in all cases, up-to-date Environment Agency mapping of flood risk should be used to identify the potential flood risk associated with comparator sites.

To ensure a comprehensive approach is taken to the identification of comparable sites, applicants will normally be required to consult professional property agents with demonstrable knowledge and understanding of the local land and property market in Wyre. It is recommended that a minimum of three agents who individually or collectively cover the agreed area of search are used. Where this is not possible, the applicant should evidence that the number of agents used provides appropriate coverage of the agreed area of search and provides a comprehensive view of the market in question. In any event, applicants should provide written evidence (for example e-mails or letters that include company and contact details) detailing the nature and outcome of the contact with agents. The Council will not accept the use of web-based search engines or web-only site searches as the sole means of meeting this requirement.

In some cases, it may be necessary for the applicant to undertake a bespoke survey of potentially available land within the agreed parameters of the Sequential Test.

The definition of “reasonably available”
In accordance with national planning policy, in order for development to pass the sequential test it has to be demonstrated that there are no reasonably available alternative sites appropriate for the proposed development located in areas with a lower risk of flooding.

The Council views reasonably available sites as those that are deliverable and developable (as defined by the NPPF, para. 47 and footnotes 11 and 12) for the uses proposed and:

1. Lie within the agreed area of search; and
2. Are within the agreed comparator site threshold; and
3. Can accommodate the general requirements of the development; and
4. Are, in principle, in conformity with the objectives and policies of the Adopted Development Plan and the objectives and policies of the National Planning Policy Framework and its associated National Planning Practice Guidance (or similar), including those relating to flood risk and relevant aspects of climate change, where they offer more up-to-date guidance.

The Council would normally accept that a site is not reasonably available if:

1. It contains an existing operational or business use unless a planning approval for development proposes to extinguish that use; or
2. It has a valid planning permission for development of a similar type and scale which is likely to be implemented.

Evidence that a planning permission is likely to be implemented can include:

1. The discharge of conditions (or the submission of an application to discharge conditions); or
2. Indication from the landowner(s), applicant or developer that a development is being brought forward; or
3. The approval of reserved matters (or an application for reserved matters).

Where contact has been made with a landowner under (2) above, applicants should detail the nature and timing of this contact and where possible provide the name of the owner in question. If a landowner is unwilling to make the site available for the use in question, then written evidence of this should be provided where possible. The Council reserve the right to adopt due diligence in such cases and may contact landowners to verify site availability.

Applicants are advised to submit as much detail as possible on the search for alternative sites to avoid delays in the planning process. The following information should be submitted as a matter of course:

- A map and statement identifying and justifying the area of search;
- A map of all sites considered; and
• A statement detailing known relevant information on each site. This may include matters such as size, ownership and constraints. This may be presented in tabular format with a statement outlining the conclusions.

Statements on the non-availability or unsuitability of a comparator site for whatever reason, including the presence of constraints or viability issues, will need to be justified and evidenced in writing.

Applicants are reminded that this is not a test of relative sustainability between different sites. The fact that a comparator site is considered to be less sustainable by reference to factors such as location and proximity to local services, is not in itself a justification for supporting the development of a site in an area at risk of flooding. It is clear from the National Planning Policy Framework that avoiding development in areas at risk of flooding where possible and appropriate is itself an important aspect of sustainability. Evidence should be as comprehensive as possible where the presence of a constraint is being used to discount a site from the search process. Where possible a photographic record of any constraints present should be provided. The Environment Agency provides guidance on the nature of constraints that may render a site unsuitable as a comparator site. These include:

• Physical problems or limitations;
• Potential impacts of development; and
• Environmental conditions that would be experienced by potential residents.

Local plan designations may also be a constraint to development.

The Council will take a proportionate and reasonable approach to the need for supporting evidence. However, it must be borne in mind that it is for the applicant to provide sufficient information to allow the Council to make a reasoned judgement as to whether or not the sequential test has been passed. The Council may refuse applications where this information is considered to be deficient.

The Test of Impracticality

As noted above, the NPPG states that when applying the sequential test a pragmatic approach to the availability of alternatives sites should be taken. It gives an example of a planning application for an extension to an existing business premises and suggests that it might be impractical to suggest that there are more suitable alternative locations for that development elsewhere.

Not all development is stand alone or involves a cleared site. As the NPPG suggests, in some cases developments may involve an extension to an existing use. A development proposal may also involve the intensification or partial re-development (in whole or part) of an existing use.

In such circumstances, and particularly where the proposal involves an existing business premises or operation, it may well be impractical to identify comparator sites. Where possible, and by reference to appropriate evidence, this should be agreed with the Council prior to the submission of a planning application. Where the Council does agree that it is impractical to identify comparator sites, applicants should still address this issue under the
heading of “sequential test”, with appropriate evidence, such as a statement of operational circumstances, as part of the planning application. Even where it is accepted that the identification of alternative sites is impractical, applicants are reminded that consideration of the exception test may still apply.

Conversions, Changes of Use and Alterations

The NPPG states that the sequential test does not need to be applied to minor development or changes of use (except for a change of use to a caravan, camping or chalet site, or to a mobile home or park home site). Conversions are not specifically considered although the NPPG states that the creation of a separate dwelling within the curtilage of an existing dwelling – for instance the sub-division of a house into flats – cannot be considered “minor development”.

Given that the NPPG excludes changes of use from the need to undertake a sequential test, and given the need to allow flexibility within existing stock of dwellings and other buildings to allow their efficient and effective use, for the purposes of this guidance note conversions and changes of use are exempt from the need to undertake a sequential test. This exemption includes the sub-division of dwellings.

It should be noted that in applying this guidance the Council will have regard to the scale of any proposed alterations. The NPPG makes it clear that only alterations that do not increase the size of a building can be classed as “minor development”. However, householder development that consists of a physical extension is an exception to this general rule and falls within the definition of minor development.

Applications for residential development – the 5 year land supply position and the sequential test

NPPF Para 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year supply. However, the NPPF also specifically recognises that flood risk can be considered to be a constraint to development and therefore the approach to steer development away from flood risk areas in the NPPF still has considerable weight even in the absence of a 5 year land supply. Thus the Council will not accept a lack of five year supply as an argument for disregarding the need to address the sequential approach to development in an area of flood risk.

Further Advice

Pre-application advice on the applicability and conduct of the sequential test in relation to specific development proposals is available from Wyre Council Planning Department. The Council may charge for this service. Further details of the charges to be applied in relation to the flood risk sequential test are available from http://www.wyre.gov.uk/downloads/file/2864/flood_risk_sequential_test_charging_schedule