



Town and Country Planning Act 1990
Section 78 Planning Appeal

London Borough of Hillingdon Appeal Statement

Appeal By:

Mr Richard Conroy

Proposal:

Change of use of existing single family dwellinghouse into 2 dwellinghouses with associated external and internal amendments

Appeal Site:

7 MEADOW CLOSE, HA4 8AP

Our Ref:
Your Ref:

75385/APP/2024/878
APP/R5510/W/24/3351400

1. Introduction

- 1.1 This appeal statement is submitted by the London Borough of Hillingdon, as the Local Planning Authority (LPA), in respect of the appeal against its refusal to grant planning application reference 75385/APP/2024/878 for the change of use of existing single family dwellinghouse into 2 dwellinghouses with associated external and internal amendments.
- 1.2 The LPA refused planning permission on 12-06-24 for the following reason (as stated on the decision notice):
 - 1.2.1 The Local Planning Authority considers that the applicant has failed to provide robust evidence to demonstrate that there are no other sequentially preferable alternative sites for the proposed development besides the application site which lies in Flood Zone 2. The proposal, therefore, does not pass the sequential test. The proposal would fail to steer new development away from areas at the highest risk of flooding, contrary to Policy EM6 of the Hillingdon Local Plan: Part 1 - Strategic Policies (2012), Policy DMEI 9 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020), Policy SI 12 of the London Plan (2021) and the NPPF (2023).
- 1.3 The LPA's case is set out in the Planning Officer's delegated report, which should be read in conjunction with this statement.
- 1.4 This statement will not repeat the delegated report and will focus on addressing matters raised in the Appellant's statement of case.

2. LPA Comments on Appellant's Statement of Case

- 2.1 Within their statement of case the appellant has raised the following summarised points:
 - **Sequential Test Exemption:** The appellant argues that the change of use from a single dwellinghouse to two dwellings is exempt from the sequential test, as it qualifies as a 'change of use'. The appellant cites Paragraph 174 of the NPPF (2023), which states that changes of use are generally exempt from the sequential test, particularly when they do not involve vulnerable land uses (e.g., caravan sites or mobile homes).
 - **Change of Use Within Same Vulnerability Classification:** The appellant further argues that, since the development involves a change of use within the same vulnerability classification (i.e., residential to residential), the sequential test should not be applied.

Taking into consideration these points the appellant believes the proposed scheme to be acceptable. The LPA's responses are set out below.

- 2.2 The appellant contends that the proposed development, located within Flood Zone 2, does not require a sequential test, arguing that it qualifies as a change of use under Footnote 60 of Paragraph 174 of the NPPF (2023), which generally exempts changes of use from the sequential and exception tests. However, the Council maintains that a sequential test is necessary for this proposal, as it represents not just a change of use but an intensification of use. Converting a single dwelling into two separate residential units increases the number of residents and the demand on existing infrastructure, thereby intensifying the flood vulnerability of the site.
- 2.3 The National Planning Practice Guidance (NPPG) complements the NPPF by providing more detailed, practical advice on how the policies within the NPPF should be applied in practice. The current appeal does not meet any of the definitions of 'minor development' in relation to flood risk that are outlined within the National Planning Practice Guidance (NPPG). Furthermore, this guidance is clear that the definition of householder development excludes any proposed development that would create a separate dwelling within the curtilage of the existing dwelling (e.g. subdivision of houses into flats) or any other development with a purpose not incidental to the enjoyment of the dwelling. This is not considered to be altered by Footnote 60 of the NPPF. It is therefore clear that a sequential approach still needs to be applied to the development, as acknowledged at previous appeal decisions (Ref: APP/R5510/W/22/3292951)
- 2.4 Paragraph 014 of the NPPG, Reference ID: 7-014-20220825 confirms that change of use within the same vulnerability classification can also increase the vulnerability of the development, for example the sub-division of a home into more residential units by introducing more people. If the change results in increased flood risk through an intensification of residential use through additional units, a sequential test should be applicable. In the case of subdividing a dwelling, the increase in occupancy can raise flood risk even when the change remains within the same vulnerability classification (i.e., residential to residential). The purpose of the sequential test, as outlined in NPPF (2023, Paragraph 168), is to direct development away from higher flood-risk areas.
- 2.5 This is supported by paragraph 23 of the NPPG which state avoiding flood risk though the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warning and property level resilience features. Even where floor risk assessment shows the development can be made safe through its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. The guidance goes on to state that the plan-making and decision-making process ensures that development is steered to the lowest risk areas, where it is compatible with sustainable development objectives to do so.
- 2.6 Therefore, the LPA would argue that as per the previous appeal decision, the sequential test would still be applicable as the scheme increases the number of units within an area prone to flooding risk.
- 2.7 The NPPG acknowledges that while changes of use are generally exempt from the sequential and exception tests however local authorities must assess whether such changes are acceptable in flood-prone areas, especially when they may intensify flood vulnerability. The guidance stresses the importance of considering the Strategic

Flood Risk Assessment (SFRA) and ensuring that developments are designed safely, with adequate emergency planning.

- 2.8 This guidance aligns with Hillingdon's Local Plan policies, particularly Policy EM6 and Policy DMEI9, which require the application of the sequential test in areas of flood risk. Policy EM6 restricts development in Flood Zones 2 and 3 unless exceptional circumstances apply, while Policy DMEI9 stipulates that a sequential test must demonstrate the availability of alternative, lower-risk sites. Therefore, despite the change of use remaining within the same vulnerability classification, the intensification of residential units justifies the need for the sequential test to be applied.
- 2.9 The sequential test is clearly applicable in cases where the proposal involves a change of use which increases vulnerability within Flood Zones 2 or 3. This approach has been applied in various appeal decisions, including a recent appeal (APP/R5510/W/22/3292951 – See Appendix 2) concerning the very same site, reinforcing the importance of the sequential test when development is proposed in flood-prone areas.

In the previous appeal, the Inspector noted that while the development proposed involved the construction of a pair of semi-detached dwellings, the building footprint remained the same as that of the previously approved dwelling. Despite this, the Inspector concluded that the proposal resulted in the intensification of occupation on the site, thereby increasing the site's flood vulnerability. As the Inspector stated:

"Having housing allocations on sites at a greater risk of flooding than the appeal site does not necessarily demonstrate that there are no other sites at lower risk of flooding than the appeal site, particularly when the proposal relates to just one net additional dwelling. Indeed, given the potential flexibility of sites in their capacity to accommodate a single dwelling, I concur with the Council's conclusion that it has not been adequately or robustly demonstrated that there are no available sites at lower risk of flooding."

This reasoning directly applies to the current proposal, where the change of use involves an increase in residential units, thereby intensifying the occupation and flood risk of the site. Despite the footprint remaining unchanged, the addition of another dwelling increases the vulnerability of the site to flooding and necessitates the application of the sequential test.

As seen in the appeal decision, the failure to adequately demonstrate the availability of lower-risk sites can lead to the refusal of the proposal, further underscoring the necessity of the sequential test in this application.

- 2.10 The Council can demonstrate a robust five-year supply of deliverable housing sites across the borough. Hillingdon's most recent 'Five-Year Housing Land Supply Statement' confirms a 6.5-year supply of deliverable housing sites (rounded), significantly exceeding the requirements set out in the National Planning Policy Framework (NPPF, 2023).

Given this, it is not deemed necessary to approve schemes that are at risk of flooding, as the borough is already meeting its housing delivery obligations without

compromising other critical planning considerations, such as flood risk and sustainable development principles.

- 2.11 The appellant has submitted a Flood Risk Assessment (FRA) arguing that the sequential and exception tests are not required. The NPPG makes it clear that a change of use that creates separate dwellings increases the vulnerability onsite and that local authorities must assess whether such changes are acceptable in flood-prone areas and therefore should still be subject to the sequential test. The appellant's failure to robustly demonstrate that no suitable alternative sites exist in lower flood risk areas highlights the need for a more thorough assessment.
- 2.12 The examples cited by the appellant do not set a relevant precedent for the current application, primarily due to differences in the site context, nature of the developments and the flood risk.

Furthermore, the current Hillingdon Local Plan policies (adopted in 2020) and the National Planning Policy Framework (NPPF, 2023) specifically call for a sequential test in cases where there is a change of use that intensifies residential use, particularly in flood-prone areas. Local policies such as EM6 and DMEI9 emphasise the need for a sequential test in these cases, ensuring that flood risk is adequately assessed and managed, and no suitable lower-risk sites are available.

Therefore, there is no justification to bypass the requirement for the sequential test, each case should be assessed and determined on its own merits and the policy sets a clear position on why a sequential test is required. There is no sufficient evidence placed before Officers to demonstrate why a departure from the policy requirement should be accepted.

- 2.12 In conclusion, as per the previous dismissed appeal decision, the sequential test should be applied to this development, as the proposal constitutes a change of use that results in an intensification of residential use in Flood Zone 2. The appellant's failure to adequately demonstrate that no sequentially preferable alternative sites exist at lower flood risk justifies refusal under Policy DMEI 9 of the Hillingdon Local Plan: Part 2 - Development Management Policies (2020), Policy SI 12 of the London Plan (2021), and the NPPF (2023). The appellant's claim that no sequential test is required is inconsistent with both national and local flood risk policies and does not reflect the need for robust flood risk management in light of the intensification of residential use on the site.

3. Other Matters

- 3.1 The officers delegated report and copies of the relevant planning policies (referenced in the delegated report) have been sent separately.
- 3.2 The LPA's assessment of the application was carried out in accordance with the relevant flood risk policies, including the National Planning Policy Framework (NPPF), the National Planning Practice Guidance (NPPG), and the local development plan.
- 3.3 An updated Flood Risk Assessment (FRA) was provided by the appellant on the 10th of June 2024. It is titled 'Flood Risk Assessment May 2024 ref:

241817/FRA/AG/KBL/01', which was reviewed by the LPA. The updated FRA does not provide a sequential test. It states the sequential test and exception test are not required for the subdivision of the existing dwelling into 2 dwellings, as it is a change of use. However, as the development involves increases in the vulnerability of the site through the intensification of the use within a flood risk area, the LPA determined that a sequential test was still required in accordance with policy.

4. Conclusion

- 4.1 For the reasons outlined in the officer's delegated report, and in response to the appellant's statement of case, the LPA respectfully requests that the Inspector dismiss the appeal.
- 4.2 The LPA maintains that the proposed development constitutes a change of use that increases the vulnerability on the site, which falls within Flood Zone 2, and as such, is subject to the requirements of the sequential test as set out in the NPPF, NPPG and local guidance. The failure to comply with this requirement was the primary reason for the refusal of the application.
- 4.3 The appellant's assertion that no sequential test is required for this development is not consistent with national and local planning policies. As such, the LPA's decision to refuse the application should be upheld.

Appendices

Appendix 1 – The LPA's Recommended Conditions

Appendix 2 – 7 Meadow Close Appeal Decision, ref:
APP/R5510/W/22/3292951