



Appeal Decision

Site visit made on 6 January 2026

by **C Harding BA (Hons) PGCert PGDip MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27th February 2026

Appeal Ref: APP/U2750/W/25/3374932

46c Dove Way, Kirkbymoorside Industrial Estate, Kirkbymoorside YO62 6QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Sid Brackley against the decision of North Yorkshire Council.
 - The application Ref is ZE24/05184/FUL.
 - The development proposed is erection of 2no General Industrial Units.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 2no General Industrial Units at 46c Dove Way, Kirkbymoorside Industrial Estate, Kirkbymoorside YO62 6QR in accordance with the terms of the application, Ref ZE24/05184/FUL, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with drawing nos:
Proposed Drawing 2278-401-A
Site Location Plan 2278/LP
 - 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on plan no. 2278-401-A.
 - 4) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
 - 5) No part of the development must be brought into use until the approved access, parking, manoeuvring and turning areas and cycle parking have been constructed and are available for use. Thereafter, these areas must be maintained clear of any obstruction and retained for their intended purpose at all times.

- 6) Prior to first occupation, the development hereby approved shall have been constructed in accordance with, and incorporate, the following flood resilience measures:
 - a) a finished floor level of at least 37.919m AOD
 - b) no voids, other than doorways, in the external walls within 900mm of the floor construction level
 - c) a steel portal frame construction
 - d) all cables to be routed at high level with vertical drops to fittings
 - e) any air bricks shall be 'smart air bricks' incorporating a self-closing mechanism
 - f) non-return valves installed on drainage systems and pipework to prevent the ingress of water by backflow.

Thereafter, the installed flood resilience measures shall be retained and suitably maintained.

Main Issue

2. The main issue is whether or not the proposal would be acceptable in respect of flood risk having regard to national and local policies and guidance.

Reasons

3. The appeal site relates to an area of land located within an existing industrial estate and adjacent to an existing industrial unit. The site and surrounding area is broadly flat in nature. The River Dove is located to the east of the industrial estate, beyond a road.
4. National Planning Policy Framework ('Framework') paragraph 170 states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Framework paragraph 173 states that a sequential risk-based approach should be taken to individual applications in areas known to be at risk now or in the future from any form of flooding.
5. Framework paragraph 174 clarifies that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source, and that development should not be allocated or permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test.
6. At paragraph 175, the Framework sets out that the sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future.
7. The Council's evidence indicates that the appeal site and the wider Kirkbymills Industrial Estate is allocated for employment uses within the Ryedale Plan 2013 ('RP'). Framework paragraph 180 states that where planning applications come

forward on sites allocated in the development plan through the sequential test, applicants need not apply the sequential test again.

8. Even if I were to adopt the Council's position of the site being at high risk of flooding as identified within the Scarborough Borough and Ryedale Level 1 Strategic Flood Risk Assessment 2021 ('SFRA 2021'), this evidence post-dates the allocation of the site for employment purposes within the RP. There is no evidence before me to suggest that the level of flood risk substantially changed between the site's allocation in 2013 and the more recent SFRA 2021. Indeed, there is no evidence before me at all in relation to the assessment of flood risk during the employment land allocation process at that time.
9. It is stated that the Council, within its Local Plan Sites Document 2019 ('LPSD'), made no provision for any further expansion of Kirkbymills Industrial Estate. However, this document has not been provided to me, and it is unclear whether this approach was wholly based upon flood risk or whether there were other factors that were considered. Furthermore, the stated lack of provision for further expansion of the Kirkbymills site does not necessarily indicate that additional development within the original RP allocation would now be considered unacceptable, or that the allocation has been superseded.
10. Therefore, there is no reason for me to doubt that the issue of flood risk was appropriately taken into consideration in the original allocation of the appeal site for employment purposes, as was required, or that the allocation remains. On this basis, and having regard to Framework paragraph 180, there is no requirement for the sequential test to be re-applied in relation to the current proposal.
11. However, Framework paragraph 180 also states that the exception test may need to be applied if, among other reasons, more recent information about existing or potential flood risk should be taken into account. Given the more recent Environment Agency ('EA') modelling data and the SFRA 2021, this would be the case in this instance.
12. I am therefore taken to the Flood Risk Vulnerability Classification set out at Annex 3 of the Framework. The appellant identifies that this identifies buildings used for general industry should be considered as "less vulnerable", and I have no reason to disagree.
13. Planning Policy Guidance (PPG) includes a matrix which sets out scenarios where an exception test may be required, having regard to development vulnerability and flood zones. For less vulnerable development it does not require exception tests to be undertaken in any scenario, although it does indicate that less vulnerable development in Flood Zone 3b should not be permitted.
14. It is not a matter of dispute that the appeal site is identified within the EA's flood map as being within Zone 3, although I note that this is based upon 2023 data and is no longer being updated. The EA data which is before me does not subdivide Zone 3 into Zones 3a and 3b, however the SFRA 2021 identifies that the appeal site lies within Flood Zone 3b which forms part of the functional flood plain.
15. The FRA refers to the more recent EA flood data for rivers and seas which became available in 2025 and provides a finer grain of modelling than available previously. It takes account of climate change scenarios, and with and without existing flood defences. The FRA concludes that this data, although continuing to identify that a

level of flood risk exists, finds that this level of risk, taking account of likely extent and flood depth, is very low. This conclusion is not disputed by the Council, whose evidence makes no reference to this most recent data.

16. On this basis, I find that the most recent flood risk data indicates that the appeal site is not located within an area at a high risk of flooding. Accordingly, an exception test is not required, and there is no suggestion that the proposal would increase flood risk elsewhere.
17. Bringing the above together, the proposal would be acceptable with regard to flood risk. It would accord with Policy SP17 of the Ryedale Plan, which states that flood risk will be managed by undertaking a risk based sequential approach, with full account being taken of the flood risk vulnerability of proposed uses and the application of the exception test, where required.

Conditions

18. The Council has provided a list of suggested conditions, which I have considered and varied the wording where necessary, to ensure precision and compliance with the Planning Practice Guidance and Framework paragraph 56.
19. I have attached conditions relating to the standard time limit [1] and to list the plans [2] in the interests of certainty. Condition [3] relates to ensuring that suitable materials are used in the construction of the proposal in the interests of the character and appearance of the area. Condition [4] relates to management of unexpected land contamination and is necessary in order to ensure adequate conditions for future occupiers of the proposed units. Condition [5] relates to the provision of adequate access and parking and is necessary in the interests of highway safety.
20. Although not suggested by the Council, I have also attached a condition [6] which requires the development to be carried out in accordance with the flood risk mitigation measures set out within the FRA. This is necessary, as although the risk of flooding has been shown to be low, a residual risk would nevertheless remain and would require mitigation.

Conclusion

21. For the reasons given above, the proposal would be in accordance with the development plan as a whole. There are no material considerations, including the Framework, that indicate that a decision should be taken other than in accordance with it. Therefore, I conclude that the appeal should succeed.

C Harding

INSPECTOR