

John Mook, Representer Number ID853475.

Ref: Council Response EX15

Church Cliff Drive, Filey – SiteHA23 (Flooding Information).

1. Response to SBC Ref: EX15 – Site HA23 Flooding Information

The view of residents who have responded is NOT taken solely from the Strategic Flood Risk Assessment (SFRA) 2010 (CSD-27).

The Strategic Housing and Employment Land Availability Assessment (SHELAA) May 2015 SHELAA is a technical document used to identify potential sites for housing this document is within the National Planning Policy Framework (NPPF)

Site Ref: 03/D. Local Plan Ref:03/06 states: “Filey should be considered as a Flood Zone 3 until determined otherwise.”

The council does NOT dispute this (Reference point 2, EX15) and show no evidence that the classification has changed. In addition the Council does NOT consider this in their Housing Land Selection Methodology Assessment (HLSMA) site assessment (HLSMA - May 2016 – CSD-6 - Appendix C - pages 12-20).

The contention of residents and experts from the very start of the proposed site allocation and assessment process is that HA23 is an area identified as flood zone 3 and is therefore classed as having a high risk of flooding. Flood zone 3 should follow Flowchart 3 (Ref SFRA, page 238) where the first question identifies which sub-section of zone 3 the site is actually located in. Following the SFRA guidance for flood zones 3 through Section 6. (Ref: 6.2.2) HA23 matches the criteria of a flood zone 3b. Zone 3b should be dismissed in stage A of the HLSMA assessment process. This was raised by residents in previous statements at Draft and Proposed Stages and by Dr Emily Agus (M Eng (Hons), Phd, AIEMA, Respondent Number 858480), who is a professional qualified to undertake land and environmental assessments.

This statement is important as flood zone 3 has not been considered in the HLSMA for Site HA23 as the council is only using the Environment Agency map classification that it is a Flood zone 1.

The HLSMA May 2016 for site HA23, Question 4 asks “Does the site lie within an area considered to be unsuitable due to its position within a flood risk zone (high risk)?” The answer given by council officers is ‘NO’ which is low risk. However, considering all the supporting information SFRA and SHELAA on flood risk for this area, the answer should be ‘Yes’.

This links to HLSMA question 7 that states. “Where one of the above questions may be answered ‘Yes’ the site should be dismissed.” This is supported by Explanation BP-3, pages 52-53.

Following the SFRA precautionary principles, a Sequential Approach and or Exception Test must be taken. Areas classified as flood zone 3, are subdivided into zones 3a (i), 3a (ii) and 3a (iii) and 3b. High risk areas identified as flood zone 3b are recommended to be removed at Stage A of assessment. This is supported by the flowchart process in Appendix F of the SFRA.

There have been no material changes to this area since the report was compiled, so at this moment in time the area is considered a flood zone 3 until determined otherwise.¹ Officers have a legal obligation to follow NPPF and PPG policies and it seems in this case they have not fully considered all the pertinent information and reports to assess the site. Residents feel officers are in breach of the Planning Policy Summary 25 (PPS25), approach and methodology. (See Executive Summary, pages i-iii (CSD-27) and NPPF.

To make the Local Plan compliant, justified and consistent with National Policy Site, HA23 should be removed and replaced with a more suitable site for development, as recommended in the Sequential Approach and Flowchart Procedure within NPPF and PPG Policies 100 and 101.²

2. Other issues Following the Council's Flood Zone 1 Status.

Council officer's state: "The housing allocation assessment is based on the evidence at hand," however they have ignored other contributing factors in the SFRA which change the assessment criteria:

Other critical omissions in the assessment are the area identified by the Environment Agency as a Critical Drainage Area, (CSD-27, Drawing 11.12 page 189). Plus a Ground Water and Surface Water Runoff Flood Risk Zone, (CSD-27, Drawing 6.3 page 145). The proposed site HA23 is located in this area making the site high flood risk, SFRA 7.7 page 53.

Forward Planning Recommendation A in the SFRA, Areas at risk of surface water and/or ground water flooding states: "A sequential approach to site allocation should be made to this zone" and follow the SFRA Flowchart 4, page 239 in Appendix F. The officers have not considered in their assessment the area as Critical Drainage Area and Ground Water and Surface Water Runoff Flood Risk Zone! If you add these to the flood zone 1 they have determined for HA23, then the assessment criteria changes within the recommendations of the SFRA for flood risk areas from low risk to high risk. This is explained in SFRA Section 7.7 which then qualifies the site to follow the Sequential Approach and the SFRA Flowchart 4, page 239 in Appendix F.

SFRA Flowchart 4 asks the questions:

1: "Is the potential site (HA23) at risk of Surface water/Ground water flooding?" If the answer is 'YES' as determined above by CSD-27 then the advice given is for officers to consider an alternative less vulnerable site.

2: "Is the potential site (HA23) located in a Critical Drainage Area?" If the answer is 'YES' as determined above CSD-27 then the advice given is for officers to consider an alternative less vulnerable site.

Officers have a legal obligation to follow NPPF and PPG policies, it seems in this case they have not fully considered all pertinent information and reports to assess the site accordingly. Residents feel

¹ See my statement to the Inspector Matter 1 Issue 1.6, HA23 attached as Appendix A below.

² See my statement to the Inspector Matter 2 (HA23) evidence of sites more suitable for development around File, attached as Appendix B below.

officers are in breach by not complying with National Policies, Recommendations in the Sequential Approach and Flowchart Procedures.

The points above would also change the HLSMA at assessment stage A and these points would then relate to HLSMA Assessment Question 4, so that the area would be classed as a high flood risk area and the answer to this question would be 'Yes.' Considering all the supporting information from the SFRA and SHELAA on flood risk for this area and previous local knowledge submitted at draft and proposed consultation, the answer should be 'Yes' resulting in HA23 being dismissed through the precautionary principles, sequential approach and the SFRA Flowchart 4 process.

This links to HLSMA Question 7 that states "where one of the above questions may be answered 'Yes' the site should be dismissed."

To make the Local Plan compliant, justified and consistent with National Policy, site HA23 should be removed and replaced with a more suitable site for development as recommended in the Sequential approach and Flowchart procedure within the NPPF and PPG Policies 100 and 101.³

3 Other relevant flood risk information.

The SFRA recognizes the Environment Agencies Flood Zone 1 Map as shown in the extract EX15. The SFRA then give extra recommendations on the areas of Filey (11.5 to 11.5.8 SFRA) that need to be protected and some of these areas are within the Filey Flood Alleviation Scheme (FFAS) Plans. Reference is made to section 11.5.8 which recommends that NO DEVELOPMENT take place in areas identified at risk of flooding until alleviatory measures are in place and that development on potential sites of flood storage areas should be avoided. Site HA23 is within this area and meets these criteria.

Additional supporting evidence that HA23 is within a high risk flooding zone is provided by:

Filey Town Council supports this SFRA 11.5.8 statement. Ref: SBLP384 – ID46762.

Flooding incidents are highlighted in the supporting 'Location of Incidents' map, Internal and External flooding (Especially Church Cliff Drive Farm Area over the road from HA23). Atkins Map 500253/WA/FO17 (CSD-27).

Officers state in (Reference point 1 - EX15) that the Landowner has provided bunding to reduce surface water runoff into surrounding areas, this bunding is ineffective due to lack of maintenance and highlights the flood risk in this area. Flood water from this site contributed to the internal flooding of properties in Church Cliff Farm area as shown in 'Location of Incidents' map above. Emphasizing the SFRA recommendations Section 11.5.8

Scarborough Borough Council Planning application for the FFAS has been granted. Planning Ref: 15/02657/RG3. See Area 1 sitemap PB1154/9005

³ See my statement to the Inspector Matter 2 (HA23) evidence of sites more suitable for development around Filey, attached as Appendix B below.

The FFAS Plan shows the extent of Flood Alleviation Flood Protection Works in HA23. Due to the technical design of the Filey Flood Alleviation Scheme the residential areas around site HA23 will be fully protected from potential flooding when completed.

Statement by Respondent Mr John Mook - ID Number 853475 - Matter 1 Issue 1.6 (HA23) (Appendix A below).

Even after completion of the FFAS, the area HA23 will still meet the definition of being in a flood zone 3b as explained in the SFRA 6.2.2. The Lidar model clearly supports this assertion.⁴ This highlights the area of storm water storage /ponding and shows flood depths could be Between .5 to 1 meter deep at times of flooding. This area would not pass the assessment for a high risk flood zone following the NPPF, PPG Policies and SFRA.

SUMMARY:

The SBC Sustainability Appraisal Doc (EX6R- SA) states that the target is for NO new development in *High Risk Flood Zones* and that any plan should be consistent with National Policy. It is clear that officers are in breach of National Policy in this site HA23 assessment. These observations are supported by Dr Anthony Verduyn, who has relevant professional experience. Representor number: 960166.⁵

APPENDIX A.

John Mook

***Representor Number ID
853475***

Matter 1 issue1.6 (HA23)

WRITTEN HEARING STATEMENT

The Inspector has raised question item No 15: 'Have all the sites allocated in the Plan been subject to flood risk assessments, this is unclear?'⁶

It is the contention of residents that HA23 has been grossly mis-assessed because the officers have not followed the guidelines laid down in the NPPF, PPG and SFRA. In particular the HLSMA Question 4 "Does the site lie within an area considered unsuitable due to its position within a Flood Risk Zone?"

⁴ See my statement to the Inspector Matter 1 Issue1.6, HA23 attached as Appendix A below which includes a copy of the Lidar Model in Appendix 1 attached to my statement, below.

⁵ See my statement to the Inspector Matter 1 Issue1.6, HA23 attached as Appendix A which includes a statement by Dr Anthony Verduyn in Appendix 2 attached to the statement by Mr.Mook.

⁶ Reference EXR1.

The answer should be YES, this links into question 7: consequently HA23 should be immediately dismissed. To support this, reference is made to the SFRA that directly address HA23:

The methodology and procedures followed have been deficient.

Scarborough Borough Council is in agreement with Arup the Independent experts commissioned to undertake the Northeast Yorkshire Strategic Flood Risk Assessment (SFRA) that Filey is considered a flood zone 3 until determined otherwise.⁷

When the SFRA was compiled, HA23 was not considered within Filey's settlement limits. Therefore there was no need to report or document any flooding that had previously taken place on the HA23 site. Even within settlement limits the area was defined as flood zone 3. Yet officers in the HLSMA have allocated the site as flood zone 1. This is erroneous as there have been documented flooding on previous occasions.⁸ In addition there is the key statement in SFRA Filey Section 11.5.8 'Guidance on Land Use Planning and Flood Risk' which states: "Development on the potential sites for flood storage areas upstream of Filey should be avoided, in order to ensure that potential for future flood alleviation works is not compromised".

To further support the proposal that the officers have mis-assessed the site and not considered pertinent facts, reference is made to the following sections in the SFRA:

Section 5.2.4.3: Surface water flooding within Scarborough Borough in particular surface water runoff problems have been reported in Filey, over the proposed site HA23.

Section 6.2: Mapping PPS25 Flood Zones; The Environment Agency Flood Zone Maps DO NOT Identify flood zones 3a and 3b. and therefore are not consistent with the SFRA.

It is important to consider, as stated above, that the SFRA considers Filey to be in a flood zone 3, subdivided into zones 3a and 3b. This is significant because in the SFRA:

Section 6.2.1: All currently developed sites within a flood zone 3 are defined as zones 3a(i) 3a(ii) and 3a(iii) sites within a developed area. For example the adjoining streets Wooldale Drive and Church Cliff Farm are defined as zone 3a(i).

Section 6.2.2: Defines a flood zone 3b as: "all areas within Flood Zone 3 which are LOCATED OUTSIDE of currently developed sites and are not defended to a proven standard of protection of at least 5%". This includes all floodplain areas behind agricultural flood banks and land to provide flood storage and conveyance. HA23 meets the criteria of being in a flood zone 3b.

⁷ See Examination Doc [CSD27] SFRA page 96, Filey sections 11.5 to 11.5.8. Also see my submission to the proposed plan stage Appendix A5 dealing with SHELAA (Sept 2014).

⁸ Also see my submission to the proposed plan stage and Appendix A4 that refers to the statement by Mr Hand, Scarborough Forward Planning Officer in Filey Town Council minutes 1st Sept 2014 who made the point that it is in a flood zone 3. This is a continuation of the statements in the SFRA which point out that no new developments should take place in areas of flooding or areas that have previously flooded.

Even with the Filey Flood Alleviation Scheme in place, the southern end of HA23 will be exposed to flood protection flood water storage/ ponding⁹. So development will incur costs of a storm water attenuation system, which links to the viability of the development.

Table 7.1 and 7.2: Provides information that developments should meet. PPS25 states that Flood Zone 3b is appropriate for 'Water Compatible' development types only (see table 7.1). 'Essential Infrastructure' development types are only considered appropriate if the requirements of the Exception Test are passed. According to SFRA table A1 and A2¹⁰ a housing development is not classified as 'Essential Infrastructure'.

Due to the technical design of the Filey Flood Alleviation Scheme the residential areas around site HA23 will be fully protected from potential flooding. However, according to the Lidar Model¹¹ submitted it is clear that HA23 will be subject to flood protection flood water storage/ ponding and will therefore still remain classified as a flood zone 3b.

Sections 6-8.6: Irrespective of whether or not a development is within or outside a settlement limit, the guidance and policy set down for new developments in flood risk zones should meet the criteria as set down in sections 6 to 6.5 Approach and Methodology; 7 to 7.7 Forward Planning Policy Recommendations and 8 to 8.6 Development Control Guidance. HA23 should be subject to the same policies and guidance.

Section 11.5.8 Recommends that NO DEVELOPMENT take place in the areas identified at risk of flooding until alleviatory measures are in place and that development on the potential sites for flood storage areas should be avoided, which links to 6.2.2 above. Clearly it has been identified that area HA23 floods, and flood water from this site contributed to the internal flooding of many properties at Church Cliff Farm flowing over Church Cliff Drive and the entrance to Country Park.¹²

Not only have officers given an incorrect response to Question 4 in the HLSMA but it is clear they have ignored the subsequent explanation presented in BP-3 pages 52-53 and they have failed to comply with Matter 1, Issue 1.6.

Summary.

The document SBC Sustainability Appraisal Doc [EX6R(SA)] states that the target is for NO new development given in High Risk Flood Zones and that any plan should be consistent with National Policy.

The issues raised in my statements have been presented to officers on numerous occasions, for example at the consultation meetings held in Filey Town Council Offices 1st Sept 2014. During the Draft Stage and Proposed Submission Stage as well as at the Drop in Day held in The Evron Centre, Nov 2015.

⁹ See Appendix 1.

¹⁰ PPS25 Flood Risk Vulnerability and Flood Zones Compatibility.7.1 and Flood Risk Vulnerability Classification.7.2 Doc [CSD27].

¹¹ See Appendix 1.

¹² Atkins Map Filey Town Flooding Investigation 5002531/WA/FO17 and see my submission to the proposed plan stage Appendix A6.

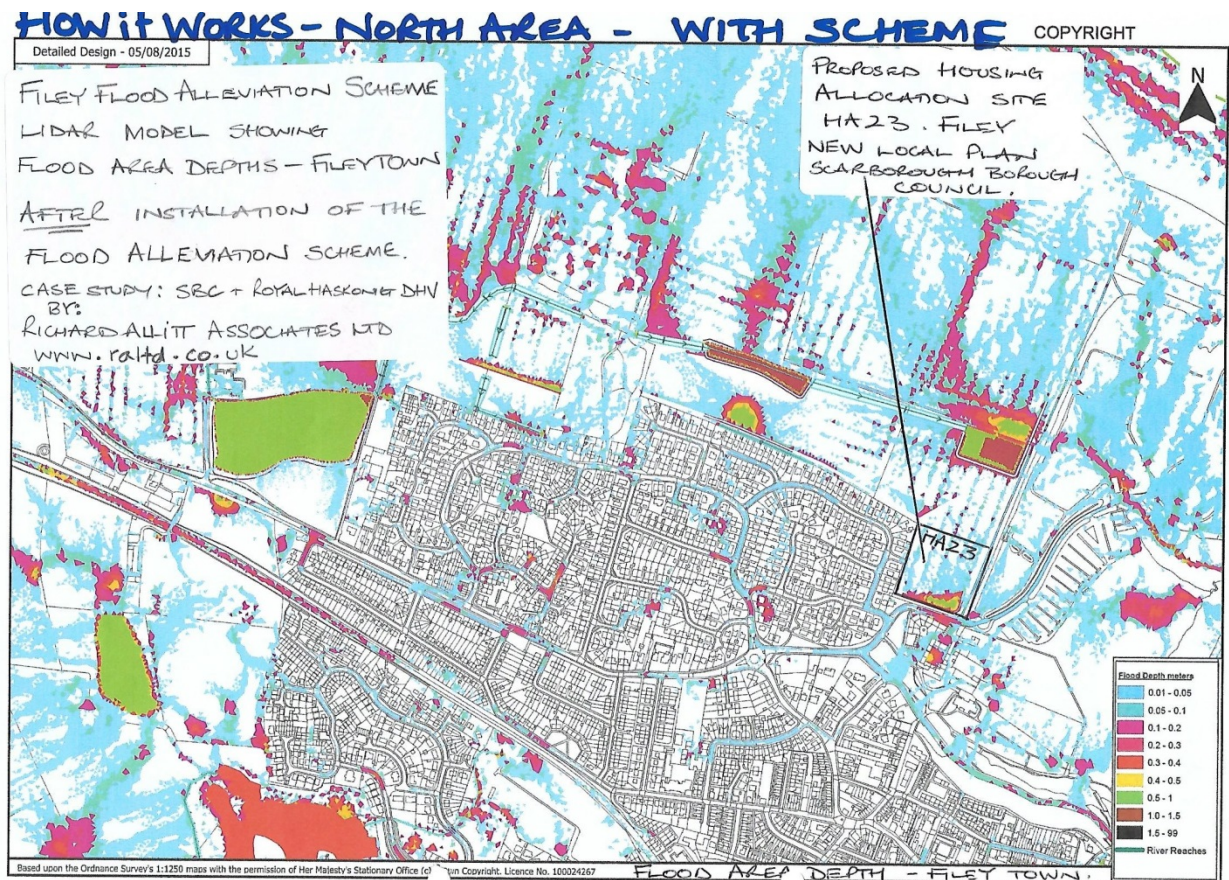
It is clear that officers have failed to comply with Matter 1, Issues 1.5 and 1.6, Matter 5 Issue 5.4 raised in previous written statements and in consequence the suitability of HA23 raised in Matter 10, issue 10.2 is compromised. These observations are supported by Barrister Anthony Verduyn, who's statement is presented in Appendix 2.

For the above reasons the proposed housing allocation site HA 23 should be dismissed.

Appendix 1 .

From Filey Town Council. Filey FAS. Presentation to Planners 15.02.2016.

SBC and Royal Haskonig DHV. Page 21, How it works – North Area – With Scheme.



Appendix 2

Scarborough Borough Council (new) Local Plan – Representor no.: 960166

Re.: - HLMSA – HA23 – Filey

This is my written representation, which I would wish to be placed before the Inspector for the Examination, Mr W.J. Fieldhouse. Although I am a barrister-at-law (1993 call) specialising in property litigation from Chambers in Birmingham, Leeds and London, this letter is written in my private capacity as a home owner in Filey (49 Mitford Street).

I have had the privilege of discussing the facts and matters set out in the statement of Mr John Mook (Representor Number ID 853475), accompanying this statement. Given the significance of the points he raises concerning flood assessment of the site in question, I emphasise the points that he makes: it is my professional experience that management of water in potential development sites needs to be a central consideration, both by reason of its particular environmental impact and to accommodate climate change. It is absolutely imperative to follow national policy; that sites rendered unsuitable for development by reason of water management issues (and it seems to me that the current site is a prime example of this) are not simply built out in the hope that the risks identified do not eventuate. I would urge that the proposed Housing Allocation site HA23 is rejected on this basis and having regard to the issues raised by Mr Mook,

Yours sincerely,



Dr Anthony Verduyn BA Hons (Dunelm), Dip. Law., D.Phil (Oxon)

APPENDIX B:

John Mook

**Representor Number ID
853475**

Matter 2. (HA23)

Matter 2.

Reference Matter 2, 'Housing Needs and Requirements'¹³ the household projections for 2011-2032 is now estimated at 840 fewer housing units than the original estimate put forward by officers.¹⁴ The removal of site HA23 from the New Local Plan could be factored into this equation, because removing HA23 will not have an adverse impact on the housing figures within the plan. As of this date, council officers have not proposed a modification addressing this matter of excess capacity.¹⁵

Alternative Site Recommendations.

When the officers were requesting responses to the Local Plan they invited suggestions from the public. Following the HLSMA and SFRA Precautionary Principles, Policies and Methodology for site allocations the following sites would be more suitable for development in Filey:

¹³ Document EX10A.

¹⁴ Ref: DCLG2014- Household Projections.

¹⁵ Reference EX4R.

Site 03/14 Land south of Brigg Road, Filey, located on the south side of Filey, where flood alleviation is already in place.¹⁶

Site 03/03 Land between the Dams, Scarborough Road, Filey.¹⁷

Site 03/05 Land at Mill Farm, Muston Road, Filey.¹⁸

Site OM4. Land opposite East Lea Farm, Scarborough Road, Filey.

Site 03/I Old Launderette, Laundry Road, Filey =20 Dwellings.¹⁹

Site 03/J Land at Carlton Road, Filey =12 Dwellings.²⁰

These sites are certainly more suitable than the proposed allocation on HA23.

¹⁶ A recent addition in the Proposed Local Plan that was not even considered prior to this last stage in the planning process.

¹⁷ PSD2C(a) states locating development at this site would negate the need to allocate land that was in flood risk areas. It had an assessment score of Neutral as it is not part of the Green Infrastructure network.

¹⁸ PSD2C(a) states locating development at this site would negate the need to allocate land that was in flood risk areas. It had an assessment score of Neutral as it is not part of the Green Infrastructure network.

¹⁹ A Brownfield site identified for Employment Land review as being released for Non- Employment use. It is a site identified in The Strategic Housing and Employment Land Assessment under Policy HC2 to promote efficiency of land use through maximising the re-use of previously developed land and existing buildings.

²⁰ A Brownfield site identified for Employment Land review as being released for Non- Employment uses. It is a site identified in The Strategic Housing and Employment Land Assessment under Policy HC2 to promote efficiency of land use through maximising the re-use of previously developed land and existing buildings.