

16 June 2015  
**Delivered by email**

Bob Duxbury  
Head of Planning  
Cherwell District Council  
Bodicote House  
Bodicote  
Banbury  
OX15 4AA

Dear Sirs

**REPRESENTATION ON BEHALF OF ABERDEEN ASSET MANAGEMENT TO PLANNING APPLICATION FOR NEW WAITROSE FOODSTORE ON LAND AT KRAFT FOODS, SOUTHAM ROAD, BANBURY 15/00831/F**

We act on behalf of our client Aberdeen Asset Management. Officers will be aware of Aberdeen Asset Management's (AAM) interests in Castle Quay Shopping Centre (AAM acquired Scottish Widows' assets earlier this year). Officers will also be aware of our current outline planning application for mixed use leisure and retail at Spiceball, benefiting from a Committee resolution to approve. These proposals include a foodstore as an anchor tenant.

We therefore strongly object to the proposals for a new Waitrose foodstore on land at Kraft foods.

**Historic proposals**

AAM has historically objected to proposals for retail on this site (our objection letter dated 20 April 2012). In 2012 an outline planning application was submitted by Barwood for a foodstore with an unnamed operator (ref: 12/00329/OUT). We note that this remains undetermined and that it has not been updated since its submission. We remain of the view that this is not capable of being determined because it does not address the requirements of NPPF (having been prepared and submitted prior to this being introduced) and should be 'finally disposed of' and treated as withdrawn by your authority. The applicant's most recent planning statement suggests that the application is considered to be 'withdrawn' but this is not the decision recorded on the planning register. If this is the Planning Authority's decision on this application, it should be properly recorded as 'withdrawn' or 'finally disposed of'.

**AMMs aspirations for the town centre**

AAM have worked hard with your Officers and Members to collectively bring forward proposals at Spiceball. The proposals include a foodstore as an anchor tenant which is integral to delivering a successful mixed-use leisure and retail extension to the town centre. Our proposals are planning policy compliant and represent a significant investment in the future prosperity of the town centre. They represent 'planned investment' under the terms of NPPF and are at an advanced stage, being subject to a Committee resolution to grant outline planning permission.

9 Colmore Row  
Birmingham  
B3 2BJ

T 0121 233 0902 [turley.co.uk](http://turley.co.uk)

The foodstore proposed at Kraft Foods is on an out of centre site and is not in accordance with adopted or emerging policy. It is of serious concern to our client because of the impact it will have on our planned retail and leisure investment in Banbury town centre.

## Objections

Our objections are related to the following matters which are explained below:

- The proposals are fundamentally contrary to national and local policy for town centres and economic investment.

### *Economic investment*

The site is an 'Existing Strategic Employment Site' where para B.36 states that 'The Council will, as a general principle, continue to protect existing employment land and buildings for employment (Class B) Use'. The presumption is therefore that such sites will not be acceptable for other uses, including retail, unless the applicant can demonstrate that the criteria of policy SLE1 is met. As we demonstrate below, the applicant has undertaken no such assessment and so the proposals fail to meet the requirements of emerging policy which has significant weight and is in accordance with NPPF.

This policy has significant weight and the proposals fail to provide any evidence to quantify the effects, sufficient to perform the required balancing under NPPF para 14. The applicant makes no attempt to address the requirements of policy SLE1 relating to strategic employment sites, acknowledging that the site is identified as such in emerging policy that is at an advanced stage.

The policy is clear and requires the applicant to demonstrate the following:

- that the employment use should not be retained, including showing that the site has been marketed and has been vacant in the long term [our emphasis].
- that there are valid reasons why the use of the site for existing or another Class B use is not economically viable.
- that the proposal would not have the effect of limiting the amount of land for development.

The applicant undertakes no objective assessment of the suitability of the application land for continued employment purposes and no assessment of the viability of that use, or the effect of its alternative use on the overall supply of employment land. There is no evidence of marketing, or a demonstration that it has been vacant in the long term. The applicant simply states that there is a tension between the development and this policy and that it should be weighed in the balance with the investment Waitrose will bring. What the applicant means is that the proposal is in direct conflict with this policy.

The applicant then asserts at para 6.2 of the Planning Statement that Policy SLE1 requires one of the criteria to be met. This is not correct. The policy requires the criteria to be met in order for non-Class B uses to be considered [our emphasis]. The requirement is therefore plural, requiring all criteria to be met, though the applicant makes no attempt to provide any evidence to address these and instead simplistically asserts that the proposal's conflict with this policy is not significant. There is no analysis of the effects of the loss of employment land and no basis on which to quantify the severity of the effects of this policy conflict.

The decision-maker simply does not have all the facts to understand the impacts of allowing this development. Policy cannot be sidestepped by asserting (rather than demonstrating) that the harm (to employment policy SL1) is not severe. One must understand the effects in order to properly undertake the

balancing test in NPPF – paragraphs 14 and 22. Importantly the proposals must be assessed as a whole and for the reasons set out below, there is clear and demonstrable conflict with retail policy with a direct refusal (para 27).

### ***Failure of the sequential test***

We note that pre-application advice from Planning Officers confirms that the proposals are 'inconsistent with the aims of local policy...[being] to maintain a compact shopping area' (policy SLE2). We agree with your Officer's view.

The applicant accepts that Spiceball is a sequentially preferable site and that there is conflict with paragraph 22 of the Framework and the emerging local plan policy (presumably policies SL1 and SL2). Failure of the sequential test means permission should be refused. This is explained further in the attached note on retail and economic matters.

### ***Significant adverse effect on planned town centre investment***

This is explained further in the attached note.

### ***Undermining town centre vitality and viability***

As explained in the attached note.

### ***Overstatement of economic benefits***

The joint venture between Mondalez and the coffee maker is already committed and is not facilitated by this development. The claimed investment in the factory by the sale of the land is not quantified and is unlikely to constitute a significant economic benefit. Furthermore, there is an acknowledgement in the Planning Statement (para 3.9) that the Senior roles within the foodstore will be recruited internally from existing employees of the John Lewis Partnership. The true economic benefits must be seen in this context. These matters do not outweigh the conflict with retail and economic policy in NPPF.

## **Conclusions**

The applicant makes no attempt to provide any justification for the loss of strategic employment land and does not provide any assessment of the effects this will have on supply. The proposals are contrary to emerging policy which seeks to retain strategic employment land. Applying the applicant's logic to NPPF paragraph 22 which requires an assessment of alternative proposals to be assessed on their merits, this still requires an assessment of whether its re-use for employment use is reasonable and the applicant makes no attempt to grapple with this issue.

In any event, the proposal, if permitted and developed, would have a serious adverse impact on planned investment in Banbury town centre and would undermine vitality and viability. There are sequentially preferable sites in Banbury, a matter acknowledged by the applicant. National planning policy (NPPF, paragraph 27) directs Local Authorities to refuse applications where there is a failure to comply with these key tests.

NPPF must be read as a whole and the applicant fails to recognise that failure of the 'retail tests' at para 26 and 27 equals refusal of planning permission. The balancing of impacts at paragraph 6.7 of the applicants Planning Statement is an assertion of various economic impacts, rather than an assessment as is required under policy SLE1.

The benefits of the proposals are overstated and do not provide adequate justification for a significant departure from development plan policy, or an NPPF balancing in favour of development.

As a departure to local plan policy the proposals are referable to the Secretary of State via the National Casework unit.

Please confirm that these representations are duly noted and that they will be included in your officer report to Planning Committee.

Yours Faithfully

Andrea Arnall  
**Associate Director**

[andrea.arnall@turley.co.uk](mailto:andrea.arnall@turley.co.uk)

enc.