

Briefing

Objection to foodstore on Land at Southam Road, Banbury (ref: 15 00831/F)

June 2015

Introduction

- 1 This briefing note has been prepared by Turley on behalf of Aberdeen Asset Management (AAM), current owners of the Castle Quay Shopping Centre in Banbury town centre. The note presents a critique and review of material submitted in support of a current planning application seeking planning permission for a new Waitrose food store, car parking and access on land at Southam Road, Banbury.
- 2 This application (ref: 15/00831/F) has been submitted by Barwood Capital and Mondelez Limited and relates to 'surplus land' adjoining the existing Mondelez International premises at Southam Road. The site is out-of-centre in planning terms.
- 3 This critique focusses on the retail economic, sequential and policy analysis submitted on behalf of the applicant by Framptons and PBA Peter Brett (PBA). The following documents have been included within the scope of this review:
 - New Waitrose Store, Southam Road, Banbury: Retail Impact Assessment (RIA), PBA, May 2015
 - Planning Statement (PS) to accompany a Full Planning Application, Framptons, May 2015
 - Appendices to the PBA RIA, in particular Appendix C – 'Retail Impact Assessment Tables'
 - Appendices to the PS, in particular Appendices 3 and 5 – 'Letter from Paul Sinclair' and 'Sequential Test Assessment'
 - Proposed Food Store Mondelez International Site, Banbury: Design and Access Statement (DandA), Corstorphine and Wright

Overview

- 4 The application relates to an out-of-centre site at Southam Road and proposes the development of a new Waitrose foodstore. The material submitted in support of the application and purporting to demonstrate retail policy compliance contains numerous errors, contradictory statements and flawed analysis. The policy assessment presented by both Framptons and PBA is, as a consequence, seriously deficient.
- 5 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. We elaborate on these matters below.

Policy

- 6 Both the PS (Section 4 and Appendix 4) and RIA (Section 2) set out planning policies relevant to the consideration of the application. Although reference is made in both documents to the development plan (the saved policies of the Cherwell Local Plan, 1996), and to non-statutory and emerging policies, the policy context of most significance to the determination of the application is contained in the National Planning Policy Framework (NPPF). Hence, the focus on the NPPF in the material submitted in support of the application.
- 7 The principal NPPF tests are set out in full at paragraphs 4.11-4.13 of the PS, and can be summarised as follows:
- The requirement to comply with the sequential test (NPPF, Paragraph 24)
 - Where proposals exceed 2,500 sq. m gross floorspace (or a locally set threshold), the requirement to assess impacts on existing, committed and planned public and private investment; and on town centre vitality and viability (NPPF, Paragraph 26)
 - The direction to refuse applications that fail the sequential test and/or would have a serious adverse impact on investment or town centre vitality and viability (or both) (NPPF, Paragraph 27).
- 8 We consider the evidence presented in support of the application in relation to these policy tests below.

Sequential Test

- 9 The applicant has assessed seven alternative sites as part of a sequential assessment exercise. This analysis is mostly set out in Appendix 5 to the PS. The applicant has considered the George Street car park and other locations in addition to the sites identified by the LPA at pre-application stage (PS, Appendices 1 and 5).
- 10 The focus of our critique, however, is on the applicant's assessment of the Spiceball site. This site is the subject of a positive resolution to grant planning permission for retail and leisure development, including a foodstore, and is of principal interest to our client.

Critique

- 11 Framptons accepts (PS, paragraph 5.7) that the Spiceball site is, in planning terms, sequentially preferable to the application site. Without undertaking any further analysis, this acknowledgment alone is sufficient to justify the refusal of the application on the basis of its failure to comply with the sequential test, as directed by the NPPF.
- 12 Paragraphs 2.1 and 4.2 of Appendix 5 set out the basic parameters for the sequential assessment exercise; the reasons for dismissing the site as a sequential alternative are set out at Paragraph 4.4. Although this material is presented by Framptons as an objective and factual exercise, in practice the position adopted by Waitrose pre-determines the outcome of the assessment. This is clear from the statement at paragraph 2.3 of Appendix 5: 'Waitrose will not make the investment in Banbury (on the Spiceball site). Waitrose will not be forced into a location that presents unsatisfactory compromises'.
- 13 The sequential test is intended to operate in a real-world context, and commercial needs and viability are part of this. However, it is primarily a planning tool designed to direct investment to

town centres, and to ensure that proposals cannot be located on edge or out-of-centre sites where there are genuine alternatives; hence the refusal presumption at paragraph 27 of the NPPF.

- 14 The claim by a specific commercial interest (in this case Waitrose) that a particular in-centre trading location is not viable, particularly where this is asserted rather than proven through an ‘open book’ viability assessment, is not a reason to circumvent the sequential test. Moreover, factors such as those listed at paragraph 2.1 of Appendix 5 (property costs, sales forecasts, local demographics, relative accessibility, environmental quality, etc.) are incapable of proper evaluation through the planning process without supporting evidence.
- 15 Property cost, for example, is a highly variable factor. It is influenced not only by the market but the potential to strike an appropriate ‘deal’ between a landowner and an occupier. The fact that one site might be a cheaper option than another is not a reason to set aside established policies. Other factors, such as environmental quality or attractiveness to customers, are highly subjective.
- 16 In this case the differences in trading location (Spiceball v. Southam Road) are so marginal in strategic terms (a matter emphasised by Framptons by reference to the town centre boundary – see Paragraph 2.4) that such claims can in any event be called into question. We explore this in further detail below.

Suitability

- 17 **Key factors** highlighted by Framptons in relation to the suitability of Spiceball relative to the application site are set out at Paragraph 4.4. These factors include:
- 18 **Size** – it is asserted that the proposed foodstore at Spiceball (25,000 sq. ft. /2,322 sq. m.) is not large enough to accommodate Waitrose.
- 19 **Configuration** – the Spiceball foodstore is not appropriately configured for Waitrose (too long and too thin).
- 20 **Vertical Circulation** – the position of lifts, travellers etc. would, it is claimed, compromise store layout.
- 21 **Multi-level parking** – this would act as a disincentive to customers reducing sales and viability, and would not be suitable for Waitrose.
- 22 **Complexity** – the multi-level, multi-use Spiceball scheme is too complex, and the mix of uses would compromise the ability of Waitrose customers to find car parking spaces.
- 23 The way in which the sequential test should be applied, and suitability assessed, has been clarified in the Dundee Supreme Court Judgement (“Dundee”) and more recently in the Rushden Lakes’ decision (“Rushden”). This decision (which was made by the Secretary of State) applied the Dundee principles to an out-of-centre retail proposal in Northampton. This scheme was approved following a public inquiry.

24 These cases establish the meaning of 'suitable' as it is to be applied to alternative sites: 'suitable for the development proposed by the applicant'. However, there is also a requirement for flexibility in relation to issues such as format and scale, a matter highlighted at paragraph 24 of the NPPF. Without some flexibility it would be easy to defeat the sequential test by simply promoting a scale of development that could not possibly be accommodated within a town centre.

25 Having regard to the need to consider both the requirements of the applicant and some flexibility in scale and format, it is patently clear that Spiceball is a suitable alternative for the development proposed by Waitrose. Our response to the matters highlighted by Framptons is as follows:

Store Size

26 The proposed store (29,000 sq. ft./2,694 sq. m.) is only 372 sq. m. (16%) larger than that identified in the indicative Spiceball scheme. These differences are marginal and within the scope of 'flexibility in scale' applying NPPF guidance. In any event, evidence presented by PBA in the RIA (Paragraph 1.2.3) indicates that the proportion of comparison floorspace proposed by Waitrose (and by implication convenience floorspace also) is variable, ranging between 15% and 30% of total net sales. This 15% variation confirms that store format is not fixed at this stage, and that some modification in scale/format could be achieved and viability maintained.

27 The Spiceball site extends to 4.5 hectares. The scheme has been submitted as an outline application, which is the subject of a positive resolution to grant planning permission. There is ample scope to modify the development to accommodate the additional 372 sq. m. required by Waitrose were this considered essential to achieve a store of 2,694 sq. m.

Configuration

28 Identical considerations apply to issues of configuration and layout. The current Spiceball store layout falls well within the scope of 'flexibility in format' applying NPPF guidance. The scale of the site would, in any event, allow revisions to the proposals to be made to achieve the optimum layout required by Waitrose.

Vertical Circulation and Multi-Level car parking

29 Town centre sites are more complex to develop and some compromises are inevitable if the regeneration of central areas is to be achieved. We are aware that Waitrose trades successfully from town centre stores in Bath (the Podium) and Wandsworth (Southside Shopping Centre) which are served by multi-storey car parks, lifts and travellers. These stores have existed for many years and Waitrose customers do not appear to be disincentivised by the lack of surface level car parking, or the location of the store within a multiple retailer and mixed-use environment. These alleged impediments to successful trading are not supported by evidence from other locations in which Waitrose currently trades.

Complexity

30 Regenerating town centres sites is more problematic than developing level, single use/ single ownership out-of-centre sites, but nevertheless remains a key element of planning policy at all levels. The complexity of achieving such developments is not, however, a reason to circumvent the sequential test.

31 As outlined above, Waitrose currently trades in locations (such as the Bath Podium) which do not benefit from 'ample surface level car parking' and where there is competition for parking spaces with other uses. There is no reason to suppose that different considerations should apply in this case. The regeneration of Spiceball is a Council priority supported by policy, and is an investment that should not be compromised by the application proposal, or the preferences of a particular retailer.

Other Factors

32 The application site is some 550 metres from the town centre boundary (as proposed to be extended) a matter highlighted by Framptons (PS, Paragraph 2.4). It is proximate to both the town centre and Spiceball site.

33 Moving the centroid of the store's catchment area by 550 metres is unlikely to have any material impact on the ability of a Waitrose store to serve the Banbury catchment or its accessibility to the resident population. Indeed, the application site would have the disadvantage of being a solus trading location without the benefit of town centre spin-off trade.

34 The suggestion by Framptons that this marginal difference in strategic location would have a fundamental impact on viability and suitability is highly unconvincing.

Summary

35 The parameters for the sequential test are determined (post-Dundee and Rushden) by the needs of the applicant, but within a framework that acknowledges the requirement for flexibility. This is essential if town centre regeneration is to be achieved. The sequential test should not, however, operate in a way that serves only the needs of specific commercial interests.

36 The categorical statement by Waitrose in relation to Spiceball (Paragraph 2.3 of Appendix 5) is not evidence that the site is not a suitable and viable trading location for a foodstore. Moreover, the viability analysis presented by Framptons and Waitrose is incapable of being properly evaluated in the absence of quantifiable and measurable data; it is asserted rather than proven.

37 In relation to both suitability and viability, it is clear that with an appropriate degree of flexibility in scale and format, Spiceball is a sequentially preferable alternative site. This factor alone is a reason to refuse the current application.

Impacts on Planned Investment

38 The implications of retail development proposals for 'planned investments' in town centres is a material planning issue identified at Paragraph 26 of the NPPF. The applicant's analysis of this issue is set out at Paragraphs 5.5.1 – 5.5.3 of the RIA, and Paragraph 5.8 of the PS. Where such impacts are 'significantly adverse', the NPPF directs refusal as outlined above.

39 The meaning of town centre developments or investments (or 'planned investments') and the way in which impact should be assessed is explained in the Planning Practice Guidance (PPG) at

Paragraph 016. The PPG identifies three 'key considerations' relevant to an assessment: the policy status of the development; the progress made towards securing the investment (for example if contracts are established); and the extent to which an application is likely to undermine planned developments or investments, with factors such as turnovers, operator demand and investor confidence highlighted specifically. These matters are referenced (albeit superficially) in the RIA (Paragraph 5.5.2).

40 The Inspector appointed to report to the Secretary of State in the Rushden case exhaustively examined the meaning of 'planned investment' in the context of an emerging proposal by Legal and General for Northampton town centre. In this case the Inspector concluded that this proposal could not be defined as planned investment on the basis that a viable scheme had not been formulated.

41 Although his analysis is detailed (Paragraphs 8.60-8.68), the Inspector in this case confirmed in essence that for an investment to be considered 'planned' and capable of being prejudiced, a viable scheme capable of implementation must be shown to exist.

42 If PPG criteria and the analysis presented in the Rushden Lakes decision are applied to the Spiceball development, it is clear that proposals for the site fall within the definition of 'planned investment'. This is demonstrated by the following:

43 **Policy** – mixed retail and leisure development on the Spiceball site is supported by Draft Policy 9 of the emerging Local Plan, which has reached an advanced stage. PBA acknowledges that this policy carries a 'substantial degree of weight' (RIA, Paragraph 5.5.2). The proposals for the site accord with this policy.

44 **Progress towards securing investment** – a planning application has been formulated, submitted and determined positively by the LPA. The principle of the development is supported and planning permission can be granted once legal agreements are concluded. With tenants secured and agreements signed, development can commence. Substantial progress has been made.

45 **Existence of a scheme** – a scheme of development exists as set out in the approved planning application. The scheme is viable if an anchor tenant can be secured for the foodstore unit.

Critique

46 Framptons claims (Appendix 1 to Appendix 5, page 41) that the Spiceball site 'would not be viable for a retail development' given the 'complexity of the redevelopment and the space constraints of the site'. The analysis presented by PBA asserts that there will be no impact on this planned investment. PBA expresses this position in the following terms:

'....whilst it is acknowledged that the Spiceball development includes a foodstore, on the basis that Waitrose has confirmed that they would not be able to viably operate a store from that site which complied with the outline planning permission, it is plain that the proposed development will not divert an occupier that would otherwise have taken floorspace in the town centre extension scheme.....As such, it is considered that the impact of the proposed development on investor confidence in that scheme, and any implications for its delivery, are likely to be negligible.'

47 This analysis is flawed, simplistic and illogical. In reality the impact of the application proposals will be severe as is clear from a more logical and coherent consideration of the circumstances in this case:

- The Spiceball scheme has been formulated by an experienced developer. The Spiceball development is (contrary to the view of Framptons) viable if anchored, as intended, by a foodstore operator.
- The loss of Waitrose from the scheme will have a direct effect on the viability and deliverability of a planned investment supported by planning policy. The case presented by the applicants to demonstrate the site would not be viable for Waitrose is unconvincing for the reasons set out above.
- If a Waitrose store is developed on the application site there will be a direct impact on operator demand (PPG, 016) through the removal of a potential anchor. The development will also have a deterrent effect on potential alternative occupiers by diverting expenditure (to an out-of-centre site) that would otherwise underpin store viability. The loss of expenditure from the town centre equivalent to the projected turnover of the Waitrose store (c. £30 million) is substantial in impact terms.
- The combination of these factors will inevitably have a damaging effect on investor confidence in the Spiceball scheme and on other investments in the town centre.

Summary

48 Impacts on planned investment associated with out-of-centre proposals should lead to a refusal of planning permission where such effects are demonstrably significant and adverse. Spiceball is a planned investment supported by planning policies and in full accordance with the 'town centres first' principle.

49 The diversion of investment to an out-of-centre site at Southam Road will have severe repercussions for this planned investment, which requires a foodstore anchor to underpin viability. The analysis presented by PBA and Framptons suggesting otherwise is based on confused and contorted logic, with repeated reference to the commercial preferences of one operator.

50 It is clear that the proposals are in conflict with this aspect of the NPPF.

Impacts on Vitality and Viability

51 The impact of out-of-centre proposals on the vitality and viability of town centres is an additional 'prong' of the 'impact test' identified at Paragraph 26 of the NPPF.

52 The impact of the development on the vitality and viability of Banbury town centre is examined by PBA in the RIA; the implications of this analysis for in policy terms are summarised by Framptons in the PS.

53 PBA has applied a conventional, step-by-step impact methodology underpinned by a household survey. This survey (with a sample base of 1,000) was undertaken by NEMS Market Research in January 2015.

54 The key assumptions and methodology are set out in Section 3 (notably Paragraph 3.4 – data inputs and assumptions), with supporting tables included in Appendix C. Quantitative retail analysis is supplemented by qualitative evidence, including a ‘health check’ of Banbury town centre (Section 4). The assessment includes both convenience and comparison goods analysis reflecting the trading profile of a Waitrose store (convenience and ancillary comparison goods floorspace).

Critique

55 This methodology applied by PBA is robust in principle if correctly applied and based on appropriate assumptions. It combines straightforward arithmetic analysis to generate baseline turnovers (e.g. expenditure and market share calculations) with judgments relating to trade draw and impact. However, such analysis should always be checked carefully to ensure that it is generating logical and robust outputs.

56 The analysis in this case is illogical in places, producing outputs which are unrealistic and not reflective of ‘real world’ trading conditions. The trade draw assumptions are not robust, and the basis on which the cumulative analysis has been undertaken contradicts the sequential analysis presented in the PS. Impacts on Banbury town centre have been underestimated by PBA to a significant degree. These flaws cast doubt on the overall reliability of the assessment.

57 Our principal comments are as follows:

Baseline Turnovers

58 Baseline convenience goods turnovers (in 2014) are set out in Table 7. They are based on the market shares taken from Table 6.

59 The turnover calculated by PBA for the Aldi store in Banbury (£36.51 million) is equivalent to a trading density of £64,392/sq. m. (assuming a convenience floorspace of 567 sq. m. – Table 2, Appendix 3). This is approximately seven times greater than average store trading applying the Aldi turnover ratio applied by Turley.

60 Although Aldi as a retail business is performing well nationally, the trading levels for the Banbury store assumed by PBA are simply not realistic. This baseline analysis should be re-assessed and more appropriate turnover used as a basis for the impact calculations.

Trade Draws

61 The percentage of store turnover assumed to be diverted from existing stores and facilities is set out in Table 7 (Appendix C). The proportion of trade assumed to be diverted from Aldi and Morrisons (which is edge-of-centre) is 9% in both cases; this compares with 23% and 26% respectively assumed by PBA to be diverted from Sainsbury’s and Tesco in Banbury. Taking into consideration the relative size and projected turnovers of these stores as calculated by PBA, these assumptions are unrealistic in our view.

62 The impact on the town centre is also clearly under-represented in PBA's analysis. The 1% of turnover assumed to be diverted from the town centre Marks and Spencer store does not reflect the significant overlap between the trading profile and target demographic of Waitrose and M&S. Also, the assumption of a zero trade draw from Tesco Express and other town centre floorspace is illogical given the proximity of the application site to the town centre, and the degree of catchment overlap. Impacts on town centre convenience goods turnover have been significantly underestimated by PBA.

63 We note also that only 95% of the turnover of the store is accounted for in Table 9 (and in the comparison goods assessment in Table 15), for which no apparent explanation is given.

64 The combination of these assumptions results in an assessment which overstates impacts on out-of-centre stores, and under-represents the true impact of the development on Banbury town centre.

Comparison Floorspace

65 We note the assumptions in the RIA relating to the proportion of the proposed store's floorspace that would be used for comparison goods' sales (Paragraph 3.5.1). This ranges between 15-30% according to PBA. This has been assessed on a worst-case basis in PBA's quantitative analysis (Table 3.6), which is appropriate in our view.

66 This range is wide (15%), suggesting that the precise format of the store is not fixed at this stage. As noted above, this is material to the sequential assessment exercise and supports the argument that the store could be accommodated, with some flexibility, on the Spiceball site.

Cumulative Impacts

67 The cumulative impact analysis includes Spiceball and other commitments in Banbury and elsewhere (RIA, Paragraph 3.7.1).

68 The cumulative convenience goods assessment in Table 17 (Appendix C) shows a positive impact on Banbury town centre of +316% in 2019. This is explained by PBA at Paragraph 5.3.12 of the RIA:

'It is clear that, considered cumulatively, there will be an overall uplift in the amount of convenience spending taking place in the town centre. The effect of the new Spiceball foodstore in the town centre will bolster it as a convenience shopping destination; thus, whilst there will be a degree of diversion from existing shops in the centre, this will be outweighed by expenditure being diverted into the town centre.'

69 PBA's assessment of positive impact and compliance with the NPPF is therefore based entirely on the assumption that Spiceball will 'insulate' the town centre from the negative effects of trade diversion associated with Waitrose and other commitments.

70 The basis of this assessment is flawed and cumulative impacts have been significantly underestimated for the following reasons:

- The viability of the development is under threat due to the impact of the application proposal on the Spiceball proposal as a planned investment. If the Spiceball development does not proceed, impacts will increase to a substantial extent applying the logic of PBA's analysis.
- PBA has ignored Frampton's assessment of Spiceball and their conclusion that the development is unviable per se. The scheme cannot be both unviable and in a position to protect the town centre from damaging cumulative impacts; the totality of the evidence presented in support of the application is contradictory.
- Spiceball does not benefit from planning permission at this stage. It should therefore be excluded from PBA's cumulative analysis.
- The cumulative analysis excludes comparison goods impacts on the town centre associated with commitments such as Banbury Gateway. The analysis is accordingly too narrow and the full scale of the diversion from the town centre has not been adequately assessed.
- The trade draw analysis in both the comparison and convenience assessment relates to 95% only of the store's turnover, further reducing the level of cumulative diversion from the town centre as assessed by PBA.

Summary

71 The impact analysis prepared by PBA underestimates to a significant extent the solus and cumulative impact of the application proposal on the town centre. Elements of the assessment are illogical (notably the outputs of the baseline assessment) and a number of the supporting assumptions are not robust.

72 These matters need to be revisited and a revised assessment produced.

73 The cumulative impact of the application proposals with Banbury Gateway and other commitments is significant and may be adverse, leading to conflict with the NPPF.

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