

DEVELOPMENT INTERNAL MEMORANDUM

From: Head of Strategic Planning and the Economy

To: Head of Public Protection & Development Management (FAO Bob Duxbury)

Our Ref: 3.2

Your Ref: 15/00831/F

Ask for: Chris Thom / David Peckford

Ext: 1849

Date: 11/08/2015

APPLICATION CONSULTATION PLANNING POLICY RESPONSE

Application No.	15/00831/F
Address / Location	Land at the Mondelez site, Southam Road, Banbury.
Proposal	Proposed development of a new foodstore with car parking and access arrangement onto the Southam Road. Demolition of existing building.
Site Details	The application site is within the boundary of the a food manufacturing site (Mondelez) site and comprises a mainly grassed / soft landscaped area containing a small pre-fabricated building.
General Comments	The proposed foodstore would have a gross internal area of 3,576 sq m and sales area of 2,697 sq m and would be accessed from two points on Southam Road
Main Development Plan Policies	<p>On the 20 July 2015 the Council adopted the Local Plan 2011-2031 - Part 1. The Local Plan replaces a number of the saved policies of the 1996 adopted Cherwell Local Plan. These are set out in Appendix 7 of the Local Plan 2011-2031.</p> <p>The policies in the Local Plan 2011-2031 and the saved policies of the 1996 Local Plan most pertinent to this planning application are set out below.</p> <p>Local Plan 2011-2031 (July 2015)</p> <p>Policy SLE1 (Employment) Policy SLE2 (Securing Dynamic Town Centres) Policy SLE4 (Improved Transport and Connections) Policy ESD1 (Mitigating and Adapting to Climate Change) Policy ESD 1 (Mitigating and Adapting to Climate Change) Policy ESD 2 (Energy Hierarchy and Allowable Solutions) Policy ESD 3 (Sustainable Construction) Policy ESD 4 (Decentralised Energy Systems) Policy ESD 5 (Renewable Energy) Policy ESD 7 (Sustainable Drainage Systems) Policy ESD 15 (The Character of the Built and Historic Environment) Policy Banbury 7 (Strengthening Banbury Town Centre)</p> <p>The following policies are indirectly relevant:</p> <p>Policy Banbury 1 (Banbury Canalside)</p>

	<p>Policy Banbury 8 (Bolton Road Development Area) Policy Banbury 9 (Banbury Spiceball Development Area)</p> <p>Local Plan 1996 – Saved Policies (policies not replaced by Local Plan 2011-2031)</p> <p>Relevant policies regarding design and transport should be considered.</p>
NPPF	<p>Paragraph 19 of the NPPF states that <i>‘Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system. LPA’s should promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas...’</i></p> <p>Paragraph 23 of the NPPF states that planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. In drawing up Local Plans, local planning authorities should recognise town centres as the heart of their communities and pursue policies to support their viability and vitality;</p> <p>Paragraphs 24 to 27 of the NPPF set out a requirement for a sequential test and impact assessment.</p> <p>Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.</p> <p>Paragraph 27 states that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.</p>
PPG	<p>The PPG should be considered and guidance adhered to in relation to the required sequential test and impact assessment. The PPG makes clear (inter alia):</p> <ul style="list-style-type: none"> - the sequential test should be considered first as this may identify that there are preferable sites in town centres for accommodating main town centre uses (and therefore avoid the need to undertake the impact test) - the sequential approach requires a thorough assessment of the suitability, viability and availability of locations for main town centre uses. It requires clearly explained reasoning if more central opportunities to locate main town centre uses are rejected.
Non-Statutory Cherwell Local Plan 2011	<p>Whilst some policies within the Non-Statutory Local Plan may remain material, others have in effect been superseded by those of the Local Plan 2011 – 2031 (Part 1). The Planning Policy Team should be contacted on 01295 227985 if advice is required on individual policies. Relevant policies regarding design and transport should be considered.</p>
Other Material Policy Considerations	<p>1. In January 2015, a ‘Planning Update Newsletter’ Steve Quartermain, Chief Planner, Department for Communities and Local Government advised, “<i>Ministers</i></p>

	<p><i>wish to re-emphasise to local authorities the importance of the Town Centre First policy as set out in the National Planning Policy Framework and supported by planning guidance Ensuring the Vitality of Town Centres. Please see Annex A.”</i></p> <p><i>Annex A stated, “Town Centre First policy, as set out in the National Planning Policy Framework, makes clear that local authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. It requires applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered.</i></p> <p><i>The Framework also sets out that when assessing large applications (if there is no locally set threshold, the default threshold is 2,500 sq m) for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local authorities should require an impact assessment.</i></p> <p><i>Ministers wish to restate policy which makes clear that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on the town centre as set out in the Framework, it should be refused. It is for local authorities to ensure that the sequential test and impact test have been properly applied, and that the “town centre first” approach has been followed. This does not mean that out-of-centre development is necessarily inappropriate.</i></p> <p><i>Ministers would highlight the planning guidance Ensuring the Vitality of Town Centres and specifically draw authorities’ attention to the section: “How should the sequential test be used in decision-taking?”. This sets out the considerations that local authorities should take into account when determining whether a proposal complies with the sequential test, including that due regard should be given to the requirement to demonstrate flexibility. This includes whether the suitability of more central sites to accommodate the proposal has been considered and the scope for flexibility in the format and/or scale of the proposal.</i></p> <p><i>Guidance on applying the impact test can also be found under the above section and makes clear that the design year for impact testing should be selected to represent the year when the proposal has achieved a ‘mature’ trading pattern. This is conventionally taken as the second full calendar year of trading after opening of each phase of a new retail development, but it may take longer for some developments to become established”.</i></p> <p>2. The Council has resolved to grant planning permission for a foodstore (5,500 sq metres) and other uses (subject to legal agreement) on land at the Spiceball Development Area (policy Banbury 9 of the adopted Cherwell Local Plan 2011-2031). The Council owns most of the site and along with the owners of Castle Quay shopping centre is seeking to facilitate re-development of the site. To date, development has not commenced.</p> <p>3. The Council has produced draft Supplementary Planning Documents (SPDs) for the Banbury Canalside area and Bolton Road area for public consultation. The Bolton Road SPD shows how a foodstore could be accommodated on the site, however the draft SPD was produced in 2011 before the new Local Plan was adopted.</p>
<p>Overall Policy Observations</p>	<p>The application site is identified as an existing employment site in the new Local Plan (2011-2031) (Banbury policies map 5.3). Policy SLE1 seeks to retain existing employment sites unless the following criteria are met:</p>

- the applicant can demonstrate that an employment use should not be retained, including showing the site has been marketed and has been vacant in the long term
- the applicant can demonstrate that there are valid reasons why the use of the site for the existing or another employment use is not economically viable
- the applicant can demonstrate that the proposal would not have the effect of limiting the amount of land available for employment.

The policy states that that regard will be had to whether the present employment activity has an unacceptable adverse impact on adjacent residential uses and, to whether the applicant can demonstrate that there are other planning objectives that would outweigh the value of retaining the site in an employment use. The policy seeks focus employment development on existing employment sites.

The applicant's planning statement states (para. 5.12), "*The applicant does not seek to demonstrate that any of these criteria [then in draft] are satisfied. Rather the extent of tension with the criteria attached to emerging Policy SLE1, and the underlying intent of paragraph 22 of the Framework should be placed into the planning balance that is required by the approach set out in the second bullet point of paragraph 14 of the Framework.*"

The Plan has since been adopted and must now be given full weight as part of the statutory Development Plan. The Plan, including policy SLE1, have been prepared having regard to the NPPF including paragraphs 22 and 14.

The application should therefore be supported by information that assists detailed consideration of the proposals in light of policy SLE1.

Local Plan paragraph B.48 which supports SLE1 states that the provision or the loss of jobs will be a material consideration for determining proposals for any use classes. The supporting statement (para. 5.13) states that the provision of the foodstore would result in the provision of some 200 new jobs with provision for staff training and an emphasis upon local recruitment. It also states the capital receipt from site disposal would be re-invested in the factory (a major local employer) and that the proposed development would not harm the 'industrial processes undertaken on the retained land'. The application is described as being 'redundant' (para's. 1.2 & 2.9). On this basis, the provision of some 200 additional jobs is a significant consideration but does not negate the need to consider the criteria in SLE1.

Policy SLE2 states that retail development will be directed towards Banbury town centre and the Council will require a sequential test and an impact assessment in accordance with requirements in the NPPF and PPG. The policy requires that proposals not in town centres should be in edge of centre locations. Only if suitable sites are not available in edge of centre locations should out of centre sites be considered and that when considering edge of centre and out of centre proposals, preference will be given to accessible sites that are well connected to the town centre.

At pre-application stage it was agreed that undertaking the sequential test the following sites should be considered:

- i. Land at Banbury Canalside (Local Plan policy Banbury 1)
- ii. Land at Bolton Road (policy Banbury 8)
- iii. Land at Spiceball (policy Banbury 9)

- iv. Land at Calthorpe Street (paragraph C.158)
- v. George Street Car Park

It was also advised that a sequential test, in this case, need not extend beyond Banbury and that a retail impact assessment would be required.

Sequential Test

i. Policy Banbury 1 - Banbury Canalside allows for residential, commercial and town centre uses in the northern part of the allocated site. The policy also states that there should not be any significant convenience retail on the site. Policy Banbury 7 states that main town centre uses will be supported in Banbury town centre and identifies an 'area of search' for an extension to the town centre which will be explored in Local Plan Part 2.

The submitted sequential test considers two parts of the Canalside site closest to the existing town centre. It states, "*Neither site is considered a suitable site for Waitrose. Site A forms part of the Council's wider Canalside allocated site and should form part of that comprehensive redevelopment, it is also currently occupied and appears to be vibrant and healthy. Site A is far too small to accommodate even a part of the proposed development and would only appeal to much smaller independent retail outlets and has aspirations to remain as public open space.*"

As the policy seeks to avoid significant convenience retail in this location, it is accepted that it could not accommodate the proposed development under this restriction.

ii. Policy Banbury 8 sets out how land at Bolton Road will be redeveloped for town centre uses including small scale A1 and A3 uses, ancillary residential development and car parking. Paragraph C.167 explains how there is an option for food retailing to be provided on the site.

The sequential test notes, "*The Bolton Road site could potentially accommodate the scale of proposed retail supermarket. The site is presently in multiple ownerships and is occupied by a range of commercial uses and a substantial public car park. The emerging Development Plan indicates Cherwell District Council proposes a residential led scheme, contributing to the vitality and viability of the town centre*" (para. 4.5).

It also states (appendix 1), "*The site is identified to come forward as part of a comprehensive mixed use development adjacent to the Town Centre. The emerging allocation identifies that a variety of commercial uses should come forward on the site. A number of units on the Bolton Road site are occupied, therefore the availability of the site in the short to medium term is questioned. The site also relies of the delivery of a number of different uses (Hotel, Leisure, small scale Retail) to fulfill its policy requirement to be a comprehensive scheme. Accordingly the site is considered neither suitable or available and can therefore be discounted as a suitable site for Waitrose.*"

The Plan was modified in 2014 in deliver a larger residential component on this site with smaller retail units. However, in the view of the Council's land interest in the site and its desire to facilitate redevelopment, it is suggested that further consideration be given to its potential suitability and availability.

iii. Policy Banbury 9 – Spiceball Development Area provides for a mixture of town

centre uses comprising new retail and leisure, a landmark mixed retail and leisure development that supports the growth of the town centre to the north of the Oxford Canal. On 6 February 2014 the Council resolved to grant permission for a retail food store (Use Class A1), hotel (Use Class C3), cinema (Use Class D2), restaurants and cafes (Use Class A3 and A4) on the site subject to legal agreement.

The potential operator involved in the current application had been an interested party. The sequential test states, *“Waitrose has carefully considered the trading opportunity presented by this site and has concluded that it is not suitable for Waitrose. Waitrose will not undertake investment on this site. The reasons why this site is not acceptable to Waitrose are set out in the correspondence dated 20th May 2015”* (para. 4.3)

“Although the location is acceptable to Waitrose as a matter of principle, being edge of centre, the site does not present the opportunity for a successful supermarket for Waitrose”. The five reasons highlighted in the sequential test are:

“i) The size of the proposed foodstore at 25,000 sq ft net sales is not large enough to enable Waitrose to compete against existing food retailers in Banbury.

ii) The store configuration does not meet Waitrose’s model layout; it is too long and thin and does not allow sufficient aisle width and or an acceptable store layout.

iii) The vertical circulation (goods lifts, customer lifts and escalators/travellators) sits within the sales area, further reducing the available selling space and compromising retail layout.

iv) The multi level car parking proposed is not of an acceptable layout and is not suitable for Waitrose customers. Multi level parking is a disincentive as customers find it inconvenient and more difficult to navigate, and so reduces sales and viability.

v) The overall scheme is a complex – multi level mixed use redevelopment of a constrained town centre site that includes a hotel, cinema, restaurants, bars and cafes. Customers are likely to find themselves competing for parking with users of the adjacent leisure centre, as well as users of the other facilities on the site.” (para. 4.4)

Whilst this site and the approved scheme is not considered to suitable for Waitrose, its potential suitability for a foodstore, the possibility of an alternative scheme being promoted and the policy certainty brought about by an allocated site should be given consideration.

iv. Land at Calthorpe Street (paragraph C.158). The sequential test concludes *“The opportunity for development of any form to come forward on the site is extremely limited on account of Calthorpe Road dissecting the site Furthermore there is no prospect of the site coming forward in the short to medium term as the existing car parks serve a number of existing users.”*

Land at Calthorpe Street has mixed use potential but at present is not given the priority in the Local Plan that has been given to Spiceball and Bolton Road. It is accepted that Calthorpe Street is likely to represent a longer term redevelopment opportunity.

v. George Street Car Park – including large public car park serving the town centre. The sequential test concludes, “*The redevelopment of the site does not present a suitable option, due to the fragmented nature of the sites. Furthermore the various land ownership issues surrounding the sites would require extensive discussion and negotiation, thus meaning that the likelihood of the site coming forward in the short to medium term is extremely unlikely. Considering the above, the sites can be discounted as a suitable site for Waitrose.*”

Again, it is accepted that George Street is likely to represent a longer term redevelopment opportunity.

Retail Impact Assessment

With regard to the retail impact assessment, the PPG expects the likely effects of development on any town centre strategy to be considered. The RIA states, “*In relation to planned investment, outline planning permission has been granted for an extension to Banbury town centre, including a foodstore. This permission [note: resolution not permission] was granted without a confirmed foodstore operator. Waitrose has a longstanding aspiration to have a presence in Banbury and therefore considered this site in detail....they concluded it was not feasible for them. Whilst it is understood that the Council as a key landowner of the site is keen to facilitate the development, because there has never been any prospect of Waitrose operating a foodstore on that site, the delivery of the proposed foodstore will not impact on this aspiration or investor confidence more widely*”.

The RIA, goes on to conclude, “...In the event a foodstore comes forward as part of the Spiceball, the cumulative scenario shows that the impact on Banbury town centre will, in net terms be positive”. No specific reference is made to the Bolton Road site.

In view of the importance of the Local Plan’s policies for Spiceball and Bolton Road in strengthening the town centre to meet recently adopted Local Plan objectives, it is suggested that separate expert advice be sought on both the sequential test and retail impact assessment to ensure that the Plan’s and the NPPF objectives for town centres are met.

The proposed development should also comply with Local Plan policy SLE4 which states that all development where reasonable to do so, should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling. Encouragement will be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. The policy explains that development which has a severe traffic impact will not be supported. Policy ESD1 seeks to distribute growth to the most sustainable locations and deliver development that seeks to reduce the need to travel and which encourages sustainable travel options to reduce dependence on private cars.

In conclusion, the application site is outside the town centre in an out of centre location and therefore the proposed development would be inconsistent with the NPPF, the PPG and the policy approach in the Local Plan 2011-2031. There are at least two sequentially preferable sites in the town centre that are considered suitable for a foodstore in principle. Whilst the development would produce a significant number of jobs and assist the wider local economy, the tests of policy SLE1 need to be addressed and it is considered that further expert advice on the conclusions of the sequential test and retail impact assessment should be sought in the interest of meeting Local Plan and NPPF objectives.

	<p>It is noted that the proposals would allow for investment in the existing factory, a large and important local employer. It is also noted that the application site, despite being in an out of centre location is relatively close to the town centre and within reasonable walking and cycling distance. A car parking strategy for the site could also be secured. However, in the interests of ensuring that there would not be significant adverse harm to the delivery of Local Plan policies Banbury 7 (Strengthening Banbury Town Centre), Banbury 8 (Bolton Road) and Banbury 9 (Spiceball), it is recommended that further specialist advice be sought.</p>
Policy Recommendation	Further consultation upon receipt of specialist advice.