

# Frontier Park Land Adjacent to the M40 Junction 11 Banbury OX16 3AD

Full application for a mixed-use development including a 240-bed hotel, 4 storey office building, and roadside services including 2 no. hot food restaurant drive-throughs, a coffee shop drive-through, and a petrol filling station with ancillary retail store.

## SEQUENTIAL TEST

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#### **/1** INTRODUCTION

- 1.1 This sequential test supplements the application submitted to Cherwell District Council for a mixed-use development including a 240-bed hotel, 4 storey office building, and roadside services including 2 no. hot food restaurant drive-throughs, a coffee shop drive-through, and a petrol filling station with ancillary retail store, at Frontier Park, Land Adjacent to the M40 Junction 11, Banbury, OX16 3AD ('the application site').
- 1.2 The planning application is made to Cherwell District Council as a full planning application. The supporting Planning Statement provides a detailed description of the site and assessment of the proposals in relation to the relevant planning policies.
- 1.3 As part of this application, the applicant is required to undertake a sequential test as the proposal includes some uses which can be considered as main town centre uses that are outside of a defined centre. In accordance with Paragraph 86 of the National Planning Policy Framework (NPPF) and Policy SLE 2: Securing Dynamic Town Centres of the Adopted Cherwell Local Plan 2011-2031 Part 1 (adopted 2016) a sequential test has been carried out. This Statement provides the results of this test in the context of the relevant planning policy.



#### **/2 PLANNING POLICY CONTEXT**

2.1. The adopted Development Plan for the application site comprises of the Adopted Cherwell Local Plan 2011-2031 (Part 1). An extract from the Policies Map associated with Cherwell Local Plan is provided at Figure 1: the site is located within an area identified as an 'New Employment Area' for B1, B2 and B8 uses. The site is categorised as Policy Banbury 15, which contains site-specific requirements regarding the employment designation.



Figure 1: Extract from the Local Plan Policies Map (Blue shade and red outline illustrating designated New Employment area)

2.2. Policy SLE2: Securing Dynamic Town Centres of the adopted Local Plan states that the Council will, where relevant, apply the sequential and impact assessment to retail and other new main town centre uses, in areas outside the town centres of Banbury and Bicester and the village centre of Kidlington. The Council will apply the sequential test as set out in the NPPFF stating that:



- Proposals for retail and other Main Town Centre Uses not in these 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.
- 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.
- The Council will consider if the proposals satisfy the sequential test and if they are likely to have a significant adverse impact on one or more of the factors in the NPPF.
- All proposals should comply with Policy SLE 4.
- An impact assessment will also be required in accordance with requirements in the NPPF. The Council will require an impact assessment if the proposal is over 2000 sq. metres (gross) in Banbury, 1500sq. metres (gross) in Bicester and 350 sq. metres (gross) elsewhere.
- Evidence in the Council's Retail Study will also be considered in determining applications if information is not provided by the applicant which is considered to supersede this evidence.
- Proposals should comply with Policy ESD15.
- The Council will support the provision of new local centres containing a small number of shops of a limited size within the strategic housing allocations on strategic sites set out in this Local Plan.
- 2.3. Paragraph 86 and 87 of the NPPF states:

'Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.



When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.'

2.4. In relation to impact, Paragraph 89 of the NPPF outlines that when assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date local plan, local planning authorities should require an impact assessment for developments that are in excess of locally set floor space thresholds. Policy DM23 of the adopted Local Plan states:

'Retail proposals for more than 200 sq. m net floorspace in locations outside defined centres will only be permitted if the proposal can be demonstrated to be acceptable under the terms of the National Planning Policy Framework (NPPF), particularly in terms of:

- a. the appropriate scale of development;
- b. the sequential approach;
- c. avoiding significant adverse impact on existing defined Centres; and
- d. accessibility by a choice of means of transport.'



#### **/3** SEQUENTIAL TEST

- 3.1. This section assesses the proposal against the key planning policy requirement. The proposed development is mixed use in its nature, with the proposed development including a hotel, petrol filling station (PFS), office, and three drive-through units. The PFS and hotel are both defined as a main town centre use in the glossary of the annex of the Framework. In short, a main town centre use is proposed in an out of centre location; therefore, it is necessary to demonstrate that there are no available, suitable, and viable sequentially preferable sites that could accommodate the proposed development.
- 3.2. The application site area is approximately 1 hectare in size, and a search of sites of broadly the same size have been undertaken as part of this assessment. The search area was focused within the local centres of Banbury and Bicester.
- 3.3. It is important at the outset to correctly interpret and apply the sequential test, taking into account case law and relevant appeal decisions. For example, as highlighted in the Dundee (March 2012)<sup>1</sup> case, the Supreme Court ruled that '*suitable'* means '*suitable for the development proposed by the applicant*' and the Secretary of State in the Rushden appeal decision (June 2014)<sup>2</sup>, has confirmed that the sequential test needs to be considered in the context of the specific development proposed by the applicant, and not simply a '*class of goods'* approach or some attempt at disaggregation that might otherwise seek to accommodate elements of the proposed development on a smaller, sequentially preferable site.
- 3.4. Whether, therefore, a site is suitable for the commercial requirements of a developer/retailer, clearly needs to be considered in light of the specific application

<sup>&</sup>lt;sup>1</sup> Case [2012] UKSC 13 - Tesco Stores Limited (Appellants) v Dundee City

Council (Respondents) (Scotland) <u>https://www.supremecourt.uk/cases/docs/uksc-2011-0079-judgment.pdf</u> <sup>2</sup> Appeal Reference: APP/G2815/V/12/2190175, applicant LXB RP (Rushden) Limited -



proposal. The two decisions referred to above, both assist in demonstrating how the sequential test should be lawfully and properly applied.

- 3.5. Whilst we acknowledge the requirement for some flexibility in applying the sequential test, as referred to in the National Planning Guidance, this needs to be applied sensibly in the context of scale and format, as it is clearly not the purpose of national or local planning policy to require a developer to seriously compromise their proposal by requiring them to disaggregate it into its constituent parts. Indeed, the Secretary of State in the Rushden decision expressly acknowledges that the NPPF does not require an applicant to disaggregate in any way a specific development proposal. In reality, therefore, whilst there may be some limited scope to reduce the scale of the proposed development, it would be wholly unreasonable to expect the applicant / retailer to amend a proposal to the extent that it no longer meets their business requirement and becomes unviable.
- 3.6. In order that the sequential test is properly applied, it is therefore necessary to consider the proposed development as a whole for which planning permission is sought, which includes a PFS (sui generis), 3 drive thru units (Use Class E, formerly A3/A5), a 240-bed hotel (Use Class C1) and an office building (Use Class E, formerly B1a).
- 3.7. In line with planning policy requirements, this sequential test considers potential alternative, sequentially preferable sites that could accommodate the development on a site of 1 hectare, allowing for a reasonable degree of flexibility, focusing upon the centres of Banbury and Bicester in accordance with national guidance.

#### <u>Availability</u>

3.8. The NPPF (Paragraph 86) sheds light on the correct interpretation of this aspect of the test, and states:

'Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.'



3.9. Importantly, it does not ask whether such sites are likely to become available during the remainder of the plan-period but instead whilst sites do not have to be available immediately, to avoid prejudicing town centre or edge of centre sites that are in the pipeline but not available straight away.

#### <u>Suitability</u>

- 3.10. Suitability relates to whether the proposed development can be reasonably and successfully located at a particular site. There are several key considerations in this respect.
- 3.11. Firstly, as previously indicated, the test is only relevant in the context of the *'requirement'*the proposed development will meet. The introduction of a PFS and hotel, are seen as sensible introductions to the area. The proposed uses are ancillary to the uses already present in the area, including within the greater Policy Banbury 15 site, which minimises the need for travel to these facilities. In this respect it is considered that this site caters for the needs and services required by passing motorists of the adjacent highway network including the M40, as well as existing and future employees of the nearby commercial uses and the proposed offices at the site.
- 3.12. Secondly, the basic business requirement of the operators is of fundamental importance. Combining the Petrol Filling Station with ancillary retail use, the hotel, and the array of other services across the site allows for a 'hub' to be identified providing uses in this area that are appropriate for local convenience and reflective of the site's location off the M40.
- 3.13. The Applicant's business model includes these types of roadside facilities where road users can get food and beverages whilst on journeys at the same time as fuel and provide services in one location for convenience. Moreover, the hotel provides the opportunity to take a break during longer journeys, which helps to increase highway safety. Indeed, the proposed operator (Hampton by Hilton) has identified a need for a hotel of their quality in this area, that provides a greater offer than the budget hotels that are already located within this part of Banbury.



- 3.14. The sites are required to be located by strategic road networks and are often located on the edges of commercial estates, where they can complement business uses providing services for employees on these types of estates.
- 3.15. Furthermore, as previously indicated, it is not the purpose of planning policy to require a proposal (as a whole) to be split between separate sites. The NPPF does not require `*disaggregation*', as evidenced by the Rushden decision. This has not changed in the revised NPPF (February 2019).

<u>Viability</u>

3.16. Sites should not present any obvious economic obstacles to the proposed development.

#### Assessment

- 3.17. For the purposes of our sequential examination, the assessment focuses on available sites within Banbury and Bicester, having identified the village centre of Kidlington as unsuitable for the proposed uses, due to accessibility and because the proposed development if of an inappropriate scale for the village.
- 3.18. A thorough search of land / buildings both for sale and for let with a minimum size area of 0.5 hectares (the application site area is 1 hectares) was undertaken 9<sup>th</sup> June 2021 via the following:
  - Rightmove, Prime Location, and Zoopla's online search engines; and
  - Websites of three local independent commercial agents including; White Commercial, VSL and Savills.
- 3.19. Full search results are shown in Appendices A and B. Only allocated employment sites and of a minimum of 0.4ha in size have been considered in more detail.
- 3.20. <u>No suitable sites (both for rent and for sale) which could accommodate the proposed</u> <u>development were found.</u>
- 3.21. Following a thorough search of sites in and on the edge of Banbury and Bicester Town Centre, no sites were found that could sufficiently accommodate the proposed development.



- 3.22. Other sites located outside of the Town Centres and the Borough were found but were not suitable for the use of the proposed development and are also not located in a defined centre.
- 3.23. The two sites documented within Appendix B are identified to be suitably located within the town centre development zones, yet these have constraints which would prohibit the proposed development. These are documented in further detail in Appendix B.
- 3.24. The site shown at Longford Park, Banbury is too small is size at 0.4ha. Although this site is allocated as an employment site, it too is allocated for B1 office uses (Use Class E), similar to the Policy 15 Banbury designation. For the reasons above, this site is not suitable.
- 3.25. The land for Canal Basin also located at Longford Park, Banbury is also inadequate is size of site required for the development at 0.5ha, limiting the proposed development. Again, this site is not suited for the proposed uses, as this site is allocated for a mixed-use scheme, which includes a housing allocation. For the reasons above, this site has been discounted.
- 3.26. The industrial/warehouse units AxisJ9 90 & 160 AxisJ9, Bicester are unsuitable in size as unit 90 is too small at 0.8ha whilst, Unit 160 is too large for the proposed development with up to 1.48ha available. Additionally, the site is not suited for the proposed development despite being located close to the M40, it is identified to be suited for distribution uses holding B1 (Now Use Class E) and B8 planning permission.
- 3.27. Finally, the site at Axis J9 Units 1 5 is too small, with up to 0.5ha available. This is too small compared to the proposed development site, furthermore, this site would require the purchasing of multiple units. Although this site is located within proximity to J9 of the M40, it has planning permission for B1 (Use Class E), B2 and B8 uses, and has been identified to be more suited for distribution/logistics, advanced manufacturing and the technology sectors.



#### <u>Summary</u>

- 3.28. There is a distinct lack of sites within Banbury and Bicester town centres to accommodate a development of this size, with the vast majority of properties available falling well below the required floorspace and the client's requirements, especially when considering the mixed-use nature of the development. The Town Centre is a tightly developed area with limited space for this type of development. There are no sites that are suitable to contain the proposed mixed-use development, which contains a PFS with ancillary retail elements, a hotel, offices, and three drive thru units. The development is required to be on strategic road networks to attract passing motorists and it is a requirement of the clients business model to be located on or within close proximity to strategic highway networks.
- 3.29. Considering all of the above, it is clear that there are no sites identified in the sequential search that are suitable, available and viable to accommodate the application proposal.
- 3.30. The summary of the results within this Statement represents a sensible interpretation and application of the sequential approach towards site selection. There are demonstrably no sequentially preferable alternatives that are available or suitable and consequently the application site, is still, in our view, the most appropriate location for the proposed development located adjacent to Junction 11 of the M40.



#### **/4** CONCLUSION

- 4.1. Having considered the availability of sites within and on the edge of Banbury and Bicester Town Centres it has been concluded that there are no sites adequate in size for the development proposed that can be considered more suitable.
- 4.2. For the reasons identified within this Statement, it is considered that a satisfactory sequential test has been carried out to demonstrate compliance with Section 7 of the NPPF. Planning permission for the proposed development should not therefore be withheld on sequential grounds.

**SEQUENTIAL TEST** Frontier Park, Banbury



# **APPENDICES**

**SEQUENTIAL TEST** Frontier Park, Banbury







Figure 2:Rightmove search for any commercial property for sale in Bicester (top) and Banbury (bottom), no properties were found which could accommodate the proposed development.

**SEQUENTIAL TEST** Frontier Park, Banbury







t - From 2,323 - 14,973 sq. m\* Industrial for sale Heyford Park, Camp Road, Upper Heyford, Bicester OX25

Bicester Gateway Residential-led development and investment opportunity within the Oxford Cambridge Arc in a highly prominent position at the entrance to Bicester.



VSL & Partners, OX5

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Figure 3: Zoopla search for any commercial property for sale in Bicester (top) and Banbury (bottom), no properties were found which could accommodate the proposed development.







Figure 4: Prime Location search for any commercial property for sale in Bicester (top) and Banbury (bottom), no properties were found which could accommodate the proposed development.





#### COMMERCIAL PROPERTY CONSULTANTS

The most effective Commercial Property Consultants along the London to Birmingham M40 Corridor

Search Results



M40 Gateway Office Park, Wildmere Road, Banbury, OX16 3JU

Size from (sq ft)	17076	
Size to (sq ft)	48604	
Tenure	To Let	
Availability	Under Offer	
Value	£280,000 - £765,000	



### COMMERCIAL PROPERTY CONSULTANTS

The most effective Commercial Property Consultants along the London to Birmingham M40 Corridor

Search Results



Axis J9 Bicester (Phase 1), Middleton Stoney Road, Bicester, OX26 1RT

Size from (sq ft)	23446
Size to (sq ft)	64737
Tenure	To Let
Availability	Let
Value	£9.00 per sq ft

Figure 5: White Commercial search for any commercial property for sale in Bicester (top) and Banbury (bottom), no properties were found which could accommodate the proposed development.





Figure 6: Saviills search for any commercial property for sale in Bicester (top) and Banbury (bottom), no properties were found which could accommodate the proposed development.





Figure 7: VSL search for any commercial property for sale in Banbury to accommodate the proposed development.



Size: 9,010 - 21,365 sq ft For Sale or To Let



Figure 8: VSL search for any commercial property for sale in Bicester to accommodate the proposed development.



#### **APPENDIX B**

Site Address	Site Area (ha)	Land Agent	Suitability
Longford Park (Employment Site), Banbury, OX15 4AD	0.4ha	White commercial	Too small Limited to B1 office development
Land for canal basin Longford Park, Banbury Oxon, OX15 4AD	0.5ha	White commercial	Mixed use scheme- allocated housing
Industrial/Warehous e Axis J9 Units 1 - 5, Bicester, OX26 1RT	0.6ha	VSL	Close proximity to J9 Limited to B1,B2 and B8 uses
Industrial/ Warehouse Axis J9 units 90 & 160, Bicester	0.8-1.48 ha	VSL	Inappropriate size Close to M40 Limited to B1 and B8 uses



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