

7 September 2016
Sequential Test Statement
Land at Bicester Gateway
Site Owned by Bloombridge Development Partners and Hill Street Holdings

1.0 Introduction

- 1.1 This Sequential Test Statement is submitted by the Retail and Leisure Planning team at Savills on behalf of Bloombridge Development Partners and Hill Street Holdings ('the developers') in relation to land known as Bicester Gateway.
- 1.2 The Retail and Leisure Planning team is a national team that has significant experience in advising on development proposals for large-scale retail and leisure proposals and associated planning policy considerations.
- 1.3 The Statement is submitted to support an application proposal for large-scale employment development at Bicester Gateway. The application proposal will include a hotel that will support the operation of the proposed employment development.
- 1.4 The Statement builds on the earlier Sequential Test & Economic Case report prepared by Radimus Consulting Limited and submitted to Cherwell District Council. It follows the pre-application advice, dated 18 August 2016, issued by the Council to the developer. The pre-application advice considers the sequential test, which is applicable to 'main town centre use' proposals such as hotels. This Statement is submitted to address those comments and provide details on how the sequential test policy that adopts a 'town centre first' approach to certain forms of development should be applied. By way of background, the other main town centre use policy consideration – the impact assessment – does not apply (see further details at Paragraphs 3.18 – 3.21 below).
- 1.5 The Statement is structured as follows:
 - **Section 2:** Background Information: Site Description and The Proposed Development
 - **Section 3:** Local and National Planning Policy Background
 - **Section 4:** Relevant Case Law and Appeal Decisions
 - **Section 5:** Application of the Sequential Test to the Proposed Development
 - **Section 6:** Conclusions

2.0 Background Information: Site Description and The Proposed Development

Site Description

- 2.1 The site is undeveloped land located approximately 1.6km to the south west of Bicester town centre. It is located off the A41, which is an arterial route into the town and provides immediate access to the M40, located approximately 2.6km to the south west of the site.
- 2.2 Located to the north west and north of the site on the opposite side of the A41 is the Bicester Park and Ride and an urban extension to Bicester, known as 'South West Bicester' Phases 1 and 2 that will provide approximately 2,300 new dwellings and associated infrastructure and services. To the north of the site on the same side of the A41 is a Wyevale Garden Centre and further north of this is Bicester Village outlet shopping centre. Located adjacent to Bicester Village is the Bicester Village train station that is located approximately 1.9km from the application site.
- 2.3 It follows that the site is in an accessible location that is well related to surrounding land uses.
- 2.4 The application site forms part of a wider allocation under Policy Bicester 10: Bicester Gateway in The Cherwell Local Plan 2011 – 2031 (adopted 20 July 2015) that will deliver 'Knowledge

economic employment development'. The wider allocation measures 20.97 hectares and it is intended that the allocation as a whole will deliver approximately 77,000 sq. m of employment floorspace.

- 2.5 Further details are provided on the policy below. However, as part of the Examination into the Local Plan, the Local Planning Authority documented its position by signed Statement of Common Ground with the developer, that the site is an appropriate location for hotel development and that the then emerging Policy Bicester 10 should include explicit reference to hotel development being an acceptable use at the site. This position was also documented by the Inspector in his Report on the Examination of the Local Plan (Paragraph 156).
- 2.6 Although the explicit reference to hotel development was not incorporated into Policy Bicester 10, both the Statement of Common Ground and the Inspector's Report demonstrate that it is considered that a hotel would be an appropriate use at the site as it would support the operation of the employment development. This provides the context to the proposal and demonstrates that the Council and Inspector have already confirmed that a hotel use at the site would be sustainable development. There have been no changes in circumstance that would result in a different conclusion being reached. This provide the positive background against which the proposal should be assessed against and demonstrates that there should be a presumption in favour of supporting the application.

The Proposed Development

- 2.7 The application proposal is for Phase 1 of the development of the large-scale employment allocation at Bicester Gateway. The application proposes 16,722 sq. m of employment development for use as offices, research and design and production facilities and a 150 room hotel that will support the operation of the employment development both that proposed now and as part of the wider allocation. The objective of the development is to provide floorspace that creates and supports a knowledge based economy in Bicester.
- 2.8 The Phase 1 application site measures approximately 5.25 hectares as shown on Drawing Reference PL01B – 'Phasing' that is enclosed with the application¹. The Phase 1 development is located on the western side of the site at its entrance from the A41.

3.0 Local and National Planning Policy Background

Introduction

- 3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that:
- 'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise'*
- 3.2 The starting point for the consideration of an application proposal is therefore the development plan. Material considerations include the National Planning Policy Framework ('The Framework') and the National Planning Practice Guidance ('The Guidance').

The Development Plan

- 3.3 The development plan comprises:
1. The Cherwell Local Plan (adopted November 1996)

¹ Phase 2 of the development will take place on a site that measures 15.72 hectares.

2. The Cherwell Local Plan 2011 – 2031 (adopted 20 July 2015)

3.4 The relevant policies are:

1. Policy PSD 1: Presumption in Favour of Sustainable Development

3.5 Policy PSD1 confirms that the Council will take a proactive approach to securing development that improves the economic, social and environmental conditions in the area to reflect the presumption in favour of sustainable development outlined in The Framework.

2. Policy Bicester 10: Bicester Gateway

3.6 Policy Bicester 10 is the site specific allocation for the application proposal. It provides a positive policy framework for the development of the site for 'Knowledge economy employment development'. The employment development is to be 'B1 Business uses: high tech knowledge industries.'

3.7 Policy Bicester 10 sets out key site specific design and place shaping principles and confirms that these include:

*'A well designed modern area with the provision of **high quality property to attract and retain 'best in class' technology companies.**'* (Savills' emphasis in bold)

3.8 Pausing here, we comment that:

- a. The hotel will support the operation of the employment development and provide facilities and amenities for its users. It follows that the proposal for a hotel would form part of well designed modern area that is responsive to its users' requirements.
- b. The hotel will be a well-designed high quality 'gateway feature' at the site's entrance.
- c. The provision of a hotel that supports the operation of the employment development will assist in ensuring that the development can attract and retain best in class technology companies.

3.9 Accordingly, there is a case that a proposal for a hotel complies with the design and place shaping principles of Policy Bicester 10 and so should benefit from the grant of permission under Section 38(6) of the Planning and Compulsory Purchase Act 2004. Nevertheless, this Statement also considers the following development plan policies:

3. Policy SLE 2: Securing Dynamic Town Centres

3.10 Policy SLE 2 provides a policy framework for assessing proposals for 'main town centre uses'² that are not located within a defined centre. This includes:

² Main town centre uses are listed at Annex 2: Glossary of The Framework as:

'Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment facilities the more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres, and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).'

- a. The application of the sequential test, which seeks to guide main town centre use development towards town centres in the first instance, followed by edge of centre locations and then out of centre sites.
- b. The impact assessment, which seeks to ensure that proposals not located within centres do not have a significant adverse impact on defined retail centre, including their vitality and viability and planned investment within them.

Material Considerations

The Framework and The Guidance

- 3.11 The Framework is the national planning policy document that sets out the Government's planning policies for England and how these are expected to be applied³. It is a material consideration in the determination of all planning applications, and Local Plans should be consistent with the principles and policies set out in The Framework⁴.
- 3.12 Paragraph 14 of The Framework confirms that there is a presumption in favour of sustainable development, which should be the 'golden thread' running through plan-making and decision-making. As set out above, both the Council and the Local Plan Inspector confirmed that the proposed hotel use was sustainable development as part of the Examination into the Local Plan. This demonstrates that there should be a presumption in favour of supporting the application.
- 3.13 Paragraph 24 of The Framework relates to the sequential test for 'main town centre uses' and states:

'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.'
- 3.14 The Guidance accompanies The Framework and provides the Secretary of State's position on how the policies of The Framework are to be applied. It is also a material consideration. Paragraph 010 of the section titled 'Ensuring the vitality of town centres' outlines how the sequential test should be used in decision-taking. It sets out that:
 1. The application of the test should be proportionate and appropriate for the given proposal.
 2. Due regard should be given to the requirement to demonstrate flexibility in terms of a proposal's format and scale.
 3. It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.

³ Paragraph 1 of The Framework.

⁴ Paragraph 151 of The Framework.

- 3.15 Paragraph 011 of The Guidance sets out that certain ‘main town centre uses have particular market and locational requirements which mean **they can only be accommodated in specific locations**’. (Savills’ emphasis in bold).
- 3.16 It follows that it is now well established that the sequential test cannot be undertaken in a vacuum and must have regard to commercial realities of what the market is proposing in response to particular types of development. Therefore, even where there may be sites located within town centres, or sequentially preferable locations that are available, these may simply not be suitable for the type of development that is proposed to meet a specific market requirement. In addition, the Government provided a response to the CLG Select Committee Inquiry into the Operation of The Framework on 27 February 2015. This confirms that there is no requirement to disaggregate any main town centre use proposal.
- 3.17 As set out in Footnote (2) above, office development is also a ‘main town centre use’. It follows that in coming to its decision to allocate the site for employment development, the Council has confirmed that the site is a sequentially preferable location for main town centre uses. As the hotel will support the main town centre use office development, it follows that it is a sequentially preferable location for the development as a whole. In any event, we have applied the sequential test to the application proposal and details of this are set out in Section 5.
- 3.18 As a side note, impact is not a relevant consideration to hotel proposals.
- 3.19 Paragraph 13 of The Guidance sets out the types of ‘main town centre’ use development that the impact test applies to as follows:
- ‘The purpose of the test is to ensure that the impact over time (up to five years (ten for major schemes)) of certain out of centre and edge of centre proposals on existing town centres is not significantly adverse. **The test relates to retail, office and leisure development (not all main town centre uses) which are not in accordance with an up to date Local Plan and outside of existing town centres**. It is important that the impact is assessed in relation to all town centres that may be affected, which are not necessarily just those closest to the proposal and may be in neighbouring authority areas.’* (Savills’ emphasis in bold)
- 3.20 Annex 2: Glossary of The Framework lists the types of development that are ‘main town centre uses’. It confirms that hotels are ‘tourism development’ (see cross-reference to Footnote 2 above). Tourism development is not retail, office or leisure development that the impact test could apply to (see cross-reference to Annex 2 of The Framework for types of development that are retail, office, leisure and tourism development).
- 3.21 It follows that the impact test does not apply to hotel proposals as tourism development is not one of the main town centre uses that the impact test could apply to. The impact test is also not applicable to the office development as this is in accordance with an up to date Local Plan. The Framework and The Guidance are clear on these points.

4.0 Relevant Case Law and Appeal Decisions

- 4.1 The above requirements of the application of the sequential test are now well established and have been considered over a number of Court Judgements and Secretary of State appeal decisions.
- 4.2 Relevant decisions in this instance include:
1. The Supreme Court Judgement on Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland), dated 21 March 2012 (Case Reference UKSC 13)

(‘Dundee’)

2. The High Court Judgement on Aldergate Properties Limited v Mansfield DC, dated 1 June 2016 (Case Reference EWHC 1670) (‘Mansfield’)
3. Secretary of State Call-In Appeal Decision Reference APP/G2815/V/12/2190175, dated 11 June 2014 (‘Rushden Lakes’)

4.3 The key points arising from the decisions that are relevant to the application proposal are:

1. The ‘Dundee’ case is legally binding in that the sequential approach does not:
 - a) relate to need or deficiencies in retail provision in the area in question
 - b) require a ‘suitable’ site to be one that can only accommodate a proposal if the proposal is altered / reduced (Dundee, Rushden Lakes)
2. The sequential test relates entirely what is proposed by the application and whether it can be accommodated on an actual alternative site, not some other proposal that the planning authority might seek to substitute for it which is for something less than that sought by the developer. (Dundee)
3. The question is whether an alternative site is suitable for the proposed development having regard to reasonable degrees of flexibility and format, not whether the proposed development could be altered or reduced so that it can be made to fit the alternative site. (Dundee, Rushden Lakes)
4. The proposal as a whole needs to be considered, and should not be disaggregated. (Rushden Lakes)
5. That the site search area has to include an assessment of more central sites and that the search cannot be modified to exclude central sites based on operator requirements. (Mansfield)

4.4 We note from the pre-application advice, that Cherwell District Council consider that Dundee is wrongly applied and has been overtaken by English policy published since the decision date. That is not the case. As a Supreme Court Judgement, Dundee applies. This has also been confirmed by the Secretary of State in the Rushden Lakes decision.

4.5 In any event, there is no requirement in either The Framework or The Guidance for a proposal to be disaggregated when the sequential test is applied (see cross-reference to Paragraph 3.16 above). The application of the sequential test relates wholly to the application proposal and not a disaggregated, reduced or altered version of the proposal (see cross-reference to Secretary of State appeal decisions above). Put simply, the sequential test applies to the ‘proposed development’.

5.0 Application of the Sequential Test to the Proposed Development

5.1 In the light of the above, the starting point for the application of the sequential test is to consider what the application proposes. The proposed development is a large-scale employment development providing approximately 16,722 sq. m of employment development for use as offices, research and design and production facilities and a 150 room hotel that will support the operation of the employment development. The proposal is not for a stand-alone hotel.

5.2 Against that background, it follows that only sequentially preferable sites that are suitable are

those that can accommodate the proposed development, and not a disaggregated or reduced version of the proposed development.

- 5.3 In terms of an assessment of alternative sites, town centre sites must be considered first, then edge of centre sites and only if suitable sites are not available, out of centre sites should 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.
- 5.4 It follows that there is no preference built into the sequential test for other out of centre sites, which may be allocated for similar uses (e.g. a hotel), except where those sites score better in accessibility terms and connectivity to the town centre.

- 5.5 Accordingly, we have reviewed the following sites:

1. Town Centre Sites

- 5.6 There are no available sites in the town centre that are suitable for the proposed development.
- 5.7 The only site is the Bure Place Town Centre Redevelopment Phase 2 site that is allocated under Policy Bicester 6 of the Local Plan for new civic buildings that also include new public space and a library. Accordingly, a proposal for large-scale employment development and a hotel conflicts with the policy objective for the site.
- 5.8 As the Bure Place site measures approximately 3 hectares, it is not suitable as it is not large enough for the proposed development even with a significant degree of flexibility applied. The site is approximately 57% of the size of the application site and could not accommodate the proposed development set out at Paragraphs 2.7 – 2.8 above.
- 5.9 In addition, a town centre hotel would not meet the same market and location requirements that a hotel proposed at the application site would. Using the language of The Guidance stated at Paragraph 3.14 (3) above, it follows that a more central site in Bicester town centre, would not be able to make the same contribution to the proposed employment development that a hotel at the application site would be able to make.

2. Edge of Centre/Out of Centre Sites

- 5.10 The pre-application advice letter, directs the applicant to a number of edge and out of centre sites to consider as part of the sequential test. These along with our assessment of each are:
- a. SW Bicester Phase 1
- 5.11 The pre-application advice letter directs the applicant to a 2.045 hectares that has recently been subject to an appeal for retail development (Reference APP/C3105/W/15/3137608). The appeal was dismissed on 1 August 2016.
- 5.12 The site is located approximately 1km to the south east of Bicester town centre. It is out of centre and not sequentially preferable to the application site. Although slightly closer to the town centre than the application site, it is not better connected or more accessible to the town centre. Both sites benefit from being located on the A41 and have the same public transport links. Arguably, as the application site is located adjacent to Bicester Park and Ride, it is better in accessibility terms.
- 5.13 In any event, the site is not suitable as it is not large enough for the proposed development even with a significant degree of flexibility applied. The site is approximately 39% of the size of

the application site and could not accommodate the proposed development set out at Paragraphs 2.7 – 2.8 above.

b. Brownfield Land at Bessemer Close

- 5.14 The pre-application advice letter directs the applicant to a 1.19 hectare site that has recently been subject to an application for 70 homes. The application was refused and is subject to an appeal (Reference APP/C3105/W/16/3149497).
- 5.15 The site is located approximately 430m to the east of the town centre and is out of centre. Given its slightly closer proximity to the town centre, the site could be considered sequentially preferable to the application site. However:
- i. The site is not available. The owner is pursuing alternative development options for the site.
 - ii. The site is not suitable as it is not large enough for the proposed development even with a significant degree of flexibility applied. The site is approximately 23% of the size of the application site and could not accommodate the proposed development set out at Paragraphs 2.7 – 2.8 above.
- 5.16 In addition, a hotel in this location would not meet the same market and location requirements that a hotel proposed at the application site would. A hotel at the Bessemer Close site would provide a facility for town centre users and would not provide hotel accommodation for the users of the employment space at the application site. See also commentary at Paragraph 5.9 above.

c. RAF Bicester

- 5.17 The former RAF Bicester site is allocated under Policy Bicester 8 of the Local Plan for heritage tourism uses, leisure, recreation, employment and community uses. Policy Bicester 8 confirms that *'The development of hotel and conference facilities will also be supported as part of a wider package of employment uses.'*
- 5.18 The site is located approximately 1.7km to the north east of Bicester town centre. It is out of centre and not sequentially preferable to the application site. The site is not considered to be more accessible than the application site or better connected to the town centre. The application site is located adjacent to the Bicester Park and Ride and so better in terms of its connectivity to the town centre and its accessibility by a wider range of transport modes.
- 5.19 The allocation of the site for hotel purposes does not make it a sequentially preferable site for hotel uses. As set out above, there is no preference built into the sequential test in either the development plan or The Framework for other out of centre sites, even where an alternative site may be allocated for similar uses.
- 5.20 In addition, the former RAF site that is located to the north of the town would not meet the same market and location requirements that a hotel proposed at the application site would. A hotel at the former RAF site would not provide hotel accommodation for the users of the employment space at the application site.
- 5.21 We note the comments in the second paragraph on the fifth page of the pre-application advice letter that expresses a concern in relation to the impact of a hotel at the application site on the ability to provide a viable hotel at the former RAF site. As set out above, hotels at each location would serve distinctly different markets, but in any event:

- i. Impact is not a consideration that is relevant to hotel proposals (see commentary at Paragraphs 3.18 – 3.21 above); and
- ii. Impact on edge and out of centre allocated sites is not a policy consideration. There is no requirement in either the policies of the development plan or The Framework for the impact of a proposal on an edge or out of centre allocated site to be considered.

6.0 Conclusions

- 6.1 This Sequential Test Statement is submitted by the Retail and Leisure Planning team at Savills on behalf of Bloombridge Development Partners and Hill Street Holdings in relation to a proposal for large-scale employment development and a hotel on a site known as Bicester Gateway.
- 6.2 As part of the Examination into the Local Plan in 2015, both the Local Planning Authority and Inspector confirmed that a hotel use at the site would be sustainable development. There have been no changes in circumstance that would result in a different conclusion being reached.
- 6.3 The Statement demonstrates that there is a case that a proposal for a hotel complies with the design and place shaping principles of Policy Bicester 10. The proposal will improve economic, social and environmental conditions in Bicester and also accords with Policy PSD1. Accordingly, the proposal should benefit from grant of permission under Section 38(6) of the Act and the presumption in favour of sustainable development. The proposal does not conflict with any of the policies in the development plan or The Framework and all material considerations indicate that the application should be approved.
- 6.4 Nevertheless, the Statement applies the sequential test to the proposed development and also confirms that the impact assessment is not a policy consideration that is relevant to the proposal.
- 6.5 The Statement thoroughly assesses a range of sites for the proposed development and demonstrates that there are no available sites that are suitable for the proposed development.
- 6.6 Accordingly, the sequential test is satisfied as required by both the development plan and The Framework.
- 6.7 We conclude that planning permission should be granted in accordance with Section 38(6) of the Act and the presumption in favour of sustainable development outlined in both the development plan and The Framework.