
Planning, Economic and Main Town Centre Use Statement

Land east of Evenlode Crescent and south of
Langford Lane, Kidlington, Cherwell

**Full Planning Application for Hotel (Class C1)
and Ancillary Restaurant (Class A3), including
associated works comprising the provision of
parking spaces and landscaping.**

Application by Oxford Technology Park Limited

Planning, Economic and Main Town Centre Use Statement

Development Site of Business and Science Park, Kidlington



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Appendices

1. Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland)
2. Minutes of Pre-app Meeting
3. Drawing Ref: AP11B – ‘Proposed Site Plan’
4. Drawing Ref: AP10A – ‘Site Location Plan’



1. Executive Summary

1.1 The case for the proposal is:

1. The Proposal is Positive Economic Investment

1.2 The application proposes a hotel that will support the operation Oxford Technology Park ('OTP'). OTP is a proposed large-scale employment location that benefits from planning permission recently granted by Cherwell District Council.

1.3 The hotel will support the operation of the approved employment development by providing a complimentary land use that fulfils a necessary function of principally providing hotel accommodation for users of OTP, along with also providing a facility that could serve the adjacent airport and commercial development.

1.4 It is well-established that hotel development forms an integral mix of the range of uses and services at modern large-scale employment destinations and this is established locally in Oxfordshire at locations such as Oxford Business Park, Oxford Science Park and Milton Park.

1.5 The complimentary function of the proposed hotel will be a major locational advantage and draw for high tech, high quality companies that the applicant is seeking to accommodate at OTP.

1.6 Hotel development is defined as 'economic development' in the National Planning Policy Framework ('The Framework')¹. As well as providing a service function that will support and promote the economic growth of OTP, the proposed hotel development will generate a significant number of jobs and provide a diverse range of employment opportunities within the hospitality and catering sectors.

1.7 The application proposal is positive economic investment that accords with the objectives and policies of the development plan and The Framework to secure sustainable economic growth.

¹ See Annex 2 of The Framework.



2. The Proposal Complies with the Requirements of the Sequential Test and Impact Assessment

- 1.8 The proposed hotel development and ancillary restaurant are defined in the Cherwell Local Plan Part 1 2011-2031 (2015) and The Framework as 'main town centre uses'².
- 1.9 As the proposed development is not located in a defined centre, both the Local Plan Part 1 and The Framework require the consideration of the sequential test and impact assessment policy requirements (Policy SLE2 of the Local Plan Part 1 and Paragraphs 24 and 26 of The Framework).
- 1.10 The sequential test requires applications for main town centre use development to consider whether there are any available sites within defined town centres³ that are suitable for the proposed development. If there are no available sites in a relevant centre that are suitable for the proposed development, then alternative sites can be considered. The sequential test requires that alternative sites are considered in the order of locations that are first edge of centre and then out of centre.
- 1.11 The sequential test should be proportionate and appropriate for the given proposal⁴, and applied according to the market requirements that a proposal is intended to serve⁵.
- 1.12 The approach set out in the National Planning Practice Guidance ('The Guidance') is consistent with the decision made by the Supreme Court in *Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland)*, dated 21 March 2012.

² Paragraph B.56 of the Local Plan and Annex B of The Framework.

³ The reference to town centres is a reference to City, town, district and local centres (see Glossary at Annex 2 of The Framework). This reference would include Kidlington Village Centre as defined by the development plan.

⁴ The first sub-paragraph under Paragraph 010 of the section Ensuring the vitality of town centres in the National Planning Practice Guidance (The Guidance) and titled *How should the sequential test be used in decision-taking?* All paragraph references in the Statement in relation to The Guidance are from the section Ensuring the vitality of town centres, unless stated otherwise.

⁵ The National Planning Practice Guidance ('The Guidance') confirms that the use of the sequential test should recognise that certain main town centre uses have particular market and location requirements (Paragraph 011 of The Guidance).

1.13 Of note are the following points⁶:

1. Inappropriate businesses decisions should not be taken on behalf developers and operators (Paragraph 28).
2. The term 'suitable' in the application of the sequential test means suitable for the development that is proposed by the applicant (Paragraph 28).

1.14 In terms of availability, the question in The Framework is whether a site is available now and not whether a site is likely to become available during the remainder of the plan period or over a period of some years.

1.15 The application proposes a new 101 room hotel with ancillary restaurant, and 134 car parking spaces at the planned OTP. It follows that the proposed development will principally provide floorspace that is complementary to OTP. It will also serve the adjacent London Oxford Airport, including business users of both the airport and OTP. The site is therefore sustainably and accessibly located to support the operational requirements of OTP.

1.16 Therefore, the question that arises is whether there are any suitable sites in established centres that are available and can meet the same market and locational requirements to provide floorspace for the scheme proposed, having regard to the need for flexibility.

1.17 Officers of the Local Planning Authority ('LPA') confirmed at the pre-application meeting on 16 May 2017 that the search for sites should be limited to Kidlington Village Centre. We have undertaken a thorough review of whether there are any sites in the centre or at its edge that would meet the same market and location requirements of the proposal. We conclude that there are no sequentially preferable available sites within or at the edge of Kidlington Village Centre that are suitable for the proposed development.

1.18 The proposed hotel is not a use that is subject to the impact assessment. This has been confirmed by the LPA in pre-application discussions. The ancillary restaurant is an integral part of all modern hotel

⁶ Copy of Judgement included at **Appendix 1**.



operations principally serving a hotel's residents. The restaurant is included within the proposed hotel building and functionally linked to its operation. Given its ancillary function, it follows that the impact assessment does not apply to the proposed use. In any event, it is not of a scale that could give rise to significant adverse impacts on defined retail centres.

1.19 Paragraph 27 of The Framework requires 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.'

1.20 The proposal satisfies the sequential test and will not have a significant adverse impact on defined centres. It therefore complies with the terms of Policy SLE2 of the Local Plan Part 1 and The Framework.

3. The Proposal is Acceptable in All Other Regards

1.21 The proposal accords with all other development management policies relating to highways, design, landscape, noise, air quality, ecology and flooding.

1.22 In terms of highways, the clear case is that:

1. The approved access junction into the wider OTP development forms a suitable means of access into the proposed hotel and restaurant in this location;
2. The development provides an appropriate level of parking provision including disabled spaces, cycling spaces and electrical vehicle charging points; and
3. There would be fewer trips generated by the proposed development than the approved B1(a) use and therefore no adverse impact on the local road network.



Summary of the Case

- 1.23 The proposed development complies with the requirements of the development plan and The Framework. Accordingly the proposed development should be granted permission in accordance with both Section 38(6) of the Planning and Compulsory Purchase Act ('The Act') and the presumption in favour of sustainable development.



2. Introduction

- 2.1 This Statement has been prepared by Savills (UK) Limited on behalf Oxford Technology Park Limited in respect of an application for a hotel building which includes an ancillary restaurant at the proposed Oxford Technology Park ('OTP') in Kidlington. The hotel development will support the operation of OTP.
- 2.2 The hotel will be operated by national multiple hotel operator, Premier Inn. The restaurant proposed will be operated by Beefeater restaurant brand. It is functionally linked to the hotel forming part of the hotel building and is operated contiguously with the operation as Premier Inn and Beefeater are owned by the same Company⁷. The restaurant's intended function is to principally serve meals to residents of the hotel⁸ but it will also become a key feature of the wider OTP and provide services and amenities for its occupants. This is a well-established hotel concept and is described in more detail in this Statement and the Economic Impact Report prepared by Ramidus Consulting Limited that accompanies the application.
- 2.3 The OTP development benefits from outline planning permission granted on 16 October 2016 under Reference 14/02067/OUT and subsequently varied under Reference 17/00559/F. The outline permission permits the construction of 40,362 sq. m of office, research and development, laboratory and storage business space.
- 2.4 Pre-commencement of development conditions have been discharged under Reference 16/00533/DIS and reserved matters for the first phase of the business development is pending consideration by the LPA (Reference: 17/01542/REM). This will enable the business development to commence in order for occupational requirements to be met.

⁷ Both Premier Inn and Beefeater are operated by Parent Company, Whitbread.

⁸ As set out on <https://www.beefeater.co.uk/promotions/premier-inn.html> nearly all of the Beefeater restaurants are located next to a Premier Inn.

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- 2.5 The proposed hotel will support the operation of OTP by:
1. Providing facilities and amenities for its users. It follows that the proposal for a hotel will form part of a well designed modern economic development area that is responsive to its users' requirements.
 2. The hotel will be a high quality 'gateway feature' at the site's entrance.
 3. The provision of a hotel that supports the operation of the employment development will assist in ensuring that the development can attract and retain the best in class technology companies.
- 2.6 The application has been subject to pre-application discussions with officers at Cherwell District Council on 16 May 2017 in order to agree the scope of the application and supporting information. The minutes of the meeting are included at **Appendix 2**.
- 2.7 It was confirmed by Bernadette Owens, Principle Planning Officer at Cherwell District Council, that the application should be accompanied by a Planning Statement and technical assessments demonstrating that the proposal complies with development management considerations and a comprehensive assessment of main town centre use policies.
- 2.8 This Statement and the suite of accompanying documents provide a robust assessment of the application in relation to relevant planning policies and any other material considerations to assist the LPA's determination of the application. The assessment demonstrates that the proposal is acceptable in all regards and that planning permission should be granted.

The Proposal

- 2.9 The application seeks planning permission for the construction of a 101 room hotel (Class C1) and ancillary restaurant (Class A3) measuring 492 sq. m (Gross Internal Area). The proposed hotel development will occupy Plot 2 of the planned OTP.



- 2.10 The proposed 101 room hotel will provide 17 rooms on the ground floor, 22 rooms on the first floor and 31 on each of the second and third floors. An associated full service restaurant, with 150 covers is included at ground floor level and will operated by Beefeater⁹.
- 2.11 Vehicular and service access to the site will be taken place from the main access into the site from Langford Lane. This access will be installed under the development proposed as part of the pending Reserved Matters application for the first phase of the business development (Reference: 17/01542/REM).
- 2.12 A car park providing space for 134 vehicles including six spaces for disabled users and two electrical vehicle charging points, and eight cycle parking spaces are proposed.
- 2.13 The proposed development is shown on Drawing Ref: AP11B – ‘Proposed Site Plan’ at **Appendix 3**.

The Principal Issues

- 2.14 The principal issues are whether the proposal accords with the development plan and material considerations on the following matters:
1. Whether the principle of hotel development is acceptable?
 2. Whether the proposal satisfies the sequential test that seeks to locate main town centre uses within town centres or at their edges, and whether it can be demonstrated that the proposed development will not have a likely significant adverse impact on defined town centre locations?
 3. Whether the proposal secures sustainable economic growth?
 4. Whether the proposed development accords with highway policy matters, namely:

⁹ See cross-reference to Paragraph 2.2 and Footnote (5) above which confirms that Beefeater and Premier Inn brands are operated by Parent Company Whitbread.



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- a. Whether safe and suitable access to the site can be achieved?
 - b. Whether improvements are required to the transport network and whether those works can be undertaken that cost effectively limit any significant impacts of the development?
 - c. Whether it is demonstrated that the proposed development will not have a severe impact on the operation of the highways?
 - d. Whether the site can be accessed by sustainable modes of transport that reduce the need for major transport infrastructure?
5. Whether the proposal accords with various development management policies particularly those relating to design, landscape, noise, air quality, ecology and flooding?
- 2.15 The existing development plan and material considerations including the National Planning Policy Framework ('The Framework') and Planning Policy Guidance ('The Guidance') provide the LPA's and National Government's policies and guidance addressing the above issues.
- 2.16 In this case, the proposal accords with the adopted development plan. That is, it complies with local policies concerning main town centre uses, economic development, highways, design, landscape, noise, air quality, ecology and flooding. Where this is the case, the full weight of Section 38(6) of the Planning and Compulsory Purchase Act ('The Act') applies, unless the material considerations indicate otherwise.
- 2.17 The material considerations also indicate that permission should be granted as the proposal accords with The Framework and The Guidance. As the proposal accords with The Framework and the development plan, it benefits from the presumption in favour of sustainable development.



The Merits of the Proposal

2.18 The merits of the proposal are that:

1. The application is supported by evidence addressing the sequential test as there are no available sites within relevant centres or at their edges that are suitable for the proposed development. The impact assessment does not apply to the proposed hotel use. The ancillary restaurant is functionally linked to the hotel and is operated as a brand that is directly linked to the Premier Inn operation. It will principally serve residents of the hotel and therefore cannot give rise to any significant adverse impacts.
2. The proposal is a positive investment in Cherwell and will compliment and support the operation of the proposed OTP. The proposal contributes towards local and national Government agendas to promote sustainable economic growth.
3. The proposed development does not result in any severe highway impacts. The effects of the proposal in highway terms are not significant.
4. Safe and suitable access to the proposal can be achieved and the site is accessible by sustainable modes of transport. The proposal does not result in a requirement for any major transport infrastructure.
5. The proposal accords with all other development management policies relating to design, landscape, noise, air quality, ecology and flooding.

2.19 The proposed development accords with the development plan and all other material considerations and should be supported under the terms of Section 38(6) of The Act. It should also benefit from the presumption in favour of sustainable development established in The Framework¹⁰ and we respectfully request that the application be approved and planning permission granted.

¹⁰ Paragraph 14.

Structure of the Statement

2.20 In order to comprehensively assess the proposed development against the relevant planning policies, the remaining sections of this Statement are structured as follows:

Section 3.0: Description of the Site and Surroundings

Section 4.0: Review of Relevant Planning Policy

Section 5.0: The Sequential Test: Relevant Case Law and Appeal Decisions

Section 6.0: Satisfying the Sequential Test

Section 7.0: Other Material Considerations

Section 8.0: Conclusions



3. Description of the Site and Surroundings

- 3.1 A site location plan is included at **Appendix 4** (Drawing Ref: AP10A). The application site is located within Plot 2 of the planned business park known as OTP. The business park comprises 8.3 ha of vacant land which benefits from planning permission for 40,362 sq. m of flexible, hi-technology units suitable for office, research and development, laboratory and storage and ancillary purposes (References: 14/02067/OUT and 17/00559/F).
- 3.2 The application site comprises a 0.81 ha rectangular piece of relatively flat land, located on the southern side of Langford Lane. The application site lies inside the Oxford Green Belt and is classified as being agricultural land (Policy ESD 14 of the Local Plan Part 1). However, it is a material consideration and established fall-back position that the site benefits from outline planning permission to be developed for economic development.
- 3.3 To the immediate west are the South Central Ambulance Service Resource Centre and Campsfield House Immigration Removal Centre. To the north, on the opposite side of the Langford Lane, are buildings/hangers serving London Oxford Airport and to the east is the Oxford Motor Park where a number of car dealerships are located. Beyond this lies a cluster of employment parks comprising Cherwell Business Park, Station Field Industrial Park and the West Side of Canal, covering 25 ha and providing a wide range of commercial uses. The southern boundary abuts a large agricultural field which separates the application site and Campsfield House from the northern edge of Begbroke.
- 3.4 The application site is located in a strategic location, to the north of Oxford and adjacent to London Oxford Airport. It is at the northern edge of Kidlington. The site benefits from established highways infrastructure most notably Langford Lane which bounds the site to the north, with the A44 and A4260 providing the main access routes. The A4260 runs through the centre of the Village, creating a direct connection to Oxford City Centre and Banbury. The A44 also provides access to the A34 to Bicester to the north and, via the M40, to Reading and London to the south.



- 3.5 The site is easily accessible by a range of transport modes. It is in easy pedestrian and cycle reach from both residential areas and businesses in Kidlington, as well as in close proximity to bus stops that serve the wider area. The Transport Assessment prepared by Peter Brett Associates provides further details of the transport modes, with summary details provided below.
- 3.6 National Cycle Network Route 55 runs adjacent to the A44 Woodstock Road providing a direct connection from its junction with Langford Lane through to Oxford City Centre to the south.
- 3.7 The nearest existing bus stop is located 250m north east of the site on The Boulevard and currently serves Oxford Spires Business Park and London Oxford Airport. There are further bus stops located along Langford Lane and along the A44 Woodstock Road all of which are within a reasonable walking distance from the site. The bus services running in the vicinity of the site include route 2C/2D, S4, 7, 224, 224A and 500, at an average of approximately five buses an hour serving the local area. Bus services 7 and 500 provide a park and ride service connecting the site to Oxford Parkway Rail Station and the local area, but also provides wider access to Oxford City Centre and London.
- 3.8 It follows that the application site forms part of the Kidlington area and the surrounding land uses are characterised by commercial development including retail, leisure and employment uses. Both the approved development at the site and that proposed under this application are of a scale that is commensurate and will complement the surrounding commercial development. It is considered that the application site is well connected and easily accessible to users of the surrounding area and has good transport links that connect the site to the wider Village and surrounding areas.

4. Review of Relevant Planning Policy

Introduction

4.1 Section 38(6) of The Act sets out that if regard is to be had to the development plan for the purposes of any determination, a planning application must be determined in accordance with the plan unless material considerations indicate otherwise.

4.2 It follows that the starting point for the consideration of a proposal is an assessment against the development plan. If a development accords with the plan, and it is up-to-date, then the decision should be to grant planning permission unless material considerations indicate otherwise. Supplementary Planning Documents (SPDs), The Framework and The Guidance are material considerations, but they do not change the statutory basis on which planning decisions are made.

Local Planning Policy

The Development Plan

4.3 The development plan comprises the:

- Saved policies of the Cherwell Local Plan (adopted November 1996)
- Cherwell Local Plan 2011-2031 Part 1 (adopted July 2015)

4.4 The relevant policies are:

Saved policies of the Cherwell Local Plan (1996)

- Policy TR1: Transportation funding
- Policy TR7: Development attracting traffic on minor roads
- Policy T5: Hotels, motels, guest houses and restaurants in the countryside

- Policy C28: Layout, design and external appearance of new development
- Policy C32: Provision of facilities for disabled people
- Policy ENV1: Development likely to cause detrimental levels of pollution

Cherwell Local Plan 2011-2031 Part 1 (2015)

- Policy PSD1: Presumption in Favour of Sustainable Development
- Policy SLE2: Securing Dynamic Town Centres
- Policy SLE3: Supporting Tourism Growth
- Policy SLE4: Improved Transport and Connections
- Policy ESD1: Mitigating and Adapting to Climate Change
- Policy ESD2 Energy Hierarchy and Allowable Solutions
- Policy ESD3: Sustainable Construction
- Policy ESD7: Sustainable Drainage Systems
- Policy ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- Policy ESD13: Local Landscape Protection and Enhancement
- Policy ESD14: Oxford Green Belt
- Policy ESD15: The Character of the Built and Historic Environment
- Policy Kidlington 1: Accommodating High Value Employment Need
- Policy INF1: Infrastructure

4.5 The Cherwell Local Plan 2011-2031 (Part 2) is at very early stages of the development management process having completed the Issues Consultation in March 2016. Due to the early stages of the development plan process, the Local Plan Part 2 is not sufficiently advanced to be afforded full weight in the determination process. However, the plan demonstrates the direction of travel of the Council's policies, insofar as it would remove the site from the Green Belt. This is consistent with the allocation of the site in the Local Plan Part 1 to be developed for employment development and the LPA's decision to grant planning permission for economic development at the site (i.e. OTP).



- 4.6 Local Plan Part 1 Policy Kidlington 1 identifies that high value employment needs will be accommodated at the site and therefore sets out that a small scale review of the Green Belt will be undertaken. This review has now been completed by LUC as part of the ‘Small-Scale Green Belt Review’ (November 2016) which identifies the site for release from the Green Belt. Importantly, since the adoption of Local Plan Part 1, the principle of development on the site for economic generating uses has been confirmed to be acceptable through the grant of permission for the proposed OTP. It follows that the site is an acceptable location for development within the Green Belt.
- 4.7 The proposed hotel development complies with the relevant parts of Local Plan Part 1 Policy Kidlington 1 and the grounds for supporting the outline application as it¹¹:
1. Meets identified high value employment needs by providing a complimentary and associated facility that will support the operation of the approved employment development¹²
 2. Creates a gateway with a strong sense of arrival including when arriving from the airport
 3. Is of a high quality design that ensures that a well-designed approach to the urban edge has been taken
 4. Uses high quality design and finishes and reflects the layout of the already supported development
 5. Reflects the building heights already supported under the outline permission
- 4.8 There is therefore no conflict with either policies relating to Green Belt matters – namely Policy ESD14 of the Local Plan Part 1 – or the conclusions of the Small-Scale Green Belt Review. All matters relating to the appropriateness of economic development at the site, within the context of Green Belt policy matters, have been addressed as part of the Examination and Adoption of Local Plan Part 1, the Council’s decision to approve the outline application and the recommendations of the Small-Scale Green Belt Review.

¹¹ The below numbered bullets are all policy criteria from Policy Kidlington 1.

¹² See cross-references to Paragraph 2.2 and 2.5 above.



- 4.9 The complimentary function of the proposed hotel will be a major locational advantage of the development at the site and a draw for high tech, high quality companies that the applicant is seeking to secure at the site. Indeed, a number of principal employment locations in the Oxfordshire area offer hotel accommodation, including Oxford Business Park, Oxford Science Park and Milton Park. More recently, the LPA has granted outline planning permission on 26 July 2017 for a similar employment development with associated hotel at Bicester Gateway¹³. The case for supporting the hotel application at OTP is directly comparable with the recent decision of the LPA to support hotel development that supports the function of the employment development proposed at the Bicester Gateway site.
- 4.10 The proposed hotel and restaurant will provide a significant number of jobs and provide a diverse range of employment opportunities within the hospitality and catering sectors, including providing managerial, administrative and service employment positions. The range of employment opportunities includes flexible jobs which can assist in overcoming barriers of entry to employment. Further details of the economic benefits are set out in Section 7 and the Economic Impact Report prepared by Ramidus Consulting Ltd.
- 4.11 Policy SLE2 of the Local Plan Part 1 provides the policy framework for assessing proposals for 'main town centre uses'¹⁴ that are not located within a defined centre. This includes:
- 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.
 - c) All proposals should comply with Policy SLE4 which requires the facilitation of sustainable modes of transport.

¹³ Application Reference 16/02586/OUT

¹⁴ Main town centre uses are listed at Annex 2: Glossary of The Framework. It lists the types of development that are 'main town centre uses' and confirms that hotels are 'tourism development'



The Kidlington Framework Masterplan Supplementary Planning Document Part 1: Kidlington Tomorrow – Realising the Potential (Adopted December 2016)

- 4.12 The SPD supports the development plan. Page 6 of the SPD¹⁵ identifies that alongside the Green Belt review a number of factors should be considered in an overarching economic strategy for Kidlington's employment growth area, which includes the application site and surrounding airport and employment development.
- 4.13 The fourth bullet point in the third column at page 6 of the SPD states that the potential for supporting uses such as small scale convenience/food & drink, hotels and other related infrastructure which can offer a better place for employees to work and serve the wider community in north Kidlington should be considered in an overarching economic strategy for Kidlington's employment growth areas, which includes the application site.
- 4.14 The proposed hotel and ancillary restaurant development will ensure that this factor of the economic growth strategy for Kidlington's employment growth areas can be met. The proposal therefore accords with the SPD, which is a material consideration that weighs heavily in favour of planning permission being granted.

The National Planning Policy Framework and Planning Practice Guidance

- 4.15 A summary of the relevant planning policies in The Framework and policy guidance in The Guidance are included below and the proceeding sections that assess the proposal. The golden thread running through The Framework is the presumption in favour of sustainable development outlined at Paragraph 14. In this instance, and as the development plan is up to date, this means that if the development proposal accords with the development plan, the application should be approved without delay.

¹⁵ Third column of Page 6 of the SPD.

4.16 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.'

4.17 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.

4.18 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).

4.19 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.

4.20 In coming to its decision to allocate the site for employment development (including office use), the Council has confirmed that the site is a sequentially preferable location for main town centre uses¹⁶. As the hotel will meet market and locational requirements to support the operation of the approved employment development, it follows that it is intrinsically linked to the success of OTP as a location for economic development in Cherwell. There are no better located sites that can meet this market and locational requirement. In any event, we have applied the sequential test to the application proposal and details of this are set out in Section 6.

4.21 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)

4.22 Annex 2: Glossary of The Framework lists the types of development that are 'main town centre uses'. It confirms that hotels are 'tourism development'. 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).

¹⁶ Office development is a main town centre use as set out at Annex 2 of The Framework.



4.23 It follows that the impact assessment does not apply to hotel proposal. The Framework and The Guidance are clear on this. We do not consider that the impact assessment applies to the ancillary restaurant due to the functional link between the restaurant to the hotel as part of a composite hotel development facility.

4.24 In any event, the impact assessment has been applied to the restaurant proposal below. This confirms that the proposed development will not have a significant adverse impact on Kidlington Village Centre. The proposal therefore satisfies the requirements of Paragraphs 26 and 27 of the Framework in relation to the impact assessment.

The Impact Assessment

4.25 For the reasons set out above, impact is not a relevant consideration to hotel proposal. This has been confirmed by officers at the LPA as part of pre-application discussions.

4.26 Policy SLE2 sets out a threshold for assessing impact of main town centre uses to which the impact assessment applies in The Framework¹⁷. The threshold for Kidlington is 350 sq. m (gross). As the proposed restaurant is functionally linked and ancillary to the hotel, we do not consider that the impact assessment applies to this element of the proposal. In any event, we demonstrate below that it cannot be considered that the proposed restaurant operation will give rise to any likely significant adverse impacts on defined centres.

4.27 It is standard practice in business park developments that hotels are considered as part of the usual offer of ancillary uses to ensure the success of the park. Similarly, a restaurant as part of a hotel is a well established concept. The market and locational requirement for the proposed restaurant arises to principally serve the meal requirements of residents of the hotel development and secondly to provide on-site amenities for occupants of the business park.

4.28 In the absence of the business park, there would be no market or locational requirement for the hotel. Equally, in the absence of the hotel, there would be no market or locational requirement for the ancillary restaurant. The restaurant does not exist as a stand alone proposal, it is a use that forms part of the

¹⁷ I.e. not the hotel

proposed hotel building and operation as is common with all modern hotel developments. Put simply, the requirement for the restaurant does not exist without the hotel proposal.

4.29 The functional link between the restaurant and hotel is further explicitly demonstrated by the restaurant being operated by Beefeater, which is a brand that is directly linked to the operation of Premier Inn. As set out at Footnote (6) above, nearly all Beefeater restaurants are associated to a Premier Inn hotel, and the Beefeater brand is operated by the same Parent Company as Premier Inn, namely Whitbread.

4.30 It is important to note that all of the Premier Inn's in the surrounding area have an ancillary restaurant that operates under the Whitbread brand, namely:

1. Oxford located approximately 8.5 miles away – includes a Beefeater
2. Bicester located approximately 8.5 miles away – includes a Brewers Fayre
3. Witney located approximately 11 miles away – includes a thyme British Bar and Grill
4. Abingdon located approximately 12 miles away – includes a Beefeater
5. Chipping Norton located approximately 15 miles away – includes a thyme British Bar and Grill
6. Oxford South (Didcot) located approximately 16 miles away – includes a Beefeater
7. Banbury located approximately 19 miles away – includes a thyme British Bar and Grill
8. Silverstone located approximately 23 miles away – includes a Chef & Brewer Pub

4.31 Restaurant operations associated to hotels therefore do not primarily act as destinations in their own right, rather they support the primary use of the hotel by offering a complementary restaurant service for residents. As it primarily services residents of the hotel it does not compete with other restaurant facilities in the surrounding area. In addition, at 492 sq. m, the restaurant is not of a scale of commercial development that could harm Kidlington Village Centre or any other defined town centre location. Accordingly, the proposed restaurant will not have a significant adverse impact on town centre locations and accords with Part (b) of Policy SLE2 and Paragraph 27 of The Framework.

4.32 Conversely, the proposal will improve the qualitative hotel offer in the surrounding area by introducing a national multiple hotel operator at a location that will support the operation of the proposed employment



development. It will act as an attractor to ensure that visitors choose to stay in Kidlington. This has the opportunity of providing potential positive impacts on existing leisure and service facilities in the Village.

4.33 As demonstrated in Section 7 below, all of the effects of the proposed development are positive and the development of the site for hotel and restaurant land uses will secure sustainable economic growth, in full accordance with Policy SLE4.

5. The Sequential Test: Relevant Case Law and Appeal Decisions

5.1 The requirements of the application of the sequential test are now well established and have been considered in a number recent Court Judgements and Secretary of State appeal decisions, namely:

1. Tesco Stores Ltd v Dundee City Council (2012)
2. Secretary of State Call-in Decision at Rushden Lakes (2014)
3. Aldergate Properties Ltd v Mansfield District Council (2016)

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

1. The sequential test relates entirely to what is proposed by the application and whether it can be accommodated on an actual alternative site; not some other proposal which the planning authority might seek to substitute for it which is for something less than that sought by the developer (Dundee).
2. 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).
3. The question is whether an alternative site is suitable for the proposed development, 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. Flexibility must be applied on issues such as format and scale when undertaking the sequential test, to assess whether more central sites are realistically able to accommodate the development proposed (Rushden Lakes).
5. The proposal as a whole needs to be considered, and should not be disaggregated (Rushden Lakes).
6. The sequential approach is only concerned with sites that are available now and not at some point in time over the plan period (Rushden Lakes).
7. In terms of disaggregation, the Government has also 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 retail proposal when the policies in The Framework are to be applied.
8. The Secretary of State confirms at Paragraph 17 of the Rushden Lakes decision that the Inspector's conclusions at Paragraphs 8.55 – 8.58 of his report that there are no suitable sites that are available for that proposal are correct. Accordingly, the Secretary of State confirms that for a site to be available, it must currently be available (i.e. now) as that is what The Framework requires. For reference, Paragraph 8.55 of the Inspector's Report – that the Secretary of State confirms is correct – states:

*'In terms of availability, NPPF [24] simply asks whether town centre or edge of centre sites are "available". It does not ask whether such sites are likely to become available during the remainder of the plan period or over a period of some years. NBC has previously adopted the same interpretation of "available" as LXB do. Mr Lewin accepted that in the Committee report (24 July 2012) in relation to an application to redevelop the Royal Mail site at Barrack Road for a 5,000+ sq m Tesco superstore, the Council rejected Legal & General's objection that availability should have been looked at over a longer time frame. **The site was not currently available and that was what was required by the sequential test...***

(Savills' emphasis in bold).



9. The business needs of a particular development are material considerations to take into account when assessing the suitability of alternate sites, but not to the extent that it should determine the way in which the sequential search area is defined (Mansfield).

10. The area and sites covered by the sequential assessment should not vary from applicant to applicant according to their identity, but from application to application based on their content (Mansfield).

11. Applying the suitability element of the sequential test means asking whether an alternative site is suitable for the development proposed by the applicant. For proposals in out of centre locations, the relevant question is whether there is an alternative site that is suitable within or on the edge of the centre that could accommodate the proposal for which the developer seeks planning permission.

6. Satisfying the Sequential Test

Introduction

- 6.1 As assessment of sequential sites is undertaken below in accordance with Policy SLE2 of the Local Plan Part 1, The Framework and The Guidance, and the latest authority from case law and the approach of the Secretary of State in appeal decisions.
- 6.2 The purpose of the sequential test is to assess whether there are any available sites that are suitable for the proposed development either in or at the edge of relevant centres. At 1.5 km from the Kidlington Village Centre boundary, the site is located in an out of centre location.
- 6.3 The criteria used to assess whether alternative sites exist are set out in Paragraph 010 of the Guidance as follows:
- **With due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered?**
 - **Is there scope for flexibility in the format and / or scale of the proposal?** 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.
 - **If there are no suitable sequentially preferable locations, the sequential test is satisfied.**
- 6.4 In light of the above, the starting point for the application of the sequential test is to consider the development that planning permission is sought for. That is, a 101 room hotel with ancillary restaurant comprising 492 sq. m (Gross Internal Area), car park with 134 spaces and associated landscaping.



- 6.5 The proposed use is of a scale that will complement and principally serve the proposed OTP. It is also well-related to provide a sustainable and accessible facility that will serve the adjacent employment development and users of the airport, all in accordance with the requirements of the SPD as set out at Paragraphs 4.12 – 4.14 above.
- 6.6 The market requirement for the hotel only exists as a result of the proposed OTP, in order to provide on-site amenities and services such as accommodation, food, beverages to support the operation of the proposed OTP and the requirements of its users.
- 6.7 Therefore, the question that arises is whether there are there any suitable sites in established centres that are available and can meet the same market and locational requirements to provide floorspace for a proposed hotel that will principally serve the proposed OTP, along with also providing a facility that could serve the adjacent airport and commercial development, all in accordance with the economic growth strategy requirements of the SPD and having regard to the need for flexibility.
- 6.8 In terms of availability, the question in The Framework is whether a site is available now and not whether a site is likely to become available during the remainder of the plan period or over a period of some years. This has been confirmed by the Secretary of State as part of the Rushden Lakes decision set out above in Section 5.
- 6.9 As also set out above in Section 5, the term suitable means suitable for the development proposed. In that sense and the test is whether an alternative site is suitable for the proposed development, not whether the proposed development could be altered or reduced so that it can be made to fit the alternative site. The test of suitability also means that the proposal as a whole needs to be considered, and should not be disaggregated into its component parts.
- 6.10 The role of the proposed hotel development as being a facility that will support and contribute to the success of the operation of OTP and therefore Kidlington's employment growth areas has been outlined in detail in this Statement¹⁸. The market requirement for the hotel only exists as a result of the proposed

¹⁸ See cross-references to Paragraphs 2.2, 4.9 – 4.10, 4.23, 4.25 – 4.31 and 6.5 above.

employment development. It follows that there are no better located sites that can meet this market and locational requirement and the principle of the proposed hotel at application site. It is therefore an acceptable land use that satisfies the sequential test. Given its specific locational requirements and supporting role to OTP, it does not conflict with the objectives of main town centre use policies to ensure the vitality of centres.

6.11 Nevertheless, to demonstrate flexibility in terms of our approach we have applied the sequential test and assessed only whether alternative sites could accommodate the hotel and restaurant floorspace proposed under this application. That is a hotel will provide 101 bedrooms across four floors and the restaurant provides 492 sq. m of floorspace. The hotel and restaurant use should not be disaggregated for the reasons set out above as that is not the development that is proposed.

6.12 It is important to stress that locating new hotel facilities at existing or planned employment facilities, particularly close to an airport, is a sustainable and accessible approach to planning, and in accordance with Policy T5 of the Cherwell Local Plan.

Application of the Sequential Test to the Proposed Development

6.13 The locational search for the sequential test focuses solely on Kidlington as agreed with officers at the pre-application meeting.

6.14 Accordingly, we have reviewed the following sites in Kidlington Village Centre:

1. Vacant Units

6.15 A Savills survey of Kidlington Village Centre in June 2017 identified five vacant units. The largest vacant unit is 202 sq. m located Marlborough House on the High Street. This is too small for the proposed development even with a significant degree of flexibility applied. It follows that all of the vacant units are not suitable as they are too small for the proposed development.

2. Sites from the Kidlington Framework Masterplan SPD

6.14 The Kidlington Framework Masterplan SPD identifies a number of development areas in the town centre, which are considered as part of the sequential test as follows:

a. Rationalisation and redevelopment of car parks to the north of High Street

6.15 The 1.2 ha site is located at the northern periphery of the town centre and comprises multiple car parking areas for the general public, as well as three separate areas for Tesco patrons only. The site is an operational car park and not considered to be available for redevelopment, nor is it being marketed.

6.16 The site is unsuitable as it comprises various irregular shaped parcels of car park land, under different ownerships. The Kidlington Framework Masterplan SPD at Section 6.3.4 (C) identifies the site being redeveloped for smaller retail units and residential units above. The SPD makes clear that parking in this location should be retained, with one option using car parking decks to release development land. In doing so, some 230 spaces would need to be provided, leaving little room for a hotel. In this respect, a hotel in this location would not meet the SPD aspirations, nor is it considered that there is sufficient land to accommodate both the hotel development and the required replacement park.

6.17 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. Using the language of The Guidance stated at Paragraph 4.17 (3) above, it follows that a more central site in Kidlington Village Centre, would not be able to make the same contribution to the proposed OTP and the economic growth strategy outlined in the SPD that a hotel at the application site would be able to make.

b. Various units at High Street

6.18 None of the units identified within the SPD are available or being marketed, as all are occupied by active businesses (i.e. 1-5 High Street; 13-15 High Street; 16 High Street; 42 High Street). Notwithstanding this, even if all of the units identified within the SPD were available, the site area would measure less than

0.2ha. At less than a third of the size of the application site, this is too small an area to accommodate the proposed development, even with a significant degree of flexibility applied.

6.19 The SPD, at Section 6.3.4 (E), identifies the High Street area as its primary retail frontage and an area for redevelopment for retail including specialist shops and small businesses, to make the Village Centre more visible. A hotel in this particular area of the centre would not accord with the vision of the SPD.

6.20 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 for the reasons set out at Paragraph 6.17 above.

c. Co-op car park

6.21 The car park is actively being used by Co-op for its patrons and is not being marketed. It is therefore not considered to be available for development.

6.22 The site measures 0.3ha. At less than half the size of the application site, it is too small an area to accommodate the proposed development, even with a significant degree of flexibility applied.

6.23 In addition, the site is identified as an opportunity in the SPD for residential, small scale retail or office above and around a car park.

6.24 The site has recently been subject to an application for a remodelled Co-op store and the creation of 52 flats/apartments via the conversion of office space and erection of a new block within the Co-op car park that was refused permission on 22 February 2017 (Reference: 15/01872/F). The application was refused as it was considered to be contrary to Policy Kidlington 2 of the Local Plan and the Kidlington Framework Masterplan SPD. For these reasons, it follows that a proposed development for a hotel also conflicts with the aspirations for the development opportunity in the SPD and is therefore not a suitable land use.

6.25 For the reasons set out at Paragraph 6.17 above, a hotel in this location would not meet the same market and location requirements that a hotel proposed at the application site would.

3. Edge of Centre/Out of Centre Sites

6.26 The Kidlington Framework Masterplan SPD identifies a number of development areas in edge and out of centre locations, which are considered as part of the sequential test as follows:

a. Skoda Garage, Oxford Road

6.27 The circa 1,240 sqm unit is set within a 0.4 ha site and occupies a prominent corner to the west of Oxford Road. Skoda Garages currently occupy the site, and there is no sign of it being marketed. It is therefore not available for development. The site at less than two / thirds of the size of the application site, is too small an area to accommodate the proposed development, even with a significant degree of flexibility applied.

6.28 The SPD identifies that the current building scale, car park forecourt and advertising banners are detrimental to the appearance of the Village Centre. It considers the site to be a potential location for a new retail anchor, community or arts facility such as a theatre providing an attractive western frontage to the square (Section 6.3.4 (A)). Hotel development does not meet the aspirations of the SPD in terms of use class or activity.

6.29 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 for the reasons set out at Paragraph 6.17 above.

b. Potential reconfiguration at Exeter Close

6.30 The SPD (Section 6.3.4 (D)) seeks to expand the Village Centre boundary by reconfiguring the units and land within the 3.7 ha area off Exeter Close for an enhanced community hub and health facilities, and flagship recreation space.



6.31 The site is in active use by various occupants including a health centre, youth club and children's club, as well as a football and bowls club. Surface car parking is provided centrally, whilst a large field is located at its periphery. The site is in fully operational use and therefore not available for the proposed development.

6.32 A hotel in this location would not meet the aspirations of the SPD, nor would it meet the same market and location requirements that a hotel at the application site would for the reasons set out at Paragraph 6.17 above.

c. Properties to the west of Oxford Road

6.33 This area is considered a long term opportunity site within the SPD for a strong, continuous frontage of retail/community uses with residential or office uses above (Section 6.3.4 (F)). The area is predominantly residential and in multiple ownership. There are no vacant units. The site is not available and the development of a hotel in this location would not meet the aspirations of the SPD.

6.34 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 for the reasons set out at Paragraph 6.17 above.

d. Fire station and post office sorting office site

6.35 The site is located along Sterling Road Approach, adjacent to the southern boundary of the Village Centre. The units are currently occupied by Royal Mail and the local fire station, and therefore are not available for the proposed development.

6.36 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 for the reasons set out at Paragraph 6.17 above.



Summary

6.37 Our overall conclusion on the sequential test in accordance with the checklist in The Guidance at Paragraph 010 (third bullet) is that the sequential test is passed.

6.38 The proposal satisfies the sequential test under the terms of Policy SLE2 of the Local Plan Part 1 and Paragraph 27 of The Framework. The proposal complies with the requirements of the sequential test and the test has been applied in a way that is proportionate and appropriate for the given proposal.

7. Other Development Management Considerations

7.1 The proposal accords with all other relevant policies as demonstrated below.

Highways and Accessibility Considerations

7.2 Policy SLE2 requires all relevant proposals to comply with Policy SLE4. This expects all development, where possible to facilitate the use of sustainable modes of transport. Encouragement is given to solutions which support reductions in greenhouse gas emissions and reduce congestion.

7.3 The Hotel site's location as part of OTP and adjacent to the airport and existing commercial development provides a site that is highly accessible to potential users of both the OTP and immediate surrounding development. The site is also highly accessible by public transport links as demonstrated in Section 3 above. Further enhancements are being provided as part of the wider OTP development and includes a shared foot/cycleway will along Langford Lane, a bus stop at The Boulevard and improvements to the frequency and hours of operation of bus services between Oxford Airport/Langford Lane and Oxford Parkway Station. These enhancement measures improve the overall OTP site's accessibility by sustainable transport modes.

7.4 The proposed hotel use as a complimentary use to a wider employment site will encourage reduced carbon and NO₂ emissions through linked trips between the employment development and the hotel use. The development therefore accords with national and local Government carbon reduction targets by making the most efficient practicable use of resources, minimising the overall need to travel, reducing dependency on the private car and high-emission vehicles and ensuring ease of access to facilities and services for all users both now and in the future. The proposal therefore accords with Policy SLE4 of the Local Plan Part 1.

7.5 The Transport Statement, prepared by Peter Brett Associates confirms the site is well connected to local businesses, facilities and services for staff and visitors, including businesses and services to locate in the future on the OTP, for access by foot and cycle.



- 7.6 The Transport Statement concludes that the approved access junction into the wider OTP development forms a suitable means of access into the proposed hotel and restaurant development.
- 7.7 The proposed vehicle access, internal spine road and plot road permitted as part of the wider OTP development supports the associated vehicle movements with the proposed hotel development. The hotel development provides an appropriate level of parking provision including disabled spaces and cycling space in accordance with Policy C32 of the Cherwell Local Plan.
- 7.8 The traffic impact of the proposed hotel and restaurant development when compared to the approved Class B1(a) development that could be accommodated at Plot 2 under the terms of the outline permission demonstrates that the overall level of predicted vehicle trips generated will reduce slightly in the peak periods. Consequently, there will be no adverse impact on the local road network in accordance with the requirements of Policies TR1 and TR7 of the Cherwell Local Plan, Policy INF1 of the Local Plan Part 1 and Paragraph 32 of The Framework.
- 7.9 There are therefore no transportation reasons that should prevent the hotel development proposals from being granted permission.

Design Considerations

- 7.10 A Design and Access Statement, prepared by Allison Pike demonstrates the development will follow the design style and principles established in the outline and first reserved matters application thereby complementing and enhancing the appearance of the planned technology park and existing surrounding areas. It demonstrates that the proposed hotel development complies with Policy ESD15 of the Local Plan Part 1 and Policies C28 and C32 of the Cherwell Local Plan.
- 7.11 Based on the findings of the BREEAM Pre-Assessment Report, submitted with the application, the proposed hotel will obtain a BREEAM 'Very Good' rating, complying with Policies ESD2 and ESD3 of the Local Plan Part 1.



Landscape

7.12 In accordance with Policy ESD13 of the Local Plan Part 1, landscape planting is proposed to be provided along Langford Lane in accordance with the permitted OTP scheme. This would be part of a comprehensive landscaping scheme to enhance the site and limit visual intrusion into the wider landscape. A Landscape and Visual Appraisal note completed by LDA Design confirms that the hotel proposal would be within the parameters set by the outline planning permission and therefore there would be no discernible impact on landscape and visual receptors and no unacceptable harm to the green belt functions.

Noise

7.13 The application is accompanied by a Report on Existing Noise Climate prepared by Hoare Lea Acoustics that demonstrates that the impact of noise associated with the hotel would not be significant and accordingly the proposal complies with the requirements of Policy ENV1 of the Cherwell Local Plan.

7.14 The primary noise source across the site is from general traffic flows on Langford Lane and other roads in the local vicinity with occasional aircraft activity from the airport.

7.15 Internal noise criteria given in the Premier Inn specification will require the use of appropriate acoustic rated glazing for all bedrooms throughout the development. In addition, all guest bedrooms should be provided with means of background ventilation other than by use of open windows.

7.16 All plant equipment will need to be carefully selected and sited so as to achieve sound levels in accordance with BS 4142 at the nearest dwellings.

Air Quality

7.17 The application is accompanied by a Technical Note on Air Quality Implications of Proposed Hotel Use prepared by Peter Brett Associates. Its conclusions are that the impacts of the proposed development on



air quality do not raise any air quality issues of significance in accordance with Policy ENV1 of the Cherwell Local Plan.

7.18 The Note demonstrates that the site can be considered suitable for the proposed use as a hotel without the need for mitigation against poor air quality including nitrogen dioxide and particulate matter.

7.19 There would be a beneficial effect on local air quality by the reduced traffic generation of the hotel scheme compared to the approved B1(a) use in this location.

Ecology

7.20 The application is accompanied by an Ecological Note which confirms it is not necessary to undertake an updated ecological survey. In summary, the proposal hotel scheme is not anticipated to give rise to any additional significant ecological issues, when compared to the permitted OTP scheme, and as such no additional survey, mitigation, compensation or enhancement measures are necessary. This is in accordance with Policy ESD10 of the Local Plan Part 1.

Flood risk and drainage

7.21 The Flood Risk and Drainage Strategy submitted with the outline application demonstrates that the proposed development is not in an area that is at risk from flooding and an appropriate drainage strategy can be devised to support a scheme in this location, in accordance with Policy ESD7 of the Local Plan Part 1.

7.22 A Preliminary Levels & Drainage Strategy plan, drawing ref 14818:SK01A proposes to drain all surface water runoff from the site to the ground via infiltration whilst foul drainage will connect into the wider development site.



Socio-economic benefits

- 7.23 The proposed development scheme will provide a number of part-time and flexible roles, making a useful contribution to the mix of employment opportunities in Kidlington and the wider area. Information direct from the Premier Inn demonstrates that a hotel proposal for 100+ rooms and restaurant could be expected to create 75 new jobs, equating to circa 60 FTE jobs.
- 7.24 In addition to the direct employment, with 101 bedrooms, at an estimated 85% occupancy and average 1.2 occupancy rate, the Premier Inn would be expected to accommodate approximately 37,600 guests per annum. Figures derived from Visit England data suggest an average spend of £43.50 per night per guest. This would equate to approximately £1.6m in captured visitor spending in the area. Across the Premier Inn estate, approximately a third of overnight guests dine out in the area, rather than at any partner restaurant such as a Beefeater. On this basis there is a potential 12,000 additional customers for nearby pubs and restaurants. Further details of the socio-economic benefits is provided in the Ramidus Report.

Summary

- 7.25 In light of the compliance of the proposal with the development plan and national policies set out above and in Section 4, the proposed development delivers sustainable development as required by Policy PSD1 of the Local Plan Part 1. Accordingly, the full presumption in favour of sustainable development outlined at Paragraph 14 of The Framework applies.

8. Conclusions

8.1 Our conclusions are:

1. Development of the site is supported through the allocation of the site at Kidlington Policy 1 and the permitted OTP scheme. The proposed hotel will occupy Plot 2 of the proposed OTP and its scale, layout, access and design accord with the parameters established by the outline planning permission.
2. The application complies with relevant national policies addressing main town centre use development. The application is supported by evidence addressing the sequential test. The sequential test is satisfied as there are no available sites within Kidlington Village Centre or its edges that are suitable for the proposed development.
3. The proposed development is positive economic investment in a sustainable location on a site allocated for economic development. The proposal promotes sustainable economic growth and supports and promotes the overall economic function of OTP.
4. The complimentary function of the hotel with OTP and the adjacent airport will prove to be a major locational advantage and draw for high tech, high quality companies wishing to move to this location. This will assist in securing the economic success of OTP.
5. The proposed development does not result in any severe highway impacts. Safe and suitable access to the proposal can be achieved and the site is accessible by sustainable modes of transport.
6. The proposal accords with all other development management policies relating to design, landscape, noise, air quality, ecology and flooding.

Planning, Economic and Main Town Centre Use Statement

Development Site of Business and Science Park, Kidlington



8.2 Accordingly, permission should be granted in accordance with both Section 38(6) of the Planning and Compulsory Purchase Act and the presumption in favour of sustainable development¹⁹.

¹⁹ Paragraph 14 of The Framework



Appendix 1

Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland)



Hilary Term
[2012] UKSC 13
On appeal from: [2011] CSIH 9

JUDGMENT

Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland)

before

Lord Hope, Deputy President
Lord Brown
Lord Kerr
Lord Dyson
Lord Reed

JUDGMENT GIVEN ON

21 March 2012

Heard on 15 and 16 February 2012

Appellants
Martin Kingston QC
Jane Munro
(Instructed by Semple
Fraser LLP)

Respondents
Douglas Armstrong QC
James Findlay QC
(Instructed by Gillespie
Macandrew LLP)

*Interveners (Asda Stores
Limited and MacDonald
Estates Group PLC)*
Malcolm Thomson QC
Kenny McBrearty
(Instructed by Brodies
LLP)

LORD REED (with whom Lord Brown, Lord Kerr and Lord Dyson agree)

1. If you drive into Dundee from the west along the A90 (T), you will pass on your left a large industrial site. It was formerly occupied by NCR, one of Dundee's largest employers, but its factory complex closed some years ago and the site has lain derelict ever since. In 2009 Asda Stores Ltd and MacDonald Estates Group plc, the interveners in the present appeal, applied for planning permission to develop a superstore there. Dundee City Council, the respondents, concluded that a decision to grant planning permission would not be in accordance with the development plan, but was nevertheless justified by other material considerations. Their decision to grant the application is challenged in these proceedings by Tesco Stores Ltd, the appellants, on the basis that the respondents proceeded on a misunderstanding of one of the policies in the development plan: a misunderstanding which, it is argued, vitiated their assessment of whether a departure from the plan was justified. In particular, it is argued that the respondents misunderstood a requirement, in the policies concerned with out of centre retailing, that it must be established that no suitable site is available, in the first instance, within and thereafter on the edge of city, town or district centres.

The legislation

2. Section 37(2) of the Town and Country Planning (Scotland) Act 1997, as in force at the time of the relevant decision, provides:

“In dealing with [an application for planning permission] the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.”

Section 25 provides:

“Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise –

(a) to be made in accordance with that plan...”

The development plan

3. The development plan in the present case is an “old development plan” within the meaning of paragraph 1 of Schedule 1 to the 1997 Act. As such, it is defined by section 24 of the 1997 Act, as that section applied before the coming into force of section 2 of the Planning Etc. (Scotland) Act 2006, as including the approved structure plan and the adopted or approved local plan. The relevant structure plan in the present case is the Dundee and Angus Structure Plan, which became operative in 2002, at a time when the NCR plant remained in operation. As is explained in the introduction to the structure plan, its purpose is to provide a long term vision for the area and to set out the broad land use planning strategy guiding development and change. It includes a number of strategic planning policies. It sets the context for local plans, which translate the strategy into greater detail. Its preparation took account of national planning policy guidelines.

4. The structure plan includes a chapter on town centres and retailing. The introduction explains that the relevant Government guidance is contained in National Planning Policy Guidance 8, *Town Centres and Retailing* (revised 1998). I note that that document (NPPG 8) was replaced in 2006 by *Scottish Planning Policy: Town Centres and Retailing* (SPP 8), which was in force at the time of the decision under challenge, and which was itself replaced in 2010 by *Scottish Planning Policy* (SPP). The relevant sections of all three documents are in generally similar terms. The structure plan continues, at para 5.2:

“A fundamental principle of NPPG 8 is that of the sequential approach to site selection for new retail developments ... On this basis, town centres should be the first choice for such developments, followed by edge of centre sites and, only after this, out of centre sites which are currently or potentially accessible by different means of transport.”

In relation to out of centre developments, that approach is reflected in Town Centres and Retailing Policy 4: Out of Centre Retailing:

“In keeping with the sequential approach to site selection for new retail developments, proposals for new or expanded out of centre retail developments in excess of 1000 sq m gross will only be acceptable where it can be established that:

- no suitable site is available, in the first instance, within and thereafter on the edge of city, town or district centres;
- individually or cumulatively it would not prejudice the vitality and viability of existing city, town or district centres;
- the proposal would address a deficiency in shopping provision which cannot be met within or on the edge of the above centres;
- the site is readily accessible by modes of transport other than the car;
- the proposal is consistent with other Structure Plan policies.”

5. The relevant local plan is the Dundee Local Plan, which came into operation in 2005, prior to the closure of the NCR plant. Like the structure plan, it notes that national planning policy guidance emphasises the need to protect and enhance the vitality and viability of town centres. It continues, at para 52.2:

“As part of this approach planning authorities should adopt a sequential approach to new shopping developments with first preference being town centres, which in Dundee’s case are the City centre and the District Centres.”

That approach is reflected in Policy 45: Location of New Retail Developments:

“The City Centre and District Centres will be the locations of first choice for new or expanded retail developments not already identified in the Local Plan. Proposals for retail developments outwith these locations will only be acceptable where it can be established that:

- a) no suitable site is available, in the first instance, within and thereafter on the edge of the City Centre or District Centres; and

- b) individually or cumulatively it would not prejudice the vitality and viability of the City Centre or District Centres; and
- c) the proposal would address a deficiency in shopping provision which cannot be met within or on the edge of these centres; and
- d) the site is readily accessible by modes of transport other than the car; and
- e) the proposal is consistent with other Local Plan policies.”

6. It is also relevant to note the guidance given in NPPG 8, as revised in 1998, to which the retailing sections of the structure plan and the local plan referred. Under the heading “Sequential Approach”, the guidance stated:

“12. Planning authorities and developers should adopt a sequential approach to selecting sites for new retail, commercial leisure developments and other key town centre uses ... First preference should be for town centre sites, where sites or buildings suitable for conversion are available, followed by edge-of-centre sites, and only then by out-of-centre sites in locations that are, or can be made easily accessible by a choice of means of transport ...

13. In support of town centres as the first choice, the Government recognises that the application of the sequential approach requires flexibility and realism from developers and retailers as well as planning authorities. In preparing their proposals developers and retailers should have regard to the format, design, scale of the development, and the amount of car parking in relation to the circumstances of the particular town centre. In addition they should also address the need to identify and assemble sites which can meet not only their requirements, but in a manner sympathetic to the town setting. As part of such an approach, they should consider the scope for accommodating the proposed development in a different built form, and where appropriate adjusting or sub-dividing large proposals, in order that their scale might offer a better fit with existing development in the town centre ...

14. Planning authorities should also be responsive to the needs of retailers and other town centre businesses. In consultation with the private sector, they should assist in identifying sites in the town

centre which could be suitable and viable, for example, in terms of size and siting for the proposed use, and are likely to become available in a reasonable time ...

15. Only if it can be demonstrated that all town centre options have been thoroughly addressed and a view taken on availability, should less central sites in out-of-centre locations be considered for key town centre uses. Where development proposals in such locations fall outwith the development plan framework, it is for developers to demonstrate that town centre and edge-of-centre options have been thoroughly assessed. Even where a developer, as part of a sequential approach, demonstrates an out-of-centre location to be the most appropriate, the impact on the vitality and viability of existing centres still has to be shown to be acceptable ...”

The consideration of the application

7. The interveners’ application was for planning permission to develop a foodstore, café and petrol filling station, with associated car parking, landscaping and infrastructure, including access roads. The proposals also involved improvements to the junction with the A90 (T), the upgrading of a pedestrian underpass, the provision of footpaths and cycle ways, and improvements to adjacent roadways. A significant proportion of the former NCR site lay outside the application site. It was envisaged that vehicular access to this land could be achieved using one of the proposed access roads.

8. In his report to the respondents, the Director of City Development advised that the application was contrary to certain aspects of the employment and retailing policies of the development plan. In relation to the employment policies, in particular, the proposal was contrary to policies which required the respondents to safeguard the NCR site for business use. The Director considered however that the application site was unlikely to be re-developed for business uses in the short term, and that its re-development as proposed would improve the development prospects of the remainder of the NCR site. In addition, the infrastructure improvements would provide improved access which would benefit all businesses in an adjacent industrial estate.

9. In relation to the retailing policies, the Director considered the application in the light of the criteria in Retailing Policy 4 of the structure plan. In relation to the first criterion he stated:

“It must be demonstrated, in the first instance, that no suitable site is available for the development either within the city/district centres or, thereafter on the edge of these centres ... While noting that the Lochee District Centre lies within the primary catchment area for the proposal, [the retail statement submitted on behalf of the interveners] examines the potential site opportunities in and on the edge of that centre and also at the Hilltown and Perth Road District Centres. The applicants conclude that there are no sites or premises available in or on the edge of existing centres capable of accommodating the development under consideration. Taking account of the applicant’s argument it is accepted that at present there is no suitable site available to accommodate the proposed development.”

In relation to the remaining criteria, the Director concluded that the proposed development was likely to have a detrimental effect on the vitality and viability of Lochee District Centre, and was therefore in conflict with the second criterion. The potential impact on Lochee could however be minimised by attaching conditions to any permission granted so as to restrict the size of the store, limit the type of goods for sale and prohibit the provision of concessionary units. The proposal was also considered to be in conflict with the third criterion: there was no deficiency in shopping provision which the proposal would address. The fourth criterion, concerned with accessibility by modes of transport other than the car, was considered to be met. Similar conclusions were reached in relation to the corresponding criteria in Policy 45 of the local plan.

10. In view of the conflict with the employment and retailing policies, the Director considered that the proposal did not fully comply with the provisions of the development plan. He identified however two other material considerations of particular significance. First, the proposed development would bring economic benefits to the city. The closure of the NCR factory had been a major blow to the economy, but the re-development of the application site would create more jobs than had been lost when the factory finally closed. The creation of additional employment opportunities within the city was considered to be a strong material consideration. Secondly, the development would also provide a number of planning benefits. There would be improvements to the strategic road network which would assist in the free flow of traffic along the A90 (T). The development would also assist in the re-development of the whole of the former NCR site through the provision of enhanced road access and the clearance of buildings from the site. The access improvements would also assist in the development of an economic development area to the west. These benefits were considered to be another strong material consideration.

11. The Director concluded that the proposal was not in accordance with the development plan, particularly with regard to the employment and retailing

policies. There were however other material considerations of sufficient weight to justify setting aside those policies and offering support for the development, subject to suitable conditions. He accordingly recommended that consent should be granted, subject to specified conditions.

12. The application was considered by the respondents' entire council sitting as the respondents' Development Quality Committee. After hearing submissions on behalf of the interveners and also on behalf of the appellants, the respondents decided to follow the Director's recommendation. The reasons which they gave for their decision repeated the Director's conclusions:

“It is concluded that the proposal does not undermine the core land use and environmental strategies of the development plan. The planning and economic benefits that would accrue from the proposed development would be important to the future development and viability of the city as a regional centre. These benefits are considered to be of a significant weight and sufficient to set aside the relevant provisions of the development plan.”

The present proceedings

13. The submissions on behalf of the appellants focused primarily upon an alleged error of interpretation of the first criterion in Retailing Policy 4 of the structure plan, and of the equivalent criterion in Policy 45 of the local plan. If there was a dispute about the meaning of a development plan policy which the planning authority was bound to take into account, it was for the court to determine what the words were capable of meaning. If the planning authority attached a meaning to the words which they were not properly capable of bearing, then it made an error of law, and failed properly to understand the policy. In the present case, the Director had interpreted “suitable” as meaning “suitable for the development proposed by the applicant”; and the respondents had proceeded on the same basis. That was not however a tenable meaning. Properly interpreted, “suitable” meant “suitable for meeting identified deficiencies in retail provision in the area”. Since no such deficiency had been identified, it followed on a proper interpretation of the plan that the first criterion did not require to be considered: it was inappropriate to undertake the sequential approach. The Director's report had however implied that the first criterion was satisfied, and that the proposal was to that extent in conformity with the sequential approach. The respondents had proceeded on that erroneous basis. They had thus failed to identify correctly the extent of the conflict between the proposal and the development plan. In consequence, their assessment of whether other material considerations justified a departure from the plan was inherently flawed.

14. The respondents had compounded their error, it was submitted, by treating the proposed development as definitive when assessing whether a “suitable” site was available. That approach permitted developers to drive a coach and horses through the sequential approach: they could render the policy nugatory by the simple expedient of putting forward proposals which were so large that they could only be accommodated outside town and district centres. In the present case, there was a site available in Lochee which was suitable for food retailing and which was sequentially preferable to the application site. The Lochee site had been considered as part of the assessment of the proposal, but had been found to be unsuitable because it could not accommodate the scale of development to which the interveners aspired.

15. In response, counsel for the respondents submitted that it was for the planning authority to interpret the relevant policy, exercising its planning judgment. Counsel accepted that, if there was a dispute about the meaning of the words in a policy document, it was for the court to determine as a matter of law what the words were capable of meaning. The planning authority would only make an error of law if it attached a meaning to the words which they were not capable of bearing. In the present case, the relevant policies required all the specified criteria to be satisfied. The respondents had proceeded on the basis that the proposal failed to accord with the second and third criteria. In those circumstances, the respondents had correctly concluded that the proposal was contrary to the policies in question. How the proposal had been assessed against the first criterion was immaterial.

16. So far as concerned the assessment of “suitable” sites, the interveners’ retail statement reflected a degree of flexibility. There had been a consideration of all sites of at least 2.5 ha, whereas the application site extended to 6.68 ha. The interveners had also examined sites which could accommodate only food retailing, whereas their application had been for both food and non-food retailing. The Lochee site extended to only 1.45 ha, and could accommodate a store of only half the size proposed. It also had inadequate car parking. The Director, and the respondents, had accepted that it was not a suitable site for these reasons.

Discussion

17. It has long been established that a planning authority must proceed upon a proper understanding of the development plan: see, for example, *Gransden & Co Ltd v Secretary of State for the Environment* (1985) 54 P & CR 86, 94 per Woolf J, affd (1986) 54 P & CR 361; *Horsham DC v Secretary of State for the Environment* (1991) 63 P & CR 219, 225-226 per Nolan LJ. The need for a proper understanding follows, in the first place, from the fact that the planning authority is required by statute to have regard to the provisions of the development plan: it

cannot have regard to the provisions of the plan if it fails to understand them. It also follows from the legal status given to the development plan by section 25 of the 1997 Act. The effect of the predecessor of section 25, namely section 18A of the Town and Country (Planning) Scotland Act 1972 (as inserted by section 58 of the Planning and Compensation Act 1991), was considered by the House of Lords in the case of *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447. It is sufficient for present purposes to cite a passage from the speech of Lord Clyde, with which the other members of the House expressed their agreement. At p 44, 1459, his Lordship observed:

“In the practical application of sec 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it.”

18. In the present case, the planning authority was required by section 25 to consider whether the proposed development was in accordance with the development plan and, if not, whether material considerations justified departing from the plan. In order to carry out that exercise, the planning authority required to proceed on the basis of what Lord Clyde described as “a proper interpretation” of the relevant provisions of the plan. We were however referred by counsel to a number of judicial dicta which were said to support the proposition that the meaning of the development plan was a matter to be determined by the planning authority: the court, it was submitted, had no role in determining the meaning of the plan unless the view taken by the planning authority could be characterised as perverse or irrational. That submission, if correct, would deprive sections 25 and 37(2) of the 1997 Act of much of their effect, and would drain the need for a “proper interpretation” of the plan of much of its meaning and purpose. It would also make little practical sense. The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others (as discussed, for example, in *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836), policy statements should be interpreted

objectively in accordance with the language used, read as always in its proper context.

19. That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780 per Lord Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean.

20. The principal authority referred to in relation to this matter was the judgment of Brooke LJ in *R v Derbyshire County Council, Ex p Woods* [1997] JPL 958 at 967. Properly understood, however, what was said there is not inconsistent with the approach which I have described. In the passage in question, Brooke LJ stated:

“If there is a dispute about the meaning of the words included in a policy document which a planning authority is bound to take into account, it is of course for the court to determine as a matter of law what the words are capable of meaning. If the decision maker attaches a meaning to the words they are not properly capable of bearing, then it will have made an error of law, and it will have failed properly to understand the policy.”

By way of illustration, Brooke LJ referred to the earlier case of *Northavon DC v Secretary of State for the Environment* [1993] JPL 761, which concerned a policy applicable to “institutions standing in extensive grounds”. As was observed, the words spoke for themselves, but their application to particular factual situations would often be a matter of judgment for the planning authority. That exercise of judgment would only be susceptible to review in the event that it was unreasonable. The latter case might be contrasted with the case of *R (Heath and Hampstead Society) v Camden LBC* [2008] 2 P & CR 233, where a planning authority’s decision that a replacement dwelling was not “materially larger” than its predecessor, within the meaning of a policy, was vitiated by its failure to understand the policy correctly: read in its context, the phrase “materially larger” referred to the size of the new building compared with its predecessor, rather than

requiring a broader comparison of their relative impact, as the planning authority had supposed. Similarly in *City of Edinburgh Council v Scottish Ministers* 2001 SC 957 the reporter's decision that a licensed restaurant constituted "similar licensed premises" to a public house, within the meaning of a policy, was vitiated by her misunderstanding of the policy: the context was one in which a distinction was drawn between public houses, wine bars and the like, on the one hand, and restaurants, on the other.

21. A provision in the development plan which requires an assessment of whether a site is "suitable" for a particular purpose calls for judgment in its application. But the question whether such a provision is concerned with suitability for one purpose or another is not a question of planning judgment: it is a question of textual interpretation, which can only be answered by construing the language used in its context. In the present case, in particular, the question whether the word "suitable", in the policies in question, means "suitable for the development proposed by the applicant", or "suitable for meeting identified deficiencies in retail provision in the area", is not a question which can be answered by the exercise of planning judgment: it is a logically prior question as to the issue to which planning judgment requires to be directed.

22. It is of course true, as counsel for the respondents submitted, that a planning authority might misconstrue part of a policy but nevertheless reach the same conclusion, on the question whether the proposal was in accordance with the policy, as it would have reached if it had construed the policy correctly. That is not however a complete answer to a challenge to the planning authority's decision. An error in relation to one part of a policy might affect the overall conclusion as to whether a proposal was in accordance with the development plan even if the question whether the proposal was in conformity with the policy would have been answered in the same way. The policy criteria with which the proposal was considered to be incompatible might, for example, be of less weight than the criteria which were mistakenly thought to be fulfilled. Equally, a planning authority might misconstrue part of a policy but nevertheless reach the same conclusion as it would otherwise have reached on the question whether the proposal was in accordance with the development plan. Again, however, that is not a complete answer. Where it is concluded that the proposal is not in accordance with the development plan, it is necessary to understand the nature and extent of the departure from the plan which the grant of consent would involve in order to consider on a proper basis whether such a departure is justified by other material considerations.

23. In the present case, the Lord Ordinary rejected the appellants' submissions on the basis that the interpretation of planning policy was always primarily a matter for the planning authority, whose assessment could be challenged only on the basis of unreasonableness: there was, in particular, more than one way in

which the sequential approach could reasonably be applied ([2010] CSOH 128, para 23). For the reasons I have explained, that approach does not correctly reflect the role which the court has to play in the determination of the meaning of the development plan. A different approach was adopted by the Second Division: since, it was said, the proposal was in head-on conflict with the retail and employment policies of the development plan, and the sequential approach offered no justification for it, a challenge based upon an alleged misapplication of the sequential approach was entirely beside the point (2011 SC 457, [2011] CSIH 9, para 38). For the reasons I have explained, however, even where a proposal is plainly in breach of policy and contrary to the development plan, a failure properly to understand the policy in question may result in a failure to appreciate the full extent or significance of the departure from the development plan which the grant of consent would involve, and may consequently vitiate the planning authority's determination. Whether there has in fact been a misunderstanding of the policy, and whether any such misunderstanding may have led to a flawed decision, has therefore to be considered.

24. I turn then to the question whether the respondents misconstrued the policies in question in the present case. As I have explained, the appellants' primary contention is that the word "suitable", in the first criterion of Retailing Policy 4 of the structure plan and the corresponding Policy 45 of the local plan, means "suitable for meeting identified deficiencies in retail provision in the area", whereas the respondents proceeded on the basis of the construction placed upon the word by the Director of City Development, namely "suitable for the development proposed by the applicant". I accept, subject to a qualification which I shall shortly explain, that the Director and the respondents proceeded on the latter basis. Subject to that qualification, it appears to me that they were correct to do so, for the following reasons.

25. First, that interpretation appears to me to be the natural reading of the policies in question. They have been set out in paras 4 and 5 above. Read short, Retailing Policy 4 of the structure plan states that proposals for new or expanded out of centre retail developments will only be acceptable where it can be established that a number of criteria are satisfied, the first of which is that "no suitable site is available" in a sequentially preferable location. Policy 45 of the local plan is expressed in slightly different language, but it was not suggested that the differences were of any significance in the present context. The natural reading of each policy is that the word "suitable", in the first criterion, refers to the suitability of sites for the proposed development: it is the proposed development which will only be acceptable at an out of centre location if no suitable site is available more centrally. That first reason for accepting the respondents' interpretation of the policy does not permit of further elaboration.

26. Secondly, the interpretation favoured by the appellants appears to me to conflate the first and third criteria of the policies in question. The first criterion concerns the availability of a “suitable” site in a sequentially preferable location. The third criterion is that the proposal would address a deficiency in shopping provision which cannot be met in a sequentially preferable location. If “suitable” meant “suitable for meeting identified deficiencies in retail provision”, as the appellants contend, then there would be no distinction between those two criteria, and no purpose in their both being included.

27. Thirdly, since it is apparent from the structure and local plans that the policies in question were intended to implement the guidance given in NPPG 8 in relation to the sequential approach, that guidance forms part of the relevant context to which regard can be had when interpreting the policies. The material parts of the guidance are set out in para 6 above. They provide further support for the respondents’ interpretation of the policies. Paragraph 13 refers to the need to identify sites which can meet the requirements of developers and retailers, and to the scope for accommodating the proposed development. Paragraph 14 advises planning authorities to assist the private sector in identifying sites which could be suitable for the proposed use. Throughout the relevant section of the guidance, the focus is upon the availability of sites which might accommodate the proposed development and the requirements of the developer, rather than upon addressing an identified deficiency in shopping provision. The latter is of course also relevant to retailing policy, but it is not the issue with which the specific question of the suitability of sites is concerned.

28. I said earlier that it was necessary to qualify the statement that the Director and the respondents proceeded, and were correct to proceed, on the basis that “suitable” meant “suitable for the development proposed by the applicant”. As paragraph 13 of NPPG 8 makes clear, the application of the sequential approach requires flexibility and realism from developers and retailers as well as planning authorities. The need for flexibility and realism reflects an inbuilt difficulty about the sequential approach. On the one hand, the policy could be defeated by developers’ and retailers’ taking an inflexible approach to their requirements. On the other hand, as Sedley J remarked in *R v Teesside Development Corporation, Ex p William Morrison Supermarket plc and Redcar and Cleveland BC* [1998] JPL 23, 43, to refuse an out-of-centre planning consent on the ground that an admittedly smaller site is available within the town centre may be to take an entirely inappropriate business decision on behalf of the developer. The guidance seeks to address this problem. It advises that developers and retailers should have regard to the circumstances of the particular town centre when preparing their proposals, as regards the format, design and scale of the development. As part of such an approach, they are expected to consider the scope for accommodating the proposed development in a different built form, and where appropriate adjusting or sub-dividing large proposals, in order that their scale may fit better with existing

development in the town centre. The guidance also advises that planning authorities should be responsive to the needs of retailers. Where development proposals in out-of-centre locations fall outside the development plan framework, developers are expected to demonstrate that town centre and edge-of-centre options have been thoroughly assessed. That advice is not repeated in the structure plan or the local plan, but the same approach must be implicit: otherwise, the policies would in practice be inoperable.

29. It follows from the foregoing that it would be an over-simplification to say that the characteristics of the proposed development, such as its scale, are necessarily definitive for the purposes of the sequential test. That statement has to be qualified to the extent that the applicant is expected to have prepared his proposals in accordance with the recommended approach: he is, for example, expected to have had regard to the circumstances of the particular town centre, to have given consideration to the scope for accommodating the development in a different form, and to have thoroughly assessed sequentially preferable locations on that footing. Provided the applicant has done so, however, the question remains, as Lord Glennie observed in *Lidl UK GmbH v Scottish Ministers* [2006] CSOH 165, para 14, whether an alternative site is suitable for the proposed development, not whether the proposed development can be altered or reduced so that it can be made to fit an alternative site.

30. In the present case, it is apparent that a flexible approach was adopted. The interveners did not confine their assessment to sites which could accommodate the development in the precise form in which it had been designed, but examined sites which could accommodate a smaller development and a more restricted range of retailing. Even taking that approach, however, they did not regard the Lochee site vacated by the appellants as being suitable for their needs: it was far smaller than they required, and its car parking facilities were inadequate. In accepting that assessment, the respondents exercised their judgment as to how the policy should be applied to the facts: they did not proceed on an erroneous understanding of the policy.

31. Finally, I would observe that an error by the respondents in interpreting their policies would be material only if there was a real possibility that their determination might otherwise have been different. In the particular circumstances of the present case, I am not persuaded that there was any such possibility. The considerations in favour of the proposed development were very powerful. They were also specific to the particular development proposed: on the information before the respondents, there was no prospect of any other development of the application site, or of any development elsewhere which could deliver equivalent planning and economic benefits. Against that background, the argument that a different decision might have been taken if the respondents had been advised that

the first criterion in the policies in question did not arise, rather than that criterion had been met, appears to me to be implausible.

Conclusion

32. For these reasons, and those given by Lord Hope, with which I am in entire agreement, I would dismiss the appeal.

LORD HOPE

33. The question that lies at the heart of this case is whether the respondents acted unlawfully in their interpretation of the sequential approach which both the structure plan and the relevant local plan required them to adopt to new retail developments within their area. According to that approach, proposals for new or expanded out of centre developments of this kind are acceptable only where it can be established, among other things, that no suitable site is available, in the first instance, within and thereafter on the edge of city, town or district centres. Is the test as to whether no suitable site is available in these locations, when looked at sequentially, to be addressed by asking whether there is a site in each of them in turn which is suitable for the proposed development? Or does it direct attention to the question whether the proposed development could be altered or reduced so as to fit into a site which is available there as a location for this kind of development?

34. The sequential approach is described in National Planning Policy Guidance Policy 8, *Town Centres and Retailing*, para 5.2 as a fundamental principle of NPPG 8. In *R v Rochdale Metropolitan Borough Council, Ex p Milne*, 31 July 2000, not reported, paras 48-49, Sullivan J said that it was not unusual for development plan policies to pull in different directions and, having regard to what Lord Clyde said about the practical application of the statutory rule in *City of Edinburgh v Secretary of State for Scotland* 1998 SC (HL) 33 at p 44, that he regarded as untenable the proposition that if there was a breach of any one policy in a development plan a proposed development could not be said to be “in accordance with the plan”. In para 52 he said that the relative importance of a given policy to the overall objectives of the development plan was essentially a matter for the judgment of the local planning authority and that a legalistic approach to the interpretation of development plan policies was to be avoided.

35. I see no reason to question these propositions, to which Mr Kingston QC for the appellants drew our attention in his reply to Mr Armstrong’s submissions for the respondents. But I do not think that they are in point in this case. We are concerned here with a particular provision in the planning documents to which the

respondents are required to have regard by the statute. The meaning to be given to the crucial phrase is not a matter that can be left to the judgment of the planning authority. Nor, as the Lord Ordinary put it in his opinion at [2010] CSOH 128, para 23, is the interpretation of the policy which it sets out primarily a matter for the decision maker. As Mr Thomson for the interveners pointed out, the challenge to the respondents' decision to follow the Director's recommendation and approve the proposed development is not that it was *Wednesbury* unreasonable but that it was unlawful. I agree with Lord Reed that the issue is one of law, reading the words used objectively in their proper context.

36. In *Lidl UK GmbH v The Scottish Ministers* [2006] CSOH 165 the appellants appealed against a decision of the Scottish Ministers to refuse planning permission for a retail unit to be developed on a site outwith Irvine town centre. The relevant provision in the local plan required the sequential approach to be adopted to proposals for new retail development out with the town centre boundaries. Among the criteria that had to be satisfied was the requirement that no suitable sites were available, or could reasonably be made available, in or on the edge of existing town centres. In other words, town centre sites were to be considered first before edge of centre or out of town sites. The reporter held that the existing but soon to be vacated Lidl town centre site was suitable for the proposed development, although it was clear as a matter of fact that this site could not accommodate it. In para 13 Lord Glennie noted that counsel for the Scottish Ministers accepted that a site would be "suitable" in terms of the policy only if it was suitable for, or could accommodate, the development as proposed by the developer. In para 14 he said that the question was whether the alternative town centre site was suitable for the proposed development, not whether the proposed development could be altered or reduced so that it could fit in to it.

37. Mr Kingston submitted that Lord Glennie's approach would rob the sequential approach of all its force, and in the Inner House it was submitted that his decision proceeded on a concession by counsel which ought not to have been made: [2011] CSIH 9, 2011 SC 457, para 31. But I think that Lord Glennie's interpretation of the phrase was sound and that counsel was right to accept that it had the meaning which she was prepared to give to it. The wording of the relevant provision in the local plan in that case differed slightly from that with which we are concerned in this case, as it included the phrase "or can reasonably be made available". But the question to which it directs attention is the same. It is the proposal for which the developer seeks permission that has to be considered when the question is asked whether no suitable site is available within or on the edge of the town centre.

38. The context in which the word "suitable" appears supports this interpretation. It is identified by the opening words of the policy, which refer to "proposals for new or expanded out of centre retail developments" and then set out

the only circumstances in which developments outwith the specified locations will be acceptable. The words “the proposal” which appear in the third and fifth of the list of the criteria which must be satisfied serve to reinforce the point that the whole exercise is directed to what the developer is proposing, not some other proposal which the planning authority might seek to substitute for it which is for something less than that sought by the developer. It is worth noting too that the phrase “no suitable site is available” appears in Policy 46 of the local plan relating to commercial developments. Here too the context indicates that the issue of suitability is directed to the developer’s proposals, not some alternative scheme which might be suggested by the planning authority. I do not think that this is in the least surprising, as developments of this kind are generated by the developer’s assessment of the market that he seeks to serve. If they do not meet the sequential approach criteria, bearing in mind the need for flexibility and realism to which Lord Reed refers in para 28, above, they will be rejected. But these criteria are designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest doing so.

39. For these reasons which I add merely as a footnote I agree with Lord Reed, for all the reasons he gives, that this appeal should be dismissed. I would affirm the Second Division’s interlocutor.



Appendix 2
Minutes of Pre-app Meeting



Note of Discussions

Hill Street Holdings, Langford Lane, Kidlington
Pre Application Meeting
Cherwell Council, Bodicote House, Banbury, OX15 4AA

DATE: 16 May 2017

PRESENT	Bernadette Owens	Cherwell District Council
	Bob Duxbury	Cherwell District Council
	Angus Bates	Hill Street Holdings
	Lauren Bates	Hill Street Holdings
	Raymond Tutty	Savills

This note provides a record of discussions between Cherwell District Council and Hill Street Holdings on 16 May 2017 in respect of land east of Evenlode Crescent and south of Langford Lane, Kidlington.

The applicant provided an overview of discussions with occupiers for the Class B1 business space. In addition, it confirmed that the proposed hotel operator had engaged in discussions with nearby employers such as the Airport to gauge demand for a new hotel. These discussions assured the operator that there would be adequate demand to support its new hotel.

Planning Officers confirmed that Cherwell District Council had approved a similar proposal for a hotel as part of the new Bicester Gateway Business Park in April 2016 (Ref: 16/02586/OUT). Officers had initially raised concerns during pre-application discussions about the loss of employment land through the creation of a hotel at the site. During the formal determination however, it was demonstrated that the hotel would act as a good catalyst for the delivery of the business park floorspace and supporting infrastructure.

Officers confirmed that the planning application for a hotel on Langford Lane should be supported by a comprehensive assessment of sequential sites. It was noted that Kidlington Village Centre should be the focus of this assessment and the Kidlington Masterplan used a guide to identify suitable sites. In addition, officers stated that a planning application should include further details of the functional link between the hotel and the proposed bar / restaurant. Finally, it was agreed that impact assessments are not required for hotel developments in accordance with Paragraph 26 of the National Planning Policy Framework.

Officers stated that if it is to support the hotel proposal at Langford Lane, the proposal should secure a degree of upfront infrastructure to demonstrate that the business park will be delivered. The applicant confirmed that it was eager to progress the initial infrastructure works to demonstrate progress to the Class B occupational market in any event.

Officers advised that in advance of the submission of a full planning application for the proposed hotel, a reserved matters application should be submitted for Class B1 floorspace on some other elements of the wider site. It was felt that this approach would assist the determination of the hotel application at Planning Committee by Members as it would provide further evidence that the Class B1 floorspace was being delivered.

The applicant stated that a decision on whether to engage in the formal pre application procedure for the hotel proposal had not yet been reached. Officers confirmed that it could give a view on the principle of the proposed hotel use due to its past experience at Bicester Gateway. For detailed comments on parking and access, elevational design, and landscaping however, further pre application discussions would be required. The applicant confirmed that the proposed hotel is likely to maintain the same elevational design principles agreed for the original planning application. In light of this, it was hoped that the design of the proposed hotel could be supported by Officers.

It was confirmed that the applicant would inform Officers of its preference in respect of further pre application discussions for the hotel.



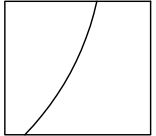




Appendix 3

Drawing Ref: AP11B – 'Proposed Site Plan'

LANGFORD LANE

KEY

-  PERMEABLE PAVING TO PARKING AND DELIVER BAYS
-  TARMAC ROADWAY
-  CONCRETE PAVING SLABS
-  LANDSCAPING - REFER TO DETAIL LANDSCAPE SCHEME
-  SWALE - REFER TO DETAIL LANDSCAPE SCHEME
-  BUILDING FOOTPRINT / ROOFSCAPE

Condenser Enclosure

Hotel

Linen Deliveries

Restaurant

Goods In

Service Yard

Goods In

Entrance

Patio

Delivery Bay

Cycles

Charging Points

134 Car Park Spaces

SERVICE VEHICLE TURNING

47 Car Park Spaces (9 To service yard)

First Floor Ancillary

TH	REV B: SITE LAYOUT UPDATED	13.10.17	
TH	REV A: SITE BOUNDARY UPDATED	07.09.17	
TH	DRAWN	JULY 17	VER
DRAWN	REVISION	DATE	



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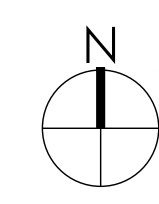
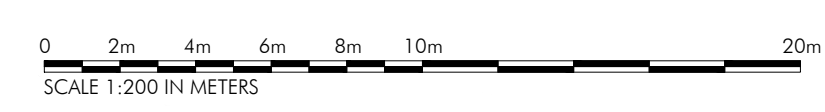
PLANNING ISSUE

PROJECT
 PREMIER INN
 OXFORD TECHNOLOGY PARK

TITLE
 PLANNING DRAWING
 PROPOSED SITE PLAN

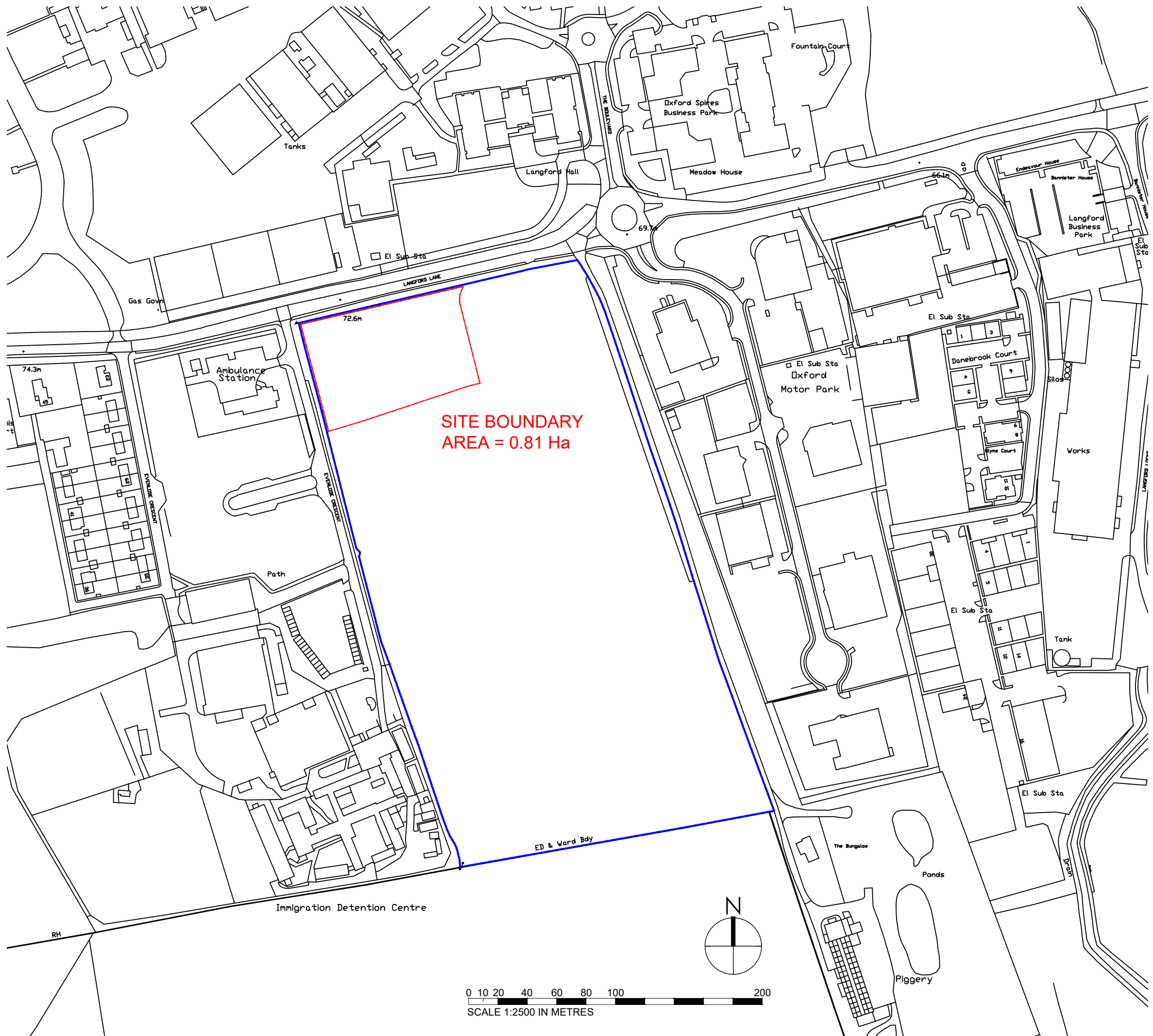
SCALE
 1:200 @ A1

JOB No	DRAWING No	REV
PI662	AP11	B





Appendix 4
Drawing Ref: AP10A – 'Site Location Plan'



SITE BOUNDARY
AREA = 0.81 Ha

0 10 20 40 60 80 100 200
 SCALE 1:2500 IN METRES

PLANNING ISSUE	<table border="1"> <tr> <td>TH</td> <td>REV A: SITE BOUNDARY UPDATED, AREA ADDED</td> <td>07.09.17</td> </tr> <tr> <td>TH</td> <td>DRAWN</td> <td>JUL 17</td> </tr> <tr> <td>DRAWN</td> <td>REVISION</td> <td>DATE</td> </tr> <tr> <td></td> <td></td> <td>VER</td> </tr> </table>	TH	REV A: SITE BOUNDARY UPDATED, AREA ADDED	07.09.17	TH	DRAWN	JUL 17	DRAWN	REVISION	DATE			VER
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<p style="text-align: center;">AP ALLISON PIKE</p> <p style="text-align: center;">ARCHITECTS & DESIGNERS</p> <p>7 Buxton Road West, Disley, Stockport, Cheshire, SK12 2AE Website: www.allisonpike.com</p> <p>Telephone: 01663 763000 Facsimile: 01663 766772 Email: studio@allisonpike.com</p> <p style="text-align: right; font-size: small;">© Allison Pike Partnership Limited.</p>													
<p>PROJECT</p> <p>PREMIER INN OXFORD TECHNOLOGY PARK</p>													
<p>TITLE</p> <p>PLANNING DRAWINGS SITE LOCATION PLAN</p>													
<p>SCALE</p> <p>1:2500 @ A3</p>													
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PI662	AP10	A											