Land south of Broadland Gate, adjacent to Postwick Interchange, Norwich

Full planning application for the proposed development of 1 no. petrol filling station and 2 no. drive through restaurants.

SEQUENTIAL TEST

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Document: Sequential Test

Project: Land south of Broadland Gate, Norwich

Client: Monte Blackburn Ltd and Pigeon Investments Ltd

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1 INTRODUCTION

1.1 PWA Planning is retained by Monte Blackburn Ltd and Pigeon Investments Ltd to prepare and submit a full planning application for the proposed development of 1 no. petrol filling station, 2 no. drive through restaurants, together with access, parking and other various infrastructure work on land south of Broadland Gate, adjacent to Postwick Interchange, Norwich.

1.2 The planning application is made to Broadland District Council (the local planning authority) as a full planning application within a single application site boundary, as illustrated on the submitted Location Plan. It is relevant to note at this point that formal pre-application discussions have been undertaken regarding the proposals and comments received from officers have been taken into consideration in finalising the proposals, which are now the subject of this application.

1.3 As part of this application, the applicant is required to undertake a sequential test of the proposed main town centre uses as per Paragraph 24 of the National Planning Policy Framework (NPPF). The statement provides the results of this test in the context of relevant planning policy.
2 PLANNING POLICY CONTEXT

2.1 The statutory development plan for the application site comprises Broadland District Council’s Joint Core Strategy Development Management Document (2014), the Development Management DPD (2015) and Site Allocations DPD (2016), whilst government guidance as set out in the National Planning Policy Framework (NPPF) (2012) is a material consideration to be weighed in the balance of this application’s determination.

2.2 The Joint Core Strategy DPD sets out a strategic vision for future growth and development within the Greater Norwich Area between the period 2008 – 2026 and has been prepared between Broadland, Norwich and South Norfolk Councils. The Development Management DPD provides specific policies which seek to deliver the objectives as set out in the Joint Core Strategy and the Site Allocation DPD allocates specific areas of land for a range of different uses, namely housing, employment and leisure.

2.3 The application site is identified within the Development Management DPD Proposals Map Part 1, which is further reiterated by the Site Allocations DPD Thorpe St Andrew Proposals Map, as an area for the ‘Protection of Land for Transport Improvements – for the Proposed Postwick Hub Scheme’. An extract from the Development Management DPD Proposals Map is provided below at Figure 2.

2.4 With regards to the need for a sequential test, Paragraph 24 of the National Planning Policy Framework states that:

“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.”

2.5 In relation to impact, Paragraph 26 outlines that when assessing applications for retail development outside of town centres, which are not in accordance with an up-to-date local plan, local planning authorities should require an impact assessment for developments that are in excess of locally set floor space threshold. Where no local threshold has been set, the default is 2,500 sqm. The Local Plan relies on the impact test level of 2,500 sqm as set out in the NPPF and the retail element of the proposals is substantially below this threshold, with the combined staff, storage and retail (internal) floor space amounting to 1,179 sqm.
3 SEQUENTIAL TEST

3.1 This section assesses the proposal against the key retail planning policy requirement. As the proposed development includes main town centre uses which are to be located out of centre in retail policy terms, it is necessary to demonstrate that there are no suitable, available and viable sequentially preferable sites that could accommodate the proposed development.

3.2 It is, however, important at the outset to correctly interpret and apply the sequential test, taking into account case law and relevant appeal decisions. For example, as highlighted in the Dundee (March 2012)\(^1\) case, the Supreme Court ruled that “suitable” means “suitable for the development proposed by the applicant” and the Secretary of State in the Rushden appeal decision (June 2014)\(^2\), has confirmed that the sequential test needs to be considered in the context of the specific development proposed by the applicant, and not simply a “class of goods” approach or some attempt at disaggregation that might otherwise seek to accommodate elements of the proposed development on a smaller, sequentially preferable site. Whether, therefore, a site is considered suitable for the commercial requirements of a developer/retailer, clearly needs to be considered in light of the specific application proposal. The two decisions referred to above, both assist in demonstrating how the sequential test should be lawfully and properly applied.

3.3 Whilst we acknowledge the requirement for some flexibility in applying the sequential test, as referred to in the National Planning Guidance, this needs to be applied sensibly in the context of scale and format, as it is clearly not the purpose of national or local planning policy to require a developer to seriously compromise their proposal by requiring them to disaggregate it into its constituent parts. Indeed, the Secretary of State in the Rushden decision expressly acknowledges that the NPPF does not require an applicant to disaggregate in any way a specific development proposal. In reality, therefore, whilst there may be some limited scope to reduce the scale of the proposed development, it would be wholly unreasonable to expect the applicant/retailer to amend a proposal to the extent that it no longer meets their business requirement and becomes unviable.

3.4 In order that the sequential test is properly applied, it is therefore necessary to consider the proposed development as a whole for which planning permission is sought, within which the main town centre uses comprise 1 no. hot-food, drive-through restaurant and 1 no. drive-through coffee

\(^1\) Case [2012] UKSC 13 - Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland) https://www.supremecourt.uk/cases/docs/uksc-2011-0079-judgment.pdf
shop. In line with the Council’s recommendations during pre-application discussions, this sequential test considers potential sequentially preferable sites that could accommodate the proposed development on a site that is broadly the same in size, allowing for a reasonable degree of flexibility, as required by national policy, within the centres listed below:

- Norwich City Centre;
- Blofield local centre;
- Brundall local centre;
- Pound Lane in Thorpe St Andrew.

**Availability**

3.5 The NPPF (Paragraph 24) helpfully sheds light on the correct interpretation of this aspect of the test, and simply asks whether town centre or edge of centre sites are “available”. Importantly, it does not, therefore, ask whether such sites are likely to become available during the remainder of the plan-period or over a period of some years. Put simply, the correct approach is to ascertain whether a site is currently available rather than speculate if a site may become available at some indeterminate future date.

**Suitability**

3.6 Suitability relates to whether the proposed development can be reasonably and successfully located at a particular site. There are a number of key considerations in this respect.

3.7 Firstly, as previously indicated, the test is only relevant in the context of the “requirement” the proposed development will meet – in this case a mix of a hot-food, drive-through restaurant and a drive-through coffee shop, which will meet some of the hot food and drink needs of passing motorists and local residents/workers. It has however been asked that the applicant considers other, potentially sequentially preferable suitable sites.

3.8 Secondly, the basic business requirement of the operators is of fundamental importance. Significant in this respect is the current requirement for new restaurants to be of a certain size, similar to other restaurants operated by the same enterprise. Therefore, for the operators to be able to provide the retail offer needed to meet customer expectations a development of broadly the size and format proposed is essential. Put simply, units materially smaller and reduced parking numbers than those proposed would be seriously compromised and would not represent a viable development from the operator’s perspective. Furthermore, as previously indicated, it is not the purpose of planning policy to require a proposal (as a whole) to be split between separate sites. The NPPF does not require “disaggregation”, as evidenced by the Rushden decision.
Viability
3.9 Sites should not present any obvious economic obstacles to the proposed development.

Assessment
3.10 For the purposes of our sequential examination, the assessment focuses on available sites within the centres noted at Paragraph 3.4 above.

3.11 A thorough search of land / buildings both for sale and for let with a minimum size area of 2 hectares (the application site area) has been undertaken via the following:

- Rightmove’s online search engine;
- NPS Group’s online commercial property search engine;
- Websites of local independent commercial agents.

3.12 However, no sites (both for rent and for sale) were found that could accommodate the proposed development.

3.13 The fact that there are no available sites is not unsurprising: firstly, Norwich cite centre is a densely built up and well-confined settlement, with most of its available sites comprising of existing, typical shop / restaurant / cafe / office units within the town centre which are mostly either attached or semi-detached and well below 3 hectares in size. In addition, none of these sites would provide the amount of space required for off-road car parking or indeed the circulation space needed as part of the drive through restaurants and petrol filling station. Property / land that is currently available in the settlements of Blofield, Brundal and Thorpe St Andrew is few and far between, namely due to the very nature of these settlements, being rural, small scale villages, and is largely limited to single residential dwellings and all below the required 2 hectares.

3.14 It is worth reiterating here that whilst Euro Garages are willing to apply flexibility in their approach to their operations when considering alternative sites, it is not the purpose of national policy to disaggregate proposals as a result of a sequential test and various appeal decisions (cited earlier in this statement) have supported this view. The flexibility here can only extend to sites capable of accommodating the required minimum 2 ha of development (this is derived in part from the size of required seating areas for customers of all units) and where vehicular circulation around the buildings together with on-site parking can be provided.

3.15 Therefore, in this regard, we conclude that there are no available and suitable sequentially preferable opportunities capable of accommodating the proposed development.
3.16 Notwithstanding the current lack of available units, even if there were to be a site of sufficient size/configuration and with sufficient associated parking, it would in any case not represent a suitable alternative to the application site, because it would cater for an essentially different “localised catchment” served by that particular centre. The primary role of this particular proposal is to serve passing motorists on the A47 and A1042, which results in the strong likelihood that a high proportion of the users of the drive through units will be derived from a wide catchment area, with a very limited secondary role of servicing local residents of the surrounding residential area. Indeed, the proposals will cater for a different customer base than shoppers in these centres and as such there is no potential for cross-over trade or for the proposals to have any adverse impact on the vitality and viability on the centres.

Summary

3.17 Taking into account all of the above, it is clear that there are no sites identified in our sequential search that are suitable, available and viable to accommodate the application proposal. If during the determination period of the application the LPA become aware of any available sites, we will of course address these as necessary, however at present and for the purposes of this assessment, there are no such sites which exist.

3.18 We consider the above represents a sensible interpretation and application of the sequential approach towards site selection. There are demonstrably no sequentially preferable alternatives that are available or suitable and consequently the brownfield application site, which is accessible by a variety of transport modes, is still, in our view, an appropriate location for the proposed development.
4 CONCLUSION

4.1 Having considered the availability of sites within the identified centres of Norwich city centre, Blofield, Brundal and Thorpe St Andrew (specifically Pound Lane), it has been concluded that there are no sites adequate in their capacity for the type of development proposed, which requires not only land to accommodate the required retail, stores and staff facilities floor space but circulation space for vehicles using the drive through units and externally for the required parking facilities.

4.2 Notwithstanding this, as has been set out above, the proposals require a specific geographical location adjacent and with direct access to the A47 strategic highway network and therefore would be considered unsuited to a town centre location, even if one were to become available.

4.3 For the reasons identified within this Statement, it is considered that a satisfactory sequential test has been carried out to demonstrate compliance with paragraph 24 of the NPPF and it is clear that planning permission for the proposed development should be granted.

4.4 Finally, it is relevant to note that a rejection of the application proposal on sequential grounds would not have the effect of re-directing the proposed investment and development to a sequentially superior site. Such a refusal would simply mean that the wide-ranging economic benefits and employment opportunities associated with the subject site’s regeneration would be denied to the local community.