

P18-1172 / AM

27th May 2018

Reading Borough Council,
Civic Offices,
Bridge St,
Reading
RG1 2LU

Dear Sir/Madam,

Re: Proposed Drive-thru Coffee Shop, Rose Kiln Lane, Reading.

INTRODUCTION

This letter has been prepared by Pegasus Group on behalf of Sorbon Estates in relation to a proposed Drive-thru Coffee Shop, at the Reading Link Retail Park, Rose Kiln Lane, Reading. It explains why a sequential test is not justified in order to properly assess the merits of the proposal. Relevant planning policies and applicable planning law cases are referred to.

The development proposal represents an important opportunity to enhance this 'Gateway Site' into the Reading Link Retail Park. The site itself is highly visible, and currently used as a car park servicing the Reading Link Retail Park, which contains a variety of retail stores including a Matalan, Bensons for Beds and Home Bargains. It acts as a destination for retail customers, who would typically drive to and park at the retail park, visit one or more of the premises at the park, then drive away from the retail park.

The Reading Link Retail Park, is located within the main settlement boundary of Reading (Policy CS6, SA11), and is outside a core employment area (Policies CS10, CS11 and SA12) and the Reading Central Area (Policies RC5, RC7, RC8, RC9, RC11, RC13, RC14).

In line with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning applications should be determined in accordance with the Statutory Development Plan unless material considerations indicate otherwise. In this instance, the Development Plan consists of the 'saved' policies of the Reading Borough Council Core Strategy most recently updated in January 2015, and the Sites and Detailed Policies Document, adopted 2012, and updated 2015. The development plan is in the process of being updated, with a Submission Local Plan being considered at LP Examination, Hearings for which commence in September 2018. Relevant policies within it are therefore material considerations in this instance, as is national guidance in the form of the NPPF and NPPG.

Development Plan

When commenting upon the 'Scale and Location of Retail, Leisure and Culture Development', Core Strategy Policy 25 indicates that a sequential approach should be considered when assessing major proposals outside the centre of Reading, whilst adhering with national guidance on the matter:

'Major retail and main town centre leisure and culture development will take place in, or as an extension to, the centre of Reading. Where a need for additional development has been identified, and no sites are available in or adjoining the centre of Reading, a sequential approach should be adopted to identifying alternative sites. All development will comply with the relevant tests for retail, leisure and culture development set out in government guidance.'

The policy defines 'major development' as 2,500 sq m or greater. For clarification, the current proposal is only 186 sq m, so is not subject to such requirements.

The accompanying text to Policy CS 25 goes on to note that retail, leisure and cultural development will only be allowed in exceptional circumstances outside designated centres, where the requirements of PPS 6 are met. PPS 6 has now been superseded by the NPPF, the content of which is referred to below.

As a result, relevant development plan guidance recognises that sequential tests, for smaller schemes, such as that now proposed, are not a requirement, and refers back to national guidance on the matter, which has since been superseded.

Material Considerations

The National Planning Policy Framework (NPPF), and National Planning Policy Guidance (NPPG) are material considerations of significant weight. At the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as a golden thread running through both the plan-making and decision-making process (paragraph 14).

With regard to decision-making, the document states that local planning authorities should approve development proposals that accord with the Development Plan without delay, and, where the Development Plan is absent, silent or relevant policies are out of date, grant permission unless any adverse impacts in doing so would significantly and demonstrably outweigh the benefits when assessed against the policies within the NPPF.

In this instance, given commentary relating to the development plan above, it is considered that the latter, underlined requirement of the NPPF, applies.

The document sets out twelve core principles for the planning process (paragraph 17) and advises that, amongst other things, planning should:

- Be a creative exercise in finding ways to enhance and improve the places in which people live their lives;
- Proactively drive and support sustainable economic development;
- Promote the vitality of main urban areas and encourage the reuse of existing resources;
- Actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.

The policies 'ensuring the vitality of town centres' are set out at paragraphs 22 to 27. Paragraph 23 states that the needs for retail and leisure are to be met in full and are not to be compromised by limited site availability.

The NPPF explains 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. Paragraph 24 states that authorities 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.'

The NPPF also states that applicants and LPAs should 'demonstrate flexibility on issues such as format and scale' (paragraph 24).

Paragraph 27 states that where an application fails to satisfy the sequential test, or is likely to have a 'significant adverse impact' on one of the factors set out in paragraph 26, it should be refused, unless material considerations indicate otherwise.

In determining planning applications, paragraph 187 states that:

'...local planning authorities should look for solutions rather than problems, and decision takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments and improve the economic, social and environmental conditions of the area.'

Furthermore, paragraph 197 states that when assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development. Overall, the NPPF requires local planning authorities to take a pro-active approach to development and growth.

The NPPG advises that the sequential test should be 'proportionate and appropriate' for the given proposal. It goes on to outline a checklist which sets out the considerations that should be taken into account in determining whether a proposal complies with the sequential test:

'with due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.

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 is no suitable sequential preferable locations, the sequential test is passed'. (Para 010)

For an available central site to be sequentially preferable, it must be suitable. In assessing whether a site is suitable the local planning authority and developer must consider whether there is scope for flexibility in terms of format and scale. The definition of suitability and the extent to which flexibility should be demonstrated has been underscored by Case Law and the Secretary of State in appeal decisions.

Importantly, "Use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations. Robust justification must be provided where this is the case, and land ownership does not provide such a justification" (Para 011).

This is considered to be relevant in this instance. It must be recognised that the operational, and hence locational, requirements of a Drive-thru Coffee Shop, are notably different to that of a standard Coffee Shop. A Drive-thru will not represent a destination in itself, but will be located where it can benefit from those who are already travelling in the area, and will simply 'call-by' at a Drive-thru. It is not appropriate to introduce such provision at a town centre, where customers are typically away from their car, and hence would have no need for a drive-thru facility.

The Submission Draft Local Plan (March 2018) advises at Policy RL2 that if major development proposals for retail and town centre use schemes of 2,500 sq m or more are proposed outside of a centre, then a sequential approach should be adopted to identify an alternative site. Policy RL5 requires that schemes for town centre uses of greater than 1,000 sq m in out of centre locations, should demonstrate that they have no adverse impact on existing centres.

For clarification, the proposed development in this instance will be 186 sq m, and therefore notably below the suggested requirement set out in the emerging Local Plan for sequential assessment being required.

The adopted and emerging development plan policies attempt to focus retail and other town centre use development towards town centre locations. However, there is an acknowledgement that the requirement for sequential assessment should only apply towards schemes larger than that currently proposed.

The NPPF sets out the Government's commitment to ensuring that the planning system delivers sustainable economic growth, and it is recognised that at paragraph 20 encouragement is given towards the siting of town centre use proposals within centres, ahead of 'out of centre' sites. A more detailed consideration is therefore given below to the sequential assessment, as required by national policy, taking account of Case Law and an Appeal Decision;

Planning Law

What makes a site 'sequentially preferable' has been made clear by a judgement in 2012 at Dundee (Tesco Stores Limited v Dundee City Council). The judgement established that if a site is not suitable for the commercial requirements of the development in question, then (subject to the suitable application of flexibility) it is not a suitable site for the purposes of the sequential approach; and that in terms of the size of the alternative site, provided that the applicant has demonstrated flexibility with regards to format and scale, the question is:

'...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.' (Paragraph 29 of the Dundee Judgement)

Paragraph 38 of the Dundee Judgement goes on to state:

'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 in doing so.'

In other words, the sequential test should be undertaken not as an academic exercise, rather with the commercial realities of delivering development and the critical components of the proposed development.

The interpretation of 'suitability' has been reinforced by the Secretary of State. In June 2014 the SoS agreed with the Inspector's recommendation to allow the erection of a mixed-

use scheme at Rushden Lakes (Ref: APP/G2815/V/12/2190175). Within the decision the Inspector identifies the Supreme Court Dundee judgement as being of 'seminal importance'. To this end when commenting on suitability the Inspector stated that (paragraph 2.64):

'...if a site is not suitable for the commercial use requirements of the developer in question then it is not a suitable site for the purposes of the sequential approach.'

In addition, the Inspector (paragraph 2.64) goes on to state that whilst an applicant must demonstrate flexibility, it is not the purpose of the sequential test to suggest sites that alter the proposed development. He states:

'...in terms of the size of the alternative site, provided that the applicant has demonstrated flexibility with regards to format and scale, the question is whether the 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.'

Put another way, it is inappropriate to require the relocation of a proposal to a smaller, more central site that would not be able to deliver the necessary quantum and quality of floorspace and associated requirements, brought forward by the application proposals. It is acknowledged that whilst there is a requirement to be flexible when looking for more central sites, a balance is needed to be struck between achieving a viable development, and one that adequately demonstrates flexibility. A drive-thru Coffee Shop, whilst having some similarities to coffee shops regularly found within town centres, is quite clearly a different operation, with different requirements, meaning it would not be viable within a town centre environment, where the 'drive-thru' element of custom would be severely constrained, due to the nature of town centres, Reading's in particular.

The appeal decision also provides an important interpretation of when a site can be considered 'available'. In particular, the Inspector (paragraph 8.55) commented:

'...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.'

Summary and Criteria for the Sequential Assessment

Planning policy guidance, case law and appeal decisions refer to the 'proposed development', as the scheme that is to be assessed, i.e. in the context of whether a sequential site can accommodate the proposed development having regard to the local context and market.

The proposed drive-thru is anticipated to directly serve customers already visiting the Reading Link Retail Park, as well as complement some of the adjacent retail destinations. Primarily, it will serve those customers who are travelling in the area, using the arterial highways that the application site relates directly to. The proposal is not intended as a destination itself, and not anticipated to draw any trade away from the town centre.

Para 011 of the NPPG recognises that certain town centre uses can only be accommodated within particular locations due to market and locational requirements. As described, the provision of the proposed drive-thru cafe within Reading Town Centre, whilst sequentially preferable, would not serve the identified primary catchment area and particular market.

Against this background, it is our view that the type of development proposed at the application site is not compatible with any sequentially preferable sites, given these would equally be sited in an 'out of centre' location, in order to effectively serve the requirements of a drive-thru coffee shop. Consequently, it is concluded that there are no sequentially preferable sites that are available, suitable and viable to meet the same needs as the development proposed.

CONCLUSION

This assessment has considered the relevant development plan policies and found them to recognise encouragement of town centre uses within town centres, but only to require sequential tests for sites notably larger than that currently under consideration. The same approach is taken in the emerging Local Plan policy on the matter.

The NPPF makes clear the need to plan proactively so that the development needs of business are met and there is an economy fit for the 21st Century (Paragraph 20). In addition, whilst promoting vital and viable town centres, there is also a need to provide customer choice and a diverse offer (Paragraph 23). Whilst specific reference is made at paragraph 20 to the sequential assessment for out of centre proposals, a more detailed consideration of the point in this submission has highlighted that Case Law recognises that flexibility must be provided on the matter. This has shown that the specific operation and requirements of a scheme must be taken into account when assessing whether other, more sequentially preferable, locations should be given priority.

The application in this instance is for a modest sized Drive-thru Coffee Shop which will serve and complement the Reading Link Retail Park. There is no element of competition with town centre businesses because it is targeting a different market. It is therefore strongly considered that no adverse impact upon Reading Town Centre will result if the scheme is allowed and, for reasons explained within this submission, there will be no other sequentially preferable sites to accommodate the proposed development due to the specific operation proposed. The scheme has been shown to adhere with the requirements of the NPPF, and consideration should be given to the accompanying Planning Statement in this respect.

It is therefore strongly considered that the application can, and should be, assessed without the requirement for a sequential test, given the specifics of the proposal which clearly explain why harm to the town centre will not result if the application is allowed.