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Mr Robert Lennis
Lead Project Officer
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By email only

Our Ref:
Your Ref:
File Ref:

Dear Robert

RETAIL PLANNING ADVICE ON APPEAL FOLLOWING REFUSAL OF HYBRID APPLICATION AT MARNHULL (APPLICATION REF: P/OUT/2023/02644 & APPEAL REF: APP/D1265/W/24/3353912): THE SEQUENTIAL TEST

Thank you for appointing Lambert Smith Hampton ('LSH') to provide Dorset Council with retail planning policy advice in relation to the forthcoming appeal at Marnhull (Application Ref: P/OUT/2023/02644; Appeal Ref: APP/D1265/W/24/3353912).

The Council has requested the assistance of LSH in terms of the Reason for Refusal 2 (RfR2), namely:

The proposed development includes main town centre uses (use class E) measuring 2,356 sqm which is not considered to be small scale rural development contrary to Policies 2, 11 and 12 of the adopted North Dorset Local Plan Part 1, and paragraphs 90 and 91 of the National Planning Policy Framework.

The purpose of this advice is to consider one of the two matters raised in the Council's Statement of Case (SoC) relating to retail and town centre policies, namely whether the additional material now provided by the appellant in the form of the Retail Sequential Test Statement (RSTS) demonstrates the necessary compliance with the sequential test.

We note that a separate Retail Impact Assessment has now been submitted by the Appellant, and we will provide our comments on that in due course.

Our advice is based on a review of the retail related documents received to date, namely:

1. Application Form
2. Retail Technical Note (Lichfields, October 2023) (RTN);
3. Planning and Retail Statement (Chapman Lily, October 2023) (PRS);
4. Retail Sequential Test Statement (Chapman Lily, September 2024) (RSTS); and
5. Appellant's Statement of Case (Chapman Lily, October 2024) (ASoC).

BACKGROUND

The original application proposal sought full permission for a mixed-use development including a foodstore, shop units and other main town centre uses on land west of Church Hill, Marnhull and outline permission for residential development on a separate site to the south. It was accompanied by a Planning and Retail Statement (PRS) prepared by Chapman Lily (CL) and dated October 2023 and a Retail Technical Note prepared by Lichfields (dated October 2023) that sought to justify the scale of retail development proposed.

However, CL took the approach that, as the development was, in their opinion 'small scale rural development' (NPPF, para 93) meeting 'local needs' (Local Plan Policy 12) there was no

requirement to undertake a sequential assessment. The need for a retail impact assessment was also rejected given the total floorspace proposed for main town centre uses is slightly below the 2,500 sqm threshold set out in the NPPF and there is no locally set lower threshold.

Despite requests from the Council that the additional information be provided, this was not done and the application was refused 16 July 2024 for 5 reasons including No. 2 detailed above, which did not accept that the proposed development was small scale rural development.

The Applicant has now lodged an appeal against the refusal and the submitted Statement of Case (ASoC) has included a sequential site assessment – the RSTS. On this basis and continuing the argument that a retail impact assessment is not required, CL on behalf of the Appellant contends that RfR2 falls away (SoC, para 8.10).

SEQUENTIAL TEST

Having reviewed the original application documentation we agree with the Council that the proposed retail development cannot be considered to represent ‘small scale rural development’ (NPPF, para 93). It is in an out-of-town location and outside of any defined town centre and therefore needs to be assessed as an out-of-centre retail development.

As a result, in order to demonstrate compliance with retail and town centre planning policy, it is necessary for the applicant/appellant to show that there are no sequentially preferable sites suitable and available for the proposed development.

This information was not included within the original application submission, but the RSTS seeks to address the first policy requirement, although the requirement for the assessment remains disputed (RSTS, para 1.5).

Our review of the document however, has identified a number of issues with the submission, which lead us to conclude that compliance with the sequential test has not been demonstrated by the Appellant.

Our reasons for reaching this conclusion are set out below, following a similar structure to the RSTS. In providing these comments we would emphasise that our appraisal has been carried out in accordance with Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004, which require planning applications to be determined in accordance with the statutory development plan, unless material considerations indicate otherwise. Our comments therefore concentrate on the matters that are material to our advice. Any failure to reference a specific part of the RSTS should not therefore be construed as meaning that we agree with what has been said. Rather, it simply means that we do not consider the statement or assumption to be directly relevant to the advice we are providing.

RELEVANT POLICY REVIEW

As set out above, there is a statutory obligation when determining any planning application to make that determination in accordance with the development plan, unless material considerations indicate otherwise, with material considerations including the National Planning Policy Framework (NPPF) and the associated Planning Practice Guidance (PPG).

For Marnhull the development plan comprises the North Dorset Local Plan Part 1 (LPP1), the saved policies of the North Dorset District-wide Local Plan 1st Revision (DWLP) and the made Neighbourhood Plans (NP) for Blandford, Gillingham, Shaftesbury and Sturminster Newton.

The key policy relevant to determining any application for retail and other main town centre uses is LPP1 Policy 12 (Retail, Leisure and Other Commercial Developments) (RSTS, paras 2.22 – 2.24). This policy includes a requirement that any such proposals that are not in an existing centre or in accordance with the development plan need to demonstrate compliance with the ‘sequential test’ set out in national policy. The same policy defines the existing town centres in North Dorset as being Blandford Forum, Gillingham, Shaftesbury and Sturminster Newton.

The requirements for undertaking a sequential test are set out in the NPPF, with the most recent version being the December 2024 version. This represents an update on that referred to in the RSTS (paras 2.1 – 2.15) but there has been no change to the policy wording within Section 7 ‘Ensuring the vitality of town centres’. Therefore the summary of the sequential test provided in the RSTS (paras 2.7 – 2.9) remains valid.

Given we do not accept that the proposed development represents ‘small scale rural development’ (NPPF, para 93), and the site is outside any defined town centre, we consider that a sequential assessment is required.

AREA OF SEARCH

The RSTS indicates that the approach adopted by CL in undertaking the sequential site search has been to look for potential sites within or on the edge of the primary shopping areas in the four defined town centres of Blandford Forum, Gillingham, Shaftesbury and Sturminster Newton (RSTS, para 3.4).

Given that the appropriate area of search will be linked to the likely catchment area for the proposal, we consider that looking at the four towns represents a robust approach, prior to our consideration of the likely catchment and trade draw of the proposed foodstore. However, we would note that Sturminster Newton, Marnhull and Stalbridge are identified as serving the rural west of the District (LPP1, para 8.132), and therefore, if it can be shown that the proposed store will have a more limited draw, then we consider that the focus of the sequential site search should be on Sturminster Newton as the centre most capable of serving the same catchment area as Marnhull.

However, we disagree with CL that the search for sites should be restricted to locations within or on the edge of the primary shopping areas in these towns (RSTS, para 3.4). The NPPF is clear that when considering edge of centre or out-of-centre proposals, preference should be given accessible sites which are well connected to the town centre (NPPF, para 92). Given the appeal site is in an out-of-centre location and has no connectivity to any of the defined town centres, it is therefore possible that a sequentially preferable site may exist beyond the CL area of search, if this is limited to areas within 300m from the primary shopping area. From the subsequent site assessments however, we are unclear if this restriction has been applied, as some out-of-centre sites appear to have been considered in Section 5 of the RSTS.

In the light of this discrepancy in the RSTS we have concerns that the sequential assessment as submitted, may be incomplete.

PARAMETERS FOR SEARCH

In assessing any potentially preferable sites, the NPPF requires both the applicant and local planning authority to demonstrate flexibility on issues such as format and scale (NPPF, para 92) and it is therefore common practice when undertaking a sequential assessment to set out the degree of flexibility that is being applied at the outset.

In the case of the RSTS, this is set out at para 4.3. However, this does little more than restate the details of the application proposal and no justification is provided as to why some variation cannot be applied. For example:

- It is suggested that the foodstore cannot be any size other than the 1,455 sqm gross for which planning permission is being sought, nor can the retail sales area be less than 814 sqm. However, there is no named operator for the unit and each retailer will have a slightly different requirement. There is also no evidence provided that this is the minimum space necessary to provide the necessary range and offer for customers, or that what is proposed is actually necessary. In particular, the proposed development includes both a post office and café within the foodstore, neither of which would normally be provided;

- The minimum site area and provision of car parking will be linked, but it is not always necessary to provide parking on site, if alternative parking is already available adjacent to potential sites. As a result the minimum site area could be reduced;
- The amount of floorspace for other retail and service uses has not been justified; and
- The requirement for buildings to be single storey is not justified given retailers often provide some back of house space at an alternative level.

As a result we consider that the parameters used in undertaking the sequential assessment have not been sufficiently flexible and as such the approach does not meet policy requirements. We consider this further when reviewing the site assessments provided.

SITE IDENTIFICATION

In terms of how potential sites have been identified for further assessment, we note that a list of sources is provided at para 4.4 of the RSTS. However, it does not appear to include any site visits which may have identified recently vacated or underused sites.

We also have concerns regarding how sites have been identified by CL. Reviewing the comments made on the various sites, it seems that only sites allocated for retail development have been considered and we presume the same is true for extant planning permissions and applications and sites in the emerging local plan.

If so, we consider this to be too restrictive, as other sites being put forward for other forms of development, could be suitable for retail use – and indeed that use may be preferable if there is known operator interest.

SITE ASSESSMENTS

In terms of the site assessments themselves, these also seem unreliable as CL has taken an approach whereby sites that may otherwise be suitable for the proposed development have been discounted, because they are not in Marnhull (RSTS, paras 5.36 – 5.38) or have been allocated for other uses.

We consider this is too simplistic an approach and also one that negates the reason for undertaking the assessment in the first place. In particular, we consider that relying on a previous (or future) allocation of a site for a particular landuse without any further consideration is unreliable, given that circumstances change. Further, the appeal site is not allocated for retail or town centre development and yet it is being put forward for development.

The assessments provided by CL therefore appear to be incomplete and potentially unsound.

Examples of our concerns include, but are not limited to:

- Sites appearing to be dismissed as they are in areas at risk of flooding and have been identified as unsuitable for housing development. Given that residential uses are considered to be a 'more vulnerable' use than shops ('less vulnerable'), further information about flooding risk is required before these sites can be dismissed on this basis (RSTS, para 5.5 and Sites 1 & 2);
- Sites being in a Conservation Area (Sites 3, 34 & 35). This in isolation should not be a reason for rejecting a site for retail development;
- Sites being rejected as too small at 0.46ha (Site 11), given we do not accept that a minimum site area of 0.5ha has been justified;
- Sites being dismissed solely as they are not currently being marketed (RSTS, paras 5.34, 5.58 & 5.73 and Sites 18,19 & 43);
- Sites being dismissed for not being in Marnhull (RSTS, paras 5.36 - 5.38);
- Sites being dismissed as too large (RSTS, paras 5.45, 5.75 & 5.83) when there is no evidence that the whole site needs to be brought forward for development;

- Sites being dismissed because they were found to be unsuitable for housing development in the 2018 SHLAA (RSTS, para 5.52). Further explanation is required to consider whether the reasons that made them unsuitable for housing development apply equally to retail development and whether anything may have changed in the intervening period to alter that conclusion; and
- Sites being dismissed due to the time land assembly may take when there is no indication of any pressing need for the proposed development (RSTS, para 5.83 & Site 55).

This is not to say the sites assessed in the RSTS are necessarily suitable for the proposed development, but rather that further assessment is required to determine whether this is the case.

We therefore conclude that, based on the submission to date, it has not been fully demonstrated that there are no suitable sequentially preferable sites available and therefore compliance with the sequential test has not been demonstrated.

As set out in the PPG it is for the applicant to demonstrate compliance with the sequential test and failure to undertake a sequential assessment could in itself constitute a reason for refusing permission (PPG, para Paragraph: 011 Reference ID: 2b-011-20190722).

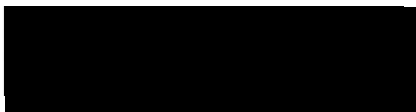
CONCLUSIONS AND NEXT STEPS

The Council's SoC in relation to the forthcoming appeal, indicated that a detailed review of the RSTS would be provided, following its submission as part of the appeal. We have undertaken this review on behalf of the Council and have concluded that the sequential site assessment provided is not robust and as such compliance with the sequential test has not been demonstrated. Consideration of sites in the four towns of Blandford Forum, Gillingham, Shaftesbury and Sturminster Newton is considered appropriate but neither the sources used to identify potential sites, the parameters used, nor the reasons for concluding sites are not suitable, are considered sufficiently robust.

We would suggest that the next stage would be for further work to be done on the previously identified sites and identifying and assessing any new sites that were previously omitted. This additional work could be undertaken by LSH but we would suggest it would be helpful to first discuss some of the matters raised in this letter, with the Appellant or their planning consultants, with a view to seeing if we can agree any areas of common ground.

We would therefore suggest that this letter should be shared with the Appellant and we are then happy to engage with their planning consultants to seek to prepare a Retail Statement of Common Ground to assist the Planning Inspector. We would expect this to also include areas of agreement in relation to the retail impact assessment, and we will provide our thoughts on this under separate cover.

Yours sincerely



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