

Planning Application 2014/036/FUL – B&Q Plc. and ASDA Stores Limited Comments on Committee Report and Committee Report Update

6 August 2014

- 1 This note has been produced on behalf of B&Q Plc. and ASDA Stores Limited following the publication of Redditch Borough Council's Officer's Report to Planning Committee for Planning Application 2014/036/FUL on 29 July 2014 which recommended approval of planning permission and the subsequent Committee Report Update published on 5 August 2014 which recommended refusal.
- 2 The purpose of the note is to provide the Committee Members with clarification on a number of points within the two reports which the applicants believe to be misleading and / or incorrect.
- 3 **It must be clearly stated that such an about turn in decision making is unprecedented and has naturally given rise to serious concerns about due process.**
- 4 **Redditch has a recognised need for an additional foodstore and the proposals will create up to 400 new jobs in 2015 and retain the existing 119 jobs within the B&Q store. The proposals comply with the sequential and impact tests, as independently verified by the Council's external planning advisors, GVA.**
- 5 **The significant benefits of the development which guarantee an influx of new jobs as well as the retention of existing B&Q jobs in a policy compliant proposal, have seemingly been put to one side during a 3 day period for no justifiable reason and certainly one that is not supported by the development plan or government policy.**
- 6 **This sudden and unexplained change in direction is erroneous at best and contradicts the extensive and detailed analysis previously provided by officers and their appointed 3rd party advisors.**

Comments on Committee Report Update

- 7 The 5 August Update Report reversed the officer's original recommendation for approval. The applicant's firmly believe that the positive recommendation is the correct one based on the proper application of planning policy.
- 8 The application offers an opportunity for the Council to create up to 400 jobs now, retain a further 120 existing jobs on the site; and to meet an acknowledged retail need now. The officers' judgement, after weeks of deliberation, was that the development was acceptable and policy compliant. The Committee are now being recommended to refuse permission for a proposal which will create up to 400 jobs (and retain a further 119 jobs on site) and millions of pounds of investment on the basis of unspecified and unquantified "long term impacts". Such a term does not exist within the development plan or NPPF and appears to have been created last week with no further explanation as to what it might mean. There is certainly no evidence put before the applicant of what these impacts constitute. A review of case law, Secretary of State and PINS appeal decisions also fail to reference such a term, and therefore the applicant cannot see how such an objection can be technically or lawfully levied.

- 9 The long term impact on the wider benefits of the store which the officers seek to base their suggested reasons for refusal on is not part of the impact test set out by paragraph 26 of the NPPF, which is only concerned with impact on investment in centres and impact on the vitality and viability of centres. The approach taken by officers appears to import an additional requirement into the NPPF policy tests, which simply does not exist.
- 10 We have not seen a balanced assessment of all the material considerations taken into account to reach the revised decision to recommend refusal or to assess the weight attached to each consideration by the LPA. There is certainly no such exercise in the supplemental comments of 4 August 2014. Given the lack of a clear assessment and the applications compliance with both local and national policy, it is difficult to see how such a conclusion can be justified by officers, particularly since there does not appear to have been any new information received or any material change in circumstances since the original report was published on 29 July 2014.
- 11 Officers have provided published analysis within the 29 July 2014 report which also comments on the professional opinions of 3rd party consultants which have been instructed by the Council to provide independent technical advice to inform decision making. This analysis includes the following conclusions, which it must be stated, have not been superseded by the 4 August 2014 report (as they address different nuances of the retail case) and therefore still stand as formal officer advice despite the revised recommendation:
 - The viability information has been independently considered and verified by experts and it seems that in the current economic climate, the town centre sites are not viable for the type of foodstore development proposed here. **This therefore addresses the policy requirement that the sequential test be met.**
 - Turning to the impact assessment provided by the Applicants, this is considered to be acceptable. Taking into account the evidence that supports the emerging local plan and identifies a need for a new store, then it is not a surprise that **the evidence demonstrates that no harmful impact from a new store in the Town Centre would arise**. However, it is noted that minimal potential impacts on the Lodge Park District Centre might arise as a result of this proposal, which might be less likely to occur were the proposed use to be located within the Town Centre, at a greater distance from the district centre and therefore in less direct competition. This is not considered to be significant enough to warrant refusal on its own.
 - However the creation of additional jobs is seen as an economic benefit to the town; the other detailed elements of the proposal largely appear to comply with policy requirements; the long term harm to the town as a whole and especially to the vitality and viability of the town and district centres is difficult to prove; the viability of town centre potential sites has not been proven and therefore **the policy tests appear to have been met in this case such that there are no reasons in principle or in detail to reject the proposed development**, despite its potential long term impacts on the town as a whole.

12 The table below sets out our specific comments on the Update Report:

Update Report Text	Comments
<p>The NPPG states in relation to the sequential test that: “Compliance with the sequential and impact tests does not guarantee that permission is granted – local planning authorities will have to consider all material considerations in reaching a decision.</p>	<p>The proposals comply with the sequential and impact tests, as independently verified by the Council’s external planning advisors, GVA and confirmed in both GVA’s letter of 31 July 2014 and the first and second paragraphs of the supplemental officer’s comments dated 4 August 2014.</p> <p>We have not seen a balanced assessment by the officers of all the material considerations to reach their decision, including how the immediate investment in Redditch as a result of the proposals (including the creation of up to 400 jobs and retention of a further 119 jobs) has been weighted compared to the unidentified potential long term impact on the town centre. There is certainly no such exercise in the supplemental comments of 4 August 2014.</p> <p>Section 38(6) of the PCPA 2004 (as amended) requires planning applications to be determined in accordance with the development plan (adopted) unless material considerations indicate otherwise. No material considerations have been defined and therefore under planning law a decision can only be made in accordance with the development plan.</p>
<p>Turning firstly to the sequential test, the applicant has demonstrated, subject to their preference of store format/layout, that neither of the two town centre strategic sites as designated in the emerging local plan 4 can viably be developed at the current time. They have examined some information in relation to the car park 4 site proposal and reached a similar conclusion, along with identifying a lack of information to support or refute the assertion that the potential loss of parking provision in the town centre would be of detriment. Whilst the policies require flexibility when considering size/format of stores, to some extent this has been addressed in the information provided.</p>	<p>A flexible approach has been adopted in the sequential assessment to consider the suitability of alternative sites, as required by paragraph 24 of the NPPF, and flexibility has been fully addressed.</p> <p>The sequential assessment has not been confined to sites which could accommodate the development in the precise form in which it had been designed but rather the analysis has also given consideration to the scope to accommodate development in a different format on the allocated sites within the town centre (including multi-level schemes with appropriate car parking and a reduced sales area scheme) and thoroughly assessed the sites on that basis. The assessment included a thorough assessment of the viability of the alternative schemes tested.</p> <p>GVA’s independent review of the assessment confirmed that there are no sequentially preferable sites which are suitable, available and viable to accommodate the proposals – including Car Park 4. This position was confirmed by GVA as recently as 31 July 2014.</p> <p>With regards to the lack of information on the loss of car parking associated with Car Park 4, the applicant has fully demonstrated that the proposals are not viable, as independently corroborated by GVA. This conclusion dismisses the site sequentially, and the impact of the</p>

Update Report Text	Comments
	<p>loss of Car Park 4 on the Town Centre is not a consideration for this application – it would only be a consideration if a scheme for Car Park 4 comes forward which results in the loss of this parking provision.</p>
<p>Turning to the impact test, this has never been a matter of dispute – there is a recognised need for a foodstore in Redditch, as evidenced in the emerging local plan and therefore any detrimental impacts on existing town and district centres in terms of direct competition are minimal. However, the links associated with the location of a supermarket in the town centre rather than at a distance from it are such that the location is critical as it has a long term impact on the wider benefits of the store.</p>	<p>It is agreed that the impact of the proposed store will mainly fall upon competing out of centre stores and not on the town or district centres. Impact on District Centres is referred to in both reasons for refusal; however there is no evidence to indicate that there would be an adverse impact on these centres. Indeed, regardless of where the store was located (in centre or the application site), there would be no prospect of linked trips with the district centres. Indeed the officer's comments of 4 August 2014 expressly concludes that "there is a recognised need for a food store in Redditch, as evidenced in the emerging local plan and therefore any detrimental impacts on existing town and district centres in terms of direct competition are minimal".</p> <p>On the long term impact on the wider benefits of the store – this is not part of the impact test set out by paragraph 26 of the NPPF, which is only concerned with impact on investment in centres and impact on the vitality and viability of centres. The approach taken by officers in this paragraph appears to import an additional requirement into the NPPF policy tests, which simply does not exist.</p>
<p>The information submitted by the Kingfisher centre owners seeks to demonstrate that it would be viable to re-provide car park 4 with both parking and a store and link this into the existing Kingfisher Shopping Centre such that a food store would be viable and deliverable but also that would maximise the linked benefits to the wider town centre through linked trips and shared footfall on a long term basis. This information suggests that the viability of this site has not been adequately proven either way, either by the applicants or by third parties, and therefore it is considered that the sequential test and viability information available to determine this application is inconclusive and thus the test not fully satisfied.</p>	<p>The sequential assessment is conclusive. GVA have independently reviewed the submissions and have concluded that the sequential test is satisfied. Their letter of 31 July 2014 expressly states:</p> <p><i>"As you will be aware, our Viability Critique (July 2014) has objectively assessed all five town centre sites, including Car Park No.4 at the Kingfisher Centre, and concluded that even in a 'best case' scenario, none are deemed viable when land assembly costs are taken into account."</i></p> <p>In addition, RBC policy officer's comments dated 25 July conclude: <i>"although there is a planning policy preference for a supermarket on a site in or adjacent to the town centre, there is not currently a viable site in a sequentially preferable location to the application site."</i></p>
<p>Policies 30 and 31 of the emerging local plan 4 detail that the evidence behind the plan demonstrates that in order to retain and enhance the vitality and viability of the town centre, significant regeneration should be encouraged and schemes that could harm that regeneration should therefore be resisted wherever</p>	<p>The emerging Local Plan 4 sets out a clear need for an additional foodstore within Redditch. It has been clearly demonstrated that the application site is the most preferable location to accommodate this and that it will not have an adverse impact on the town centre either in terms of impact on investments or town centre vitality</p>

Update Report Text	Comments
possible.	and viability.
<p>Therefore, whilst it appears from the advice of consultants that the sequential test and impact test have largely been addressed and met, consideration still needs to be given to whether or not other material considerations outweigh this. These other considerations include the longer term impacts on the town centre and its regeneration of locating a foodstore outside the town centre, as well as any negative impacts of the proposal on the application site.</p>	<p>The advice of RBC's consultants GVA is that the sequential and impact tests have been fully addressed.</p> <p>The longer term impacts have not been defined by the officers and cannot be quantified, nor has any attempt been made to do this.</p> <p>In terms of the Town Centre contribution, the LPA determined the scale of this contribution, which has been agreed by the Applicants, and must therefore have considered this sum of money sufficient to mitigate the impact of the location of the store.</p>
<p>It is harder to quantify or provide evidence regarding the concept of the wider impacts of the location of a foodstore, however it is acknowledged within the principles of national and local planning policy that this is a critical factor and that is why town centre sites are sought wherever possible. The longer term loss of trade to other town centre units, the loss of linked trips and the loss of footfall within the town centre from a unit outside the centre, rather than in it, is clearly significant though. This is why attempts have been made to seek recompense from Asda through the proposed \$106 legal agreement to achieve enhancements to the links to the town centre from the B&Q site and to the town centre itself. However, whether this is considered to be sufficient is also a matter that must be weighed in the balance.</p>	<p>In terms of the Town Centre contribution, the LPA determined the scale of this contribution and must therefore have considered this sum of money sufficient to mitigate the impact of the location of the store.</p>
<p>Officers consider that this is a very finely balanced matter, but that on reflection, it is possible that too much weight was given to the seeming near compliance with the sequential test over and above the other pertinent material considerations in the original published report. It is now considered, as detailed above, that the recommendation should read as follows, and officers would prefer that this recommendation be the one taken into consideration at the meeting on 6 August.</p>	<p>The comment on the "seemingly near compliance with the sequential test" is misleading. GVA have independently reviewed the submissions and have concluded that the sequential test is satisfied in full, a conclusion which was also reached by RBC's policy officer.</p> <p>We have not seen a balanced assessment of all the material considerations taken into account to reach the decision to recommend refusal or to assess the weight attached to each consideration by the LPA. There is certainly no such exercise in the supplemental comments of 4 August 2014. Given the lack of a clear assessment and the applications compliance with both local and national policy, it is difficult to see how such a conclusion can be justified by officers, particularly since there does not appear to have been any new information received or any material change in circumstances since the original report was published on 29 July 2014.</p> <p>B&Q and ASDA are offering an opportunity for the Council to create 400 jobs now; retain the existing jobs</p>

Update Report Text	Comments
	<p>within the B&Q store and to meet an acknowledged retail need now. The officers' judgement, after weeks of deliberation, was that the development was acceptable and policy compliant. The Committee are now being recommended to refuse permission for up to 400 new jobs and millions of pounds of investment on the basis of unspecified and unquantified long term impacts; an approach that is not supported or justified by the NPPF or any other policy.</p>

Clarifications to Original Committee Report

- 13 The second paragraph on Page 11 of the Report notes: *"Whilst there may be other sites available outside the Town Centre, but closer to it than this site, these would also fall foul of the 'Town Centre first' policy requirements and are unlikely to be preferable and therefore have not been taken into account in this case, given the seeming availability and designation of Town Centre sites"*.
- 14 A thorough sequential assessment has been undertaken, considering all potential alternative sites to accommodate the application proposals. In total ten sites have been identified, assessed and dismissed as not suitable, available or viable to accommodate the application proposals within the following submissions:

Submission	Date	Sites Considered
Retail Statement	February 2014	10 sites in total in and on the edge of Redditch Town Centre including: Church Road / North West Quadrant, Edward Street, The Kingfisher Centre including the car parks and existing edge of centre retail warehouse facilities.
Retail Statement Addendum	1 March 2014	Church Road / North West Quadrant, Edward Street and Kingfisher Centre Car Park 4
Supplementary Sequential Information	22 May 2014	Church Road / North West Quadrant, Edward Street and Kingfisher Centre Car Park 4
Further Sequential Information including Viability Assessments	June 2014	Church Road / North West Quadrant, Edward Street and Kingfisher Centre Car Park 4

- 15 Both the area of search and the methodology for identifying alternative sites were discussed and agreed with RBC at the pre-application stage. The area of search was focussed on sites within or on the edge of Redditch Town Centre, the preferred location for major retail developments and other uses that attract large numbers of people and the alternative locations considered were identified through discussions with RBC Officers, allocations within the emerging Redditch Local Plan No.4, any sequential assessments previously undertaken to support other retail proposals within the area and site visits undertaken by Deloitte.
- 16 There are no other suitable sites available outside the Town Centre, but closer to it than the application site and no out of centre sites were identified as part of this process.