

Please Reply to: Swindon  
Our Ref: DAM/C10251  
Your Ref:  
Date: 3<sup>rd</sup> November 2015



Mr R Duxbury  
Cherwell District Council  
Bodicote House,  
Bodicote,  
Banbury.  
Oxfordshire OX15 4AA

By Email: [Bob.Duxbury@Cherwell-DC.gov.uk](mailto:Bob.Duxbury@Cherwell-DC.gov.uk)

Dear Bob

**Application 15/00831/F Waitrose Foodstore, Southam Rd Banbury**

I refer to your request for comments on the additional information from the applicant attached to your recent email. This information comprises a letter from Framptons to the Council dated 22<sup>nd</sup> Oct, a letter from Waitrose to Framptons dated 21<sup>st</sup> Oct, a letter from Cushman Wakefield dated 10<sup>th</sup> September, and a plan with the Waitrose site layout overlaid on the Spiceball site. Further specific comment are therefore not necessary. I have also had regard to Turley's letter of 11<sup>th</sup> September on behalf of Aberdeen Asset Management (AAM).

Our report concluded that the proposed development would not have a sufficiently adverse impact on the town centre to warrant the refusal of planning permission. We expressed concern about the cumulative impact assessment submitted but we concluded that the contribution of the proposal to that cumulative impact was too small to justify requesting further work. The main part of the cumulative impact would derive from the Banbury Cross development and the Council could not reasonably allow that proposal and then object to a later application on the basis of a very much smaller impact, even taking account of cumulative effects. We also concluded that the proposal would not undermine the investment currently proposed on the Spiceball site because, as we were given to understand, Phase 1 of the proposal was going ahead without a named operator for the foodstore which formed Phase 2 of the overall development. Turley's letter challenges this conclusion and we will comment on that in due course.

**The Sequential Test**

In relation to the sequential test our report concluded that the applicant had not provided sufficient evidence to justify its claim that the Spiceball site was not suitable for the development. Framptons included the "Rushden Lakes" decision by the Secretary of State. The implications of that decision were taken into account in our report. The suitability of sites has to be assessed against the application proposals as established in the Dundee Judgment but the flexibility that should be required of retailers/developers remains a matter of judgement which the Council has to make in the first instance. The extract Framptons quotes does not draw attention to any passages where the SoS indicates his view of the extent of flexibility in general, policy terms and does not take the matter further in that respect. We also took full account of the Rushden Lakes Inspector's views on the availability of sites in considering the information on individual sites.

Cont/d....

**Swindon**

Old Bank House  
5 Devides Road  
Old Town Swindon  
Wiltshire SN1 4BJ  
Tel: 01793 - 610222  
Fax: 01793 - 512436  
email: [dpds.swindon@dpds.co.uk](mailto:dpds.swindon@dpds.co.uk)

**Derby**

3 Gleneagles House  
Vernon Gate  
Derby  
DE1 1UP  
Tel: 01332 - 206222  
Fax: 01332 - 206012  
email: [dpds.central@dpds.co.uk](mailto:dpds.central@dpds.co.uk)

DPDS Consulting Group comprises:  
Development Planning & Design Services Group Ltd (Company Registration No 1907209); DPDS Consulting Ltd (Company Registration No 02091153); Development Planning & Design Services Ltd (Company Registration No 2091708) and DPDS Architecture Ltd (Company Registration No 2937191)

Registered Office: Old Bank House, 5 Devides Road, Old Town, Swindon, SN1 4BJ  
[www.dpds.co.uk](http://www.dpds.co.uk)



Mr R Duxbury  
Cherwell District Council



In relation to the sequential test we identified the following matters where we concluded the applicant had not established compliance with the test or further information would be helpful.

1. The timing of Waitrose discussions on the Spiceball site vis-à-vis the application site;
2. The need for a store of the application's size to compete with existing food stores;
3. The poor trading potential of the Spiceball site compared with the application site;
4. The poor configuration of the Spiceball site.

We also commented that we felt more consideration should have been given to the Bolton Rd multi-storey car park site.

The letter from Cushman & Wakefield makes the point that there are major changes occurring in the food retail sector and retailers sector are now cautious about making major commitments and are thus less flexible in the store requirements. The letter from Waitrose sets out in detail the deficiencies in the Spiceball proposal from Waitrose's point of view. The letters also cite examples where stores have performed below expectation and attribute this under-performance to on-site deficiencies. Frampton's letter sets out the policy context in which it believes these letters should be viewed.

The additional material does not comment on the timing of discussions on the application site vis-à-vis its consideration and rejection of the Spiceball proposal. The Waitrose letter addresses the size of the store but in operational requirement terms rather than in competition terms. It also addresses the trading potential of the site, and I understand from it that it is not so much location of the site and its relationship to transport that is seen as limiting its trading potential so much as site constraints. These can be considered in the context of the general configuration of the Spiceball scheme. Waitrose identify eleven deficiencies from its point of view.

In my view, none of these, on its own, would be sufficient to rule the site out, although some, such as the size of the store, certainly come close to doing so. However, it is clear that the scheme as a whole falls considerably short of what Waitrose are looking for and the decision for Waitrose has inevitably to be taken in that overall way – on the pros and cons. The suitability of sites has to be approached in much the same way if the Council is not to behave unreasonably. The question is whether a site is suitable for the development; there is no indication in the policy that any factor on its own should be of sufficient severity to make the site unsuitable. As noted in the Dundee Judgment, the test has to be applied in the real world.

I consider that it would be requiring too much flexibility from Waitrose, or any other retailer looking for a store of about the same size, to back the Spiceball scheme. It is a matter of judgement for the Council, but I believe that the applicant is likely to persuade an Inspector that the site is not suitable as a sequentially preferable alternative for its proposal if it were presented at an appeal.

Although the additional material does not answer all the questions we raised in our report, it does in my view demonstrate that the Spiceball site is unsuitable. That is all it required to do in the sequential test.

The applicant has not supplied any further information on the Bolton Road car park site. We commented in the report that the Council was probably in the best position to assess the availability of this site. However, it might be helpful for to comment that unless there is a clear timetable for the demolition of the site and appropriate Council resolutions, little weight would be given to it.

Cont/d....



Mr R Duxbury  
Cherwell District Council



I therefore conclude that the applicant has, with the additional information, passed the sequential

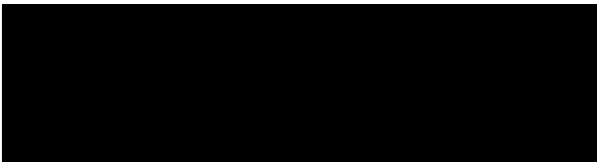
### **The Impact on Investment**

This leaves the question of impact on planned investment in the centre raised by Turley's second letter. Turley notes our comments on the phased development planned and while describing this as misplaced, does not seek to argue that Phase 1 is dependent on the foodstore development for viability. Instead it argues that we have failed to take account of the policy requirement for the comprehensive development of the site.

Policy Banbury 9 prefers (my underlining) a comprehensive approach to site planning and delivery but clearly also contemplates the phased development of the site - provided it can be demonstrated that the development will contribute to an integrated and coherent development. It is only small scale piecemeal development which the policy rules out. I do not believe that the Phase 1 development could be considered to constitute small scale piecemeal development or that the objector would like to see the policy interpreted in that way. Furthermore even where such requirements for comprehensive development are applicable, they are generally given limited weight unless the need for comprehensive development is demonstrated as needed to achieve the objectives of the policy. I therefore see no need to amend our earlier advice on this matter on the basis of Turley's letter of 11<sup>th</sup> September.

For the reasons given in this letter, I conclude that the applicant has now demonstrated the proposal's compliance with the sequential test and that there is no need to amend our earlier conclusions on retail impact.

Yours sincerely,



**Duncan McCallum, BA(Hons) MPhil MRTPI**  
**Consultant**  
**Development Planning & Design Services Ltd**  
dmccallum@dpds.co.uk