Retail Sequential and Impact Assessment

PROJECT: Land to the rear of JD Gyms, Bradford Road, Batley

KB/P100

Project No: 0356

SUBJECT: Retail sequential and impact assessment to accompany planning application seeking permission for the construction of a ground floor retail space and first floor office space to the rear of JD Gym (Batley Frontier Club), Bradford Road, Batley.

04.12.23

Introduction

This Sequential and Impact Assessment has been prepared following email requests by the case officer on 22nd November 2023 to look at potential sites for the proposed retail/office building in Dewsbury and Batley Town Centres.

These centres were visited on 29th November 2023. The town centre boundaries were taken from the adopted Kirklees Plan documents.

With regards the impact assessment, this has considered town centre units in Batley on Commercial Street and surrounding roads and Dewsbury, both with parking available. This report therefore focuses on Batley in terms of impact although a review has been undertaken of Dewsbury within 10 minute drive time of the site.

The Proposed Development comprises a contemporary office and retail building with parking. It will be operated by Redbrick Yorkshire Limited (Redbrick Mill) and Frontier Land and Development Limited, who have the same shareholders (together The Redbrick Group).

With regards to the adopted Local Plan, Policy PLP 13 refers to development in Town Centres and sets out the requirements in terms of Sequential Testing and Impact Assessment.

The Proposed Development

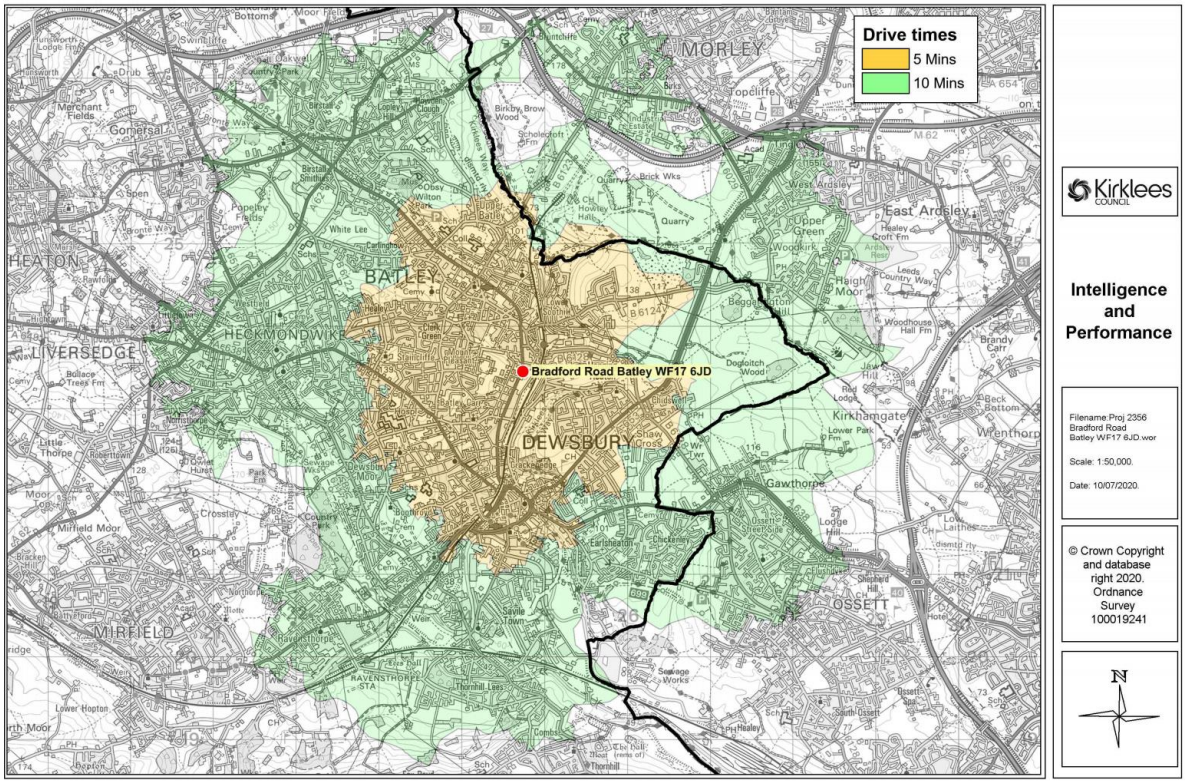
The proposal comprises construction of a new building measuring 13.35m x 21m giving a GIA of 560sqm. This building will be office/retail use and intended to be occupied by Rebrick Mill, creating a clearance retail unit. The ground floor will focus on retail use to all for ease of access for collection of bulky items.

In terms of the first floor office space, this will be used as ancillary space by JD Gyms to release internal space in the existing unit to allow the conversion of existing office space to fitness studios.

50+ car parking spaces will serve the unit to allow for staff and customer parking. The proposed site is 0.37ha.

In terms of the proposed operators, as stated earlier, the unit is intended to be retained by Redbrick Group of Companies, who currently own the site and have previous

developed units to include JD Gym, Swim and Starbucks. The unit is intended to support the existing uses at Redbrick Mill, a 3 minute drive away from the site.



Retail Considerations – Sequential Assessment

The Proposed Development comprises a construction of a new building measuring 13.35m x 21m giving a GIA of 560sqm. This building will be retail and commercial office use – it is to be occupied by the Redbrick Group of companies and existing tenants to support the existing property portfolio. The proposed use will be Class E. 50+ car parking spaces will serve the unit to allow for staff and customer parking. This will allow customers to collect items of furniture and deliveries to take place.

The NPPF refers to Sequential Tests. The NPPF is supplemented by the **Planning Practice Guidance (PPG)**, an online resource which provides some guidance on sequential assessments and sets out how the tests should be applied. The guidance indicates the application of the test should be '*proportionate and appropriate*' for the given proposal and that where appropriate suitability of alternative sites should be discussed with the LPA. In applying the sequential test, it is relevant in this case that the guidance highlights that:

"*Use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean 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.*"

The online guidance clearly recognises there are instances where main town centre uses have particular locational requirements. In this case the proposed use would benefit from car parking adjacent to the retail unit.

The provision of the office alongside the existing gym provides a support between the units. Whilst the proposed building will be in a less prominent location there are benefits in terms of marketing as the unit is less than 3 minutes from Redbrick Mill and easy to find.

In addition, it is noted that Bradford Road itself is commercial in nature with a variety of retail, employment, commercial, leisure and food/drink uses in close proximity. Whilst this part of Bradford Road is not in itself identified as Town Centre it clearly has a similar function, character and appearance such that the proposed development is in-keeping with its surrounds.

We therefore believe there is merit in locating the use on this site.

A Sequential Test has been undertaken in the form of a site visit and web based search (November 2023) for any available commercial sites (land and buildings) in the centres listed above. The site visit focussed on the town centre boundaries as set out above whilst the web based review used Rightmove, Primelocation and Zoopla websites.

Suitability

The question of '*suitability*' has been the subject of much debate through the courts and decisions by Inspectors and the Secretary of State. An important issue in setting the parameters for the site search exercise under the sequential test is whether 'suitability' relates to a potential alternative site being suitable for the 'proposed development' or some other scheme.

The question of suitability was considered in the context of the Supreme Court Judgement *(Tesco Stores Ltd v Dundee City Council, 21st March 2012, UKSC13)* and other High Court judgements since then. In the Dundee judgement Lord Reed (paragraph 29) concluded that for a site to be considered 'suitable' should be based on:

" ...*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*".

Later in the judgement, Lord Hope concurred with this approach. stating at paragraph 38 that:

" ...*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 find this 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 flexibility and realism to which Lord Reed refers, in paragraph 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 of doing so.*"

An early Secretary of State Call In decision after the Dundee judgement relating to the application of the sequential test was in the context of an application *(APP/G2815NI12/2190175)* at "Rushden Lakes" with permission granted in June 2014. The site was out of centre and in applying the sequential test and what suitability related to the Inspector concluded (paragraph 8.43 of IR) that "*the answer to this question of law is suitable for the development proposed by the Applicant*". Although

the question is to be considered in its context, which involves the consideration of the question of flexibility, the Inspector found:

" *...that the terms are to be construed (and therefore applied) in the real world of real development is beyond argument. The real world is the context*".

The Inspector made reference to the Dundee ruling and concluded that it expressly rejected the notion that "suitable" means that one should alter or reduce the proposal so as to fit on to an alternative site. At paragraph 8.46 the Inspector concluded that:

" *...what the sequential test seeks is to see whether the application i.e. what is proposed, can be accommodated on a town centre site. There is no suggestion here that the sequential test means to refer to anything other than the application proposal...*"

The findings of the Dundee judgement, accepted by the Secretary of State when determining the Rushden Lakes proposal, emphasised the need for the application of commercial reality when considering the sequential test having regard to the need for flexibility, and that prime regard has to be had to the development proposed.

A further relevant Secretary of State decision in the context of how the sequential test should be applied is the grant of planning permission for an out of centre factory outlet centre (FOC) at Scotch Corner issued in December 2016 (APP/V2723/V/15/3132873 & APP/V2723/V/16/3143678). In this case the SoS endorsed his Inspector's conclusions on the sequential approach as follows:

"In carrying out the sequential test it is acknowledged that whilst Framework paragraph 24 indicates that applicants should demonstrate flexibility on issues such as format and scale, it does not require the applicant to disaggregate the scheme. The sequential test seeks to see if the application, i.e. what is proposed, can be accommodated on a town centre site or on sequentially preferable sites."

Flexibility

When dealing with flexibility the Inspector in the Rushden Lakes decision (agreed by the Secretary of State – paragraph 16 of DL) also made clear that there was no requirement to disaggregate. The Inspector highlighted that if it had been intended to require consideration be given to disaggregation, it would have been explicitly included in the wording of the NPPF and it was not.

The PPG checklist (paragraph 010) indicates that when carrying out a sequential test it is not necessary to demonstrate that a potential town centre or edge of centre site can precisely accommodate the scale and form of development proposed but rather to consider what contribution more central sites are able to make individually to accommodate the '*proposal*'.

To summarise, the NPPF (paragraph 24) makes clear that local planning authorities should require applications for main town centre uses to be located in town centres and then follow the sequential sequence. The sequential test seeks to see whether the application (i.e. what is proposed) can be accommodated on a sequentially preferable site. There is no suggestion in the NPPF that the sequential test means to refer to anything other than the application proposals. It is clear from decisions by the Secretary of State that disaggregation is not required.

However, the NPPF goes on to state that applicants and local planning authorities should demonstrate **flexibility** on issues such as format and scale. Neither the NPPF

nor the PPG offers any detailed guidance on the degree of flexibility that should be demonstrated and this is where various decisions/judgements have interpreted how the sequential test should be applied.

It is widely accepted when considering flexibility is that an applicant is not required to disaggregate a proposed development (i.e. Rushden Lakes). In the Honiton Road, Exeter Secretary of State Call In decision, paragraph 11.32 of the Inspector's Report states that:

"…… *the purpose of flexibility is not to require the application to be transformed into something significantly different…..*"

Taking account of all the above it is clear that the application of the sequential test applies to the "proposed development". However, the NPPF and relevant guidance requires that applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, but not disaggregation, of a proposed development.

In this case the proposal essentially comprises a commercial/office building with parking for 50+ cars. There are benefits to the business in being located adjacent to other uses. The building is 560sqm whilst the site measures 0.35ha with means of access and parking. However, the proposal utilises existing means of access as part of the synergy between adjacent uses. However, in order to demonstrate flexibility, we have adopted a site search criterion simply focussing on the building, car parking for 50 cars and means of access – as such we have looked for a site of 0.4ha with a building of 550sqm.

Availability

Whilst this sets the search criteria for any potentially "suitable" sites in terms of size, other factors such as the viability of development on identified sites and their "availability" are also relevant considerations. The interpretation of "availability" was also considered by the Inspector and Secretary of State in the Rushden Lakes Call-In decision. In this instance the Inspector summarised the NPPF requirement as follows:

"…*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….*" *(Paragraph 8.55 of IR)*

On this basis the test is whether a site is "available" now, not whether it might become available during some undefined future time period.

In this case the 'development proposed' is a leisure building (circa 550sqm) with accessible parking adjacent to the building. Ideally a location close to other leisure uses is preferable. In order to accommodate this development a site area of 0.4ha is required. The above therefore sets out the requirements / characteristics of the proposed development and formed the basis of the Sequential Assessment.

Results from the Sequential Assessment

On-line search

A review of commercial sites available online (search criteria for land to buy or rent with no parameters on price) identified no suitable sites within the town and district centres subject to this Sequential Assessment.

Batley	Sq ft	Comments
119 Upper Commercial Street	459	Too small
Dewsbury		
24 Longcauseway	1,278	Too small
Market Place	1,146	Too small
Bus Station	150	Too small
Church Street	753	Too small
42 Daisy Hill	183	Too small
43 Daisy Hill	687	Too small
Prince of Wales Precinct	245	Too small
Prince of Wales Precinct	1,511	Too small
Prince of Wales Precinct	1,997	Too small
Prince of Wales Precinct	1,840	Too small
Prince of Wales Precinct	2,903	Ground floor of 1,520 and 1,383 upper floor. Only ground floor suitable for furniture retail. Poor servicibility for goods inwards and customer collections. Non suitable for furniture retail
Prince of Wales Precinct	6,350	Ground floor of 3,455 and 2,905 upper floor. Poor servicibility for goods inwards and customer collections. Non suitable for furniture retail
Prince of Wales Precinct	4,713	Ground floor 2,921 and 1,792 upper floor. Poor servicibility for goods inwards and customer collections. Non suitable for furniture retail

Site Walkover

The Council identified 2 locations in their email requesting a Sequential Assessment. Those centres have been visited and assessed to determine whether there are any potential sites and if so, if any sites are potentially suitable alternative sites to accommodate the proposed broad form and scale of development.

The town centres visited within Kirklees were Batley and Dewsbury. The findings are set out below.

Batley

The northern and southern boundary of the town centre are defined by Bradford Road and Wellington Street respectively. The primary shopping area provides a mixture of national and independent retailers, including presence from Aldi, Tesco and Lidl. Commercial Street runs through the centre of the town centre.

The character of the road (in terms of speed limits and relationship with buildings together with limited traffic flow) makes it unsuitable for the proposed development.





Small units with limited access




On street parking limiting access to existing units

Dewsbury

The retail core of the town centre sits to the north of Aldams Road forming a loop round the western, northern and eastern edges. The main retail centre is found along Northgate. Beyond the town centre boundary to the south of Aldams Road is a retail park comprising a mix of food and non-food retail outlets together with Dewsbury Sports Centre.

A walkover of Dewsbury town centre identified no sites.




Poor serviceability for delivery and collection




Access via a retail square offering poor accessibility

Review against Local Plan Policy – Sequential Test

Adopted Local Plan Policy refers to Town Centres and requires a Sequential Test to be undertaken for town centre uses not located in the town centre. The supporting text to the policy sets out a number of criteria in relation to the Sequential Test; these are addressed below.

the business model for the development and appropriate catchment that the business would seek to serve in accordance with the Shopping Centre Hierarchy Table shown above.

This Sequential Test sets out the business model associated with the unit's operation and the need to deliver a facility that is purely for use by Redbrick Group of companies and not a shared facility. Batley is identified as being within the desired demographic for the business model due to the proximity to Redbrick Mill and properties controlled by the group. Proximity is also preferable to maximise exposure to potential customers from Redbrick Mill.

Batley was identified as a location within Kirklees where all these requirements could be met. Bradford Road is a busy route to / from the M62 motorway and within 10 minute drive time of the preferred population demographic.

When considering hierarchy, the proposed development is consistent with services expected in Batley, and indeed is in keeping with similar mix of uses already existing along Bradford Road.

In light of above it is considered the proposal complies with this element.

an extensive audit trail of any sequentially preferable sites that have been discounted and robust justification given.

As set out above, a site walkover of 2 identified town centres has been undertaken together with a web based search on Zoopla and Rightmove. The web based search related to commercial land / buildings for sale and was wide ranging with no restrictions on price with location set for each of the identified centres.

Given the nature of the proposal in terms of site area required (0.3ha) to accommodate the building and associated parking / access arrangements.

The site survey undertaken identified no suitable sites.

The web based search also identified no suitable sites.

In light of the above it is considered that this element of the policy has been satisfied.

any regeneration or economic benefits brought forward by the development.

The proposed development will bring back into use a vacant piece of undeveloped land along Bradford Road.

appropriate access/improvements to access by all travel modes, in particular by public transport, safe and convenient pedestrian and cycling routes, and provision of an appropriate level of vehicular and cycle parking.

The proposal will utilise existing access arrangements off Bradford Road. Adequate onsite parking is provided, and cycle parking can be provided as necessary. In addition, the site is in a sustainable location on Bradford Road which is well served by public transport. There are bus stops adjacent to and opposite the site.

and connectivity to surrounding defined centres, and appropriate enhancements to these linkages.

The site is well connected to the Town Centre to the north via Bradford Road with its bus services. In addition, the train station and bus station are both within walking distance of the site at 900m and 1200m respectively.

In light of the above it is considered the Sequential Test has been passed for the proposed development as there are no other suitable sites in the town centres of Batley and Dewsbury.

Impact Assessment

NPPF and Local Plan Policy refer to the need for Impact Assessments where proposals meet certain thresholds / criteria, the trigger for impact assessment is 500 sqm gross floor area. The proposed building is just over that threshold at 560sqm.

Kirklees Planning Policy response received states that the impact assessment, undertaken in line with NPPF, should consider the impact of the proposal on facilities within town centre boundaries.

As set out earlier in this document, the applicant has undertaken extensive research when identifying a suitable location for their investment in a new facility. The business provides will provide a secondary retail facility to support a sustainable approach to retail items at Redbrick Mill. This will ensure employment is provided and positive footfall is maintained. In addition, the office facility will allow the gym facility to expand and progress its offering to new and existing clients at peak times. The business model relies on creating and managing their own facility rather than sharing or renting existing facilities.

Batley was chosen given access to the target demographic (urbanites and sub-urbanites) together with a demand at Redbrick Mill. The demand exists due to the successful development of the Redbrick Mill site, that recently welcomed a large national furniture retailer, Loaf, to the existing property. We are of the opinion however that as the site is to be retained by Redbrick Group of companies it forms part of the existing portfolio.

As such the impact will be beneficial in terms of local consumer choice but will not be harmful to the existing retail facilities where development is targeting varied requirements.

Conclusion

The proposed development comprises a new commercial/office building for use by Redbrick Group of companies to provide a supplementary facility to support Redbrick Mill and JD Gyms. The building is 560sqm with parking for 50+ cars which are required to accommodate customers requiring close access to collect furniture items. The site was chosen on the basis of the existing ownership and the proximity to the key primary providers.

The proposal would provide a form and scale of development which, as demonstrated within this assessment and the submitted Planning Statement, cannot be suitably accommodated in or on the edge of an identified town or district centre Batley and Dewsbury.

As required by the NPPF and Local Plan Policy, the proposed development has been assessed in the context of the sequential test and impact assessment.

Our assessment concludes there are no sequentially preferable sites within or on the edge of town and district centres within the 5 minute drive time, that are suitable and available for the proposed development. In terms of impact assessment, the proposed development would not result in a significant adverse impact of existing centres.

In light of the above, we consider the proposal passes the sequential and impact tests and as such the proposals will not have any adverse impact on the vitality or viability of the identified centres. The redevelopment of the site is consistent with guidance set out in the NPPF and Local Plan Policy LP13 and as such planning permission should be granted.