

WORKING PAPER 4

This note sets out further information in relation to the application of the sequential test addressing the additional points raised in the email of Ms S Robertson sent to Dan Hewett dated 12th January 2022.

At the outset two important points should be noted:

- The first is that West Suffolk Council planning officers provided a “Scoping note” for the application of the retail impact and sequential test to be applied to application DC/21/0427/FUL dated 7th May 2021. This identified the sites that should be considered for the application of the test and this did not include either of the two additional sites/premises referred to in the email of 12/1/2022. Furthermore, in relation to the Debenhams store, the store finally closed on 8th May 2021 and the fact that this store would close had been known since late January 2021 and the precise date known since 27th April 2021. It is clear, therefore, that the closure of the Debenhams store was well known at the time that the Scoping Note was prepared and it was the clear conclusion of Council Officers at that time that it was not appropriate to include the former Debenhams store for consideration within the sequential approach.
- The second is that, in their review of the sequential test undertaken for West Suffolk Council, Lambert Smith Hampton conclude:

60. Therefore, we consider that the sequential test has been passed in line with paragraph 86 of the NPPF and Policy CS10 of the St Edmundsbury Local Development Framework Core Strategy (2010), Policy DM35 of the West Suffolk Joint Development Management Policies Document (2015), and Policy BV17 of the Bury St Edmunds Vision 2031 (2014) document.

It is, therefore, highly significant that the Council’s own consultants, specifically appointed to advise the planning authority on matters relating to the sequential test, consider that the proposal satisfies the test as set out in both the NPPF and the development plan.

The comments in relation to the two additional sites and also the Tayfen Road site are therefore made in this context.

Former Debenhams Store, The Arc

Suitability

This unit is located within the defined town centre of Bury St Edmunds. It is a large unit totalling 7844 sq m gross internal floor area across two levels. Each floor is, therefore, ca. 3900 sq m. Based on the information set out in Section 4 of the Retail Impact Assessment submitted with the application it is clear that the Debenhams unit is much too large for either of the proposed development options. In addition, the ground floor of the unit is also significantly larger than that required for the development options (even if large non-food discounters are considered this would still result in a significant ground floor area that is not required for the proposed development).

On this basis it is clear that, should the unit be available (see comment below), the proposed development would be too small to secure the Debenhams unit.

In the email it is suggested that “*we understand that the owner is likely to rationalise the floorspace into smaller units*”. Unfortunately this comment is entirely speculative and there is no evidence, in terms of marketing information or planning applications that suggest that this is the case. Furthermore, even if it is the case there is no indication that any of the units would be suitable in terms of the factors highlighted as the minimum requirements for the proposed development options.

As noted above, it is, in theory at least, possible for the applicant to amend the proposed development in order to fit the Debenhams unit. However, as noted in both the RIA and LSH’s review, to amend the proposed development to the degree required to fit with the Debenhams unit is clearly contrary to the legal judgements set out for the application of the sequential test. There is clearly a role for some flexibility which is acknowledged in both the RIA and LSH review but, as Lord Reed, noted:

“however, the question remains, as Lord Glennie observed in Lidl UK GmbH v Scottish Ministers [2006] CSOH 165, para 14, 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”. (Lord Reed, Tesco Stores v Dundee City Council, 2012, para 29).

To require the applicant to fundamentally alter the proposed scheme in order to fit the Debenhams unit would clearly be contrary to the Supreme Court judgement for the application of the sequential test.

A further factor undermining the suitability of the unit is the distance from the store to surface level parking. As noted in the RIA direct access to surface level parking is very important given that many shoppers (particularly for discount foodstore and mid-sized supermarket development options would be carrying significant amount of shopping by trolley from the store to cars and, to a lesser degree, this could also be true for the non-food discounter option. Although relatively close to the car parks located immediately west of The Arc, the nearest car parking space is 120m from the existing store entrance and, shoppers would need to push their trolleys up the long ramp to the car park. For many shoppers with full trolleys this would, at the least, be inconvenient and for some this could be dangerous with the risk of losing control of trolleys when travelling up the incline. This problem remains whatever future development options the owners come forward with.

Availability

The former Debenhams unit is *not* available for the proposed development. The unit is *not* being actively marketed, although it is understood from announcements made in July 2021 that the owners of the Arc were in discussions with parties regarding the re-use of the whole unit (as reported in the Suffolk News (29/7/2021)). The current marketing brochure provided by JLL/Knight Frank (joint agents for the Arc) do not identify the unit as available. No information on progress with these discussions has been made available.

In conclusion:

- Debenhams was not identified as a unit for consideration in the Scoping Note prepared by SWC planning officers in May 2021.
- The unit is not suitable for the development options considered for planning application DC/21/0427/FUL.
- To amend the proposed development in order for the unit to become suitable would be in fundamental breach of the correct application of the sequential approach – as highlighted in both legal cases and would be directly contrary to the relevant policies in NPPF and the development plan.
- There is no basis for the assertion that the current owners are considering subdivision of the store so that a unit within it could be suitable for the proposed development – no application has been submitted and no public announcements have been made to that effect.
- The unit is not being actively marketed and cannot be considered to be available.

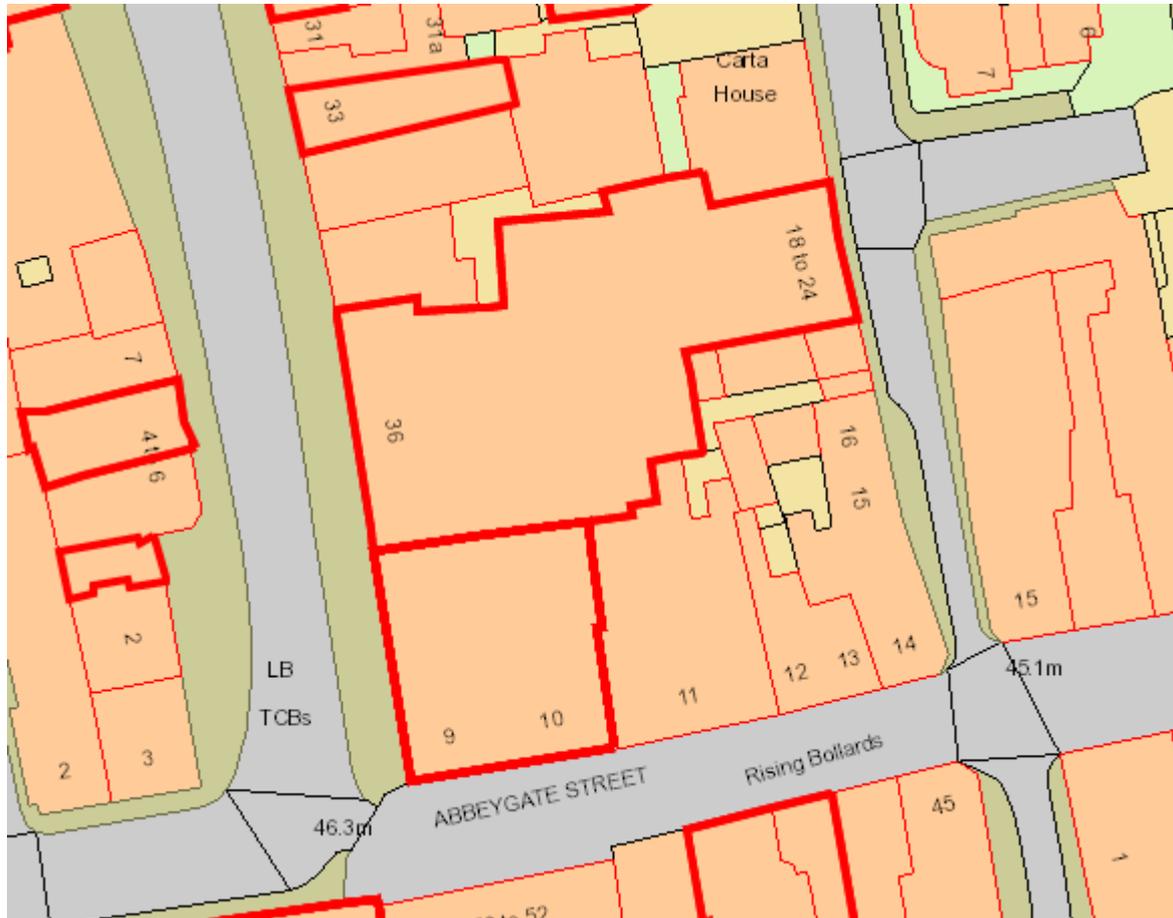
Therefore it is clear that the former Debenham's unit in the Arc is neither suitable nor available for the proposed development.

The following is a summary schedule for this unit similar to those set out in the Retail Impact Assessment.

TITLE	4. Former Debenhams Department Store
LOCATION	Bury St Edmunds City Centre
CATEGORISATION	Town Centre
OWNERSHIP	Private
AVAILABILITY	Premises not being actively marketed. Press reports from July 2021 indicate owners in discussion with potential occupiers. Not available.
SUITABILITY	<ol style="list-style-type: none"> <li data-bbox="303 1332 542 1400">1. Catchment Population Located in Bury St Edmunds City Centre – well located for catchment area to be served <li data-bbox="303 1422 542 1512">2. Size/Floor Area/Layout Single unit over two floors with 7833 sq m. proposed development would only occupy small fraction of total floorspace although upper floor would be unsuitable for proposed uses. <li data-bbox="303 1534 542 1646">3. Access to car parking Access to car parking is via 40m ramp which is unsuited to full trolleys. Nearest car parking spaces (via ramp) are 120m from store entrance. Not suitable for significant food shopping trips. <li data-bbox="303 1668 542 1758">4. Site Prominence/ Location/Market attractiveness Location within City Centre provides generally attractive with good access from main arterial routes. <li data-bbox="303 1780 542 1870">5. Customer Accessibility Good accessibility by range of public transport modes and by private car. <li data-bbox="303 1892 542 1926">6. Other Factors No significant other constraints or opportunities.
CONCLUSION	Site is unsuitable for proposed retail development and is not available (all options).

Former Palmers Department Store

Palmers formerly occupied a large unit comprising frontage along Buttermarket (36 Buttermarket) and also with a side elevation along Abbeygate Street. The store ceased trading in January 2018. Since then a number of planning applications have been approved by West Suffolk Council for the redevelopment of the Department Store as set out below. Reflecting these active proposals for redevelopment the store cannot be regarded as available for new development.



- Ref. No: DC/20/0004/FUL. Planning Application - change of use of first and second floor from retail department store (class A1) to offices (class B1(a)) or financial and professional services (class A2) following internal and external alterations to include recladding, moving existing shop frontage and creation of second shop frontage. Status: Application Granted
- Ref. No: DC/20/0005/LB. Application for Listed Building Consent - internal alterations to include (i) divide ground floor into 2no. units etc. Status: Application Granted
- Ref. No: DC/20/1640/FUL. Planning application - (i) subdivision of ground floor and basement to two retail units (ii) change of use of first, second and third floors from retail shop (Class E) to 8no. residential apartments (Class C3). Status: Application Granted
- Ref. No: DC/20/1641/LB. Listed building application - Sub-divide ground floor and basement to form two shop units etc. Status: Application Granted
- Ref. No: NMA(A)/20/1640 Non-material amendment to DC/20/1640/FUL - a. Increase in size of dormer extension at second floor level, b. enlargement of window opening, c. revised mansard elevation. Status: Application Granted
- Ref. No: DC/21/0497/FUL Planning application - replacement timber shop front. Status: Application Granted
- Ref. No: DC/21/0498/LB Application for listed building consent - replacement timber shop front. Status: Application Granted
- Ref. No: DC/21/0538/LB Application for listed building consent - replacement windows to first and second floors, 12 to South elevation and 14 to West elevation. Status: Application Granted

Applications have also been submitted and approved for the discharge of conditions for the above consents. The effect of these works are to change from the department store to residential and offices (upper floors) and ground floor retail units. The total gross internal floor area of the two retail units formed fronting onto Abbeygate is 325 sq m GFA Street and 458 sq m for the two fronting onto Buttermarket. The units on Buttermarket are separated by an existing alley which only permits the potential amalgamation of one unit (36B Buttermarket) with the two on Abbeygate Street providing a maximum floorplate of ca. 475 sq m GFA. This is significantly smaller than minimum requirement for viable units for either of the three development options identified for the proposal.

In addition, the units are constrained by awkward configuration and the presence of columns within the floorplate. The proposed units are, therefore unsuitable for the proposed development.

The new retail units are, therefore unsuitable for the minimum viable proposed development. The following provides a summary schedule for the site similar to those provided for other sites within the RIA.

TITL	5. Former Palmers Dept Store
LOCATION	Bury St Edmunds City Centre
CATEGORISATION	Town Centre
OWNERSHIP	Private
AVAILABILITY	Redevelopment proposals approved, commencement on site anticipated. Development proposed for ground floor retail (4 units) and upper floor offices, residential, hotel. Assume retail units will become available as redevelopment proceeds (not currently marketed).
SUITABILITY	<p>7. Catchment Population Located in Bury St Edmunds City Centre – well located for catchment area to be served</p> <p>8. Size/Floor Area/Layout 4 new units totalling 783 sq m, in theory three can be combined to ca 475 sq m. Layout does not have regular configuration and floorplate interrupted by columns. Not suitable for proposed development..</p> <p>9. Access to car parking No direct access to surface level parking available.</p> <p>10. Site Prominence/ Location/Market attractiveness Location within City Centre provides generally attractive with good access from main arterial routes.</p> <p>11. Customer Accessibility Good accessibility by range of public transport modes and by private car.</p> <p>12. Other Factors No significant other constraints or opportunities.</p>
CONCLUSION	Site is unsuitable for proposed development due to limited total retail floorplate, poor configuration and lack of access to surface car parking.

Tayfen Road

It is noted that the comments in the email of 12th January express concern about the site being dismissed on the grounds of its location. This matter is considered below. However, regardless of the acceptability or otherwise of its location, the site cannot be regarded as available. This was explained in the RIA and, significantly, LSH have also advised West Suffolk Council that this site is not available – they state at para 51: “...We have sought confirmation from BNP Paribas, agents for National Grid, who have confirmed that the site is being progressed to sale. Therefore, at the current time NG are not marketing the site and are not considering other offers. As such the site is not available”.

It is important to consider the basis of the sequential approach set out in the development plan and in NPPF. This is explained in paras 4.2 to 4.8 of the RIA:

- Policy CS10 of the St Edmundsbury Core Strategy (2010) states clearly that retail and leisure activity should be provided “in accordance with the sequential approach” but does not explain further.
- Policy DM35 of the West Suffolk JDM Policies Document (2015) states: “Proposals for main town centre uses that are not in a defined centre and not in accordance with an up to date Local Plan must apply a sequential approach in selecting the site demonstrating that there are no suitable, viable and available sites in defined centres or edge of centre locations.”
- Policy BV17 of Bury St Edmunds Vision 2031(2014) states, similarly, “that a sequential approach has been adopted in selecting the site demonstrating that there are no suitable, viable and available sites in defined centres or edge-of-centre locations”.
- Para 86 of the NPPF states: “Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered”.

LSH in their advice to West Suffolk Council cover the same points and highlight further some of the questions that the NPPF proposes should be considered (see LSH para 8 et seq).

In the officer’s email of 12/1/2022 the following point is made: ... *the appraisal fails to acknowledge the location of the site on a major distributor road (with potential for linked trips by car), its location within reasonable distance (certainly walking distance) of i) the town train station, ii) the town bus interchange and iii) a large town centre car park. These are shown on the plan below. In light of i) the policy and land allocation context and ii) the site context I do not consider this site should be ruled out so quickly. Further justification is required.*

In terms of the application of the sequential approach/test, as set out in the development plan, there is, in essence, only one locational issue that has to be considered – that is the relationship between the application site and the town centre. Is the site in the town centre? If there are no suitable and available town centre sites then, and only then, can edge-of centre sites be considered. Only if there are no suitable and available edge-of-centre (as well as town centre) sites then one can consider out-of-centre sites.

The Tayfen Road site is an out-of-centre location. The reasons for this are set out clearly at paras 4.38 to 4.41 of the RIA. This is the same category as the application site – the sites are, therefore, equivalent in terms of the application of the sequential approach/test.

As has been demonstrated above and in the RIA, and accepted by LSH advising the Council, **there are no town centre or edge of town centre sites that are suitable or available. On this basis alone the proposal must satisfy the sequential approach as set out in the development plan. This is LSH’s conclusion in their advice to the Council.**

In terms of the NPPF some consideration can be given to the overall accessibility of edge-of-centre and out-of-centre sites, however, the accessibility of the Tayfen Road (former gas holder) site for those travelling via the locations referred to in the email is overstated. For each of those travelling from the car park referred to and the bus/rail stations, potential customers will have to walk to, or more importantly from the Tayfen Road site, on foot and carrying significant amounts of shopping:

- The St Andrews Car park is 325-375m from the site and requires a significant ascent up St Andrews Street N from the Tayfen Road site for those who would be carrying shopping from the proposed development.
- The Bus Station is 340m from the site and also requires a significant ascent up St Andrews Street N. for pedestrians.
- The railway station is further from the site (420m) and requires a significant ascent up Station Hill for pedestrians.

None of these three locations provide an easy option for those walking burdened by shopping to/from the Tayfen Road site.

It is accepted that Tayfen Road is an important arterial route and this is adjacent to the Tayfen Road site which makes access by car easy. However, the application site is also close to Bedingfield Way which is also an important arterial route. Furthermore the application site is located very close to the well-established major retail location at St Edmundsbury Retail Park and is equally easily accessible by those travelling by car and, potentially it could be considered to have easier access due to its proximity to the A14.

In conclusion therefore, in terms of the application of the sequential approach:

- Both the application site and Tayfen Road sites are out-of-centre sites.
- It has been demonstrated that there are no suitable and available town centre and edge of centre sites. On this basis alone the application site satisfies the sequential approach as set out in the development plan. LSH agree with this conclusion.
- In terms of the development plan there is *no* preference between sites within the same sequential category. Therefore there is no policy basis for preferring Tayfen Road to the application site.
- In terms of relative accessibility (relevant for the NPPF) the Tayfen Road site does not provide easy access for those travelling from the site to either the bus station, railway station or St Andrew's car park.
- Both the Tayfen Road site and application site are easily accessible for those travelling by car.
- The application site is located very close to the well-established St Edmundsbury Retail Park which is already attractive to those travelling by car and by public transport.

Finally, and importantly, the Tayfen Road site is not available. This has been confirmed by the Council's own retail consultants. Lack of availability renders any discussion of relative accessibility irrelevant to the application of the sequential approach.

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Hargest Planning Ltd