

SEQUENTIAL ASSESSMENT

**Demolition and
decommissioning of existing PFS
and linked convenience store
and erection of replacement
convenience store and
associated works**

**Esso PFS, 94-96
High Street, Solihull**

November 2021



Summary

Proposal:

Demolition and decommissioning of existing PFS and linked convenience store and erection of replacement convenience store and associated works

Location

Esso PFS, 94-96 High Street, Solihull

Date

November 2021

Project Reference

S21.277

Client

EG Group Ltd

Product of

Asbri Planning Limited

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Introduction

- 1.1 This Sequential Assessment has been prepared on behalf of EG Group Ltd to accompany a full application proposing the demolition and decommissioning of existing PFS and linked convenience store and erection of replacement convenience store and associated works at the Esso PFS, 94-96 High Street, Solihull.
- 1.2 Policy P2 (Maintain Strong Competitive Town Centres) of the Solihull Local Plan seeks to strengthen centres' role as the focus for development and safeguard their viability and vitality through focusing retail development within their boundaries. Given the out of centre status of the site, a sequential assessment of relevant centres has been undertaken.
- 1.3 Other centres, a significant distance from the application site, would not be in "competition" to serve the catchment area where there is an identified need for the proposed development and therefore would not be suitable alternatives for the operator and thus not sequentially preferable.
- 1.4 In order to provide clarity, the application specifics comprise:
 - Site area of approx. 849 sqm
 - Convenience store measuring 211 sqm
 - 12 no. car parking spaces
- 1.5 The overall site area measures 0.08 hectares in extent. It is on this basis and the specifics of the application that the search for alternate sites has been based (albeit allowing for a significant level of flexibility).

Sequential Analysis

Purpose and Application of the Sequential Test

- 2.1 The objective of the sequential test is to locate appropriate, town centre uses within central locations. It is accepted that at a local level, it is a priority of the Council to promote retail uses within the various centres throughout the Authority area.
- 2.2 Notwithstanding, the purpose of the sequential test is not simply to justify refusing planning permission for developers seeking to develop sites in non-town centre locations. Alternative sites within central areas must be suitable, viable and available for the proposed development to be considered sequentially preferable.

Legal Precedent

- 2.3 The seminal and established Supreme Court case law example of Tesco Stores Limited v Dundee City Council provides clear guidance to LPA's in respect of the application of the sequential test. It is important to highlight at this point that whilst the Dundee case was a Scottish case the Supreme Court's decision applies in England. This has been confirmed in the recent Secretary of State decision in Rushden Lakes (see below).
- 2.4 The decision is helpful in understanding the realism with which Local Authorities should consider sequential assessments. It is also useful in discussing the application of planning policy by LPA's.
- 2.5 The court held that interpretation of policy was a matter of law, not a matter of judgment, professional or otherwise. Previously the position was that, in effect, provided that the interpretation put on a policy by the decision-maker was not unreasonable, the court would not second guess that approach.
- 2.6 In Paragraph 38, Lord Hope provided important guidance as to the interpretation and indeed application of the sequential test:

"Here too 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 think that this is 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 need for flexibility and realism to which Lord Reed refers in para 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 doing so."

- 2.7 The Tesco v Dundee decision has been reinforced by the Zurich Assurance Limited v North Lincolnshire Council (20 December 2012). The focus of the Appeal was the requirement for LPA's to assess the sequential test within the boundaries of commercial realities. To that end, the decision states:

"It is also important to mark that developers, and planning authorities, work in the real world. Marks & Spencer had assessed the only available town centre alternative to the site, and had concluded that a development that was smaller than that proposed, or one with a more restricted range of goods, was neither commercially viable nor suitable for their requirements."

2.8 Further to the above, the Scunthorpe judgement (TJ Hughes / M&S) is also helpful in respect of viability. Indeed, para 60 of the decision states:

"In my judgment, it is simply incorrect to say that there was no evidence before the officer and committee that (i) the T J Hughes unit was too small to create an economically viable Marks & Spencer food and non-food store, or (ii) it was not economically viable to split the operation into two parts, one of which might be housed in the T J Hughes unit. The evidence was that Marks & Spencer had considered the T J Hughes unit, and in their opinion, they could not use that unit (or, indeed, any unit in Scunthorpe town centre) for an economically viable operation. For that reason, they had no interest in any available site other than the Site, as the representative at the hearing made clear. That was evidence that the committee could properly take into account. It is unrealistic to expect a commercial operator to reveal its precise commercially sensitive and valuable calculations as to why it considers possible alternatives to the development proposal not to be commercially viable; and it is unnecessary for them to do so to enable a planning authority to come to a view on viability."

2.9 A further notable decision in the context of the sequential test comprises a Secretary of State decision to uphold and Inspectors recommendation to allow the erection of a mixed-use scheme at Rushden Lakes (ref. APP/G2815/V/12/2190175). Paragraph 2.64 is key in respect of the level of flexibility which must be shown as part of the sequential test:

"...in terms of the size of the alternative site, provided that the Applicant has demonstrated flexibility with regards to format and scale, the question is whether the alternative site is suitable for the proposed development, not whether the proposed development could be altered or reduced so that it can be made to fit the alternative site."

2.10 Paragraph 2.68 identifies that the consideration of disaggregation of specific elements of schemes as part of a sequential assessment is not reasonable:

"There is no longer any such requirement stated in the NPPF...Had the Government intended to retain disaggregation as a requirement it would and should have explicitly stated this in the NPPF. It is too large a point to rest on implication. If it had been intended to carry on with the requirement then all that would have been required is the addition of the word "disaggregation" at the end of NPPF [24]."

2.11 Finally, at paragraph 8.55, the Rushden decision also provides guidance on when a site can be considered "available":

"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. NBC has previously adopted the same interpretation of "available" as LXB do. Mr Lewin accepted that in the Committee report (24 July 2012) in relation to an application to redevelop the Royal Mail site at Barrack Road for a 5,000+ sq m Tesco superstore, the Council rejected Legal & General's objection that availability should have been looked at over a longer time frame. The site was not currently available and that was what was required by the sequential test."

2.12 Accordingly, any sequential assessment must be undertaken on a flexible basis, both on the side of the LPA and the developer and mindful of relevant case law examples.

2.13 The below sequential assessment has been prepared mindful of the above case law.

Location of Application Site

- 2.14 The application site is situated within Shirley, Solihull and comprises an existing PFS at 94-96 High Street. The existing facility includes a linked Spar convenience store. It is 0.21 acres in size and the Spar store as existing comprises 101m² GIA.
- 2.15 Solihull is a large market town and the administrative centre of the Metropolitan Borough of Solihull in the West Midlands.
- 2.16 Vehicular and pedestrian access is achieved from two existing access and exit points from High Street and Yardley Wood Road.
- 2.17 The site benefits from exceptional transportation links and is strategically located to access a wide highway network including the A34 and A435. The site also lies to the immediate west of a traffic-free cycle route, as shown on the OS Map below, the route follows the River Cole.
- 2.18 The site is accessible by public transport by virtue of several bus stops located on High Street, the closest being some 90m away. It is also accessible by train by virtue of Shirley train station which is located approximately 0.9 miles away encouraging sustainable modes of transport.
- 2.19 The application site is prominent at High Street and is tired in appearance. It also lies immediately opposite Peterbrook Primary School.
- 2.20 A review of the Environment Agency's Flood Map reveals the site lies within an area of Flood Risk Zone 1 meaning it is at little or no risk of fluvial or coastal/tidal flooding for the purposes of achieving a planning permission.
- 2.21 Based on a Historic England Map search, the site is free from constrains in this respect.

Application Site Planning History

- 2.22 A review of Solihull Metropolitan Borough Council Planning Portal gave an indication that the site had previously been subject to a degree of planning history which is as follows:
- PL/1991/01174/FULL – Refurbishment and extensions to service station including jet-wash facility – Approved – 11/11/1991
 - PL/2008/01723/FULL – Extensions to shop – Approved – 17/09/2008
 - PL/1991/00564/FULL – Demolition of existing buildings, installation of new pumps and sales building, pump islands, 2no. jet washers and underground petrol tank – Unknown Decision
 - PL/1991/00058/FULL – Demolition of existing buildings. New car wash, shop/office buildings, pump island and underground storage tanks – Refusal – 11/04/1991
 - PL/1990/00504/FULL – Demolition of existing building, new car wash, shop/office buildings, islands and 10,000-gallon tank – Refusal – 20/12/1990
- 2.23 In accordance with the above, it is not considered that there is any planning history which could be considered negative in the context of the application to which this statement relates. Therefore, it should be assessed in accordance with prevailing planning policy at a local and national level.

Scope of Sequential Assessment

- 2.24 An assessment of Shirley and Hall Green centres has therefore been undertaken. Given the edge of centre status of the site and distances of other centres from the site, it is considered that the assessment is comprehensive, robust and fair. It is clear that the other centres are not within a reasonable distance of the application site so as to be able to be considered alternatives in respect of the sequential test. Were the proposed development to be relocated to them, the operation would be serving a separate catchment area for which there may not be an identified need for the proposed uses. Therefore, they would not comprise suitable alternatives for the applicant.
- 2.25 It has been comprehensively evidenced throughout the Retail Statement which forms part of the application package that the unit is of such small scale, it is clear that it will not give rise to any impact concerns in respect of Shirley, Hall Green or indeed any further afield.
- 2.26 Given the purpose of the proposal is to serve the site and wider area, it would be unreasonable to consider sites in centres beyond those identified below purely for the purposes of the sequential test – particularly in the context of relevant case law (*Tesco V Dundee*).
- 2.27 Further to the above, the assessment has been made on the basis of the proposed development holistically. It is identified above that disaggregation of elements of the proposed development would not be in accordance with prevailing case law.
- 2.28 In accordance with the above, the sequential test has been prepared on the basis of the below centres. The geographic coverage of the sequential test is fair and in accordance with recent decisions by the LPA.
- Shirley, Birmingham
 - Hall Green, Birmingham
- 2.29 In accordance with the above and planning policy at a local and national level, we have assessed the above centres both in respect of existing opportunities (i.e. vacancies) and development opportunities.

Sequential Assessment

- 2.30 In this section, we present the results of our sequential assessment. The following general observations set the context for the assessment:
- The site is strategically located with immediate access to a wide highway network including High Street, the A435 and the A34.
 - The existing PFS is underperforming and therefore, EG Group, a market leader in the provision of the sale of fuel is seeking an alternative use for the site in order to safeguard its positive use;
 - The application proposes the redevelopment and decommissioning of the site in order to provide a small-scale convenience store to be occupied by Asda. It is not speculative;
 - The proposed development will result in significant economic benefits in the form of circa 8 full time positions;

- The unit is not of a scale to give rise to retail impact considerations and will fulfil a “top-up” shopping function. It will provide a convenient walk to facility to serve residents in the locality;
- The site is highly prominent and therefore it is considered important that it is in positive use and providing jobs/services;
- As existing, the site includes a Spar store comprising 101m² therefore an increase in sales floor area of 55m² is proposed.

Application Specifics

2.31 A fundamental element of any sequential assessment is to set the parameters under which the assessment should be undertaken. To that end, the specifics of the application to which this statement relates are key. These comprise:

- Site area of approx. 849 sqm
- Convenience store measuring 211 sqm
- 12 no. car parking spaces

2.32 In order to evidence that the sequential test has been undertaken in a correct manner, it is important to show flexibility in respect of the size of the site search. To that end, the assessment of alternate sites within relevant centres will be based upon sites that fall within 75% of the scale of the application site. In accordance with the above, and to provide clarity, **our search has been undertaken on sites of 0.064 hectares / 637 sqm and above** (i.e. a 25% reduction in scale when compared to the application site). It is clear that in setting the level of flexibility at 25%, the applicant is willing to show a level in excess of that compared to a traditional approach to the sequential test.

Shirley, Birmingham

2.33 The closest centre of scale to the application site comprises Shirley Town Centre. The centre is within the Solihull Metropolitan Borough Council area.

2.34 It features a range of national and independent retail operators. The centre is both vital and viable in respect of NPPF tests.

2.35 The centre, linear in format does not benefit from a significant amount of on street car parking, immediately accessible to shop frontages. As such, this is a clear differentiation to the scheme proposed by way of the application subject of this statement.

Vacant Units

2.36 The centre has been surveyed and up-to-date information purchased from Experian. The information highlights a total of just 15 vacancies within the centre as per the below table.

Activity	Category	Use C...	Misc Text	Street Nu...	Road Name	Goad Are...
VACANT	VACANT RETAI...	A1		259	STRATFORD R...	100
VACANT	VACANT RETAI...	A1		265	STRATFORD R...	100
VACANT	VACANT RETAI...	A1		214	STRATFORD R...	140
VACANT#RESTAURANT	VACANT RETAI...	A3		334	STRATFORD R...	160
VACANT CAR SALES	VACANT RETAI...	ASG			STRATFORD R...	20
VACANT	VACANT RETAI...	A1		22	PARKGATE SH...	260
VACANT	VACANT RETAI...	A1		344	STRATFORD R...	310
VACANT	VACANT RETAI...	A1		349	STRATFORD R...	40
VACANT	VACANT RETAI...	A1		279 - 283	STRATFORD R...	5050
VAC	VACANT RETAI...	A1		328A	STRATFORD R...	70
VAC TKAWY	VACANT RETAI...	A5		163	STRATFORD R...	80
VACANT	VACANT RETAI...	A1		197	STRATFORD R...	80
VACANT	VACANT RETAI...	A1		358	STRATFORD R...	860
VACANT	VACANT RETAI...	A1		189	STRATFORD R...	90
VACANT TAKEAWAY	VACANT RETAI...	A5		133	STRATFORD R...	90

2.37 The vacancies overwhelmingly are below the threshold for assessment even when allowing for a significant level of flexibility. Notwithstanding, we have assessed those above the threshold figure below:

279-283 Stratford Road

2.38 279-283 Stratford Road comprises the former Morrisons supermarket which is central within the centre. The site includes dedicated car parking formally used by the supermarket.

2.39 The site would not qualify as a sequentially preferable site for the following reasons:

- The unit was formally marketed by Colliers. They have confirmed it is no longer available to market.
- The site is subject of a live planning application (LPA Ref- PL/2021/00086/PPFL) which seeks permission for *residential based mixed use development comprising 88 C3 residential apartments, 84 bed C2 care home, ancillary commercial uses including gym, salon and restaurant with public access and basement car park providing 130 spaces as well as landscaped courtyards, frontage visitor car park and site landscaping. New vehicle access from Solihull Road*. The application serves as further evidence that the site is not available for the purposes of the sequential test.
- Irrespective, it is too large to comprise a realistic alternative to the application site. The occupation of it as an alternative to the application site would leave a minor element of it occupied and the bulk vacant in a format that would be highly unlikely to be attractive to the market in our experience. Accordingly, it is not considered a suitable alternative to the application site.

2.40 In accordance with the above, the site is discounted on the grounds of suitability and availability.

358 Stratford Road

2.41 358 Stratford Road comprises the former Office Depot unit. The site includes dedicated car parking formally used by the retailer.

2.42 The site would not qualify as a sequentially preferable site for the following reasons:

- The unit is not being marketed for sale / let.
- The wider site is subject of a determined planning application (LPA Ref-PL/2020/01379/PPFL) allowed for the development of *Demolition of existing building and erection of 48 No. retirement living apartments for older people (Sixty years of age and/or partner over fifty-five years of age), guest apartment, communal facilities, access, car parking, and landscaping*. The S106 tied to the consent was signed as recently as October 2021. The application serves as further evidence that the site is not available for the purposes of the sequential test.
- Irrespective, the site is too large to comprise a realistic alternative to the application site. The occupation of it as an alternative to the application site would leave a minor element of it occupied and the bulk vacant in a format that would be highly unlikely to be attractive to the market in our experience. Accordingly, it is not considered a suitable alternative.

2.43 In accordance with the above, the site has been discounted on the ground of availability and suitability.

2.44 No other unit within the centre is of the scale required to comprise a realistic alternative to the application site. Accordingly, this element of the sequential test is satisfied.

Development Opportunities

2.45 In addition to the above, we have also considered the potential for development sites within and on the edge of the Centre. Our research and identification of suitable sites has been based upon the following:

- A working knowledge of development opportunities within the surrounding area.
- A review of the Proposals Map and allocations.

2.46 The centre is densely developed and tightly bounded. The highway network and residential units act as barrier to its expansion to the north, south and west and east.

2.47 In accordance with the above, the sequential test is satisfied in this regard.

Hall Green, Birmingham

2.48 The closest centre of scale within the Birmingham City Council area to the application site comprises Hall Green. The centre is linear in fashion with elements separated from each other by residential dwellings.

2.49 The centre features a range of national and independent retail operators. It is both vital and viable in respect of NPPF tests.

2.50 The centre, linear in format does not benefit from a significant amount of on street car parking, immediately accessible to shop frontages. As such, this is a clear differentiation to the scheme proposed by way of the application subject of this statement.

Vacant Units

2.51 The centre has been surveyed and up-to-date information purchased from Experian. The information highlights a total of just 17 vacancies within the centre as per the below table.

Category ▲	Use C... ▲	Street Nu... ▲	Road Name ▲	Goad Are... ▲
VACANT RETAI...	A1	1496	STRATFORD R...	100
VACANT RETAI...	A1	1322 - 1324	STRATFORD R...	100
VACANT RETAI...	A5	1500	STRATFORD R...	110
VACANT RETAI...	A1	9	SOLIHULL LANE	110
VACANT RETAI...	A1	1114	STRATFORD R...	170
VACANT RETAI...	A3	1039	STRATFORD R...	190
VACANT RETAI...	A1	1498	STRATFORD R...	200
VACANT RETAI...	A2	1	HIGHFIELD R...	200
VACANT RETAI...	A2	1143	STRATFORD R...	240
VACANT RETAI...	A1	19	HIGHFIELD R...	280
VACANT RETAI...	A1	1206C	STRATFORD R...	60
VACANT RETAI...	A4	1214	STRATFORD R...	660
VACANT RETAI...	A1	1354	STRATFORD R...	90
VACANT RETAI...	A2	1353	STRATFORD R...	90
VACANT OTHE...	B1	1559	STRATFORD R...	90
VACANT RETAI...	A1	1335	STRATFORD R...	100
VACANT RETAI...	A1	1502	STRATFORD R...	100

2.52 The vacancies are overwhelmingly are below the threshold for assessment even when allowing for a significant level of flexibility. Notwithstanding, we have assessed those above the threshold figure below:

1214 Stratford Road (The Horseshoe Bar)

2.53 1214 Stratford Road comprises the former Horseshoe public house. The unit measures 660 sqm and is therefore large enough when showing flexibility (albeit smaller than the application site).

2.54 The site would not qualify as a sequentially preferable site for the following reasons:

- The site is not currently being marketed for sale / let for a redevelopment.
- A recent application proposing the redevelopment of the site by way of *demolition of existing buildings for the provision of a new foodstore building, separate coffee shop with a drive-thru facility and associated access works, car parking and landscaping* (LPA Ref-2020/07115/PA) was refused by Birmingham City Council for 9 separate reasons. They comprised:
 - The loss of the Horseshoe Public House has not been sufficiently addressed and mitigated within the submission.

- The proposal involves the loss of a building which currently makes a positive contribution to local character and the proposal is visually unattractive, of poor-quality architectural design, and fails create a distinctive and positive sense of place.
- The proposal, by virtue of the demolition of the public house building, would cause substantial harm to a non-designated heritage asset which is not outweighed by public benefits.
- The proposal by virtue of its design, form and materiality would cause less than substantial harm to the setting of a designated heritage asset, specifically Springfield Court.
- The proposal would adversely impact upon residential amenity of adjacent residential neighbours, particularly with reference to the Drive-Thru use. The submission has not satisfactorily addressed noise and air quality impacts upon sensitive receptors associated with both the retail store and coffee shop/drive-thru lane.
- Insufficient information has been provided for the Local Planning Authority to undertake a full and detailed assessment regarding sustainable construction methods, BREEAM, energy efficiency and generation on site.
- The landscape scheme as proposed is considered to be very poorly designed and would not compensate or mitigate for the loss of those trees which were on site, is not of a sufficient standard to mitigate against the large swathes of hard surfacing proposed and would adversely impact upon the site's biodiversity provision.
- It has not been sufficiently demonstrated that the proposed site access arrangements, internal site layout and associated servicing facilities would adequately cater for its intended users and would lead to a detrimental impact upon highway safety on the adjacent road network.
- The submitted drainage strategy is considered to provide insufficient information to adequately demonstrate that the proposed development can meet the minimum requirements of Policy TP6 of the adopted Birmingham Development Plan and the requirements of the NPPF.
- In accordance with the above, it is considered that the LPA would not be receptive to an application proposing the demolition of the former public house and its replacement with a small-scale convenience store as is proposed by way of the application subject of this statement.
- Though the former public house is of sufficient scale to comprise an alternative to the application site, the wider site is significantly larger than that at 96 High Street, Shirley. It is 0.28 ha larger than the application site. Accordingly, even if a redevelopment of the site was acceptable to Birmingham City Council, it is clear that a comprehensive redevelopment should be proposed as opposed to piecemeal development which has the potential to have a detrimental impact on nearby heritage assets. The site is not suitable as an alternative to the application site.

2.55 In accordance with the above, the site is discounted on the grounds of suitability and availability. It is clear that there are no other existing vacancies remotely large enough to comprise available, suitable and viable alternatives to the application site. The sequential test is therefore satisfied in this respect.

Development Opportunities

2.56 In addition to the above, we have also considered the potential for development sites within and on the edge of the Centre. Our research and identification of suitable sites has been based upon the following:

- A working knowledge of development opportunities within the surrounding area.
- A review of the Proposals Map and allocations.

2.57 The centre is densely developed and tightly bounded. The highway network and residential units act as barrier to its expansion to the north, south and west and east. There are no sites allocated for development for the purposes of a convenience store via prevailing planning policy.

2.58 In accordance with the above, the sequential test is satisfied in this regard.

Conclusion

2.59 Asbri Planning has undertaken a comprehensive survey of Shirley and Hall Green. It is clear from the results of the survey that there are no existing, suitable and available alternatives to the application site within, or on the edge of the centre surveyed in respect of existing opportunities.

2.60 We have also reviewed known development sites within and surrounding the centre. It is clear that though there are a small number of potential opportunities, for the reasons discussed above, they are not suitable, viable nor available.

2.61 It is therefore concluded that there are no units or development sites within the surveyed centres which can form a sequentially preferable alternative to the application site. Consequently, the requirements of the sequential test have been satisfied.

Conclusion

- 3.1 This Sequential Assessment has been prepared on behalf of EG Group Ltd to accompany a full application proposing the demolition and decommissioning of existing PFS and linked convenience store and erection of replacement convenience store and associated works at the Esso PFS, 94-96 High Street, Solihull.
- 3.2 Policy P2 (Maintain Strong Competitive Town Centres) of the Solihull Local Plan seeks to strengthen centres' role as the focus for development and safeguard their viability and vitality through focusing retail development within their boundaries. Given the out of centre status of the site, a sequential assessment of relevant centres has been undertaken.
- 3.3 The site is situated in an out of centre location. The overwhelming majority of trade will be drawn from residents living in the immediate vicinity. A comprehensive sequential assessment has been undertaken to demonstrate that there are no sequentially preferable sites within relevant centres.
- 3.4 The assessment is comprehensive and investigated both in respect of existing vacancies in or on the edge of the centres identified above. In addition, development opportunities are also assessed.
- 3.5 The statement concludes that there are no sequentially preferable units or sites within the search boundaries and that the sequential test has been satisfied.