

SEQUENTIAL ASSESSMENT

Land at Merthyr Leisure Village

**Erection of a Drive Thru Coffee
Unit and associated works**

February 2021



Summary

Proposal:

Erection of a Drive Thru Coffee Unit and associated works

Location

Land at Merthyr Leisure Village

Date

February 2021

Project Reference

S20.223

Client

Legal & General Leisure Fund Trustee Limited (no 04301197) and Legal & General Property Partners (Leisure) Limited (no 04452915)

Product of

Asbri Planning Limited

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Introduction

- 1.1 This Sequential Assessment has been prepared on behalf of Legal & General Leisure Fund Trustee Limited (no 04301197) and Legal & General Property Partners (Leisure) Limited (no 04452915) in respect of the proposed erection of a drive thru coffee unit (Class A1 use) and associated works at land at Merthyr Leisure Village.

- 1.2 In respect of development in out of centre locations, paragraph 4.3.18 of Planning Policy Wales states:

The Welsh Government operates a 'town centres first' policy in relation to the location of new retail and commercial centre development. In implementing this policy, planning authorities should adopt a sequential approach to the selection of new sites in their development plan and when determining planning applications for retail and other complementary uses. By adopting a sequential approach first preference should be to locate new development within a retail and commercial centre defined in the development plan hierarchy of centres

- 1.3 Similarly, Policy EcW3 (Retail Hierarchy – Supporting Retail Provision) of the adopted Merthyr County Borough Council states:

Merthyr Tydfil Town Centre is the favoured location for retail, leisure, and other complementary development, being situated at the head of a retail hierarchy and being followed by the local centres of Dowlais, Gurnos, Cefn Coed and Brecon Road/Morgantown, Troedyrhiw, Aberfan, Treharris and a new local centre forming part of the 'Hoover Strategic Regeneration Area'. Proposals for new and enhanced retail, leisure and other complementary provision in all these centres will be permitted where they improve the vitality and viability of the centre(s) concerned.

Outside the above centres, proposals will be subject to an assessment of need and a strict application of the sequential test. Proposals will then only be permitted where they avoid causing harm to town/local centre vitality and viability.

- 1.4 The site is situated within the settlement boundary and in Merthyr Leisure Village which is occupied by a number of A3 uses including McDonald's, Harvester and Subway. Given the drive thru nature of the development, it would not be suitable for Merthyr Town Centre location given the extent of pedestrianised areas / limited highways and thus lower vehicular trip rates. Notwithstanding, a sequential assessment has been undertaken to satisfy the requirement contained within Policy EcW3 (Retail Hierarchy – Supporting Retail Provision).

- 1.5 In order to provide clarity, the application specifics comprise:

- 1no. drive thru unit and associated drive thru lane
- 2no. disabled car parking spaces

- 1.6 The overall site area measures 850m² 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 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 that whilst Dundee was a Scottish case the Supreme Court's decision applies in Wales.
- 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 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."

- 2.9 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.

- 2.10 In addition, clarity on what enables a site to be considered available is also provided.

Drive Thru Appeal Decisions

- 2.11 Of relevance to the proposed development, Appeal Case - APP/00830/A/05/1182303 discusses the suitability of drive thru facilities within City Centre locations. In his concluding comments, the Inspector confirmed:

"It is difficult to envisage how a developer could be flexible in respect of the format of a drive thru restaurant. Unlike a conventional restaurant, which could be easily accommodated on any of the identified sites, a drive thru, by definition, requires vehicular access and circulation through and around the building."

- 2.12 In addition, Appeal decision APP/Q1255/A/08/2061585 clearly reinforces the findings of the above Appeal in respect of the limited flexibility which can be shown by drive thru operations as part of a sequential assessment.

Location of Application Site

- 2.13 The application site occupies a prominent position within Merthyr Leisure Village. It currently comprises an isolated parcel of parking spaces. It accessed via the existing infrastructure serving the Village. As aforementioned, the site lies within close proximity to a number of A3 uses and a drive thru facility. The principle of developing such schemes within the Leisure Village has therefore been established.

- 2.14 The site lies outside of a defined retail centre; therefore, an assessment has been undertaken to demonstrate that there are no sites suitable, available and viable within Merthyr Town Centre to accommodate the proposed development.

- 2.15 Given the size, location and distances of other centres from the site, it is considered that Merthyr Town Centre presents a comprehensive, robust and fair assessment beyond reasonable expectation. The extent of the sequential assessment has been agreed with Officers prior to submission at the pre app stage.

- 2.16 It is clear that other centres are not of sufficient scale, siting or 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 units would be serving a separate catchment area for which there may not be an identified need for a roadside facility. Therefore, they

would not comprise suitable alternatives for the operator who has a requirement within the immediate site area.

- 2.17 In accordance with the above and planning policy at a local and national level, we have assessed Merthyr Town Centre both in respect of existing opportunities (i.e vacancies) and development opportunities.

Sequential Assessment

- 2.18 In this section, we present the results of our sequential assessment. The following general observations set the context for the assessment:

- This sequential test has been undertaken to demonstrate that there are no sequentially preferable sites within the existing centres in accordance with paragraph 4.3.18 of PPW and with Policy EcW3 (Retail Hierarchy – Supporting Retail Provision) which aims to protect the vitality and viability of centres.
- The application site comprises 35no. parking spaces in a large area of car parking which is subject to an over provision of spaces. The proposed development will therefore not result in an unacceptable loss of car parking.
- There are a number of A3 uses situated within Merthyr Leisure Village including McDonald's, Harvester and Subway. Furthermore and similarly to the proposed development, the McDonald's unit features drive thru facilities. The principle of developing a food/drink drive thru unit within the Leisure Village is therefore firmly established.
- The application is tailored to the specific requirements of Starbucks, experienced operator such outlets. It is not speculative.
- The proposed development will result in significant economic benefits in the form of 15-25 jobs.

Application Specifics

- 2.19 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 850m²
- Development scheme comprising:
 - 1no. drive thru unit and associated drive thru lane
 - 2no. disabled car parking spaces

- 2.20 In reality, a successful drive thru, car parking is required. Therefore, existing car parking will be used for the development from the wider car park, but in the interests of clarity, we have based the assessment on the red line area.

- 2.21 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 the relevant centres will be based upon sites that fall within 75% of the scale of the application site.

- 2.21 In accordance with the above, and to provide clarity, **our search has been undertaken on sites of 638m² 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.

Merthyr Town Centre

- 2.22 Merthyr Town Centre comprises a large retail area concentrated along High Street which forms a spine through the centre from north to south. It features a range of national and independent, retail, leisure and office uses. It is positioned north of the application site and is densely developed, featuring a number of side streets and pedestrianised areas to serve the various uses. The pedestrianised elements of the centre would not be subject to the vehicle trips required to sustain a roadside facility. An assessment of the Centre is provided below.
- 2.23 Our survey highlighted a total of 51no. vacancies (see **Appendix 1** for survey map). As shown on the survey map, the vast majority of these vacancies are too small to be considered realistic alternatives to the application site even when allowing for a 25% reduction in scale. Notwithstanding, the vacancies in excess of 500m² will be assessed in further detail below.
- 2.24 The survey identified 2no. vacancies in excess of 500m² which are as follows:
- Former Government Offices, Castle Street
 - 1st Floor Vacancy, St Tydfil Square Shopping Centre

Former Government Offices, Castle Street

- 2.25 The vacancy comprises a four storey 'L' office building positioned on the corner of Castle Street and Glebeland Place. The building lies to the east of Merthyr Tydfil Crown Magistrates Court and north of the Castle Hotel. It measures just 540m² in extent, as such, would not be of sufficient scale to accommodate the proposed development even when allowing for a 25% reduction in area. The site can therefore be discounted from the assessment on the grounds of suitability.
- 2.26 In order for a drive thru facility to operate successfully, it is required to be situated in an area that is subject to a high level of vehicular trips. Whereas the identified vacancy is situated along Castle Street and Glebeland Place which comprise side streets and provide access to a limited number of properties. This further emphasises the site's unsuitability to accommodate the proposed development.
- 2.27 The vacancy is therefore discounted from the assessment due to suitability and viability given that it is not of sufficient scale to accommodate the proposed development, nor is it sited in an area that would be subject to the vehicular trips required to sustain a drive thru operation.

1st Floor Vacancy, St Tydfil Square Shopping Centre

- 2.28 There is a large vacancy on the 1st Floor St Tydfil Square Shopping Centre, however, it does not appear on the survey map given its elevated position. The vacancy measures 1,000m², as such, is of sufficient scale to accommodate the proposed development. However, given that it is sited on the 1st Floor of the shopping centre, it would not be suitable for a drive thru operation. It would not be reasonable for the client to disaggregate the drive thru provision from the scheme as confirmed by paragraph 2.86 of the 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) which

emphasises that if disaggregation was a requirement, it would be explicitly stated within national planning policy. The vacancy is consequently discounted from the assessment on the grounds of suitability.

- 2.29 Furthermore, the Shopping Centre lies in a pedestrianised area. As such, it would not be subject to the vehicular trips required to sustain a successful drive thru operation.
- 2.30 The vacancy is therefore discounted from the sequential assessment on the due to suitability given its position on the 1st floor of the shopping centre and siting in a pedestrianised area.

Conclusion

- 2.31 In light of the above, there are no sequentially preferable vacancies within the town centre which are suitable, available or viable to accommodate the proposed development.

Development Opportunities

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

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

Former St Tydfil's Hospital

- 2.33 Within the adopted Local Plan land at the Former St Tydfil's Hospital is earmarked for development (Ref: SW3-21). It is the site of the former St Tydfil's Hospital, the entrance of which is designated as a listed building (CADW Ref: 11475) and has been retained. The site measures 2.06 hectares in extent, as such, is of sufficient scale to accommodate the proposed development.
- 2.34 The allocation lies outside albeit adjacent to the Town Centre boundary. It is therefore not a sequentially preferable site. Notwithstanding, it is allocated for residential development of approximately 50no. units (Ref: SW3-21). Development of the allocation to be occupied by a single drive thru unit would therefore represent a missed opportunity for its comprehensive redevelopment to accommodate residential development and is contrary to the Council's aspirations for the Former St Tydfil's Hospital site.
- 2.35 Furthermore, a review of Merthyr Tydfil CBC's online planning register reveals that the site has been subject to the following planning application:
- Residential development consisting of the conversion and extension to a listed building to create 7 apartments and a dwelling, construction of 62 dwellings (including 31 affordable units), the demolition of existing buildings, landscaping, re-profiling of land, alterations to the existing access and other associated works. (Ref P/20/0199).*
- 2.36 The application was granted approval on the 17th December 2020. It is therefore not considered to be available to accommodate the proposed development.
- 2.37 The development opportunity can therefore be discounted from the sequential assessment on the grounds of suitability for the proposed use and availability.

Land north of Penydarren Road

2.38 There is a parcel of land situated north of Penydarren Road and lies outside, albeit adjacent to the Town Centre boundary. It is therefore not a sequentially preferable site. As such it measures approximately 0.4 hectares in extent, as such, is of sufficient scale to accommodate the proposed development. The site comprises a steep slope which would present a topographical constraint and likely result in an unjustifiable cost for the developer to address, whereas the application site comprises a car parking area which can be easily developed upon without the need for significant engineering works. The site can therefore be discounted from the assessment on the grounds of viability.

2.39 Furthermore, a review of Merthyr Tydfil CBC's online planning register reveals that the site has been subject to the following planning application:

The retention of an affordable housing scheme (8 flats) and associated off-street parking. Re-grading and engineering works to provide a reinstated landscaped embankment on land to the north east of the flats. (Ref: 19/0001)

2.43 The application was granted approval on 20th March 2020. It therefore appears that the land in question relates to the reinstated landscaped embankment referenced in the above application. The site is therefore not considered to be available to accommodate the proposed development.

Conclusion

2.44 In light of the above, there are no sequentially preferable vacancies or development opportunities within or on the edge of the centre which could accommodate the proposed development. The sequential assessment is consequently satisfied in respect of Merthyr Town Centre.

Conclusion

2.45 Asbri Planning has undertaken a sequential assessment of Merthyr Town Centre. 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 assessed in respect of existing opportunities.

2.46 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.

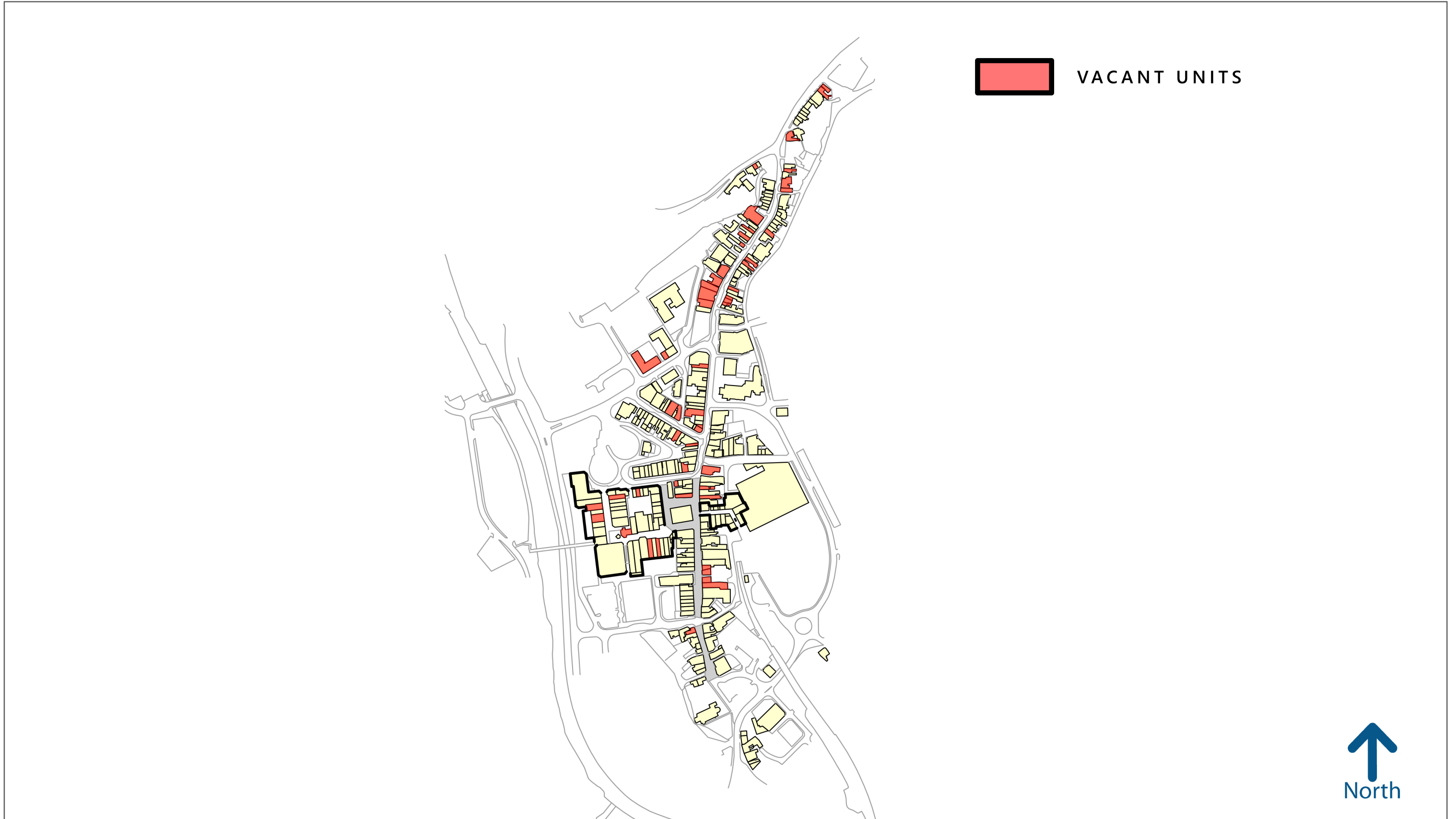
2.47 It is therefore concluded that there are no units or development sites within the assessed centre which can form a sequentially preferable alternative to the application site. It is therefore concluded that the requirements of the sequential test have been satisfied.

Conclusion

- 3.1 This Sequential Assessment is required to accompany a planning application for the proposed erection of a drive thru coffee unit and associated works at land at Merthyr Leisure Village.
- 3.2 Policy EcW3 (Retail Hierarchy – Supporting Retail Provision) of the adopted Merthyr Tydfil County Borough Council Local Development Plan aims to direct new retail development to existing centres. As such, this sequential assessment has been prepared to demonstrate that there are no more central, or sequentially preferable sites that comprise available, suitable and viable alternatives to the application site. Accordingly, an assessment of Merthyr Town Centre has been undertaken.
- 3.3 The proposal relates to the development of a roadside facility occupying a prominent location within an existing Leisure Village. It is anticipated that a large portion of visitors to the development will be existing users of the Village. As such, it is considered unlikely that the development would attract trade from designated centres and therefore impact upon their vitality and viability. Notwithstanding, a sequential assessment has been undertaken to demonstrate that there are no sequentially preferable sites within a defined centre.
- 3.4 In addition, it should be emphasised that the Leisure Village is occupied by a number of A3 uses including McDonald's, Harvester and Subway. Furthermore, the McDonald's features drive thru provision. The principle of siting food/drink drive thru facilities within Merthyr Leisure Village is therefore firmly established.
- 3.5 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. The scope has been agreed with Officers prior to submission of the application.
- 3.6 The statement concludes that there are no sequentially preferable units or sites within the search boundaries and that the sequential test has been satisfied.

APPENDIX 1

SEQUENTIAL ASSESSMENT MAP



VACANT UNITS



North



250 metres



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