

Penfold Review of Non-Planning Consents
Zone 3136
Department of Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET
9 February 2010

Dear Sir

The Penfold Review

Introduction

I write on behalf of Accessible Retail (AR), the organisation which represents the property interests of the retail warehouse and retail park sector of the retail industry. AR has over 900 members comprising owners/investors, developers, retailers and advisers, a membership which includes most of the major companies active in the sector. The majority of our member's interests are located in out-of-centre locations, but also, they have significant town centre interests.

The retail industry constitutes a major part of the UK economy accounting for some 8% of GDP and employing nearly 3 million people. Of this, retail warehouses and retail parks comprise some 30% of total retail spend from 3% of all retail outlets, with property assets over half of which is owned by pension funds.

General comments

AR is pleased to respond to this consultation which we believe furthers the Government's timely initiative to address long standing problems associated with securing the various consents needed before development can proceed. In recent years, a number of Government reports and initiatives centred on the recommendations of the Barker Report and the Killian-Pretty Review have resulted in significant progress being made in addressing issues concerned with securing planning permission. The problems encountered in obtaining concomitant non-planning consents, however, remain and the Penfold Review offers the opportunity to redress this.

In our experience there are a myriad of non planning consents which are required in order to get a development scheme to the point where a retailer can open in a new scheme. Since most of these obligations fall upon developers and/or retailers acting as developers for their own schemes, our comments focus on this aspect rather than any hurdles faced by retailers merely preparing to open their new store.

Pre-commencement conditions

It is noted that the review is intended to cover non-planning consents principally in the light of the fact that, as we say above, the Barker review, followed by subsequent changes to primary legislation and more recently Killian-Pretty have addressed various concerns about the planning system itself. We are not clear however whether the review is intended to cover matters relating to the discharge of planning conditions or obligations within a legal agreement which are often applied to new planning consents. These are frequently the major source of delay from the granting of planning permission of a new scheme to its actual implementation on site. In our experience Planning Authorities are overly cautious in imposing conditions even where there is no evidence of harm and will often duplicate matters requiring further approvals; notwithstanding that

submissions on these matters were made as part of the application - for example: conditions may be imposed requiring the approval of a waste management plan even though such a plan has been submitted with the application. The same can be true on a wide range of other issues, to name but a few archaeology, ecology, ground contamination, flooding etc. We would strongly urge the review to include this aspect within their deliberations.

As an indication of the seriousness of this problem, it is now not unusual to see planning consents on new retail schemes with in excess of 30 or 40 conditions, half of which would need to be discharged before development commenced. Moreover in many cases the material to be submitted for discharge of the condition then requires the input of statutory consultees such as the Environmental Agency. We are far from convinced that these sorts of submissions are given adequate priority.

Highways

In terms of other sorts of non planning consents, as noted above, there are a myriad of these which arise on a case by case basis, depending on the site and form of development and its surroundings. Some examples are road closure orders, 278 Agreements for new highway works, Section 38 Agreement for highway adoptions, utility diversions, British Waterways Board approvals where sites adjoin canals and watercourses, Network Rail where sites adjoin rail lines, agreements relating to oversailing cranes and building over public highways

One of the issues which arises in respect of 278 Agreements which can cause very considerable delay is when a Highway Authority changes it's requirements and standards for a new scheme subsequent to the grant of consent. In other cases the LHA will insist upon carrying out the design and construction work themselves. As an example of the former, consent was granted following a call in inquiry by the Secretary of State for a retail scheme at Tunbridge Wells. The scheme considered by the Secretary of State at Appeal included a junction design for new slip roads on to a roundabout on the A21. Subsequent to the grant of consent the Highways Agency and Kent County Council flatly refused to accept the scheme which had being approved by the Secretary of State. As a consequence the junction was substantially redesigned at an additional cost with around a 9 month delay. Whilst it would have been possible for the developer to seek legal involvement in this process at the time, this in itself would cause considerable delay and uncertainty and in any event at the commencement of the dispute with the Highway Authority it would not be known whether a legal challenge would be quicker.

A second example relates to a retail scheme in Rugby which involves a new junction of the A426. Again planning consent was secured with the Highway Authority fully involved in negotiations over the principle of consent. Subsequently, the Highway Authority having insisted on doing the design work itself, then considered that the design needed to be changed and sought to enforce its desires through refusal to agree the 278 Agreement and impose on the developer additional obligations relating to diverting the public highway through their site. Ultimately, this was resolved by negotiation but it again incurred a six month delay. In the same example although the works have not been undertaken, the Highways Authority insistence in using their own design team and tendering and running the contract for the works would have added a further delay to the process.

Road Closure Orders

These do seem unnecessarily long winded. While there needs to be some protection for users of the road to be closed, the insistence on all objections being resolved before the Secretary of State will approve an order can lead to vexatious objections with no intrinsic value considerably delaying development. We believe the Secretary of State should be able to exercise discretion to approve a RCO even where there are objections. Serious objections can still be considered as part of a Judicial Review.

Health and Safety/Building Regulations

A number of prospective delays can be dealt with by the developer as part of preparing for a new scheme and we believe that this applies for example in the case of health and safety and building control – perhaps the distinction is that building control and health and safety matters can be dealt with by external independent appointees where as this is not the case in many of the earlier examples. We would commend the Review consider if any other procedural issues can be dealt in this way.

Conclusions

AR believes that there are number of non planning consents which can arise on a case by case basis with new proposals, some of these can be controlled as part of the development management process, but there is often significant overlap with work done as part of the planning permission process, involving technical consultees which is then duplicated in discharging conditions or seeking associated consents, be they highway agreements, utility diversions and drainage consents relating to protected species and many others. We strongly believe that in many cases once the principle of development has been established those responsible for subsidiary consents and/or consultees on those applications fail to give adequate priority in order to actually achieve development commencement and the economic and social benefits that flow from developments.

If you wish to discuss the issues raised in our response please contact AR using the details at the head of this letter.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'William McKee', written in a cursive style.

William McKee

Chief Executive