

BRITISH COUNCIL FOR OUT-OF-TOWN RETAIL

newsletter

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This planning news letter is the first in a series to be produced by Anthony Bowhill & Associates on behalf of BCOTR. It covers appeal decisions during the past year. It is intended to update this on a regular basis looking at new decisions and trends in government policy.

Retail permissions can be arrived at in one of three ways. First by the planning authority; second on appeal; third following a ministerial call-in.

Authorities' decisions can be reviewed by the minister if there is a departure from the development plan or a sufficient lobby to get the application called-in. On this basis or following an appeal the decision will give inspectors' or the Secretary of State's views on the key issues which then enable trends to be identified.

We have looked at some 46 decisions reported over the period October 1998 to September. 21 were allowed, with 28 dismissed, giving a success rate of 43%. Nationally 36% of appeals were allowed, while for major retail development the figure was 46%, so the current trend is not as dark as some may have suggested. Undoubtedly there has been a decline in successful retail appeals and operators have switched resources into areas now favoured by the government.

We review below a number of interesting decisions which highlight the government's policy approach. Decisions have been categorised into a number of groups according to their principal issue.

Sequential Test

As this is at the heart of the government's policy approach it seems sensible to start with those decisions where the test has been under scrutiny. Nine decisions have been identified with four allowed (45%) and five dismissed (55%) – about the same for the average of retail appeals.

Typical of the arguments was that for a Tesco's at Tolgus Hill, Redruth, which would claw back trade outflowing to nearby superstores. An alternative CRS town centre site would harm listed buildings, the conservation area and residents' amenities as well as reducing overall parking. It was not viable. With an agreement on securing bus routes Tesco's was the only site out of nine examined as being suitable on the sequential test. The application was therefore permitted by the Secretary of State.

However a supermarket at the Southam bypass near Stratford-on-Avon would be outside the town centre and although there was unlikely to be significant impact the sequential test had not been thoroughly explored. This meant refusing the application.

A Tesco's at Williamson Street, Hull, would be outside the city centre requiring car transport and as there was a better located site within the centre the appeal was dismissed.

Discounters, with their smaller sites, seem to have fared better when seeking non-central locations. Thus an Aldi at Radford Road, Coventry, would not harm existing centres and being edge-of-centre with no more suitable sites available would conform to PPG6.

Likewise a Lidl food store at Caerphilly Road, Cardiff, would not cumulatively harm other centres and met the sequential test as there were no suitable in-town sites and one owned by Tesco was not available to a competitor. The impact would be primarily on other main supermarkets which was effectively competition. The presence of a deep discounter would increase this. In this case loss of industrial land was not fatal as sufficient sites were available elsewhere. The appeal was allowed.

These decisions also highlight the need for flexibility when assessing alternative sites on the sequential test. It is not sufficient to simply look for sites of similar size with surface level car parking. Smaller formats may be required and deck level parking necessary to shoehorn in requirements. There will be obvious implications for the size and nature of such stores and their attractiveness to consumers.

Town Centre or Edge-of-Centre

We have identified 9 appeals in this category of which 8 (89%) were allowed. This is really an extension of the sequential test with the sites being more carefully chosen in town centre or edge-of-centre situations.

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Typical was the appeal by Sainsbury's at Wilton Road, SW1, where it was linked to social housing above. This accorded with UDP policies and no undue impact on local shops. Westminster were concerned about traffic congestion but their fears were without foundation as officers had accepted the company's generation figures.

A Tesco's at Gaywood Clock shopping centre, King's Lynn, would be on a transport corridor adjacent to the centre. While the sequential test had not been wholly satisfied, nevertheless this was an appropriate location not harming the local plan. Loss of housing land was counterbalanced by the provision of affordable homes on part. The appeal was allowed.

Typical of objections to in-centre stores is that of a new supermarket at Coppice Street, Shaftesbury. Here there was a marginal loss of open space but as the site was well served by bus services and would result in local pedestrian improvements the appeal was allowed.

Likewise a food store at South Street, Okeham, would take trade from existing stores but increase the catchment of the town. While there was some impact on amenity this was not serious and the appeal was allowed.

B&Q have been particularly successful with their new generation of DIY stores. At Clayton Playing Fields, Oldham, the recreation use would be replaced with a new stadium nearby. This, together with the significant job creation, the special site requirements of a development of this nature and the possibility of a landmark building, which could have a profound effect on Oldham's image combined with the absence of a suitable alternative site constituted special circumstances justifying approval.

Out-of-Town

These appeals have been largely unsuccessful. For example, continued use of old RAF buildings for retailing at New Portreath Road, Redruth, although supported by the council would be in an isolated location without public transport at variance with national and local policy on retailing. The Secretary of State therefore had no hesitation in refusing the application.

However at the Cadbury Garden Centre, Congresbury, demolition of 7,864m² and the erection of 12,027m² of mainly retail floorspace would be in breach of local policies. Retailing had continued for a long period of time in breach of a

1982 agreement which the council now considered unenforceable. Thus the appeal was allowed subject to a wider restriction on goods to be sold. Depending on circumstances countryside retailing can therefore be profitable!

Retail Impact

Four decisions turned on the store's impact on other stores or centres. All failed.

Tesco's on a seafront car park at Quebec Road, Mablethorpe, would not offend the sequential test as a town centre backland site was not readily available. However there would be up to 50% impact on the town centre with the loss of one supermarket which was unacceptable leading to dismissal of the appeal.

The re-determination of called-in application at Yeoman Way, Trowbridge, following quashing of the decision by the High Court indicated an impact of 17%-22% on the town centre. This might cause the closure of one supermarket and would be above the acceptable level of impact. The application was therefore refused.

A Morrison's superstore at Sunderland Road, Durham, would meet a shopping need but permission had already been given for a more acceptable site at Sherburn Road local centre and thus there would be two stores east of the city centre. The cumulative impact would be unacceptable with the appeal being dismissed.

Proposed stores at Walkergate Works and Walkergate Hospital, Newcastle-upon-Tyne would both be outside local centres and impact unduly on them. Sequential test only partially used and no flexibility in size allowed. Both sites difficult to access except by car and one on employment land in the recently adopted plan. Thus both appeals dismissed.

Clearly impact and the sequential test interact. Failure on one may well pull down a marginal case on the other. Impact is however imprecise and subject to various approaches by different consultants.

Nevertheless, a large store within a relatively small catchment area will usually impact on local centres. The eventual outcome will depend very much on the location of the store. If this meets the sequential test then impact is unlikely to be a hurdle but if the test is failed then impact will add to the difficulties of the site.

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Industrial Land

PPG6 warns against using sites for retail which are designated for other uses, particularly industry, employment and housing. Industry/employment sites are often brought forward for this purpose because of their redundancy, location and unsuitability for other uses such as housing. Despite some successes, of the 11 appeals examined only 2 were allowed (18%).

Despite no town centre impact and compliance with PPG6 and PPG13 a retail warehouse at Broadwater Road, Welwyn Garden City, would be on industrial land and represent a significant loss resulting in the appeal being dismissed.

The same happened at Stanley Green, Handforth, a "flagship" business which passed the sequential test. However prejudice to development strategy, possible harm to vitality and viability of town centres plus poor public transport led to the appeal being dismissed.

The loss of small business units at Tannery Road, High Wycombe, would be prejudicial although it would not harm the overall employment land supply. There was a conflict with the emerging retail strategy as the site was out-of-centre with other sites closer to the centre, which should be debated in the forthcoming local plan. On this basis the appeal was dismissed.

One successful store was an Aldi at Smiths Roofing, Hobley Drive, Swindon, which although on an identified employment site had to be set against a surplus of such land of which this was only a very small part.

However a proposed Lidl supermarket at South Harbour Road, Fraserburgh, would be on industrial land close to the harbour. There was a road and an uphill walk to the nearby centre which made it a difficult site for retail purposes. Its retention for industrial purposes was preferred, with the appeal dismissed.

Retail Planning: The Future

The McKinsey report Driving, Productivity and Growth in the UK cites the town and country planning system as being one of the regulatory barriers to the entry of new firms which also hinders the domestic expansion of the most productive UK companies. They give examples of food retailing and hotels where these barriers are holding back productivity.

At about the same time the DETR's Economic Consequences of the Planning System identified two key issues. The first is an increasing anti-development mood, directed at all forms of development but inevitably including business in its frame. The second is the absence of any clear pro-active policies to business development, whether national, regional or local and a failure at local, if not regional, level to appreciate the economic consequences of planning action.

Not surprisingly former planning minister Richard Caborn criticised the McKinsey report by saying that it identified the productivity gap, but omitted to take into account the cost of failure to regulate, for example, the environmental damage caused by excessive car travel to out-of-town shopping centres. Nor did it consider the social issues, the value of small shops to local people and their quality of life. He advocated competitiveness but in a sustainable environment.

As a result of the McKinsey report the Chancellor in his November 1998 pre-budget speech promised to re-examine planning laws and other regulatory impediments to business. He said he would be launching a review of the planning system with the aim of ensuring business competitiveness.

We had to wait a year for his proposals which were contained in his November 1999 pre-budget speech. Here he said:

"For the regulatory system, the Government will consider how to scrutinise regulatory bodies and review existing and proposed regulations to ensure that they are promoting, not impeding, new entrance and competitive forces.

"For the planning system, the Deputy Prime Minister is today announcing changes in planning guidelines that will, for the first time, facilitate the formation of high-tech clusters, for the first time the planning system will be required to promote competition"

The ramifications of mixing up the planning system with the need to encourage competition could be confusing. Is the DETR now supposed to adjudicate on rival planning applications on the grounds of the applicant's pricing policies? If a large site is earmarked for retail development will it now be encumbered on the DETR to ensure that the site is so divided that several different retailers will be able to compete against each other in similar lines.

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No guidance on competition has yet been forthcoming from the DETR and is likely to take some time in formulation. In the meantime the Minister has made clear his antagonism to any relaxation of planning laws to allow Wal-Mart to expand in this country through their acquisition of Asda. Speaking to the House of Commons Environment, Transport and the Region Select Committee he said that plans to adapt existing out-of-town retail parks or extend such permissions would have to go through the normal planning process. "Any proposals for redevelopment, rebuilding or expansion would require planning permission and be subject to PPG6" he said.

One area of concern is car parking. There is likely to be a two tier system as existing stores with higher levels of parking compete with newer stores which have a much lower parking ratio.

This is clear from a recent appeal decision of Costco. Their warehouse club at Handy Drive, Gateshead would not offend PPG6 as it will comprise many trade sales and thus only have some characteristics of a very large retail outlet. As a result UDP policy was met but the Secretary of State agreed with the Inspector that there should be a reduction in parking from 600 to 480 spaces. This was justified because increased congestion will lead to greater public transport use, one of the benefits of the S106 undertaking.

A recent consultant's report - Parking Standards in the South East (October 1998) - refers to provision of 0 - 5 maximum parking spaces per 1,000m² gross floor area.

However, the draft revision of PPG13: Transport (October 1999) suggests a somewhat more generous standard of food retailing of one space per 18 - 20 m² of gross floorspace and one space per 20 - 22m² for non-food retail. These equate to parking provision of 5.0 to 5.6 spaces per 100m² and 4.5 spaces to 5 spaces on a similar basis. Thus the proposals in PPG13 are less draconian and give a slight edge to non-food retailing as might be expected with bulky goods although this does not of course cover all the sector.

This will obviously be a keenly fought over area and local standards may justify a harsher or more lenient approach depending upon the location of a site and its relationship to public transport etc. This seems to be the area where the biggest battles are likely to occur and the PPG makes it clear that there will be a level playing field on parking provision between town centres and other more peripheral sites.

The views expressed in this news sheet although given in good faith must not be treated as a definitive statement of the law or practice. Anthony Bowhill & Associates cannot hold themselves liable for any action taken based on such general advice and recommend that specific advice is taken on any particular problem.

We would be very pleased to hear from Members of BCOTR with examples of their experience of the planning system which might be of general interest to the market. This newsletter is coordinated by Tony Bowhill who can be contacted on 0171-403 5500 or fax 0171-403 6805 or email tony.bowhill@anthonybowhill.co.uk