

ACCESSIBLE RETAIL newsletter

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CLARIFICATION ON TOWN CENTRE RETAILING POLICIES

On 11th April 2003 John Prescott as Deputy Prime Minister issued a statement clarifying policy on planning for town centre retailing. This is intended to up-date the Government's policy taking on board various statements and cases which have sought to clarify matters since PPG6 (June 1996).

In summary, applicants must:

- demonstrate that there is a need for the development;
- having established that such a need exists, adopt a sequential approach to site selection;
- consider the impact on nearby centres; and
- provide evidence on the site's accessibility by a choice of means of transport, as demonstrated by a transport assessment (see PPG13), the likely changes in travel patterns over the relevant catchment area, and any significant environmental impacts.

These tests apply equally to proposals for extensions as well as to new developments. Likewise the tests apply to leisure facilities.

Need must be demonstrated for proposals at the edge-of-centre or out-of-centre and which:

- are not in accordance with an up-to-date development plan strategy; or
- are in accordance with the development plan but that plan is out of date, is inconsistent with national Planning Policy Guidance, or otherwise fails to establish adequately the need for new retail leisure development and other development to which PPG6 applies.

No distinction is to be made between quantitative and qualitative need, both must be demonstrated. Greater weight is now placed on quantitative need in terms of comparison and convenience shopping.

Regeneration has been argued as a component of need but Government guidance does not support this interpretation. Whilst regeneration could be a material consideration it does not replace in part or in whole the question of retail need and the stringency of the above tests.

The sequential test is particularly important. All town centre options must have been thoroughly assessed before turning to sites elsewhere. Applicants must demonstrate flexibility and realism in terms of the format, design and scale of the development, and the amount of car parking, tailoring these to fit local circumstances.

Where a class of goods is capable of being sold from a town centre location, that is the preferred location for the retail development and there will need to be flexibility in the scale and format of proposed development. A retailing format which can only be provided at an out-of-town location is not regarded as meeting the requirements of the policy.

This is an area of concern to the Government via its policy of efficient and sustainable use of land and reduction in social exclusion. In examining the issue more efficient design and layout, greater use of multi-storey developments, more efficient car parking provision, mixed-use development and opportunities for home delivery services will be critically examined. Where development consists of defined elements such as a retail warehouse park or a grouping of retail leisure uses then there will be the necessity to consider how constituent parts could be accommodated on more central sites.

In considering relevant centres for site searches much will depend upon the scale of the proposal and its catchment and if it is to serve a wide area then it should be located in a centre which has a similar catchment.

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In some cases it may not be possible to retail bulky goods either in or on the edge of town centres. Developers and retailers will need to demonstrate that a majority of their goods cannot be sold from town centre stores and the onus will lie on them to prove this. However, the policy test set out above will still need to be met.

APPEAL DECISIONS

The number of decisions has dropped dramatically. In our last Newsletter we reported on 29 decisions but only 16 are reported here. There is also a difference in the success rate. Whereas last time 31% were successful now only 25% have been permitted. This indicates the stringency of current retail tests and John Prescott's clarification does nothing to suggest a weakening of this approach.

LEGAL DECISIONS

Shopping Centre or Not?

An Inspector found that a local parade of shops did not function as a centre. The Secretary of State disagreed and allowed the appeal for a superstore and this was challenged by neighbouring authority. This was a planning judgement and in the light of PPG6 and RPG3 etc. no fault could be found. Challenge rejected: **Wandsworth LBC -v- Secretary of State [2003] PLSCS 35.**

Shopping Decision Attacked

The overturning of an Inspector's recommendation for enlarging an Oxford shopping centre has been quashed as it was held there was insufficient reasoning and a lack of clarity in the decision letter: **Liberty International -v- Secretary of State (Times 3/3/03).**

SEQUENTIAL TEST

Sequential Test Hits Superstore

A Tesco at **Powerstation Road, Rugeley** would be on the edge of the town with harm to vitality and viability of town centre and also failed the sequential test. Although there was some evidence of qualitative need this was an unsustainable site not outweighed by re-use of brownfield land. Application *refused* (Cannock Chase DC, 19/12/02).

Insufficient Flexibility Crucial

A Focus DIY and garden centre at **Belvoir Way, Fairfield** should be looked at flexibly in the light of preferable alternative sites in the town centre. Company driven format, even though there was a need insufficient regard to the alternative site meant *dismissing* the appeal (E Lindsey DC, 23/12/02).

Employment Site Hits Superstore

A 3,700m² Asda at **Fordhouse Lane, Stirchley** would not harm the character or appearance of the area but no quantitative or qualitative need established and sequential test failed in edge-of-centre site. Harm to vitality and viability of the centre as well as loss of an industrial site. Appeal *dismissed* (Birmingham CC, 5/2/03).

No Harm to Centre

A 1,201m² discount foodstore redeveloping a vehicle sales site at **Huddersfield Road, Oldham** would meet a quantitative and qualitative need and provide employment opportunities with no sequentially preferable sites available and no harm to the vitality or viability of the centre. Appeal *allowed* (Oldham MBC, 27/1/03).

Lack of Need and Sequential Test

Sale of food and drink from a warehouse at **St Columb** would impact on the nearby town centre. No sequential test or need assessment. Appeal *dismissed* (Restormel BC, 5/2/03).

Store Fails Sequential Test

A 1,357m² Tesco extension (30%) at **Vimy Road, Leighton Buzzard** would be in an out-of-centre location with no hazard to road safety but insufficient evidence regarding linked trips and no qualitative need for durable goods retailing. Failed the sequential test with harm to the centre. Appeal *dismissed* (S Bedfordshire DC, 11/3/03).

Employment Land Hit

A health and fitness club at **London Road, South Poynton** failed the sequential test because there were other preferable sites and there would be a loss of employment land. Appeal *dismissed* (Macclesfield BC, 2/12/02).

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Restaurants Create Independent Use

Although two freestanding restaurants at **Hall Road Retail Park, Norwich** passed the sequential test as there were few outlets in the area they would create new activities reliant upon car-borne customers. They might be better located in the new district centre which was being considered as part of the local plan process. Appeal *dismissed* (APP/G2625/A/02/1094729, Norwich CC, 16/1/03).

Dispensary Disperses Jobs

An edge of centre pharmacy in a doctors' surgery at **Station Street, Meltham** would impact unacceptably on town centre shops and failed the sequential test. Appeal *dismissed* (APP/Z4718/A/02/1097320, Kirklees MBC, 22/1/03).

Weddings' Sequential Test

Use of a vacant industrial building for weddings of Hindus, Muslims and Sikhs has been *rejected* as no sequential test had been carried out. The use would attract many people and should therefore be within a town centre.

TOWN CENTRE

Scale of Retail Scheme

A major factory outlet centre of 21,700m² on 27.3ha adjoining the **Burntwood District Centre** has been judged to be out of scale with that centre and while some extension was justified this scale was inappropriate. Furthermore it would be car orientated. Application *rejected*.

Extension in Town Centre

A 1,582m² (60%) extension to a Safeway at **Lord Street, Southport** would not impair an important pedestrian link nor harm the conservation area. Suitable site. Appeal *allowed* (Sefton MBC, 21/11/02).

Lidl Extension

At **Great Western Road, Clevedon** this would not harm residential amenity because of noise or disturbance and would not add to road safety due to a reduced loading and delivery area. Appeal *allowed* (N Somerset DC, 13/2/03).

Delivery Hours Extended

Delivery at the **Kennington Lane, Vauxhall** Tesco was between 8am and 10pm on Mondays to Saturdays. Proposal for 6am to midnight and 8am to 6pm on Sundays too wide. Need to allow overnight shelf stacking, meant that 11pm was an acceptable balance and appeal *allowed* to this extent.

OUT OF TOWN

Comprehensive Defeat

A retail warehouse at **Holmeslack Lane, Preston** from a commercial unit was in an unsustainable location and would harm the vitality and viability of the town centre, conflicting with regeneration policies and loss of employment. Also failed the sequential test. Appeal *dismissed* (Preston BC, 28/1/03).

Retail Sales Banned

A condition at a BP service station at the junction of **Winchester Road** and the **A3 Petersfield** allowed only motor vehicle related sales but not a full range of groceries. Appeal dismissed on the basis that it would draw people from the town and conflict with countryside policies although there would be no effect on the successful town centre. Appeal *dismissed* (APP/M1710/A/02/1092205, E Hampshire DC, 3/12/02).

DECISIONS NOT CALLED-IN

At **White City Retail Park, Old Trafford** the replacement of two existing retail units by three on a well established retail park identified as such in the draft revised UDP would not have any adverse retail impact on existing shopping centres and thus the application was left to the planning authority to determine.

At **Frank Street, Preston** the application was for a non-food retail building, an A3 unit and alterations to a B&Q to form a non-food retail unit which was left to the council to determine as the site was allocated for retail (non-food) purposes, there was a qualitative/quantitative need for a DIY warehouse and development unlikely to have an adverse impact on the city centre. Would bring back into positive use a rundown area served by public transport.

A C C E S S I B L E R E T A I L

The views expressed in this newsletter 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 Accessible Retail with examples of their experience of the planning system which might be of general interest to the market. This newsletter is co-ordinated by Tony Bowhill who can be contacted on 020-7403 5500 or fax 020-7403 6805 or email tony.bowhill@anthonybowhill.co.uk

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