

# **Is the Devil in the Detail? Retail Land Use Planning and The Planning White Paper**

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Planning is not a technical and value free activity (Tewdwr-Jones, 2002). There will always be conflicts of interest which must be resolved and some positions will be privileged over others. Retail planning in the last 40 years or so has oscillated between tighter controls on where development may take place to more pro-development positions (Guy, 2007a). This reflects ongoing tensions between balancing commercial responsiveness and social responsibility, between fulfilling the ambitions of the retail industry and the aspirations of all consumers and between national consistency and local flexibility in decision taking.

Over recent years there has in the UK been an unprecedented level of investigation of both the retail industry and aspects of its regulation. The Competition Commission inquiry into the groceries market (Competition Commission, 2007a) is the latest in a sequence examining issues of power and competition in the food retail sector. The newly published English White Paper *Planning for a Sustainable Future* is the latest with respect to the land use aspect of regulation (HM Government, 2007). This paper looks at the genesis of the English White Paper and considers its implications not only for retail land use planning but also for the increasing conflation of retail competition regulation and retail land use planning. Whilst the White Paper proposes some changes, the exact dimensions and indeed directions and consequences of these changes will be the subject of further debate and negotiation.

### **From PPS6 to the Barker Review of Planning**

The 1990s heralded an era of tighter controls on the retail industry in terms of land use planning. Although it took some time to turn the tide of out of town development, there is general agreement that the 1996 Planning Policy Guidance 6, and its more recent 2005 version Planning Policy Statement 6 (ODPM, 2005) have influenced the location of retail development (CB Hillier Parker and Cardiff University, 2004). This ‘town centres first’ policy was supported by requirements of ‘demonstrating need’ for development and by a sequential approach to site selection whereby town centres are favoured over other non-central sites for development. The concept of ‘need’ however

has been somewhat difficult to fully pin down. Ministerial statements attempted to clarify what was meant by need in PPG6, but the very difficulty of achieving this satisfactorily may have contributed to early calls for the removal of the 'need' test (Adlard, 2001). The need test is essentially a quantitative assessment of forecast population levels, expenditure on different classes of goods and improvements in productivity. Part of the problem may lie in the narrow definition of need in quantitative terms and the underlying assumption that all retail floorspace is performing appropriately.

Regulation of the retail sector has been achieved not only through regulation of land use but also by industry regulators concerned with issues of retailer dominance, competition, pricing and supply chain. These two approaches have in the past remained essentially separate with land use planners unconcerned about protecting or promoting either particular trading formats or particular retailers, but more interested in particular land uses, classes and types. Industry regulators mainly in the form of competition authorities have focused on takeovers and mergers and abuses of trading practices. However the past few years have seen some reduction in separation of these approaches with regulators discussing planning effects on competition and planning authorities discussing productivity developments and competition enhancement (Retail Strategy Group, 2004).

Following the publication of an updated version of retail planning policy Planning Policy Statement 6 in 2005 (ODPM, 2005) dissatisfied groups began putting pressure on the competition authorities. This arose from the outcome of the Competition Commission inquiry into superstores in 2000 (Competition Commission, 2000), the subsequent mergers and takeover activity in the sector and the realisation that the 'two markets' model of shopping was problematic. The Association of Convenience Stores (ACS) joined other protagonists to demand action to save the 'small shop sector' and threatened legal action to force a new look at the sector. An all-party parliamentary committee supported by ACS took up these issues (APPSSG, 2006). Following publication of their report the Office of Fair Trading referred the sector to the Competition Commission for further investigation (Office of Fair Trading, 2005). Its report is expected in 2008 (Competition Commission, 2007a). Interim statements from the Competition Commission have demonstrated that they are looking at ways in

which land use planning may impinge on the competitiveness of the sector (Competition Commission, 2007b).

Concurrently the Treasury had commissioned a review of UK land use planning (Barker, 2006). The Barker Review was concerned with the whole spectrum of land use planning including both procedures and principles and arose in the main from Treasury concerns over the lack of productivity growth, a sense that land use planning was acting as a brake on innovation and the length of time taken for some high profile national significance planning inquiries. Controversially the Barker Review recommended that changes be made to retail planning policy. The focus for change was one of the key policy instruments for the implementation of PPS6 – the need test. PPS6 only requires that the need test be applied to large developments outside existing designated town centres. Large developments in town centres do not have to meet any need requirements, although their impact on the existing town centre retail structure will be subject to an impact test. The Barker Review took the position that:

‘Planners should not be attempting to determine if there is sufficient ‘need’ for a given application – rather the applicant, who is bearing the risk, should be responsible for assessing that likely demand is sufficient to make the development viable. This has implications for the ‘town centre first’ policy priority. There are a number of means by whereby this goal is promoted including the sequential test and the impact tests of Planning Policy Statement 6. These should be retained. But the requirement for applicants to demonstrate need should be removed, and can be done without harm to the overall policy’ (Barker, 2006, 7).

Barker then went further however and put together competition policy and land use by noting:

‘In addition, where there are concerns about potential consumer detriment caused by restricted competition in local retail markets, should the Competition Commission conclude that there is evidence of anti-competitive conduct, the Government will also need to play a role in encouraging new entrants to a market where a new site becomes available.’ (Barker, 2006, 7)

## **From the Barker Review to the White Paper**

The Barker Review recommendations evoked a diversity of responses. The extent to which the need test was an integral part of PPS6 immediately became the focus of attention (Bach, 2007a, Findlay and Sparks, 2007, Guy, 2007b, Guy, 2007c). From the outset of PPS6, definitions and interpretations of need were recognised as problematic both conceptually and practically (Findlay and Sparks, 2006).

For example regeneration initiatives with retail-led schemes were often unable to get planning permission as the sites were not strictly in the town centre and no overall quantitative need could be demonstrated. This was despite the fact that many of the people living in these areas had poor local access to high quality modern facilities (Anderson, 2007, Dunford, 2006, Guy, 2006). This underlined the view that quantitative need was in itself inadequate as a measure and that other qualitative factors should be of importance.

Separately major retailers, in particular Asda, had been lobbying the Government with complaints that the need test was making it difficult to create a competitive market. Incumbent retailers in an area already provided all the 'needed' retail space for convenience goods and also were seeking to extend their stores to absorb any possible future need. This was in Asda's view restricting competition. This issue of new entrants is part of the Competition Commission investigation (Competition Commission, 2007b).

Academically Guy has taken the position that the need test is dispensable:

'The conclusion can be drawn therefore that policies relating to need assessment could be simplified in future government guidelines on retail planning. Quantitative need appears to be in most circumstances a redundant criterion' (Guy, 2007b, 136).

This position emphasises the issue of quantitative need as opposed to wider considerations but is also based on the view that the impact test will capture a more important dimension of change.

Arguments for and against the need test have appeared in the stakeholder literature. Not surprisingly perhaps, these broadly accorded with the orientation of the group or organisation towards in town or out of town retailing. For example the Association of Town Centre Management, Action for Market Towns and the British Council of Shopping Centres were all worried by the idea of removing the need test (Action for Market Towns, 2007, British Council of Shopping Centres, 2007, Quin, 2007). The British Council of Shopping Centres considered that whilst industry requirements matter and whilst the planning system has to be efficient and effective neither is actually trying to deliver successful town centres. Removal of the need test in their opinion might make the delivery of successful town centres impossible as other tests are not sufficiently robust. As publication of the White Paper grew closer stakeholders became more polarised in their views. The British Council of Shopping Centres warned that:

‘any uncertainty , even a rumour that policy could change, is likely to be enough to defer, if not deter, investment’ (Bach, 2007b)

By contrast the CBI stated that:

‘The ‘need test’ is overly complex and costly for developers and business...The CBI would welcome the removal of the need test, however this would have to be considered in the context of the wider sequential and impact tests.....the CBI would not support a review that could lead to more onerous information requirements being placed on applicants’ (CBI, 05/03/07).

The diversity of opinion and lack of consensus about the outcomes are summarised in Findlay and Sparks (2007).

### **The Planning White Paper**

It is against this background that the White Paper was published in May 2007. Much of the paper addressed procedural not directional issues. The pro-development stance of the Barker Review was not fully present in the White Paper in the way that some

had feared. Indeed the White Paper did not really pioneer a new way of thinking about planning but instead it adopted a more ad hoc position focusing mainly on technical issues of achieving policies rather than setting goals.

Ahead of publication Ruth Kelly (Secretary of State for Communities and Local Government) had assured land use planners that:

‘We remain absolutely committed to promoting the vitality and viability of town centres and we will be sticking to our town centre-first policy, while providing choice, competition and innovation. The planning system has a real role in supporting thriving high streets, where small shops can succeed and provide real choice for consumers.’ (Kelly, 2007)

Whilst on the surface this speech offered some reassurance that commitment to the ‘town centres first’ policy would continue it suggests some degree of confusion and contradiction through the equation of high streets and small shops. This of course does not represent the realities of retail structure. The White Paper proposed a review of the policy and various tests:

‘We therefore intend to review the current approach in PPS6 to assessing the impact of proposals outside town centres. We will replace the need and impact tests with a new test which has a strong focus on our town centre first policy, which promotes competition and improves consumer choice avoiding the unintended effects of the current need test’ (HM Government, 2007, para 7.55).

The issue of the need test is described by Ruth Kelly as follows:

‘The current needs test can sometimes be a blunt instrument to gauge the impact of development on town centres. In future we will require better assessments of how new developments will affect town centres, including the impact on high streets and local shops’ (Hansard, 2007, col.981).

However when questioned over her ‘relaxation’ of planning powers for retail development by the Conservative Party she replied:

'I shall give an example. If a developer put in an application for an edge of town centre development that would drain the town centre's vitality, it could be refused on the basis of the needs test saying that there was already existing capacity in relation to another developer who had an out of town site. That does not help town centres. In future we want a stronger impact test that considers the impact of any development on the town centre' (Hansard, 2007, col. 983).

This is a rather confusing statement and it is not clear how Ruth Kelly sees the process of retail development.

Perhaps not surprisingly the media became even more confused. The Times had an article with the title 'Proposals give supermarkets an easy ride to out of town centres' claiming that 'big supermarket chains were yesterday given the opportunity to build out of town developments after the Government released plans to relax planning laws'. (Butler, 2007). Similarly the Daily Telegraph had an article entitled 'Supermarkets win fight to build on edge of towns' (Clover, 2007) whilst the Guardian had 'The Tesco clauses betray big business's grip over Labour (Jenkins, 2007). This does not seem to follow the statements in the White Paper

Industry and stakeholder responses were more measured with their most favoured response being that 'the devil is in the detail' (British Council of Shopping Centres, 2007, Hall, 2007, Liberal Democrats, 2007, Mayfield, 2007, RTPI, 2007):

'We welcome the Government's continuing commitment to its 'town centre first' approach to ensure that the proportion of new retail floorspace going into town centres will continue to rise. We are pleased that out of centre proposals will still be subject to close scrutiny, which is essential if investors are to have the confidence to undertake town centre developments'

'In a nutshell the devil is going to be in the detail of the document which DCLG issues for consultation in the summer'. (BCSC, 2007)



Lobby groups such as Friends of the Earth immediately saw the review of the need test as an opportunity for more stringent regulation with a more demanding need test which would include consideration of which retailer was making the application in order to stop further multiple retailer growth (Friends of the Earth, 2007). They have made similar points to the Competition Commission inquiry. Small shop lobbies generally considered that the White Paper would favour larger retailers (Association of Convenience Stores, 2007) though the basis for this is unclear.

### **Looking ahead: is the devil in the detail?**

The remainder of 2007 will see further positioning and lobbying about the way forward. Some see the uncertainty involved as itself prejudicial to existing policy. Although Ruth Kelly appeared committed to the town centre first policy there remained a certain ambiguity in other parts of her statement and a worrying confusion about her understanding of the sequential approach. For example para 7.52 says:

‘Where development outside the town centre would not impact detrimentally on the town centre, and it is otherwise acceptable in planning terms, both plans and planning decisions should reflect this’ (HM Government, 2007).

There is some justification for the view that the ‘devil is in the detail’.

Decisions on future policy will also await the outcome of the Competition Commission inquiry and report due in early 2008. This again draws the two regulatory processes closer together and does perhaps suggest that retail *land use* planning may indeed be reaching its ‘sell-by’ date (Findlay and Sparks, 2006).

Whilst many see that the next few months of review and consultation will be crucial in formulating future policy, they are focused like the White Paper on the technical aspects of planning rather than on the goals and vision to be achieved. The goals and vision should set the context for evaluating what potential developments can deliver and contribute to the location and consumer. The first question of course is what kind of retailing we actually want? There are real choices to be made. A focus on technical methods cannot make these choices. Place ‘shaping’ is high up the political agenda. It

is the rightful role of planning and the 'town centre first' agenda is already acting as a place shaping agenda. However there is also an opportunity to make more exciting places and offer a more creative retail environment. Whilst the devil may be in the detail, it is not the detail, but the bigger picture, which should determine the shape of future retailing. Perhaps more discussion on planning, competition and the bigger picture is also now needed.

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