

## The planning framework for grocery retailing

### Introduction

1. This appendix provides an overview of the law and policy primarily relating to retail planning in England. Those differences between the English regime and the regimes of Wales, Scotland and Northern Ireland are set out in paragraphs 15 to 19.

### Features of the planning framework

2. The principal framework through which planning policies are delivered in England is the Town and Country Planning Act 1990 as modified by the Planning and Compulsory Purchase Act 2004. The key features of this framework are the following:
  - (a) There is a hierarchical structure of guidance and plans at national, regional and local level against which planning applications are assessed. These include Planning Policy Statements (PPS) at the national level, Regional Spatial Strategies (RSS) developed by regional planning bodies,<sup>1</sup> and Local Development Frameworks (LDF) developed by LPAs.
  - (b) Decisions on planning applications, which in the majority of cases are taken by the relevant LPA, should be made in accordance with the LDF unless other 'material considerations' are sufficient to override the plan.
  - (c) The outcome of a planning decision may take one of three forms:
    - (i) unconditional permission;
    - (ii) permission subject to conditions; or
    - (iii) refusal.
  - (d) A planning decision may be overturned on appeal to the Secretary of State for the Department of Communities and Local Government (the Secretary of State).

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<sup>1</sup>In all regions outside London the regional planning body is the Regional Assembly.

3. The Secretary of State sets planning policy and influences local planning decisions through a variety of means. PPSs and other guidance notes issued by the Secretary of State set the overall framework for regional and local development plans. The Secretary of State can also make representations to regional and local bodies regarding draft development plans and, if necessary, can require modifications to be made. Finally, the Secretary of State can ‘call-in’ individual planning applications for decision following a public inquiry. These planning applications are generally the most complex and controversial.
  
4. PPS6, ‘Planning for Town Centres’, is the most relevant of the PPSs issued to grocery retailing. The following paragraphs provide an overview of the key features of PPS6, namely its objectives, the town centre first approach to retail development, the ‘need test’, the requirement for developments of an appropriate scale, and the need to consider the impact of new developments on existing retail centres.

### **Planning Policy Statement 6—objectives**

5. The key objective of PPS6 is the promotion of ‘vital and viable’ town centres through:
  - (a) planning for the growth and development of existing centres; and
  - (b) promoting and enhancing existing centres, by focusing development in such centres and encouraging a wide range of services in a good environment, accessible to all.
  
6. PPS6 also refers to ‘other objectives’ which need to be taken into account in the context of the key objective set out in paragraph 5:
  - enhancing consumer choice by making provision for a range of shopping, leisure and local services, which allow genuine choice to meet the needs of the entire community, and particularly socially-excluded groups;

- supporting efficient, competitive and innovative retail, leisure, tourism and other sectors, with improving productivity; and
- improving accessibility by ensuring that existing or new development is, or will be, accessible and well-served by a choice of means of transport.<sup>2</sup>

7. The first two 'other objectives' set out in paragraph 6 indicate that choice and competition are factors that should be considered in assessing planning applications. However, planning authorities do not interpret choice and competition as meaning that they should consider the identity of an applicant in terms of how any new retail development will compete with existing retailers and ensure improved market outcomes for consumers in terms of factors such as price, quality or service. Rather, these objectives generally appear to be interpreted in terms of, first, providing for different types of retail development, which for consumers may be complements rather than substitutes, and second, providing for the development of retail centres that can compete with other retail centres for shoppers through providing an attractive destination with a good range of shops.

### **Town centre first or sequential approach**

8. Under PPS6, applicants wishing to develop a retail site outside a town centre, which has not been allocated to retailing in an up-to-date development plan, are required to demonstrate that there are no other centrally-located sites suitable for the development. The sequential approach was introduced in 1996 and is intended to protect the vitality and viability of town centres. This approach contrasts to a more relaxed retail planning policy in the 1980s that had led to the rapid development of numerous out-of-town shopping sites (see Section 3 of the main report).

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<sup>2</sup>PPS6 also refers to wider policy objectives including promotion of social inclusion, regeneration of deprived areas, promotion of economic growth, delivering more sustainable patterns of development, and promotion of good design.

## Requirement to demonstrate 'need' (the need test)

9. Applicants wishing to develop a retail site outside a town centre, which has not been allocated to retailing in an up-to-date development plan, are also required to demonstrate the 'need' for that development. In addition, they must demonstrate that there are no more centrally-located sites suitable for the development.
10. Need is assessed in both qualitative and quantitative terms. PPS6 states that in assessing need, LPAs should place greater weight on quantitative assessments, while still taking qualitative considerations into account. Quantitative assessments of need seek to assess whether there is an excess of demand for retail floorspace within the broad categories of 'comparison' and 'convenience' goods. Such assessments will take into account factors such as existing and forecast population levels, expenditure on convenience and comparison goods in the catchment area, and existing levels of floorspace in the relevant category.<sup>3</sup>
11. The Barker Report<sup>4</sup> expressed support for the 'town centre first' policy and the impact and sequential tests that underpin it, but recommended removing the need test.<sup>5</sup> The Government, in responding to the Barker Report, has said in its Planning White Paper that it will improve the effectiveness of the town centre planning policy by replacing the need and impact tests with a new test, which has a strong focus on the

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<sup>3</sup>Groceries are considered to be a 'convenience' good.

<sup>4</sup>The Government announced in the 2005 Pre-Budget Report that Kate Barker had been asked to lead an independent review of land use planning, focusing on the link between planning and economic growth. The final report for the review was published on 5 December 2006.

<sup>5</sup>The Barker Report states that:

the current system of needs tests in town centre first policy also can have perverse effects: it protects incumbents and gives preference to operators that have lower sales densities. These incumbents may be operating in out-of-town shopping centres, leading to the effect that if need is demonstrated and there is no impact on the town centre, an existing out-of-town shopping centre could expand while there is no application for a sequentially preferable site in the town centre. Furthermore, incumbents may find it easier to expand incrementally while prospective local entrants fail at any one time to demonstrate sufficient need for a one-off increase of space. The needs test should therefore be removed.

Barker Report *Barker Review of Land Use Planning, Final Report—Recommendations*, December 2006 paragraph 1.33.

town centre first policy, promotes competition and improves consumer choice, while avoiding the unintended effects of the need test.<sup>6</sup>

### **Scale of development**

12. PPS6 requires that proposed retail developments be of a scale appropriate to the catchment area that the proposed development will serve (ie regional provision in regional centres and local provision in local centres).

### **Impact of development**

13. PPS6 also requires that any development of more than 2,500 sq metres of gross floor area that is in an edge-of-centre or out-of-centre location, and not in accordance with an up-to-date development plan, must be accompanied by a retail impact assessment (RIA). An RIA seeks to assess the impact of the proposed development on the vitality and viability of existing centres within the catchment area.

### **Planning in Scotland, Northern Ireland and Wales**

14. Substantially similar arrangements to those in England apply in Scotland (contained in Scottish Planning Policy SPP8, August 2006), Northern Ireland (contained in PPS5, 1996 with an updated draft published July 2006) and Wales (contained in Ministerial Interim Planning Policy Statement (MIPPS) 02/2005). However, they are

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<sup>6</sup>The White Paper states that:

we recognise that there are issues around the practical effect of the current policy requirement on applicants to demonstrate the need for proposals outside town centres, where these are not supported by an up-to-date development plan. This 'need test' has proved in some respects a blunt instrument, and can have the unintended effect of restricting competition and limiting consumer choice. For example, it is possible under current policy for a new retail development on the edge of the town centre to be refused because there is an existing or proposed out-of-town development which meets the identified 'need' even though the new retail development would bring wider benefits and help support the town centre. In addressing this issue, we have two clear objectives. First, we must support current and prospective town centre investment, which contributes to economic prosperity, and to our social and environmental goals. Simply to remove the 'needs test' could put this at risk. Second, we must ensure that planning promotes competition and consumer choice and does not unduly or disproportionately constrain the market. 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, and which promotes competition and improves consumer choice avoiding the unintended effects of the current need test.

*Planning for a Sustainable Future*, White Paper, 21 May 2007, paragraphs 7.53 to 7.55.

different administrative regimes and we review some key differences in the following paragraphs.

15. In Scotland, there is less emphasis, in most cases, on quantitative assessments of need, but a heavy reliance on ensuring that developments satisfy the sequential test and a greater emphasis on qualitative assessments of need. In some areas, local development plans incorporate quantitative assessments of need in a similar way to that in England.<sup>7</sup> It does not seem that these differences in the planning regime between England and Scotland have any significant impact in terms of the pattern of grocery retail development.
  
16. In Northern Ireland, the existing planning guidance is relatively general. However, draft guidance has been prepared which is substantially similar to PPS6 in England and contains a need test. An impact assessment has to be performed for stores larger than 1,000 sq metres (compared with 2,500 sq metres in England). The Northern Ireland Independent Retail Trade Association has told us that the lack of a need test until recently has meant that in general retailers have applied to build larger supermarkets in Northern Ireland than in England.
  
17. Northern Ireland licensing laws also appear to play a significant role in influencing new entry into grocery retailing. We understand that there is a cap on the total number of licences available for the sale of alcohol off licensed premises. As alcohol sales are an important component of convenience store sales, this means that new entry into this sector is more constrained than would otherwise be the case.

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<sup>7</sup>Asda, Sainsbury's, Morrisons and M&S all told us that in Scotland some form of quantitative capacity assessment is taken into account by planning authorities within Scotland's central belt in the preparation of development plans and Morrisons also told us that 'need' was taken into account in the assessment of planning applications that were outside the development plan.

18. Finally, the regime in Wales has fewer key differences than the other countries when compared with the English planning framework. However, the Welsh guidance notes that it is unlikely that the retail need currently exists for the development of any new large regional shopping centres (more than 50,000 sq metres of gross floor space).