

RETAIL DEVELOPMENT PROPERTY BRIEFING PAPER 8

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THE 'NEED' FOR DEVELOPMENT

In recent years, Jim Morrissey has advised many private sector clients and over 50 local planning authorities on retail strategies, policies and proposals, as Director of Planning and Development Consultancy at Colliers Erdman Lewis, the West End Property Consultancy, and more recently as Planning Director of Chase & Partners, Commercial Property Consultants.

Graham Chase, Senior Director of Chase & Partners is the immediate past Chairman of the Commercial Market Panel of the Royal Institution of Chartered Surveyors and in his capacity of Retail Property Spokesman appeared before the House of Commons Select Committee investigating Shopping Centres and their Future.



Introduction

A long held and fundamental principle of the planning system in the UK has been that, with the exception of development in the green belt, a developer has not had to demonstrate a need for development as a prerequisite of the grant of planning permission.

In this regard, PPG1 'General Policy and Principles' makes no reference to the demonstration of need as a necessary prerequisite. It could be argued, therefore, that the introduction of any fundamental change should properly be enshrined in this foundation PPG.

The current version of PPG6 does refer to the issue of need, at paragraph 1.10, however, it is clearly related to the preparation of development plans. In this way, PPG6 states that need is a proper consideration when drawing up development plans, but it is not so forthright in the consideration of individual planning applications. This has caused much heated debate at public inquiries over the past few years since the implication is that planning applications are to be subjected to a 'lesser test' than development plan proposals, which does seem altogether inappropriate.

Hambleton

In this recent High Court Judgement, Somerfield Stores sought to challenge the decision of Hambleton district council, concerning the grant of planning permission for a large new foodstore in Northallerton. The high court challenge was made on the grounds that, inter-alia, the local planning authority failed to apply PPG6 properly, or at all, in relation to:

- whether there was a need for the development,
- whether redevelopment would sustain and enhance the vitality and viability of the centre.

In the event, Mr Justice Dyson ruled that PPG6 does not require need for development or enhancement of town centres to be shown as a condition of the grant of planning permission. Moreover, he ruled that PPG6 does not render need and enhancement a material consideration in all cases.

This, it must be remembered, is the definitive decision of the courts on the interpretation of PPG6, which remains current government guidance and policy.

Mr Caborn's 'Clarification'

Mr Caborn has recently (11.2.99) issued a "clarification" to PPG6, by way of an answer to a Parliamentary question. The outcome is that a failure to demonstrate the need for a development would normally justify the refusal of planning permission. This requirement relates to proposals which are located at an edge of centre or out of centre location and which are not in accordance with an up to date development plan strategy.

However, the 'clarification' is actually a significant change in policy and one that has been made in the absence of proper consultation. Since it is government advice that the weight to be given to planning policy increases with the amount of consultation undertaken, the absence of any open consultation by Mr Caborn should logically undermine the weight to be given to his 'clarification'. PPG6 remains extant and it remains the case that the Dyson judgement on the Hambleton case is the definitive position on the issue of need, as interpreted by the courts.

In these unusual circumstances, it follows that although Mr Caborn's 'clarification' is a material consideration in relation to planning applications, there must be some doubt as to the 'weight' it is to be given in the decision making process.

So What is 'Need'?

Notwithstanding the above it is regrettable that Mr Caborn has neglected to set out his view as to what constitutes need. All he does reveal is that need is something other than capacity or demand; however, he did opine that capacity and demand may form part of the demonstration of need! So what is need?

The term need is frequently used in connection with housing and employment issues, where the consequences of under provision are more easily identifiable, such as homelessness and unemployment. In these cases, meeting the need takes on an understandable element of 'social imperative'. However, the same cannot be said for shopping! Need in the retail context is more subjective and almost lacking in any element of 'social imperative'.

For our part, we are not convinced that a single comprehensive definition of "need" in a retail context can be promoted. In our view, need will differ from place to place and from time to time. However, its constituent elements will include:-

- the quantitative capacity for the proposal,
- meeting a qualitative deficiency in existing provision (either in overall terms or in a spatial sense),
- a related absence of harm to interests of acknowledged importance,
- broad compliance with recognised planning objectives (e.g. sustainability),
- meeting the requirements of the local community, which the planning process is there to serve.

It can also be argued, reasonably, that if other town centres continue to improve their retail 'offer' then even standing still is akin to decline. In this way there is a need for all town centres to remain competitive if they are to maintain and enhance vitality and viability.

Systematic Evaluation ?

The absence of a generally agreed definition of 'need' in the retail sense will cause problems in the planning system in the immediate future. However, the application of the 'need' test to leisure developments is likely to prove even more contentious. How, for example, are we to evaluate the need for a family entertainment centre, a bingo hall or a bowling alley? If the government is to continue to emphasise the requirement to demonstrate need, then in the interest of open and consistent plan making and implementation it is incumbent upon them to be more expansive as to what need comprises and how can it be properly evaluated. Unless or until such time as this happens, the above lists of indicators will, we hope, provide some systematic guidance to both planning authorities and developers.

FURTHER INFORMATION

Further copies of this and previous briefing papers may be obtained from Jim Morrissey or Anthony Ferguson as may additional information or assistance on planning and development issues.

Chase & Partners provide comprehensive retail planning and development services to the private sector and local authorities, including 'health checks' and retail impact assessments, and the sequential approach. Graham Chase and Jim Morrissey have advised over 100 private sector clients and 50 local authorities on retail planning matters.

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