

RETAIL PLANNING POLICY: THE END OF THE NEED TEST....OR ARE REPORTS OF ITS DEMISE BEING EXAGGERATED?

Despite widespread expectation that the Government will abandon the requirement for developers and retailers to demonstrate 'need' for retail proposals, there are moves afoot to retain this requirement in national planning policy.

One of key recommendations emanating from Kate Barker's investigation of the Planning system in 2006 was that the 'need' test for retail developments had led to 'perverse effects' and potentially inhibited competition in the retail sector to the detriment of the consumer.

In launching the Proposed Changes to PPS6 in July 2008, the, then, Secretary of State for the Department of Communities and Local Government, Hazel Blears MP, conceded that the 'need test' may have "unintentionally stifled diversity and consumer choice", and, as a result, it should no longer form part of the process of assessment of development applications. It was proposed that it should be replaced by a broader "impact assessment framework."

The Government did not then proceed with the proposed amendments to PPS6 but, instead, initiated a further round of consultation on a new draft of PPS4 entitled 'Planning for Prosperous Economies' which proposed the amalgamation of all national planning policy on economic development (including retailing and town centres) into one consolidated PPS.



The draft PPS4 incorporated the earlier changes proposed to PPS6 – including the proposed removal of the need test in favour of the broader "impact assessment framework." Consultation on the draft closed on 28th July.

In the light of concerns raised in a number of quarters about the possible impact the removal of the 'need test' might have on existing town centre policy, the cross-party Communities and Local Government Committee invited evidence and undertook an inquiry in May of this year. Its report, entitled 'Need and Impact – Planning for Town Centres' was issued on 25th July and is designed "to influence the Government's thinking before it finalised its changes to town centre planning policy." It can be accessed at:

<http://news.parliament.uk/2009/07/committee-publish-report-on-planning-for-town-centres/>

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Having considered the evidence, the Committee has declared that, in sharp contrast to the Barker Review, it is unconvinced that the 'need test' is having undesirable effects and it continues to serve a useful planning function. Accordingly, the Committee has recommended that the 'need test' should remain part of planning policy guidance **alongside** the new impact assessment framework. It argues that, to remove in the current economic climate would not be beneficial and could put existing town centres at unnecessary risk.

Competition Commission

In parallel with these changes the Competition Commission has been investigating the UK Grocery Market. Its original report, published in April 2008, concluded that action was needed to improve competition in a number of local markets, and it included a recommendation that a 'competition test' be included in planning decisions on larger grocery stores.

Tesco Stores Ltd. successfully appealed against this recommendation and, in March 2009, the Competition Appeals Tribunal ruled that the Commission had not properly assessed the economic costs of the test, and that it had failed sufficiently to address its "proportionality and effectiveness".

Following a further investigation, the Commission issued a new report last month which seeks to prove the case for the test and show that it would have the intended effect - namely to help stimulate competition and stop existing retailers consolidating their position in local areas and also stop areas from being dominated by individual retailers in

the first place. The Commission's latest analysis examines these benefits against the costs likely to arise from any delay between a dominant retailer's development being blocked and a rival's alternative taking its place; it has concluded that, over the longer term, the benefits to consumers would outweigh any such initial costs.

Chase & Partners Commentary

In the light of the Committee's report and the latest Competition Commission's findings there is a likelihood that the final version of a revised PPS4 (incorporating the provisions currently found in PPS6) will not only retain the 'need test' but also the additional requirements of the broader 'impact assessment framework' as well as include a competition test for future foodstore development.

This would undoubtedly "raise the bar" for retailers and developers and further complicate the elaborate assessment process that those seeking to promote development in locations not identified in the development plan already have to negotiate. How it can be reconciled with Government's stated aim in launching PPS4 of "providing greater certainty to businesses looking to submit planning applications and assist local authorities take speedier decisions on planning applications" remains a mystery...!

If you would like to discuss the changes being proposed to prevailing policy, the Committee's Report and the potential implications these may have for your activities then please contact either Graham Chase or Huw Williams at Chase & Partners on the number below or email:

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