



Town centres, planning and supermarkets

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- This note covers the debate over the way that the planning system protects retailers in the town centre by restricting supermarkets.
 - Before the Election, the main debate was between two groups. Some wanted to retain the “needs test” so that consent was only granted for retail development if planners considered that more retail development was needed. Others, like the Competition Commission (CC), wishing to replace it by a competition test to ensure the approval of applications that would increase competition. The Labour Government replaced the needs test by an impact test.
 - The Government announced it would retain the Town Centre First policy.
 - The Government published the draft National Planning Policy Framework (NPPF) in July 2011. The NPPF will replace all Government planning guidance in April 2012. The impact and sequential tests are retained but the need test has not returned.
 - The CLG Committee argued that the drafting of the NPPF would weaken the Town Centre First policy.
 - Research at the LSE in 2011 suggests that restrictive planning policies have reduced productivity in the retail sector by 20%.
 - The Prime Minister commissioned Mary Portas to write a review of the high street. The review in December 2011 called for the Secretary of State to have exceptional powers to sign off all new out of town developments.
 - Other issues relating to supermarkets are covered in: [Supermarkets: Competition Concerns](#) (SN/BT/3653) and [The Groceries Code Adjudicator](#) (SN 6124).
 - On 27 March 2012, DCLG published the final version of the [National Planning Policy Framework](#). It came into effect immediately, superseding the 2011 draft and all other planning guidance (except on waste). This note (and several others) will be updated to take account of the new guidance as soon as possible, but it may take time to work out

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the implications of the new guidance. Until then, this note may contain statements that are superseded by the new guidance.

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1 Background – policy debate under the Labour Government

There are two completely different concerns relating to supermarkets, town centres and out of town shopping. The first concern is that supermarkets on the edge of towns or out of town are taking trade from town centres. The second concern is that the planning system makes it hard for new supermarkets to be established, thus restricting competition and leading to higher prices for consumers.

Broadly speaking, the first concern informed John Gummer’s planning policy in 1996, reaffirmed in Planning Policy Statement 6 in 2005.¹ Planning authorities should carry out assessments of needs for town centres, which should provide the basis for identifying the need for additional development. This is known as the “needs test”. It was also supported by Friends of the Earth,² and the All-Party Parliamentary shops group.³ The CLG Select Committee called for it to be retained.⁴

The second concern informed Kate Barker in her report on land use,⁵ and the Competition Commission in its 2008 report on the groceries sector.⁶ They are concerned that the “needs test” restricts competition. Once one supermarket has been established in a town, it is difficult for a rival to obtain planning permission. This allows that supermarket to charge

¹ ODPM, Planning Policy Statement 6: Planning for Town Centres, (PPS6), 2005

² FOE Press Release, *Town centres under threat from planning shake up*, 7 February 2007

³ House of Commons All-Party Parliamentary Small Shops Group, *High Street Britain: 2015*, 15 February 2006

⁴ Communities and Local Government Committee, [Need and impact: planning for town centres](#), 25 July 2009 HC 517 2008-9

⁵ Kate Barker, [Barker Review of Land Use Planning Final Report – Recommendations](#), December 2006

⁶ Competition Commission Press, [Groceries Market Investigation – Final Report](#), 30 April 2008

higher prices. Tesco is often the incumbent whom other supermarket chains wish to challenge. The Competition Commission argued for a competition test.⁷

The Labour Government tried to support both arguments, to protect the town centre while also offering more competition in retailing. The Planning White Paper of May 2007 accepted Barker's recommendation of replacing the "needs test" but only to replace it by a test more favourable to town centres, adding:

7.54 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.⁸

The Labour Government published [Planning Policy Statement 4: Planning for Sustainable Economic Growth](#) in December 2009, along with companion document, [Planning for Town Centres: Practice Guidance on Need, Impact and the Sequential Approach](#). The need test was replaced by an impact test i.e. impact on the town centre(s). However, the guidance requires other factors, including need, to be taken into consideration.

2 The Government's Town Centre First Policy 2011-12

In March 2011, a DCLG Minister explained Government policy:

Mr Laurence Robertson: To ask the Secretary of State for Communities and Local Government what recent steps he has taken to promote (a) the regeneration of town centres and (b) high street shops; and if he will make a statement.

Greg Clark [holding answer 14 March 2011]: The Government are fully committed to supporting town centres. Town centres are at the heart of our communities and neighbourhoods and have an important role to play in the growth of local economies. Through our new approach to planning and regeneration we will provide residents and local authorities with local rewards and incentives to enable them to drive regeneration and growth that is right for their needs.

We are giving new powers and rights for local councils and communities to determine and influence what happens in their area, for example, through neighbourhood planning, local enterprise partnerships, the power of competence and community right to buy. We are increasing local control of public finance by de-ring fencing and enabling local pooling of budgets. We are offering powerful incentives for housing and business growth, through the new homes bonus and changes to the community infrastructure levy and we are considering options to enable councils to retain locally-raised business rates and to grant business rate discounts if they wish.

The "town centre first" policy will continue to be strongly expressed in national planning policy currently under review through the National Planning Policy Framework. The Government's firm intention in reviewing the policy is to make it more accessible and clearer. We will publish, and present to Parliament, the National Planning Policy Framework by April 2012.⁹

A PQ in December 2011 stressed the Government's more general support of the High Street:

⁷ Competition Commission Press Release, [CC renews competition test recommendation](#), 2 October 2009

⁸ DCLG etc, [Planning for a Sustainable Future](#), 21 May 2007, Cm 7120

⁹ HC Deb 15 March 2011 c260W

Mr Jim Cunningham: To ask the Secretary of State for Communities and Local Government what steps he is taking to ensure that planning policy encourages the development of (a) high streets, (b) town centres and (c) empty commercial properties; and if he will make a statement.

Greg Clark [holding answer 5 December 2011]: The Government are fully committed to supporting our high streets and town centres and to maintaining a strong “town centre first” policy which identifies town centres as the preferred location for retail developments. The draft National Planning Policy Framework asks local planning authorities to pursue policies to support the viability and vitality of town centres. We are now considering all responses to the consultation.

We are also considering the responses to the consultation “Relaxation of planning rules for change of use from commercial to residential” and will publish the findings in due course.

With regard to empty commercial properties, the Government supported the work to create industry standard “meanwhile” leases to encourage temporary occupation of empty retail premises in order to improve the vitality of town centres.

Town centres have suffered under restrictions on parking introduced by the previous Administration, reducing their ability to compete with out of town supermarkets.

Consequently, in January, my Department amended planning rules on parking to:

- (a) change a policy which inhibited competition between council areas to one that said parking charges should not undermine the vitality of town centres;
- (b) introduce a policy that parking enforcement should be proportionate;
- (c) remove the policy that encouraged councils to set car parking charges to discourage the use of cars; and
- (d) encourage more charging spaces for electric cars.

The draft National Planning Policy Framework also proposes to remove Whitehall restrictions which impose an arbitrary cap on parking spaces in new non-residential developments.¹⁰

In January 2012 Grant Schapps replied to a debate on town centres:

Car parking was the No. 1 concern mentioned by Members in the 54 contributions. It is absolutely right, and in fact quite obvious, to say that in today's society, when people either do not need to get into their car at all because they can simply click on something with a mouse to buy it or, if the option is available, as it now is in most parts of the country, drive to a shopping mall or shopping centre, an uncompetitive high street with high parking charges will always make a retail district suffer. It is absolutely essential, even in these incredibly tough times, for local authorities to appreciate that hammering the motorist visiting the local shops will not be the solution to the area's problems, and certainly not to those of retailers. Everything comes back to the fact that in future, under the localisation of business rates, for the first time it will matter to local councillors that businesses survive and thrive, because the local business rates will be retained.

The second most-mentioned item in the debate was the Mary Portas concept of town teams. That is the idea that if people want to promote their town, they need to get

¹⁰ HC Deb 7 December 2011 cc344-5W

together. That involves not just the usual suspects—the town centre manager and perhaps an interested local councillor—but everyone, from the retailers and landlords to the council, and most notably Members of Parliament, forming a town team and leading the debate. (...)

There were many detailed recommendations in the report, and I am looking with great interest at the one on betting shops. I sense the impatience that has been expressed today for a response to Mary Portas's recommendations, and I can assure hon. Members that they will not have to wait terribly long to find out what our response will be. We have promised to deliver it by the spring, and we absolutely intend to do so; the hon. Lady will not have to wait very long at all—and I can confirm that I mean spring 2012.

We intend to provide a very energetic response to the Portas review. The Government like what she has said, and we have already started to implement a number of her recommendations. I will be coming back to give greater detail on the other items that we have not so far covered, but we have a generally positive attitude towards the report. It is also true to say, however, that in order for her recommendations to work, it would not be sufficient for us simply to put in place all 28 of them. Hon. Members and others should not expect a universal recovery in the high street simply as a result of such action. Retail is much more complex than that, and we need to get to the heart of the reasons that it has suffered so badly.

Hon. Members mentioned the fact that there are two essential factors. The first is the growth of the internet, as recognised by Mary Portas. The second is the growth of the out-of-town shopping stores; again, the report recognises that factor. Both those factors are here to stay, no matter what we do. No one can legislate to get rid of the internet, or to do away with the out-of-town stores. The advantages of the existing high streets therefore need to be played up. The first is the ability of people shopping in the high street to touch and feel products does not exist when they are shopping online, although they could still do that in an out-of-town store.

The second advantage is perhaps more significant. It is the ability to meet, communicate and enjoy a coffee with friends, and to go to other facilities that are based in the same location. Such facilities could include a local library or, as my hon. Friend the Member for Nuneaton said, a theatre. The high street provides a sense of community and well-being that I will wager could never be provided by the out-of-town stores. They simply do not provide that sense of community and belonging that has been so vividly described by Members across the House today. I have visited many of their constituencies in my role as Housing Minister, and I look forward to visiting many of them again. We have been given a wonderful tour of the country today, and we look forward to seeing those high streets revived. The one pledge that will go out from the Government is that, in addition to implementing as much of the Mary Portas review as possible, we will ask Members from across the House to lead the debate and the renaissance in their constituencies in the months to come just as passionately as they have done in the Chamber today.¹¹

3 The draft National Planning Policy Framework, 2011

The Government intends to replace all planning guidance with a new National Planning Policy Framework (NPPF) in April 2012. DCLG published the [Draft National Planning Policy Framework](#) on 25 July 2011. Planning applications have to be determined in accordance with the development plan “unless material considerations indicate otherwise”.¹² Courts have

¹¹ HC Deb 17 January 2012 cc719-22

¹² *Planning and Compulsory Purchase Act 2004* s.38(6)

decided that Government guidance, even in draft, can be a material consideration. Thus the July 2011 draft is important already.

The passage dealing with town centres is shorter than before and there are to be no companion documents. However the impact test is retained, including concern over the vitality of town centres. The sequential test is also retained.

Promote the vitality and viability of town centres

76. Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. Local planning authorities should:

- recognise town centres as the heart of their communities and pursue policies to support the viability and vitality of town centres
- define a network (the pattern of provision of centres) and hierarchy (the role and relationship of centres in the network) of centres that is resilient to anticipated future economic changes
- define the extent of the town centre and the primary shopping area, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations
- recognise that residential development can play an important role in ensuring the vitality of centres and set out policies to encourage residential development on appropriate sites
- allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, community services and residential development needed in town centres. It is important that retail and leisure needs are met in full and are not compromised by limited site availability. Local planning authorities should therefore undertake an assessment of the need to expand town centres to ensure a sufficient supply of suitable sites
- allocate appropriate edge of centre sites where suitable and viable town centre sites are not available, and if sufficient edge of centre sites cannot be identified, set policies for meeting the identified requirements in other accessible locations; and
- set policies for the consideration of retail and leisure proposals which cannot be accommodated in or adjacent to town centres.

77. Local planning authorities should apply a sequential approach to planning applications for retail and leisure uses that are not in an existing centre and are not in accordance with an up to date Local Plan.

78. Local planning authorities should prefer applications for retail and leisure uses to be located in town centres where practical, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. In applying this sequential approach, local planning authorities should ensure that potential sites are assessed for their availability, suitability and viability and for their ability to meet the full extent of assessed quantitative and qualitative needs.

79. When assessing applications for retail and leisure development outside of town centres, which are not in accordance with an up to date Local Plan, local planning authorities should require an impact assessment if the development is over a

proportionate, locally set floorspace threshold. If there is no locally set threshold, the default threshold is 2,500 sq m.

80. Planning policies and decisions should assess the impact of retail and leisure proposals, including:

- the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to ten years from the time the application is made.

A first reaction to this document is that the impact test is retained, but the need test has not been returned to Government planning guidance.

The magazine *Planning* asked Michael Bach, whether the NPPF would weaken high street protection. He had led the team who devised the sequential test, which requires developers wanting to build outside town centres to demonstrate that there is no suitable alternative site centrally. Under the NPPF that test would no longer apply to offices but would remain in force for retail and leisure uses:

Bach told *Planning* that taking the onus off developers to demonstrate compliance with the test sends “a considerably weaker message”. He said: “You have a mismatch between the political message, which is in favour of town centre first, and likely delivery, because town centre first planning policy is likely to be watered down so it would be ineffective.” In recent years, he said, there has been “no enforcement of town centre policy”. He cited as evidence a June Parliamentary answer from Bob Neill that revealed only one of the 146 out-of-town schemes referred to the Secretary of State since April 2009 had been called in.¹³

The Royal Town Planning Institute agreed with that analysis, but some consultants had a different view:

Chris Goddard, head of retail planning at consultancy GVA, argued that the onus is now on councils to prioritise town centre development. “There is certainly more scope for ambiguity,” he said. “The key will be for local authorities to have a sound strategy that identifies where they want development to take place.” Gary Halman, partner at consultancy HOW Planning, said the change is an intentional “rebalancing” of the planning system by the government, which would ensure that enough sites are available to encourage development. “There is still a strong emphasis on town centres,” he said, “But the government is recognising the benefits of retail development and making sure that councils allocate the necessary range of sites.”

4 CLG Committee on NPPF and Town Centres

The CLG report, [The National Planning Policy Framework](#), December 2011 HC 1526 2010-12, criticised several aspects of the draft NPPF:

Town Centre First

152. Planning Policy Statement 4 (PPS4) includes the policy of 'Town Centre First', bringing in a 'sequential test' for development under which sites were identified for development first in existing centres, then in edge-of-centre locations, and only then in

¹³ “High street protection ‘weakened’”, *Planning*, 26 August 2011

out-of-centre locations. The draft NPPF contains a section which is supportive of town centres as the preferred location for retail and leisure development as opposed to out-of-town development. The Framework also proposes to increase the 'time horizon' for assessing the impact of retail and leisure schemes in edge-of- or out-of-centre locations from five to ten years.

153. However, several organisations expressed concern that the drafting of the NPPF weakens the Town Centre First policy by guiding local planning authorities to "prefer" rather than require applications in town centre locations, and qualifies this by adding "where practical". Office development has been removed entirely from the scope of the policy, exempting offices from the sequential test. Furthermore, arts, culture and tourism were included in the list of 'main town centre uses' in PPS4, but it is not clear from the text of the draft NPPF whether these have been subsumed under "leisure uses", or whether they have been omitted from the policy.

154. Support for the Town Centre First policy among our witnesses was nearly unanimous, although Professor Paul Cheshire argued that it had resulted in losses of productivity in the supermarket sector and had increased retail's carbon footprint.[315] However, there was widespread recognition of the role that the policy had played in helping town centres to prosper by concentrating development there, and during our previous inquiry into Regeneration, we heard that the policy had made a significant contribution to town centre regeneration.

155. The John Lewis Partnership argued that the policy had "served town centres well for almost two decades" and should remain "the cornerstone of positive future investment for and in town centres". It expressed concern that the language of the NPPF "falls short of giving the necessary weight to the sequential and impact tests" by replacing a requirement with a preference, and that the detail of how impact and sequential assessments should be undertaken would be lost because of the brevity of the NPPF. The John Lewis Partnership suggested that, if a scheme failed a sequential test or was likely to have a significant adverse impact on a town centre, it should not be considered sustainable and should normally be refused permission. The Association of Convenience Stores stated that the removal of "significant amounts of detail" from the policy may give developers greater opportunities to circumvent it, and expose councils to legal challenge should they resist out of town development. Sustainable transport organisations were concerned that the change to policy would increase congestion and car travel.

156. The NPPF Impact Assessment argues that the requirement to demonstrate compliance with the sequential test "places undue burdens on office development" and has contributed to high rent costs for office space compared to other countries. However, this was not the explanation for the change of policy given to us by the Minister in oral evidence:

In a lot of rural areas, making use of disused agricultural buildings for business hubs, including small offices, has been quite successful in providing a place in which businesses can start up, and in terms of sustainability, if you live in a village and you can actually work there, rather than needing to commute somewhere else, that seems desirable. That was our intention in not requiring every new office development to be in the town centre. What was not intended—it has been suggested that this may be a loophole—was to have massive out-of-town office developments that could detract from the town centre. [...] let me say again what my policy intention was in drafting this: it was not to depart from the 'town centre first' policy, but to strengthen it.

157. The Town Centre First policy has enjoyed widespread support from businesses as well as local authorities, and the certainty it provides to developers has been an important springboard for councils to achieve town centre regeneration. **The NPPF should reflect the existing Town Centre First policy by bringing offices back within its ambit, in a form that allows exceptions that make a specific contribution to rural sustainability. We recommend that application of the sequential test for development remains a requirement rather than a preference, and developments that fail the sequential test should be deemed unsustainable. We further recommend that the Government clarify the policy position on town centres with respect to arts, culture and tourism uses, to ensure that they are included in the Town Centre First policy.**

158. The draft NPPF states that planning policies should "promote competitive town centre environments" and "recognise town centres as the heart of their communities". It also stipulates that local authorities should "set policies for the consideration of retail and leisure proposals which cannot be accommodated in or adjacent to town centres". The Local Government Association (LGA) noted that:

there is often a widespread desire for local communities to have more of a say on the sustainability of their shopping parades, district town centres and high streets. The vitality of these places depends on local areas having access to the necessary tools to shape their locality in a way that reflect local needs and priorities.

The LGA argued that reform of planning policy must better allow this to happen. **We recommend that the NPPF include a provision to allow communities, in certain exceptional circumstances, to adopt an absolute protection of a town centre from out-of-town retail development.** The circumstances would have to include evidence of widespread community support, and the ability to demonstrate that the town centre has outstanding qualities that would be threatened by the proposed development.

5 Does planning policy reduce retail productivity?

In July 2011, researchers at the London School of Economics - Paul Cheshire, Christian Hilber and Ioannis Kaplanis and colleagues - concluded that restrictive planning policies had reduced productivity in the retail sector by about 20%. The reason was that supermarkets are smaller than they would otherwise be:

We used data on planning decisions for all English local authorities since 1979, which could be used as a measure of local restrictiveness. Careful analysis of this data (taking account of the possibility that if a local authority is known to be particularly restrictive, potential developers may not apply in the first place) confirmed that stores are smaller where planning policy is more restrictive and enabled us to quantify the relationship reliably.

Together these results allow us to estimate a lower bound impact of land use planning on supermarket productivity. It is lower bound because it is conservative to assume that without the town centre first policy, productivity would have continued to grow only at the rate between 1966 and 1986: for example, US retail productivity growth accelerated sharply in the 1990s. But making that assumption implies that the town centre first policy reduced supermarket productivity in England by 16 per cent.

It is equally conservative to assume that even in the least restrictive English local authority, policies restricting the supply of urban land had no impact on the costs of retail space. But if we attribute the reduction in productivity associated with the

reduction in store sizes resulting from the variation in restrictiveness between the most and least restrictive local authorities, then this contributed a further 4.2 per cent reduction to supermarket productivity. Putting it another way, productivity 'would' have been 4.2 per cent higher if all local authorities had been as unrestrictive as the least restrictive.

Overall, therefore, it seems that on the most conservative assumptions, planning policies in England have reduced retail productivity by more than 20 per cent. Lower productivity entails higher prices – and since poorer households spend a larger proportion of their incomes in supermarkets, this probably hits poorer households harder than richer ones.

The 20 per cent reduction in retail productivity that our study finds is a measure of the gross costs to the economy.¹⁴

6 The Portas review of the High Street

The Prime Minister commissioned Mary Portas to publish an independent review into the state of high streets and town centres. The [Portas Review](#) was published in December 2011. Amongst other things, she called for strong action to prevent out of town supermarkets damaging town centres:

We are burying our heads in the sand about the social and economic impact. A pound spent in a retailer with a localised supply chain that employs local people has far greater domestic economic impact than a pound spent in a supermarket or national chain. What's more, out-of-town developments are often presented as major new sources of employment but we need to recognise that this 'job creation' is often just job displacement. It is really important that we start levelling this playing field.

Presumption in favour of town centre development

My first and intuitive response to this review was to recommend an immediate moratorium on any new out-of-town developments. I thought that this firm and decisive action would send an unequivocal message to developers that the town centre was now to take centre stage. This is an idea which seemed to have some real traction with consumers, many retailers and surprisingly even many landlords. However, in the current economic climate, such single-minded thinking may be a little unrealistic and unhelpful. However, what I do think Government can and must do is take a new approach to future development. We need to ensure that our planning system is fit for purpose and that people and place come first.

14. Make explicit a presumption in favour of town centre development in the wording of the National Planning Policy Framework

Planning guidance is currently being reviewed and simplified through the new National Planning Policy Framework (NPPF). The Government says it wants to ensure that town centres come first. I believe that the NPPF needs to be at least as protective of the effect of development on people's lives, and the places where they live, as the existing policy. In its details, but also in the strength of the language. I am worried that the guidance has been softened to the point where far too much out-of-town development may be possible.

The wording needs to be as precise as possible so it's really clear that people and place come first and the policy is less vulnerable to legal disputes.

¹⁴ [Our system of land use planning can often have damaging effect on productivity](#), July 2011

The NPPF already includes a 'presumption in favour of sustainable development'. I believe that the most sustainable form of retail development is retail development in town centres. Out-of-town shopping is less sustainable taking into account the social and environmental impacts it has; so the new NPPF policy needs to explicitly presume in favour of sustainable development in town centres. And this should include offices as well as shops and businesses.

In compiling this report I was surprised to discover that no recent research has been undertaken to understand the impact of out-of-town developments on town centres. I recommend that new research is undertaken with a clearly defined purpose to ensure the outcome provides information that is useful in making planning decisions.

15. Introduce Secretary of State “exceptional sign off” for all new out- of- town developments and require all large new developments to have an “affordable shops” quota

Just as you cannot develop on the Green Belt unless there are exceptional circumstances, an impact test for the high street should be robust and codified. As part of this review the Association of Convenience Stores told me that since 2008 there have been 146 chances to review out of town developments but so far the Government has only challenged one. The Government needs to get much tougher here. We need to stop the lip service and make this real.

Where the case for an out-of-town development has been proved, the Secretary of State should more frequently use his existing powers to decide whether there has been enough consideration of the impact of out-of-town development on the town centre. This could be restricted to extensions over a defined size or scope, in order to not overly slow the planning system.

The Secretary of State would then effectively have “exceptional sign off ” powers for all new out-of-town developments, and could be much tougher about what permissions are granted with due regard to the impact on local high streets.

Where the Secretary of State does give exceptional sign off for a new out-of-town development, the developers should have to show that they support local growth and innovation. I recommend that big new developments should only be signed off where they include some designated space for smaller retail units for local entrepreneurs. The existing system of planning obligations could be used to secure this, in much the same way as big housing developments are required to contain some affordable housing for lower-income tenants. This will really mean that the high street is not overlooked and town centres are at the heart of retail expansion in coming years.