

Our Ref: C04026

14 November 2018

Belfast City Council
Belfast Planning Service
Cecil Ward Building
4-10 Linenhall Street
Belfast



Dear Sir / Madam,

Re: Belfast Local Development Plan 2035 – Draft Plan Strategy.

We act on behalf of Corbo Ltd who have a number of retail property interests in Belfast. We wish to make the following submission in response to a number of proposed policies in the above Draft Plan Strategy document.

Our comments on the Draft Plan Strategy relate to certain elements of the draft retail policies which are outlined below.

Policy RET2 - Out of Centre Development

Technical Supplement 4 – Belfast City Centre and Retailing, has been prepared to inform the preparation of the Belfast Local Development Plan. Reference to the sequential assessment is made in paragraph 4.10 of the Technical Supplement which states:

- 4.10 Greater clarity is needed around out of centre development to limit the amount of trade drawing away from the city centre. The policy on out of centre development seeks to put forward a rationale for assessing such proposals. English national policy requires those promoting development, where it is argued that no other sequentially preferable sites are appropriate, to demonstrate why such sites are not practical alternatives in terms of their "availability, suitability and viability". As the SPPS does not clarify or define the sequential test there is a need for a policy to adopt the English policy approach so there is a clear rationale to assessment for proposal of out of centre development.

It is assumed that this has informed the policy approach to the sequential assessment of sites as outlined Policy RET2 – Out of Centre Development which states the following as its headline policy:

Policy RET2 – Out of centre development

Proposals for main town centre uses¹⁵, outside of existing centres must:

- a. **Demonstrate that there is not a sequentially preferable site in, or on the edge of, centres having regard to criteria of suitability, availability and viability; and**
- b. **Submit a retail impact assessment and assessment of need for proposals that have a floorspace of 1,000sq m gross and above.**

Policy RET2 goes to advise how to assess sites in terms of their availability, suitability and viability as follows:

Suitability

- 8.2.14 The appropriateness and likely market attractiveness for the type, scale and form of development proposed. There will be a requirement to consider flexibility in the format and scale of the development proposed for the city centre and other centres.

Availability

- 8.2.15 The applicant will be required to submit evidence of any insurmountable legal or ownership problems such as unresolved multiple ownerships, ransom strips, tenancies or operational requirements of landowners that render the site unavailable.

Viability

- 8.2.16 A viability assessment should include the land/site value as a key consideration as to whether development is economically viable. In order to determine applications a realistic understanding of the costs and the value of the development in the local area, as well as the prevailing market conditions, should be submitted. The timing of the assessment will be dependent on the nature and scale of the development proposed.
- 8.2.17 Where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on designated centres in the hierarchy, it will be refused. The information required in the assessments should be commensurate with the size of the proposal and will be agreed with Belfast City Council.

Technical Supplement 4 referred to above advises that the English national policy approach to assessing why sites are not practical alternatives in terms of their suitability, availability and viability should be adopted since the SPPS does not clarify or define the sequential test. However the SPPS does in fact define the sequential test. ; having referred to the sequential test at paragraph 6.280, the implementation of this is taken to be that as outlined in paragraph 6.289, where it states, *“Applicants will be expected to identify and fully demonstrate why alternative sites are not suitable, available and viable.”* We submit therefore that a clear rationale for the assessment of alternative sites regarding proposals for out of centre development already exists in current regional policy here and therefore does not need to be repeated in the Belfast Local Development Plan.

Furthermore and in any case, it is considered that Policy RET2 goes beyond what would be considered reasonable when assessing the suitability, availability and viability of alternative sites.

In terms of suitability, whilst there may be some flexibility that can be applied to development proposals, a development should not be required to be amended to such a degree that it fundamentally alters the nature and format of a proposal beyond what is proposed. The issue of suitability was discussed in a Supreme Court case (Tesco Stores v Dundee City Council, February 2012 – see **Annex 1** attached hereto¹) which relates to an Asda development outside Dundee City Centre that went all the way to the House of Lords (Supreme Court) in March 2012.

The Supreme Court ruled that *“suitable sites”* means locations that are suitable for the development as proposed by the applicant. In this regard the judge explained that the question was whether the word *“suitable”* meant suitable for meeting identified deficiencies in retail provision in the area or *“suitable for the development proposed by the applicant.”* The judge concluded that it was correct to progress on the latter interpretation (paragraph 24).

¹ Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland) [2012] UKSC 13.

The reasons Lord Hope offered in support of the ruling are particularly relevant :

In Para 36 he quotes Lord Glennie's finding in Lidl UK GmbH v The Scottish Ministers [2006] CSOH 165 that an alternative location should be ruled out if it meant that a proposed development would have to be altered or reduced so that it could fit into it (our emphasis).

Lord Hope goes on (Para 38) to underscore that the assessment of suitability must be directed to what the developer is proposing. "*Developments of this kind,*" he states, "*are generated by the developer's assessment of the market that he seeks to serve.*"

He concludes that the policy criteria are "*designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest in doing so.*"

Suitability should not require an applicant to alter a development proposal to such a degree that it fundamentally alters the nature and format of a proposal beyond what is proposed and actually sought by the applicant.

Given that a rationale for the assessment of proposed out of centre development already exists in regional policy in the SPPS, we see no need for the inclusion of an additional suitability test in the Belfast Local Development Plan.

In terms of availability, the proposed policy RET2 requires the applicant "*...to submit evidence of any insurmountable legal or ownership problems such as unresolved multiple ownerships, ransom strips, tenancies or operational requirements of landowners that render the site unavailable.*" We consider this requirement to be unnecessary, unreasonable and designed to be overtly onerous to applicants when assessing the availability of alternative sites.

As alluded to earlier, it is noted that the Council has adopted the English policy approach to define the sequential test however current English policy does not include such an onerous policy when assessing the availability of alternative sites. The relevant section from current English policy ² is Chapter 7 – Ensuring the Vitality of Town Centres and is contained hereto in **Annex 2**. This makes the following relevant statements in relation to availability:

86. Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. (Emphasis added).

Indeed, the sequential test in policy in the rest of the UK does not contain such an onerous policy when assessing the issue of availability. The relevant excerpts from the Scottish ³ and Welsh ⁴ policy documents are contained in **Annexes 3** and **4** respectively.

There will undoubtedly be occasions when evidence of insurmountable legal or ownership problems or operational requirements of landowners will simply not be publically accessible or available. The

² National Planning Policy Framework, July 2018.

³ Scottish Planning Policy, June 2014.

⁴ Planning Policy Wales, November 2016 and Technical Advice Note 4, November 2016.

proposed policy on availability therefore places an unreasonable and onerous burden on applicants in providing such evidence in order to satisfy the availability test.

Given the absence of such an onerous availability test in policy elsewhere, particularly English policy whose approach the Council has adopted, and that a rationale for the assessment of proposed out of centre development already exists in regional policy in the SPPS, we see no need for the inclusion of an additional availability test in the Belfast Local Development Plan.

In terms of viability, again this forms part of the rationale for the assessment of proposed out of centre development which already exists in regional policy in the SPPS, so we see no need for the inclusion of an additional viability test in the Belfast Local Development Plan.

We consider that the existing SPPS already clarifies the sequential test and therefore there appears to be no coherent strategy or logical reason leading to the introduction and form of the proposed tests regarding suitability, availability and viability. We consider therefore that Policy RET 2 is unsound in relation to the sequential assessment of sites.

Policy RET4 – Retail Warehousing

The headline policy statement for Policy RET4 – Retail warehousing is as follows:



This policy has been informed by the findings outlined in Technical Supplement 4 : Belfast City Centre Retailing (para. 4.20) which advises that based on comparable studies in the UK, strong consideration should be given to setting a number of floorspace thresholds in order to avoid trade diversion that could have an adverse impact upon centres within the hierarchy as the focus of retailing and other town centres uses.

In response, there is no indication of what the comparable studies are in the UK that led to this policy. In any case, they don't appear to have influenced policy elsewhere in the UK as there appears to be no stipulations on the amount of bulky and convenience goods' floorspace in retail warehouse policy elsewhere.

We consider that the proposed floorspace stipulations are unnecessary and an impediment to inward investment. Retailing is a very dynamic industry subject to market trends, consumer habits, spending power etc. As a result, retail and retailers are constantly looking at ways to improve or change their format in response to these factors which results in new retail formats and retailers coming forward to respond to these changing circumstances and demands to improve consumer choice and experience.

Following the closure of many retail warehouse type operators due to the economic downturn, many retail warehouse parks found themselves with increasing numbers of vacant units with little or no prospect of attracting new tenants resulting in many job losses and an increasing burden on landlords due to void costs. However existing policy does not stipulate the size and nature of goods that can be sold in retail warehouses which is generally controlled by conditions where appropriate. This level of flexibility in policy has enabled many of these vacant units to be filled by different retail formats through the appropriate amendment of conditions whilst still subjected to and assessed against other policies to ensure they didn't have an adverse impact on existing centres.

This flexibility in policy provides the appropriate level of control which has helped create jobs and attract inward investment and is therefore in line with one of the main aims of the planning system which is to help create the conditions to promote economic development.

On the other hand, to instil in policy, floorspace and goods restrictions on retail warehouses is to create an inflexible policy which will simply close the door to many retailers and new retail formats who wouldn't be able to conform to these restrictions yet are unable to find suitable, viable and available locations in existing town centres and would not be expected to have an adverse impact on existing centres. In these circumstances, areas of retail warehousing could be utilised by these retailers however as result of this policy, these retailers, investment and jobs will be lost to the Belfast City Council area.

We consider therefore that Policy RET4 is unsound as there appears to be coherent strategy or logic from which this policy has flowed. We request therefore that there are no floorspace or goods restrictions placed on retail warehouses.

We trust the above submission will be taken into account in the preparation of the Plan Strategy.

Yours faithfully,



Martin Kelly
Associate Director
Gravis Planning

ANNEX 1



Hilary Term
[2012] UKSC 13
On appeal from: [2011] CSIH 9

JUDGMENT

Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland)

before

**Lord Hope, Deputy President
Lord Brown
Lord Kerr
Lord Dyson
Lord Reed**

JUDGMENT GIVEN ON

21 March 2012

Heard on 15 and 16 February 2012

Appellants
Martin Kingston QC
Jane Munro
(Instructed by Semple
Fraser LLP)

Respondents
Douglas Armstrong QC
James Findlay QC
(Instructed by Gillespie
Macandrew LLP)

*Interveners (Asda Stores
Limited and MacDonald
Estates Group PLC)*
Malcolm Thomson QC
Kenny McBrearty
(Instructed by Brodies
LLP)

LORD REED (with whom Lord Brown, Lord Kerr and Lord Dyson agree)

1. If you drive into Dundee from the west along the A90 (T), you will pass on your left a large industrial site. It was formerly occupied by NCR, one of Dundee's largest employers, but its factory complex closed some years ago and the site has lain derelict ever since. In 2009 Asda Stores Ltd and MacDonald Estates Group plc, the interveners in the present appeal, applied for planning permission to develop a superstore there. Dundee City Council, the respondents, concluded that a decision to grant planning permission would not be in accordance with the development plan, but was nevertheless justified by other material considerations. Their decision to grant the application is challenged in these proceedings by Tesco Stores Ltd, the appellants, on the basis that the respondents proceeded on a misunderstanding of one of the policies in the development plan: a misunderstanding which, it is argued, vitiated their assessment of whether a departure from the plan was justified. In particular, it is argued that the respondents misunderstood a requirement, in the policies concerned with out of centre retailing, that it must be established that no suitable site is available, in the first instance, within and thereafter on the edge of city, town or district centres.

The legislation

2. Section 37(2) of the Town and Country Planning (Scotland) Act 1997, as in force at the time of the relevant decision, provides:

“In dealing with [an application for planning permission] the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.”

Section 25 provides:

“Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise –

(a) to be made in accordance with that plan...”

The development plan

3. The development plan in the present case is an “old development plan” within the meaning of paragraph 1 of Schedule 1 to the 1997 Act. As such, it is defined by section 24 of the 1997 Act, as that section applied before the coming into force of section 2 of the Planning Etc. (Scotland) Act 2006, as including the approved structure plan and the adopted or approved local plan. The relevant structure plan in the present case is the Dundee and Angus Structure Plan, which became operative in 2002, at a time when the NCR plant remained in operation. As is explained in the introduction to the structure plan, its purpose is to provide a long term vision for the area and to set out the broad land use planning strategy guiding development and change. It includes a number of strategic planning policies. It sets the context for local plans, which translate the strategy into greater detail. Its preparation took account of national planning policy guidelines.

4. The structure plan includes a chapter on town centres and retailing. The introduction explains that the relevant Government guidance is contained in National Planning Policy Guidance 8, *Town Centres and Retailing* (revised 1998). I note that that document (NPPG 8) was replaced in 2006 by *Scottish Planning Policy: Town Centres and Retailing* (SPP 8), which was in force at the time of the decision under challenge, and which was itself replaced in 2010 by *Scottish Planning Policy* (SPP). The relevant sections of all three documents are in generally similar terms. The structure plan continues, at para 5.2:

“A fundamental principle of NPPG 8 is that of the sequential approach to site selection for new retail developments ... On this basis, town centres should be the first choice for such developments, followed by edge of centre sites and, only after this, out of centre sites which are currently or potentially accessible by different means of transport.”

In relation to out of centre developments, that approach is reflected in Town Centres and Retailing Policy 4: Out of Centre Retailing:

“In keeping with the sequential approach to site selection for new retail developments, proposals for new or expanded out of centre retail developments in excess of 1000 sq m gross will only be acceptable where it can be established that:

- no suitable site is available, in the first instance, within and thereafter on the edge of city, town or district centres;
- individually or cumulatively it would not prejudice the vitality and viability of existing city, town or district centres;
- the proposal would address a deficiency in shopping provision which cannot be met within or on the edge of the above centres;
- the site is readily accessible by modes of transport other than the car;
- the proposal is consistent with other Structure Plan policies.”

5. The relevant local plan is the Dundee Local Plan, which came into operation in 2005, prior to the closure of the NCR plant. Like the structure plan, it notes that national planning policy guidance emphasises the need to protect and enhance the vitality and viability of town centres. It continues, at para 52.2:

“As part of this approach planning authorities should adopt a sequential approach to new shopping developments with first preference being town centres, which in Dundee’s case are the City centre and the District Centres.”

That approach is reflected in Policy 45: Location of New Retail Developments:

“The City Centre and District Centres will be the locations of first choice for new or expanded retail developments not already identified in the Local Plan. Proposals for retail developments outwith these locations will only be acceptable where it can be established that:

- a) no suitable site is available, in the first instance, within and thereafter on the edge of the City Centre or District Centres; and

- b) individually or cumulatively it would not prejudice the vitality and viability of the City Centre or District Centres; and
- c) the proposal would address a deficiency in shopping provision which cannot be met within or on the edge of these centres; and
- d) the site is readily accessible by modes of transport other than the car; and
- e) the proposal is consistent with other Local Plan policies.”

6. It is also relevant to note the guidance given in NPPG 8, as revised in 1998, to which the retailing sections of the structure plan and the local plan referred. Under the heading “Sequential Approach”, the guidance stated:

“12. Planning authorities and developers should adopt a sequential approach to selecting sites for new retail, commercial leisure developments and other key town centre uses ... First preference should be for town centre sites, where sites or buildings suitable for conversion are available, followed by edge-of-centre sites, and only then by out-of-centre sites in locations that are, or can be made easily accessible by a choice of means of transport ...

13. In support of town centres as the first choice, the Government recognises that the application of the sequential approach requires flexibility and realism from developers and retailers as well as planning authorities. In preparing their proposals developers and retailers should have regard to the format, design, scale of the development, and the amount of car parking in relation to the circumstances of the particular town centre. In addition they should also address the need to identify and assemble sites which can meet not only their requirements, but in a manner sympathetic to the town setting. As part of such an approach, they should consider the scope for accommodating the proposed development in a different built form, and where appropriate adjusting or sub-dividing large proposals, in order that their scale might offer a better fit with existing development in the town centre ...

14. Planning authorities should also be responsive to the needs of retailers and other town centre businesses. In consultation with the private sector, they should assist in identifying sites in the town

centre which could be suitable and viable, for example, in terms of size and siting for the proposed use, and are likely to become available in a reasonable time ...

15. Only if it can be demonstrated that all town centre options have been thoroughly addressed and a view taken on availability, should less central sites in out-of-centre locations be considered for key town centre uses. Where development proposals in such locations fall outwith the development plan framework, it is for developers to demonstrate that town centre and edge-of-centre options have been thoroughly assessed. Even where a developer, as part of a sequential approach, demonstrates an out-of-centre location to be the most appropriate, the impact on the vitality and viability of existing centres still has to be shown to be acceptable ...”

The consideration of the application

7. The interveners’ application was for planning permission to develop a foodstore, café and petrol filling station, with associated car parking, landscaping and infrastructure, including access roads. The proposals also involved improvements to the junction with the A90 (T), the upgrading of a pedestrian underpass, the provision of footpaths and cycle ways, and improvements to adjacent roadways. A significant proportion of the former NCR site lay outside the application site. It was envisaged that vehicular access to this land could be achieved using one of the proposed access roads.

8. In his report to the respondents, the Director of City Development advised that the application was contrary to certain aspects of the employment and retailing policies of the development plan. In relation to the employment policies, in particular, the proposal was contrary to policies which required the respondents to safeguard the NCR site for business use. The Director considered however that the application site was unlikely to be re-developed for business uses in the short term, and that its re-development as proposed would improve the development prospects of the remainder of the NCR site. In addition, the infrastructure improvements would provide improved access which would benefit all businesses in an adjacent industrial estate.

9. In relation to the retailing policies, the Director considered the application in the light of the criteria in Retailing Policy 4 of the structure plan. In relation to the first criterion he stated:

“It must be demonstrated, in the first instance, that no suitable site is available for the development either within the city/district centres or, thereafter on the edge of these centres ... While noting that the Lochee District Centre lies within the primary catchment area for the proposal, [the retail statement submitted on behalf of the interveners] examines the potential site opportunities in and on the edge of that centre and also at the Hilltown and Perth Road District Centres. The applicants conclude that there are no sites or premises available in or on the edge of existing centres capable of accommodating the development under consideration. Taking account of the applicant’s argument it is accepted that at present there is no suitable site available to accommodate the proposed development.”

In relation to the remaining criteria, the Director concluded that the proposed development was likely to have a detrimental effect on the vitality and viability of Lochee District Centre, and was therefore in conflict with the second criterion. The potential impact on Lochee could however be minimised by attaching conditions to any permission granted so as to restrict the size of the store, limit the type of goods for sale and prohibit the provision of concessionary units. The proposal was also considered to be in conflict with the third criterion: there was no deficiency in shopping provision which the proposal would address. The fourth criterion, concerned with accessibility by modes of transport other than the car, was considered to be met. Similar conclusions were reached in relation to the corresponding criteria in Policy 45 of the local plan.

10. In view of the conflict with the employment and retailing policies, the Director considered that the proposal did not fully comply with the provisions of the development plan. He identified however two other material considerations of particular significance. First, the proposed development would bring economic benefits to the city. The closure of the NCR factory had been a major blow to the economy, but the re-development of the application site would create more jobs than had been lost when the factory finally closed. The creation of additional employment opportunities within the city was considered to be a strong material consideration. Secondly, the development would also provide a number of planning benefits. There would be improvements to the strategic road network which would assist in the free flow of traffic along the A90 (T). The development would also assist in the re-development of the whole of the former NCR site through the provision of enhanced road access and the clearance of buildings from the site. The access improvements would also assist in the development of an economic development area to the west. These benefits were considered to be another strong material consideration.

11. The Director concluded that the proposal was not in accordance with the development plan, particularly with regard to the employment and retailing

policies. There were however other material considerations of sufficient weight to justify setting aside those policies and offering support for the development, subject to suitable conditions. He accordingly recommended that consent should be granted, subject to specified conditions.

12. The application was considered by the respondents' entire council sitting as the respondents' Development Quality Committee. After hearing submissions on behalf of the interveners and also on behalf of the appellants, the respondents decided to follow the Director's recommendation. The reasons which they gave for their decision repeated the Director's conclusions:

“It is concluded that the proposal does not undermine the core land use and environmental strategies of the development plan. The planning and economic benefits that would accrue from the proposed development would be important to the future development and viability of the city as a regional centre. These benefits are considered to be of a significant weight and sufficient to set aside the relevant provisions of the development plan.”

The present proceedings

13. The submissions on behalf of the appellants focused primarily upon an alleged error of interpretation of the first criterion in Retailing Policy 4 of the structure plan, and of the equivalent criterion in Policy 45 of the local plan. If there was a dispute about the meaning of a development plan policy which the planning authority was bound to take into account, it was for the court to determine what the words were capable of meaning. If the planning authority attached a meaning to the words which they were not properly capable of bearing, then it made an error of law, and failed properly to understand the policy. In the present case, the Director had interpreted “suitable” as meaning “suitable for the development proposed by the applicant”; and the respondents had proceeded on the same basis. That was not however a tenable meaning. Properly interpreted, “suitable” meant “suitable for meeting identified deficiencies in retail provision in the area”. Since no such deficiency had been identified, it followed on a proper interpretation of the plan that the first criterion did not require to be considered: it was inappropriate to undertake the sequential approach. The Director's report had however implied that the first criterion was satisfied, and that the proposal was to that extent in conformity with the sequential approach. The respondents had proceeded on that erroneous basis. They had thus failed to identify correctly the extent of the conflict between the proposal and the development plan. In consequence, their assessment of whether other material considerations justified a departure from the plan was inherently flawed.

14. The respondents had compounded their error, it was submitted, by treating the proposed development as definitive when assessing whether a “suitable” site was available. That approach permitted developers to drive a coach and horses through the sequential approach: they could render the policy nugatory by the simple expedient of putting forward proposals which were so large that they could only be accommodated outside town and district centres. In the present case, there was a site available in Lochee which was suitable for food retailing and which was sequentially preferable to the application site. The Lochee site had been considered as part of the assessment of the proposal, but had been found to be unsuitable because it could not accommodate the scale of development to which the interveners aspired.

15. In response, counsel for the respondents submitted that it was for the planning authority to interpret the relevant policy, exercising its planning judgment. Counsel accepted that, if there was a dispute about the meaning of the words in a policy document, it was for the court to determine as a matter of law what the words were capable of meaning. The planning authority would only make an error of law if it attached a meaning to the words which they were not capable of bearing. In the present case, the relevant policies required all the specified criteria to be satisfied. The respondents had proceeded on the basis that the proposal failed to accord with the second and third criteria. In those circumstances, the respondents had correctly concluded that the proposal was contrary to the policies in question. How the proposal had been assessed against the first criterion was immaterial.

16. So far as concerned the assessment of “suitable” sites, the interveners’ retail statement reflected a degree of flexibility. There had been a consideration of all sites of at least 2.5 ha, whereas the application site extended to 6.68 ha. The interveners had also examined sites which could accommodate only food retailing, whereas their application had been for both food and non-food retailing. The Lochee site extended to only 1.45 ha, and could accommodate a store of only half the size proposed. It also had inadequate car parking. The Director, and the respondents, had accepted that it was not a suitable site for these reasons.

Discussion

17. It has long been established that a planning authority must proceed upon a proper understanding of the development plan: see, for example, *Gransden & Co Ltd v Secretary of State for the Environment* (1985) 54 P & CR 86, 94 per Woolf J, affd (1986) 54 P & CR 361; *Horsham DC v Secretary of State for the Environment* (1991) 63 P & CR 219, 225-226 per Nolan LJ. The need for a proper understanding follows, in the first place, from the fact that the planning authority is required by statute to have regard to the provisions of the development plan: it

cannot have regard to the provisions of the plan if it fails to understand them. It also follows from the legal status given to the development plan by section 25 of the 1997 Act. The effect of the predecessor of section 25, namely section 18A of the Town and Country (Planning) Scotland Act 1972 (as inserted by section 58 of the Planning and Compensation Act 1991), was considered by the House of Lords in the case of *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447. It is sufficient for present purposes to cite a passage from the speech of Lord Clyde, with which the other members of the House expressed their agreement. At p 44, 1459, his Lordship observed:

“In the practical application of sec 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it.”

18. In the present case, the planning authority was required by section 25 to consider whether the proposed development was in accordance with the development plan and, if not, whether material considerations justified departing from the plan. In order to carry out that exercise, the planning authority required to proceed on the basis of what Lord Clyde described as “a proper interpretation” of the relevant provisions of the plan. We were however referred by counsel to a number of judicial dicta which were said to support the proposition that the meaning of the development plan was a matter to be determined by the planning authority: the court, it was submitted, had no role in determining the meaning of the plan unless the view taken by the planning authority could be characterised as perverse or irrational. That submission, if correct, would deprive sections 25 and 37(2) of the 1997 Act of much of their effect, and would drain the need for a “proper interpretation” of the plan of much of its meaning and purpose. It would also make little practical sense. The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others (as discussed, for example, in *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836), policy statements should be interpreted

objectively in accordance with the language used, read as always in its proper context.

19. That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780 per Lord Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean.

20. The principal authority referred to in relation to this matter was the judgment of Brooke LJ in *R v Derbyshire County Council, Ex p Woods* [1997] JPL 958 at 967. Properly understood, however, what was said there is not inconsistent with the approach which I have described. In the passage in question, Brooke LJ stated:

“If there is a dispute about the meaning of the words included in a policy document which a planning authority is bound to take into account, it is of course for the court to determine as a matter of law what the words are capable of meaning. If the decision maker attaches a meaning to the words they are not properly capable of bearing, then it will have made an error of law, and it will have failed properly to understand the policy.”

By way of illustration, Brooke LJ referred to the earlier case of *Northavon DC v Secretary of State for the Environment* [1993] JPL 761, which concerned a policy applicable to “institutions standing in extensive grounds”. As was observed, the words spoke for themselves, but their application to particular factual situations would often be a matter of judgment for the planning authority. That exercise of judgment would only be susceptible to review in the event that it was unreasonable. The latter case might be contrasted with the case of *R (Heath and Hampstead Society) v Camden LBC* [2008] 2 P & CR 233, where a planning authority’s decision that a replacement dwelling was not “materially larger” than its predecessor, within the meaning of a policy, was vitiated by its failure to understand the policy correctly: read in its context, the phrase “materially larger” referred to the size of the new building compared with its predecessor, rather than

requiring a broader comparison of their relative impact, as the planning authority had supposed. Similarly in *City of Edinburgh Council v Scottish Ministers* 2001 SC 957 the reporter's decision that a licensed restaurant constituted "similar licensed premises" to a public house, within the meaning of a policy, was vitiated by her misunderstanding of the policy: the context was one in which a distinction was drawn between public houses, wine bars and the like, on the one hand, and restaurants, on the other.

21. A provision in the development plan which requires an assessment of whether a site is "suitable" for a particular purpose calls for judgment in its application. But the question whether such a provision is concerned with suitability for one purpose or another is not a question of planning judgment: it is a question of textual interpretation, which can only be answered by construing the language used in its context. In the present case, in particular, the question whether the word "suitable", in the policies in question, means "suitable for the development proposed by the applicant", or "suitable for meeting identified deficiencies in retail provision in the area", is not a question which can be answered by the exercise of planning judgment: it is a logically prior question as to the issue to which planning judgment requires to be directed.

22. It is of course true, as counsel for the respondents submitted, that a planning authority might misconstrue part of a policy but nevertheless reach the same conclusion, on the question whether the proposal was in accordance with the policy, as it would have reached if it had construed the policy correctly. That is not however a complete answer to a challenge to the planning authority's decision. An error in relation to one part of a policy might affect the overall conclusion as to whether a proposal was in accordance with the development plan even if the question whether the proposal was in conformity with the policy would have been answered in the same way. The policy criteria with which the proposal was considered to be incompatible might, for example, be of less weight than the criteria which were mistakenly thought to be fulfilled. Equally, a planning authority might misconstrue part of a policy but nevertheless reach the same conclusion as it would otherwise have reached on the question whether the proposal was in accordance with the development plan. Again, however, that is not a complete answer. Where it is concluded that the proposal is not in accordance with the development plan, it is necessary to understand the nature and extent of the departure from the plan which the grant of consent would involve in order to consider on a proper basis whether such a departure is justified by other material considerations.

23. In the present case, the Lord Ordinary rejected the appellants' submissions on the basis that the interpretation of planning policy was always primarily a matter for the planning authority, whose assessment could be challenged only on the basis of unreasonableness: there was, in particular, more than one way in

which the sequential approach could reasonably be applied ([2010] CSOH 128, para 23). For the reasons I have explained, that approach does not correctly reflect the role which the court has to play in the determination of the meaning of the development plan. A different approach was adopted by the Second Division: since, it was said, the proposal was in head-on conflict with the retail and employment policies of the development plan, and the sequential approach offered no justification for it, a challenge based upon an alleged misapplication of the sequential approach was entirely beside the point (2011 SC 457, [2011] CSIH 9, para 38). For the reasons I have explained, however, even where a proposal is plainly in breach of policy and contrary to the development plan, a failure properly to understand the policy in question may result in a failure to appreciate the full extent or significance of the departure from the development plan which the grant of consent would involve, and may consequently vitiate the planning authority's determination. Whether there has in fact been a misunderstanding of the policy, and whether any such misunderstanding may have led to a flawed decision, has therefore to be considered.

24. I turn then to the question whether the respondents misconstrued the policies in question in the present case. As I have explained, the appellants' primary contention is that the word "suitable", in the first criterion of Retailing Policy 4 of the structure plan and the corresponding Policy 45 of the local plan, means "suitable for meeting identified deficiencies in retail provision in the area", whereas the respondents proceeded on the basis of the construction placed upon the word by the Director of City Development, namely "suitable for the development proposed by the applicant". I accept, subject to a qualification which I shall shortly explain, that the Director and the respondents proceeded on the latter basis. Subject to that qualification, it appears to me that they were correct to do so, for the following reasons.

25. First, that interpretation appears to me to be the natural reading of the policies in question. They have been set out in paras 4 and 5 above. Read short, Retailing Policy 4 of the structure plan states that proposals for new or expanded out of centre retail developments will only be acceptable where it can be established that a number of criteria are satisfied, the first of which is that "no suitable site is available" in a sequentially preferable location. Policy 45 of the local plan is expressed in slightly different language, but it was not suggested that the differences were of any significance in the present context. The natural reading of each policy is that the word "suitable", in the first criterion, refers to the suitability of sites for the proposed development: it is the proposed development which will only be acceptable at an out of centre location if no suitable site is available more centrally. That first reason for accepting the respondents' interpretation of the policy does not permit of further elaboration.

26. Secondly, the interpretation favoured by the appellants appears to me to conflate the first and third criteria of the policies in question. The first criterion concerns the availability of a “suitable” site in a sequentially preferable location. The third criterion is that the proposal would address a deficiency in shopping provision which cannot be met in a sequentially preferable location. If “suitable” meant “suitable for meeting identified deficiencies in retail provision”, as the appellants contend, then there would be no distinction between those two criteria, and no purpose in their both being included.

27. Thirdly, since it is apparent from the structure and local plans that the policies in question were intended to implement the guidance given in NPPG 8 in relation to the sequential approach, that guidance forms part of the relevant context to which regard can be had when interpreting the policies. The material parts of the guidance are set out in para 6 above. They provide further support for the respondents’ interpretation of the policies. Paragraph 13 refers to the need to identify sites which can meet the requirements of developers and retailers, and to the scope for accommodating the proposed development. Paragraph 14 advises planning authorities to assist the private sector in identifying sites which could be suitable for the proposed use. Throughout the relevant section of the guidance, the focus is upon the availability of sites which might accommodate the proposed development and the requirements of the developer, rather than upon addressing an identified deficiency in shopping provision. The latter is of course also relevant to retailing policy, but it is not the issue with which the specific question of the suitability of sites is concerned.

28. I said earlier that it was necessary to qualify the statement that the Director and the respondents proceeded, and were correct to proceed, on the basis that “suitable” meant “suitable for the development proposed by the applicant”. As paragraph 13 of NPPG 8 makes clear, the application of the sequential approach requires flexibility and realism from developers and retailers as well as planning authorities. The need for flexibility and realism reflects an inbuilt difficulty about the sequential approach. On the one hand, the policy could be defeated by developers’ and retailers’ taking an inflexible approach to their requirements. On the other hand, as Sedley J remarked in *R v Teesside Development Corporation, Ex p William Morrison Supermarket plc and Redcar and Cleveland BC* [1998] JPL 23, 43, to refuse an out-of-centre planning consent on the ground that an admittedly smaller site is available within the town centre may be to take an entirely inappropriate business decision on behalf of the developer. The guidance seeks to address this problem. It advises that developers and retailers should have regard to the circumstances of the particular town centre when preparing their proposals, as regards the format, design and scale of the development. As part of such an approach, they are expected to consider the scope for accommodating the proposed development in a different built form, and where appropriate adjusting or sub-dividing large proposals, in order that their scale may fit better with existing

development in the town centre. The guidance also advises that planning authorities should be responsive to the needs of retailers. Where development proposals in out-of-centre locations fall outside the development plan framework, developers are expected to demonstrate that town centre and edge-of-centre options have been thoroughly assessed. That advice is not repeated in the structure plan or the local plan, but the same approach must be implicit: otherwise, the policies would in practice be inoperable.

29. It follows from the foregoing that it would be an over-simplification to say that the characteristics of the proposed development, such as its scale, are necessarily definitive for the purposes of the sequential test. That statement has to be qualified to the extent that the applicant is expected to have prepared his proposals in accordance with the recommended approach: he is, for example, expected to have had regard to the circumstances of the particular town centre, to have given consideration to the scope for accommodating the development in a different form, and to have thoroughly assessed sequentially preferable locations on that footing. Provided the applicant has done so, however, the question remains, as Lord Glennie observed in *Lidl UK GmbH v Scottish Ministers* [2006] CSOH 165, para 14, whether an alternative site is suitable for the proposed development, not whether the proposed development can be altered or reduced so that it can be made to fit an alternative site.

30. In the present case, it is apparent that a flexible approach was adopted. The interveners did not confine their assessment to sites which could accommodate the development in the precise form in which it had been designed, but examined sites which could accommodate a smaller development and a more restricted range of retailing. Even taking that approach, however, they did not regard the Lochee site vacated by the appellants as being suitable for their needs: it was far smaller than they required, and its car parking facilities were inadequate. In accepting that assessment, the respondents exercised their judgment as to how the policy should be applied to the facts: they did not proceed on an erroneous understanding of the policy.

31. Finally, I would observe that an error by the respondents in interpreting their policies would be material only if there was a real possibility that their determination might otherwise have been different. In the particular circumstances of the present case, I am not persuaded that there was any such possibility. The considerations in favour of the proposed development were very powerful. They were also specific to the particular development proposed: on the information before the respondents, there was no prospect of any other development of the application site, or of any development elsewhere which could deliver equivalent planning and economic benefits. Against that background, the argument that a different decision might have been taken if the respondents had been advised that

the first criterion in the policies in question did not arise, rather than that criterion had been met, appears to me to be implausible.

Conclusion

32. For these reasons, and those given by Lord Hope, with which I am in entire agreement, I would dismiss the appeal.

LORD HOPE

33. The question that lies at the heart of this case is whether the respondents acted unlawfully in their interpretation of the sequential approach which both the structure plan and the relevant local plan required them to adopt to new retail developments within their area. According to that approach, proposals for new or expanded out of centre developments of this kind are acceptable only where it can be established, among other things, that no suitable site is available, in the first instance, within and thereafter on the edge of city, town or district centres. Is the test as to whether no suitable site is available in these locations, when looked at sequentially, to be addressed by asking whether there is a site in each of them in turn which is suitable for the proposed development? Or does it direct attention to the question whether the proposed development could be altered or reduced so as to fit into a site which is available there as a location for this kind of development?

34. The sequential approach is described in National Planning Policy Guidance Policy 8, *Town Centres and Retailing*, para 5.2 as a fundamental principle of NPPG 8. In *R v Rochdale Metropolitan Borough Council, Ex p Milne*, 31 July 2000, not reported, paras 48-49, Sullivan J said that it was not unusual for development plan policies to pull in different directions and, having regard to what Lord Clyde said about the practical application of the statutory rule in *City of Edinburgh v Secretary of State for Scotland* 1998 SC (HL) 33 at p 44, that he regarded as untenable the proposition that if there was a breach of any one policy in a development plan a proposed development could not be said to be “in accordance with the plan”. In para 52 he said that the relative importance of a given policy to the overall objectives of the development plan was essentially a matter for the judgment of the local planning authority and that a legalistic approach to the interpretation of development plan policies was to be avoided.

35. I see no reason to question these propositions, to which Mr Kingston QC for the appellants drew our attention in his reply to Mr Armstrong’s submissions for the respondents. But I do not think that they are in point in this case. We are concerned here with a particular provision in the planning documents to which the

respondents are required to have regard by the statute. The meaning to be given to the crucial phrase is not a matter that can be left to the judgment of the planning authority. Nor, as the Lord Ordinary put it in his opinion at [2010] CSOH 128, para 23, is the interpretation of the policy which it sets out primarily a matter for the decision maker. As Mr Thomson for the interveners pointed out, the challenge to the respondents' decision to follow the Director's recommendation and approve the proposed development is not that it was *Wednesbury* unreasonable but that it was unlawful. I agree with Lord Reed that the issue is one of law, reading the words used objectively in their proper context.

36. In *Lidl UK GmbH v The Scottish Ministers* [2006] CSOH 165 the appellants appealed against a decision of the Scottish Ministers to refuse planning permission for a retail unit to be developed on a site outwith Irvine town centre. The relevant provision in the local plan required the sequential approach to be adopted to proposals for new retail development out with the town centre boundaries. Among the criteria that had to be satisfied was the requirement that no suitable sites were available, or could reasonably be made available, in or on the edge of existing town centres. In other words, town centre sites were to be considered first before edge of centre or out of town sites. The reporter held that the existing but soon to be vacated Lidl town centre site was suitable for the proposed development, although it was clear as a matter of fact that this site could not accommodate it. In para 13 Lord Glennie noted that counsel for the Scottish Ministers accepted that a site would be "suitable" in terms of the policy only if it was suitable for, or could accommodate, the development as proposed by the developer. In para 14 he said that the question was whether the alternative town centre site was suitable for the proposed development, not whether the proposed development could be altered or reduced so that it could fit in to it.

37. Mr Kingston submitted that Lord Glennie's approach would rob the sequential approach of all its force, and in the Inner House it was submitted that his decision proceeded on a concession by counsel which ought not to have been made: [2011] CSIH 9, 2011 SC 457, para 31. But I think that Lord Glennie's interpretation of the phrase was sound and that counsel was right to accept that it had the meaning which she was prepared to give to it. The wording of the relevant provision in the local plan in that case differed slightly from that with which we are concerned in this case, as it included the phrase "or can reasonably be made available". But the question to which it directs attention is the same. It is the proposal for which the developer seeks permission that has to be considered when the question is asked whether no suitable site is available within or on the edge of the town centre.

38. The context in which the word "suitable" appears supports this interpretation. It is identified by the opening words of the policy, which refer to "proposals for new or expanded out of centre retail developments" and then set out

the only circumstances in which developments outwith the specified locations will be acceptable. The words “the proposal” which appear in the third and fifth of the list of the criteria which must be satisfied serve to reinforce the point that the whole exercise is directed to what the developer is proposing, not some other proposal which the planning authority might seek to substitute for it which is for something less than that sought by the developer. It is worth noting too that the phrase “no suitable site is available” appears in Policy 46 of the local plan relating to commercial developments. Here too the context indicates that the issue of suitability is directed to the developer’s proposals, not some alternative scheme which might be suggested by the planning authority. I do not think that this is in the least surprising, as developments of this kind are generated by the developer’s assessment of the market that he seeks to serve. If they do not meet the sequential approach criteria, bearing in mind the need for flexibility and realism to which Lord Reed refers in para 28, above, they will be rejected. But these criteria are designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest doing so.

39. For these reasons which I add merely as a footnote I agree with Lord Reed, for all the reasons he gives, that this appeal should be dismissed. I would affirm the Second Division’s interlocutor.

ANNEX 2

7. Ensuring the vitality of town centres

85. Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should:
- a) define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters;
 - b) define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre;
 - c) retain and enhance existing markets and, where appropriate, re-introduce or create new ones;
 - d) allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead. Meeting anticipated needs for retail, leisure, office and other main town centre uses over this period should not be compromised by limited site availability, so town centre boundaries should be kept under review where necessary;
 - e) where suitable and viable town centre sites are not available for main town centre uses, allocate appropriate edge of centre sites that are well connected to the town centre. If sufficient edge of centre sites cannot be identified, policies should explain how identified needs can be met in other accessible locations that are well connected to the town centre; and
 - f) recognise that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites.
86. Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.
87. When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
88. This sequential approach should not be applied to applications for small scale rural offices or other small scale rural development.

89. When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date 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 2,500m² of gross floorspace). This should include assessment of:
- a) 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
 - b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).
90. Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused.

ANNEX 3

Subject Policies

A Successful, Sustainable Place

Promoting Town Centres

NPF and wider context

58. NPF3 reflects the importance of town centres as a key element of the economic and social fabric of Scotland. Much of Scotland's population lives and works in towns, within city regions, in our rural areas and on our coasts and islands. Town centres are at the heart of their communities and can be hubs for a range of activities. It is important that planning supports the role of town centres to thrive and meet the needs of their residents, businesses and visitors for the 21st century.

59. The town centre first principle, stemming from the Town Centre Action Plan, promotes an approach to wider decision-making that considers the health and vibrancy of town centres.

Policy Principles

60. Planning for town centres should be flexible and proactive, enabling a wide range of uses which bring people into town centres. The planning system should:

- apply a town centre first policy³³ when planning for uses which attract significant numbers of people, including retail and commercial leisure, offices, community and cultural facilities;
- encourage a mix of uses in town centres to support their vibrancy, vitality and viability throughout the day and into the evening;
- ensure development plans, decision-making and monitoring support successful town centres; and
- consider opportunities for promoting residential use within town centres where this fits with local need and demand.

Key Documents

- [National Review of Town Centres External Advisory Group Report: Community and Enterprise in Scotland's Town Centres](#)³⁴
- [Town Centre Action Plan – the Scottish Government response](#)³⁵
- [Planning Advice Note 59: Improving Town Centres](#)³⁶
- [Planning Advice Note 52: Planning and Small Towns](#)³⁷

³³ A town centre first policy is intended to support town centres, where these exist, or new centres which are supported by the development plan. Where there are no town centres in the vicinity, for example in more remote rural and island areas, the expectation is that local centres will be supported. The town centre first policy is not intended to divert essential services and developments away from such rural areas. See section on Rural Development.

³⁴ www.scotland.gov.uk/Resource/0042/00426972.pdf

³⁵ www.scotland.gov.uk/Publications/2013/11/6415

³⁶ www.scotland.gov.uk/Publications/1999/10/pan59-root/pan59

³⁷ www.scotland.gov.uk/Publications/1997/04/pan52

- [Town Centres Masterplanning Toolkit](#)³⁸

Development Plans

61. Plans should identify a network of centres and explain how they can complement each other. The network is likely to include city centres, town centres, local centres and commercial centres and may be organised as a hierarchy. Emerging or new centres designated within key new developments or land releases should also be shown within the network of centres. In remoter rural and island areas, it may not be necessary to identify a network.

62. Plans should identify as town centres those centres which display:

- a diverse mix of uses, including shopping;
- a high level of accessibility;
- qualities of character and identity which create a sense of place and further the well-being of communities;
- wider economic and social activity during the day and in the evening; and
- integration with residential areas.

63. Plans should identify as commercial centres those centres which have a more specific focus on retailing and/or leisure uses, such as shopping centres, commercial leisure developments, mixed retail and leisure developments, retail parks and factory outlet centres. Where necessary to protect the role of town centres, plans should specify the function of commercial centres, for example where retail activity may be restricted to the sale of bulky goods.

64. Local authorities, working with community planning partners, businesses and community groups as appropriate, should prepare a town centre health check. Annex A sets out a range of indicators which may be relevant. The purpose of a health check is to assess a town centre's strengths, vitality and viability, weaknesses and resilience. It will be used to inform development plans and decisions on planning applications. Health checks should be regularly updated, to monitor town centre performance, preferably every two years.

65. Local authorities, working with partners, should use the findings of the health check to develop a strategy to deliver improvements to the town centre. Annex A contains guidance on key elements in their preparation.

66. The spatial elements of town centre strategies should be included in the development plan or supplementary guidance. Plans should address any significant changes in the roles and functions of centres over time, where change is supported by the results of a health check. Plans should assess how centres can accommodate development and identify opportunities.

67. There are concerns about the number and clustering of some non-retail uses, such as betting offices and high interest money lending premises, in some town and local centres. Plans should include policies to support an appropriate mix of uses in town centres, local centres and high streets. Where a town centre strategy indicates that further provision of particular activities would undermine the character and amenity of centres or the well-being of communities, plans should include policies to prevent such over-provision and clustering.

38 <http://creatingplacesscotland.org/people-communities/policy/town-centre-masterplanning-toolkit#overlay-context=people-communities/policy>

68. Development plans should adopt a sequential town centre first approach when planning for uses which generate significant footfall, including retail and commercial leisure uses, offices, community and cultural facilities and, where appropriate, other public buildings such as libraries, and education and healthcare facilities. This requires that locations are considered in the following order of preference:

- town centres (including city centres and local centres);
- edge of town centre;
- other commercial centres identified in the development plan; and
- out-of-centre locations that are, or can be, made easily accessible by a choice of transport modes.

69. Planning authorities, developers, owners and occupiers should be flexible and realistic in applying the sequential approach, to ensure that different uses are developed in the most appropriate locations. It is important that community, education and healthcare facilities are located where they are easily accessible to the communities that they are intended to serve.

Development Management

70. Decisions on development proposals should have regard to the context provided by the network of centres identified in the development plan and the sequential approach outlined above. New development in a town centre should contribute to providing a range of uses and should be of a scale which is appropriate to that centre. The impact of new development on the character and amenity of town centres, local centres and high streets will be a material consideration in decision-making. The aim is to recognise and prioritise the importance of town centres and encourage a mix of developments which support their vibrancy, vitality and viability. This aim should also be taken into account in decisions concerning proposals to expand or change the use of existing development.

71. Where development proposals in edge of town centre, commercial centre or out-of-town locations are contrary to the development plan, it is for applicants to demonstrate that more central options have been thoroughly assessed and that the impact on existing town centres is acceptable. Where a new public building or office with a gross floorspace over 2,500m² is proposed outwith a town centre, and is contrary to the development plan, an assessment of the impact on the town centre should be carried out. Where a retail and leisure development with a gross floorspace over 2,500m² is proposed outwith a town centre, contrary to the development plan, a retail impact analysis should be undertaken. For smaller retail and leisure proposals which may have a significant impact on vitality and viability, planning authorities should advise when retail impact analysis is necessary.

72. This analysis should consider the relationship of the proposed development with the network of centres identified in the development plan. Where possible, authorities and developers should agree the data required and present information on areas of dispute in a succinct and comparable form. Planning authorities should consider the potential economic impact of development and take into account any possible displacement effect.

73. Out-of-centre locations should only be considered for uses which generate significant footfall³⁹ where:

- all town centre, edge of town centre and other commercial centre options have been assessed and discounted as unsuitable or unavailable;

³⁹ As noted at paragraph 69, a flexible approach is required for community, education and healthcare facilities.

- the scale of development proposed is appropriate, and it has been shown that the proposal cannot reasonably be altered or reduced in scale to allow it to be accommodated at a sequentially preferable location;
- the proposal will help to meet qualitative or quantitative deficiencies; and
- there will be no significant adverse effect on the vitality and viability of existing town centres.

Promoting Rural Development

NPF Context

74. NPF3 sets out a vision for vibrant rural, coastal and island areas, with growing, sustainable communities supported by new opportunities for employment and education. The character of rural and island areas and the challenges they face vary greatly across the country, from pressurised areas of countryside around towns and cities to more remote and sparsely populated areas. Between these extremes are extensive intermediate areas under varying degrees of pressure and with different kinds of environmental assets meriting protection. Scotland's long coastline is an important resource both for development and for its particular environmental quality, especially in the areas of the three island councils.

Policy Principles

75. The planning system should:

- in all rural and island areas promote a pattern of development that is appropriate to the character of the particular rural area and the challenges it faces;
- encourage rural development that supports prosperous and sustainable communities and businesses whilst protecting and enhancing environmental quality; and
- support an integrated approach to coastal planning.

Key documents

- [Getting the Best from Our Land – A Land Use Strategy for Scotland](#)⁴⁰
- National Marine Plan

Delivery

76. In the pressurised areas easily accessible from Scotland's cities and main towns, where ongoing development pressures are likely to continue, it is important to protect against an unsustainable growth in car-based commuting and the suburbanisation of the countryside, particularly where there are environmental assets such as sensitive landscapes or good quality agricultural land. Plans should make provision for most new urban development to take place within, or in planned extensions to, existing settlements.

77. In remote and fragile areas and island areas outwith defined small towns, the emphasis should be on maintaining and growing communities by encouraging development that provides suitable sustainable economic activity, while preserving important environmental assets such as landscape and wildlife habitats that underpin continuing tourism visits and quality of place.

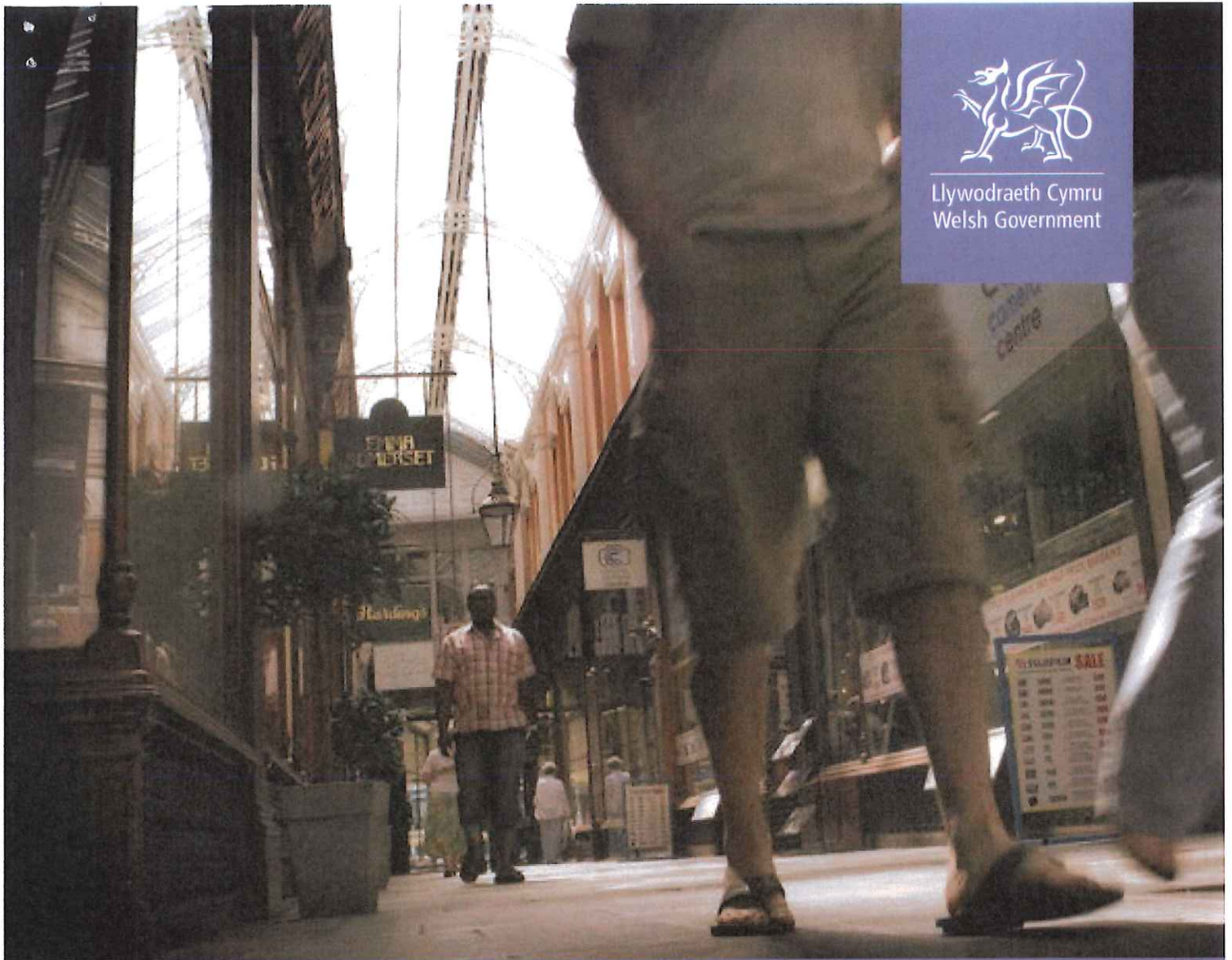
78. In the areas of intermediate accessibility and pressure for development, plans should be tailored to local circumstances, seeking to provide a sustainable network of settlements and a

⁴⁰ www.scotland.gov.uk/Publications/2011/03/17091927/0

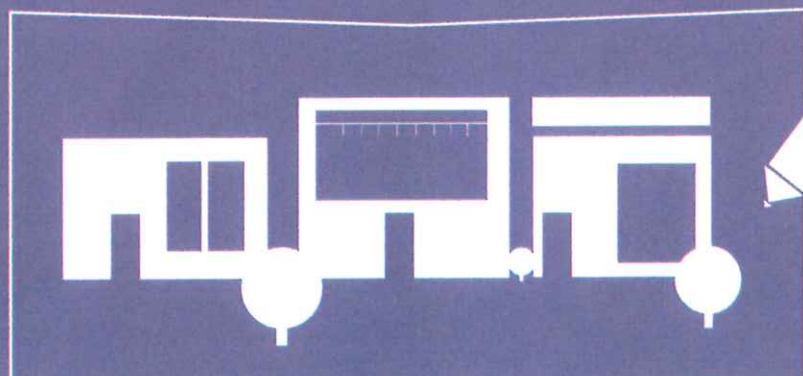
ANNEX 4



Llywodraeth Cymru
Welsh Government



Planning Policy Wales



Chapter 10 Retail and Commercial Development

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10.1 Objectives

10.1.1 Retail and commercial centres in Wales have undergone significant changes in the last 40 years. From the impact of out-of-centre retail development diverting trade away from traditional centres; the changing face of our centres diversifying away from traditional retail uses to more leisure-based activities; and the rise of internet shopping which has profoundly changed our modern retailing patterns. Through these periods of change retail and commercial centres have had to adapt and transform themselves in order to compete in an increasingly diverse market.

10.1.2 The Welsh Government's objectives for retail and commercial centres are to:

- Promote viable urban and rural retail and commercial centres as the most sustainable locations to live, work, shop, socialise and conduct business;
- Sustain and enhance retail and commercial centres' vibrancy, viability and attractiveness; and
- Improve access to, and within, retail and commercial centres by all modes of transport, especially walking, cycling and public transport.

10.1.3 Retail and commercial centres, identified in development plans are defined as established city, town, district, local, village and neighbourhood centres, which provide a range of shopping, commercial and leisure opportunities as well as places of employment, education, civic identity and social interaction. Opportunities to live in these centres, combined with their good public transport links, make them very sustainable places.

10.1.4 The Welsh Government adopts the 'town centres first' principle whereby consideration should always be given in the first instance to locating new retail and commercial development within an existing centre. Wherever possible, retail provision should be located in proximity to other commercial businesses, leisure and community facilities, employment and housing. Such co-location of retail and other uses in existing centres, with enhancement of access by walking, cycling and public transport, provides the opportunity to use means of transport other than the car. This mix of uses sustains and enhances the vibrancy, attractiveness and viability of those centres as well as contributing to an increase in linked trips and a reduction of travel demand.

10.1.5 Although retailing (A1 uses) should continue to underpin retailing and commercial centres, it is only one of the factors which contribute towards their vibrancy. Policies should encourage a diversity of uses in centres. Other appropriate retail and commercial centre uses are financial and professional services (A2), food and drink (A3), offices (B1), hotels (C1), educational and other non-residential establishments (D1), leisure (D2) and certain other sui generis uses such as launderettes and theatres¹. Mixed use development should be encouraged to promote lively centres as well as to reduce the need to travel to visit a range of facilities. Leisure uses can benefit retail and commercial centres and with adequate attention to safeguarding amenities can contribute to a successful evening economy.



10.1.6 These uses are complementary to the retail function of retail and commercial centres and should be subject to the sequential test (see 10.2.13 onwards) in consideration of development plan policies and development management decisions.

10.1.7 Vibrancy is reflected in how busy and diverse a retail and commercial centre is at different times and in different parts, and in the attractiveness of the facilities and character which draw in trade. Viability, on the other hand, refers to the ability of the centre to attract and retain investment, not only to maintain the fabric, but also to allow for improvement and adaptation to changing needs.

10.1.8 Retail catchment areas do not always reflect local authority boundaries and therefore it is important for local planning authorities to work together when considering the hierarchy of centres (see 10.2.3 – 10.2.4 below) and in dealing with larger retail developments which will have an impact on retail and other activities over a wide area.

10.2 Principles of retail and commercial centre planning

Retail and commercial strategies and support for existing centres

10.2.1 Local planning authorities should develop through their development plans a clear strategy and policies for retail development which seek to achieve vibrant, attractive and viable retail and commercial centres. They should set out a framework for the future of retail and commercial centres in their area which promotes a successful retailing sector supporting existing communities. The use of masterplans, development briefs or place plans can complement these strategies. In developing strategies, plans and policies to revitalise and increase the attractiveness of existing centres, local planning authorities should consult the private sector and local communities and should consider the character of historic centres² and conservation areas and any plans already in place to manage them.

10.2.2 If a need (see 10.2.9 – 10.2.12) for retail development has been established, the strategy will need to consider the most appropriate form and scale of provision which best matches the retail needs of the community. Planning applications, including out-of-centre developments, which do not accord with this approach should demonstrate why they have departed from it. Out-of-centre developments refer to developments outside designated retail and commercial centres and beyond edge-of-centre developments; they can be located both within and outside settlement limits.

10.2.3 Development plans should establish a hierarchy of retail and commercial centres using locally defined definitions; identify those which fulfil specialist functions and consider future roles and opportunities. This should be informed by evidence which underpins how each centre has been defined in the hierarchy.

10.2.4 In developing this hierarchy, account should be taken of the size, scale, form, function and geographical spread of the retail and commercial centres within an area. The local planning authority should consider the characteristics of each type of centre in order for them to be consistently categorised. For example, this could be the range of uses or the extent of their



catchment. The hierarchy should distinguish between those higher order centres which have a wider range of uses in order to reflect their larger catchment areas and lower order centres which are important to communities for day-to-day needs.

10.2.5 Good access to, and movement within, retail and commercial centres is essential. Development plan policies and development proposals should encourage the provision of good access and safe environments to and within centres for walkers and cyclists, including the promotion of routes identified under the provisions of the Active Travel (Wales) Act (see Chapter 8) and for public transport, allowing for bus priority measures and public transport facilities. They should also encourage easy access to and within centres, and appropriate facilities for disabled people, including accessible toilets and changing facilities.

10.2.6 Access for delivery vehicles should be provided to assist the efficient functioning of retail and commercial centres. Access by car and short-term parking can also help centres to compete with existing out of centre locations, but they should be managed to minimise congestion, pollution and parking problems which would otherwise reduce the convenience, attractiveness or competitiveness of these centres (see Chapter 8).

10.2.7 Development Plans should promote community safety by encouraging design aimed at reducing the risk of crime, and which provides a secure environment for those visiting and working in retail and commercial centres. Appropriate land uses and design of development and spaces can contribute to security through natural surveillance, for example mixed use schemes including residential can provide longer periods of activity and usage over the course of a day resulting in the creation of safer places.

10.2.8 Individual small shops and businesses, such as convenience stores and public houses, which are not part of established retail and commercial centres, can play an important economic and social role, particularly in rural areas and in urban areas with limited local provision, and their loss can be damaging to a local community. The role of these businesses should be taken into account in preparing development plan policies and in development management decision making. The policies for diversification of the local economy set out in section 4.6 and Chapter 7 will also be an important consideration.

Tests of retail need

10.2.9 In deciding whether to identify sites for comparison, convenience or other forms of retail uses in development plans or approving planning applications for such uses, local planning authorities should in the first instance consider whether there is a need for additional retail provision. Such need may be quantitative so as to address a quantifiable unmet demand for the provision concerned or qualitative. Qualitative considerations refer to issues such as the standard of existing retail provision in terms of the latest formats, range and mix of goods, distribution of retail provision and accessibility. Precedence should be given to establishing quantitative need before qualitative need is considered for both convenience and comparison floorspace, particularly as a basis for development plan allocations.



10.2.10 Where the current provision appears to be adequate in quantity, the need for further allocations or developments as a result of an identified qualitative need must be fully justified. Qualitative assessment should cover both positive and negative aspects and may become an important consideration where it:

- supports the objectives and retail strategy of an adopted development plan or the policies in this guidance;
- is highly accessible by walking, cycling or public transport;
- contributes to a substantial reduction in car journeys;
- contributes to the co-location of facilities in existing retail and commercial centres;
- significantly contributes to the vibrancy, attractiveness and viability of such a centre;
- assists in the alleviation of over-trading of, or traffic congestion surrounding, existing local comparable stores;
- addresses locally defined deficiencies in provision in terms of quality and quantity, including that which would serve new residential developments; or where it
- alleviates a lack of convenience goods provision in a disadvantaged area.

10.2.11 It will be for the local planning authority to determine and justify the weight to be given to any qualitative assessment. Regeneration and additional employment benefits are not considered qualitative need factors in retail policy terms. However, they may be material considerations in making a decision on individual planning applications if the regeneration and job creating benefits can be evidenced. Further policy and guidance is provided in Chapter 7 and Technical Advice Note (TAN) 23: Economic Development.

10.2.12 If there is no need for further development for retail and commercial centre uses, there will be no need to identify additional sites. There is no requirement to demonstrate the need for developments within defined retail and commercial centre boundaries. This approach reinforces the role of centres as the best location for most retail/leisure/commercial activities. It is not the role of the planning system to restrict competition between retailers within centres.

Sequential test

10.2.13 The sequential approach to development applies to all retail and other uses that are complementary to retail and commercial centres. Local planning authorities should adopt a sequential approach to the selection of new sites in their development plan and when determining planning applications. The sequential approach supports the principle that retail and commercial centres are in the most readily accessible location, and promotes combined trips for shopping, business, leisure and services. The approach reinforces the vibrancy, viability and attractiveness of retail and commercial centres.

10.2.14 Adopting a sequential approach requires the application of a sequential test whereby first preference should be for a site allocation or development proposal located in a retail and commercial centre defined in the development plan hierarchy of centres. The proposed use



(see 10.1.4 above) is likely to determine what type of centre (i.e. higher or lower order centre) is most appropriate as a starting point for this process. The extent of any sequential test should be agreed by pre-application discussion between the local planning authority and the developer at the outset of the development management process. This should indicate which retail and commercial centres should be examined for potential sites or buildings. If a suitable site or building is not available within a retail and commercial centre or centres, then consideration should be given to edge of centre sites and if no such sites are suitable or available, only then should out-of-centre sites in locations that are accessible by a choice of travel modes be considered. Developers should demonstrate that all potential retail and commercial centre options, and then edge-of-centre options, have been thoroughly assessed using the sequential approach before out-of-centre sites are considered. The onus of proof that central sites have been thoroughly assessed rests with the developer.

10.2.15 When preparing development plans local planning authorities should take a positive approach, in partnership with the private sector, in identifying sites which accord with the sequential approach and are in line with a development plan's retail strategy in terms of the size, scale and format of new developments needed. Local planning authorities should also conduct an impact assessment where required to determine how a future development may affect nearby retail and commercial centres. In allocating sites for different types of retail and commercial centre uses local planning authorities should take account of factors such as floorspace, quality, convenience, attractiveness of the site and traffic generation. They should not, however, prescribe rigid floorspace limits on allocated sites that would unreasonably inhibit the retail industry from responding to changing demand and opportunity. Proposals for development may come forward after the development plan has been adopted irrespective of whether the plan provides allocations. These development proposals should be determined in accordance with criteria based policies in the development plan or in relation to other material considerations.

10.2.16 Some types of retailing, such as stores selling bulky goods and requiring large showrooms, may not be able to find suitable sites or buildings within existing retail and commercial centres. Where this is the case such stores should in the first instance be located on the edge of retail and commercial centres, where specific sites are defined in the development plan for such uses. Where such sites are not available or suitable, other sites at the edge of retail and commercial centres, followed by out-of-centre locations may be considered, subject to application of the needs and impact tests. Edge-of-centre or out-of-centre sites should be accessible by a choice of public and private modes of travel. New out-of-centre retail developments or extensions to existing out-of-centre developments should not be of a scale, type or location likely to undermine the vitality, attractiveness and viability of those retail and commercial centres that would otherwise serve the community well, and should not be allowed if they would be likely to put development plan retail strategy at risk.



10.3 Development plans and retail and commercial centres

10.3.1 Development plans should:

- establish a local retail hierarchy which identifies the nature, type and strategic role to be performed by retail and commercial centres;
- set out measures to reinvigorate particular centres, as appropriate, including linking to centre-wide strategies, masterplans and place plans;
- promote vibrant, attractive and viable retail and commercial centres;
- identify the boundaries of retail and commercial centres contained within the hierarchy on the proposals map;
- allocate sites for retail and commercial centre uses where there is assessed to be a quantitative or qualitative need and where size and scale are in accord with the retail strategy. Sites should be identified using the sequential approach and, where appropriate, assessed for their impact on other centres;
- include a criteria based policy against which proposals coming forward on unallocated sites can be judged;
- set out policies for primary and secondary areas, where appropriate;
- develop policies which deal flexibly with changes to existing buildings;
- include policies relating to future development on existing retail sites to protect them from inappropriate development and to control and manage the release of unwanted retail sites to other uses; and
- monitor the health of retail centres to assess the effectiveness of policies.

10.3.2 Retail and commercial centres will experience growth and decline and development plans should identify these changing retail pressures and opportunities and devise appropriate responses to them. In some situations it may be necessary to take pro-active steps to identify retail and commercial centre locations for expansion. In others it may be necessary to identify measures to reinvigorate centres or to manage a change in the relative importance of a centre as other centres' roles expand. Dealing with change may mean redefining the boundaries of centres or identifying acceptable changes of use. Where appropriate, local planning authorities should also give consideration to including policies about the re-use of redundant out-of-town retail space for alternative uses.

10.3.3 Retail opportunities should continue to underpin retail and commercial centres. However, vibrant and viable centres are distinguished by a diversity of activity and use which should contribute towards a centre's well-being and success, whilst also reducing the need to travel. Development plans should include policies (including specific allocations) that encourage such diversity of uses in centres. In addition, mixed use developments, combining retailing with entertainment, restaurants and, where appropriate, residential should be encouraged so as to promote lively centres during both the day and the evening. Local planning authorities should undertake impact assessments if they allocate sites in the development plan on the edge of or outside a centre where it is clear the sites have been identified to meet a need of 2,500 sq. metres or more.



10.3.4 Development plans may define primary and secondary shopping areas in retail and commercial centres and describe how they relate to the character of that centre. Primary areas are typically characterised by a high proportion of A1 retail uses, and their designation requires an understanding of the existing distribution of uses in a centre together with careful consideration of a centre's role and how it relates to the retail strategy for the area. Secondary areas typically contain mixed use commercial development, for example shops, cafes and restaurants, banks and other services and community facilities. Banks and financial institutions provide important services and local planning authorities should encourage their retention in retail and commercial centres. Local planning authorities should be sympathetic to proposals aimed at upgrading such premises or providing new customer service facilities. Leisure and entertainment uses can benefit retail and commercial centres and with adequate attention to safeguarding amenities, can contribute to a successful evening economy.

10.3.5 Achieving diversity of use and activity may require a flexible approach to planning. Where the right balance of use and activity is not being achieved, local planning authorities should consider making changes to the acceptable uses in primary or secondary areas, the location of retail and commercial centre boundaries or, if necessary, the removal of these boundaries altogether.

10.3.6 To assess retail and commercial centre performance local planning authorities should monitor their health³ and recognise the signs of decline or structural change. There may be many causes of decline ranging from national or local economic circumstances, competition with other centres or changes in local shopping habits. Local planning authorities should use the strategy in their development plan to manage decline in a retail and commercial centre or to take action to regenerate it. In some situations over emphasis on A1 uses in either primary or secondary areas may undermine a centre's prospects, potentially leading to high vacancy rates. In such circumstances local planning authorities should consider how non-A1 uses may play a greater role in retail and commercial centres to increase diversity and reduce vacancy levels.

10.3.7 On the periphery of retail and commercial centres that are assessed to be in decline by a local planning authority, and where regeneration initiatives are thought unlikely to be successful, changes to the retail and commercial centre boundary may be appropriate which introduce more flexibility to the consideration of alternative uses outside the re-defined area. Rationalising a centre's boundary can help concentrate both A1 and non-A1 uses in a smaller more viable area, whilst releasing land or property outside the new boundary for other purposes such as residential. Change of use to residential within a retail and commercial centre boundary may also be acceptable; however, residential use is unlikely to be suitable on the ground floor within primary areas or other areas of concentrated A1 uses because it may fragment the shopping frontage and impact on the vitality and viability of a centre. When considering change of use to residential from for example A1, A2 or A3, a return to those uses in the future is unlikely. The introduction of residential uses may help contribute to the viability and vitality of the centre and should be encouraged on floors above ground level, including in primary areas.



10.3.8 Where a local planning authority considers a retail and commercial centre has declined to such an extent that it is no longer viable or has any prospect of retaining or attracting future investment, then consideration should be given to removing the retail centre status from that area. This should be done through full consultation with communities as part of the development plan.

10.3.9 To support development plan strategies for retail and commercial centres, local planning authorities should consider the use of Local Development Orders (LDOs)⁴. LDOs grant planning permission for certain types of development within a specified area, subject to conditions and limitations. An LDO can contribute to local economic development and regeneration, helping make places more attractive and more competitive, by simplifying the planning process. They can incentivise development and help reduce vacancy rates, leading to more vibrant and viable centres. Whilst LDOs are well suited to support minor developments in less sensitive areas, local planning authorities may also consider their use in relation to major developments where greater impacts are likely. In established retail and commercial centres an LDO can facilitate changes of use, alterations, extensions and infill developments, replacing many minor planning applications which are routinely approved. LDOs can be particularly effective when combined with other schemes such as Business Improvement Districts to bring about more comprehensive improvements to centres, such as environmental and infrastructure enhancements.

10.3.10 Policies and supplementary planning guidance should support the management of retail and commercial centres where appropriate. Such management, involving enhancement and promotion, can be an important factor in achieving vibrancy, viability, and attractiveness in retail centres. Management measures can also contribute to the achievement of a safe and crime free environment. Partnership between local authorities and the private sector is essential to the success of such management strategies.

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10.4.1 When determining a planning application for retail, commercial, leisure or other uses complementary to a retail and commercial centre, including redevelopment, extensions or the variation of conditions, local planning authorities should take into account:

- compatibility with the development plan;
- quantitative and qualitative need for the development/extension, unless the proposal is for a site within a defined centre or one allocated in an up-to-date development plan;
- the sequential approach to site selection;
- impact on existing centres;
- net gains in floorspace where redevelopment is involved and whether or not it is like-for-like in terms of comparison or convenience;
- rate of take-up of allocations in any adopted development plan;
- accessibility by a variety of modes of travel;
- improvements to public transport;
- impact on overall travel patterns; and
- best use of land close to any transport hub, in terms of density and mixed use.



10.4.2 Larger schemes should consider how they integrate into the wider urban fabric and explore if associated public realm works to improve the design of the overall development can be secured. Design and Access Statements⁵ and design reviews⁶ provide the opportunities for these issues to be explored in detail.

10.4.3 For major⁷ new retail proposals, local planning authorities should consider not only the incremental effects of that proposal, but also the likely cumulative effects of recently completed developments, together with outstanding planning permissions and development plan commitments, in the catchment areas of defined retail and commercial centres.

10.4.4 All retail applications of 2,500 sq. metres or more gross floorspace that are proposed on the edge of or outside retail and commercial centres should be supported by a retail impact assessment. For smaller retail planning applications or site allocations, local planning authorities will need to determine whether an assessment is necessary, for example when a smaller proposal may have a significant impact on a centre. Requests for retail impact assessments by local planning authorities on smaller developments should be proportionate to potential impacts.

10.4.5 The three tests of retail need, sequential test and retail impact assessments may apply to new retail developments. Proposals which are in accordance with an up-to-date development plan will not require the application of a test as this will have been undertaken when the plan was prepared.

10.4.6 Edge of centre or out-of-centre retail developments may seek, over time, to change the range of goods they sell or the nature of the sales area, for example by sub-division to a mix of smaller units or to a single 'department' store. Sites might come up for redevelopment or be extended, or additional floorspace (possibly in the form of mezzanine floors) might be proposed. Local planning authorities should anticipate such future changes to retail developments (which are likely to impact upon the vibrancy, viability or attractiveness of a retail and commercial centre) by the use of appropriate conditions on the initial permission and on any subsequent variation of condition. Conditions might be appropriate to prevent the development from being sub-divided into a large number of smaller shops to limit the range of goods sold or to restrict the amount of floorspace. Similarly where the inclusion, for instance, of post offices and pharmacies in out-of-centre retail developments would be likely to lead to the loss of existing provision, they should be discouraged by imposing appropriate conditions. Local planning authorities may wish to consider extending the list of uses controlled in out-of-centre retail developments if the location of such uses are likely to lead to the loss of existing provision in retail and commercial centres⁸. Applications to remove or vary such conditions should be subject to the same considerations.

10.4.7 The economic and social role of local shops, village shops and public houses should be taken into account when considering applications for a change of use into residential or other uses. In rural areas local planning authorities should adopt a positive approach to applications for conversion of suitable village properties to shops and for extensions to village shops designed to improve their viability. A positive approach should also be taken, subject to amenity considerations, to re-establishing public houses in villages which have completely lost such provision. The lack of public transport in rural areas should not preclude small-scale retail or service development where this will serve local needs.



10.4.8 Shops ancillary to other uses, such as farm shops that will help to meet the demand for fresh produce, craft shops and shops linked to petrol stations, can also serve a useful role in rural areas by providing new sources of jobs and services (see Chapter 7). In assessing such proposals, local planning authorities should take account of:

- the potential impact on nearby retail and commercial centres or village shops;
- the desirability of providing a service throughout the year; and
- the likely impact of traffic generated and access and parking arrangements.

10.4.9 Factory shops selling their own products are likely to be suitable where, individually or cumulatively, they do not harm the vitality, attractiveness or viability of retail centres and where they are acceptable in regard to traffic generation, access and parking.

10.4.10 Free-standing developments which include a number of factory outlets should be assessed on the same basis as other retail proposals. The central issue is not whether goods are sold at a discount, but whether such retail developments would divert trade away from existing retail centres. Such centres may draw customers from a wide catchment area, predominantly by car, and as a result are unlikely to be consistent with the criteria in this guidance unless those issues can be satisfactorily resolved.

10.4.11 Warehouse clubs which sell goods to the public share many of the characteristics of very large retail outlets and they should be treated as if they were retail businesses in assessing planning applications for them.

10.4.12 Proposals for amusement centres, if considered to be appropriate, are most suitably sited in secondary shopping areas or in areas of mixed commercial development. They are unlikely to be acceptable in primary shopping areas, close to housing or near schools, places of worship, hospitals and hotels, nor in conservation areas or other places of special architectural, historic, landscape or natural environment character. In resort towns, seafront locations may be preferred (but see sections 5.6 to 5.8). Account will always need to be taken of the amount of noise already generated in the area. It will not normally be reasonable to expect amusement centres to be quieter than their neighbours.

10.4.13 Applications for renewal of planning permission for retail, leisure, and other retail and commercial centre uses should be determined in accordance with the development plan and with regard to this guidance. This may mean that permissions are not renewed where the proposals are not in accord with current policy. Proposals to change the use of existing retail allocations which are not in conformity with this guidance (for example because they are located where access by walking, cycling and public transport is poor) to other more acceptable land uses at those locations should be supported.

10.4.14 Applications for uses other than those allocated on retail and commercial centre sites which conform to this guidance should not normally be permitted. However, some sites in urban areas with extant, but unimplemented permissions for commercial or retailing uses may be suitable for housing



development that could help bring vitality to urban centres. Where vacant offices and retail premises in existing shopping centres are unlikely to be used again for these purposes, authorities should encourage conversion to other appropriate uses. However, this is more appropriately undertaken in the context of a retail and commercial centre strategy.

10.4.15 Planning applications for retail development should not normally be permitted on land designated for other uses. This advice applies especially to land allocated for industry, employment and housing, where retail development can be shown to have the effect of limiting the range and quality of sites that would be available for such uses.

Figure 10.1 Retail and Commercial Development'

Guide to the application of national planning policy statements in LDPs

Locational considerations

The national planning policy statements which should inform the retail and commercial centre strategy in the LDP and the locational policies arising from it can be found in the following paragraphs:

Paragraph	Policy Issue
10.1.4	Locating retail and other services in existing retail and commercial centres
10.1.5	Diversity of uses and mixed use developments in centres
10.2.1	Retail and commercial centre strategies
10.2.3	Retail and commercial centre hierarchy and roles
10.2.5	Traffic management in centres
10.3.4	Primary and secondary frontages
10.2.9-16	Identifying new sites

Topic-based policies

The national planning policy statements on retail and commercial centres which should be included or considered for inclusion in topic-based policies in the LDP can be found in the following paragraphs:



Paragraph	Policy Issue
10.2.1	Policies to achieve vital, attractive and viable centres
10.2.1	Measures to reinvigorate particular centres
10.2.5	Accessibility of centres and traffic management
10.2.15	Criteria-based policy for determining proposals on unallocated sites

National development management policies

The following paragraphs contain statements of national development management policy which should not need to be repeated as local policy in LDPs:

Paragraph	Policy Issue
10.1.4	Locating retail and other services in existing centres
10.1.5	Mixed use development
10.1.5	Uses best located in centres
10.4.3	Major new retail proposals – incremental and cumulative effects
10.4.4	2,500 sq. m threshold for retail impact assessments
10.4.6	Change in nature of edge of centre and out-of-centre retail developments
10.4.7	Change of use to/from local shops and village shops, and to/from public houses
10.4.8	Shops ancillary to other uses, e.g. farm shops
10.4.9	Factory outlets
10.4.11	Warehouse clubs
10.4.12	Amusement centres



References

- ¹ The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories known as 'Use Classes'. Generally, planning permission is required to change from one use class to another, although there are exceptions to this where change is allowed without planning permission
- ² See Chapter 6, The Historic Environment
- ³ Technical Advice Note 4, Retail and Commercial Development, Welsh Government, 2016
www.gov.wales/topics/planning/policy/tans/tan4/?lang=en
- ⁴ Local Development Orders – Impacts and Best Practice, Welsh Government, 2014
www.gov.wales/topics/planning/planningresearch/publishedresearch/local-development-plans-good-practice/?lang=en
- ⁵ See Chapter 4 and Technical Advice Note 12: Design, Welsh Government, 2016
www.gov.wales/topics/planning/policy/tans/tan12/?lang=en
- ⁶ Provided by the Design Commission for Wales (www.dcfw.org)
- ⁷ 'Major' is defined as developments creating floor space over 1,000 sq m by the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (as amended)
- ⁸ Welsh Government Circular WGC016/14, The Use of Planning Conditions for Development Management www.gov.wales/topics/planning/policy/circulars/welshgovcirculars/wgc-16-2014/?lang=en

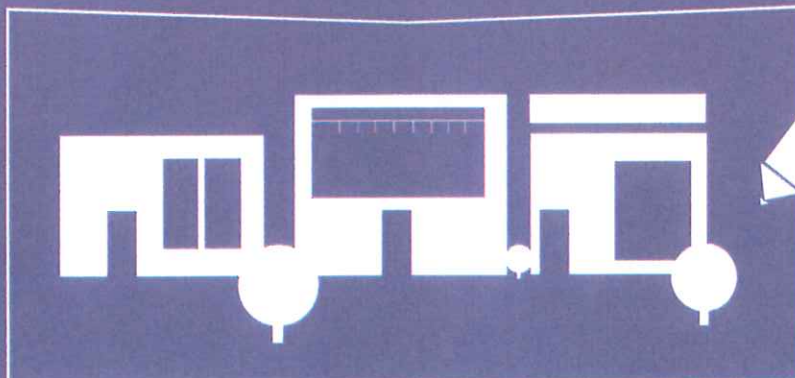




Llywodraeth Cymru
Welsh Government



Retail and Commercial Development



Technical Advice Note 4

November 2016

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1. Introduction

1.1 This Technical Advice Note (TAN) should be read in conjunction with Planning Policy Wales (PPW) which sets out the land use planning policies of the Welsh Government. PPW, TANs and Circulars should be taken into account by local planning authorities in Wales in the preparation of Development Plans. They may be material to decisions on individual planning applications and will be taken into account by Inspectors and the Welsh Government in the determination of appeals and called-in planning applications.

1.2 Technical Advice Note (TAN) 4 – Retailing and Town Centres (1996) is hereby cancelled.

2. Objectives

The Welsh Government's objectives for retail and commercial centres are to:

- Promote viable urban and rural retail and commercial centres, as the most sustainable locations to live, work, shop, socialise and conduct business.
- Sustain and enhance retail and commercial centres vibrancy, viability and attractiveness.
- Improving access to, and within, retail and commercial centres by all modes of transport, especially walking, cycling and public transport.

Objective 1 - Promote viable urban and rural retail and commercial centres, as the most sustainable locations to live, work, shop, socialise and conduct business

2.1 Planning Policy Wales recognises that retail and commercial centres are the focal point for shopping, leisure and tourism, local services and business/employment opportunities. This 'town centres first' approach ensures, through policy and decision making, that retail and commercial centres should be the first choice location in assessing the most appropriate places for a wide variety of developments. The co-location of these uses and their high levels of accessibility by a range of transport options make them sustainable locations.

2.2 Urban and rural retail and commercial centres, whilst having different contexts, are both focal points for economic activity. TAN6¹ provides further advice on planning for rural services and the economy. However, it is important for rural local planning authorities to ensure that the strategies for their area assess local requirements for additional services and they are planned in a co-ordinated manner through the development plan system.

2.3 A wide range of uses are located in retail and commercial centres including retail, office, residential, leisure, tourism and community functions. These centres are traditionally characterised by having higher densities which increases scope for different uses, including residential, to be accommodated above retail and commercial floorspace. Encouraging people to live and work in existing centres reinforces local demand and provides additional vibrancy during the day and in the evening. This diversity of uses, whilst benefiting the wider economy, will need to be carefully planned and managed to ensure that no conflicts arise, particularly with regards to amenity.



2.4 In order for these centres to be sustainable in the longer term they need to react to changes in the market place and adapt to the changing needs of society. Planning policies and development management decisions also need to take account of these changes, whilst ensuring that retail and commercial centres remain sustainable in the longer term.

Objective 2 - Sustain and enhance retail and commercial centres vibrancy, viability and attractiveness

2.5 Not all retail and commercial centres have been able to respond to changes in the sector as quickly or as effectively as others to ensure their vibrancy in the longer term. Welsh Government policy objectives, through planning and other initiatives seek to ensure that viable centres have a positive future; through flexible planning policies and targeted investment in physical regeneration which form part of a comprehensive strategy or plan for their area.

2.6 The planning system's role in creating vibrant, viable and attractive retail and commercial centres is two fold: firstly in creating a positive and flexible policy environment for retail and commercial centres which recognises the individual needs and potential of each centre and planning for their futures in a co-ordinated way (see below) and; secondly, taking other policy and development management decisions which do not undermine the importance of retail and commercial centres and the sustainable locations they offer for businesses and the community.

Objective 3 - Improving access to, and within, retail and commercial centres by all modes of transport, especially walking, cycling and public transport

2.7 Good access to, and within, retail and commercial centres is key, both to the vibrancy of those places and to ensure that everyone in society has access to the wide variety of goods and services. Ensuring that this access is sustainable in nature by promoting the ability to walk, cycle or use public transport to get to retail and commercial centres is important in this regard.

2.8 Once at a centre, it should be easy for people to access services through sensitively designed² public realm schemes and access to buildings which meet statutory requirements³. New development proposals will need to consider their internal layout and accommodate appropriate facilities for disabled people and their families. Consultation with relevant stakeholders in the design of new public areas is therefore essential.

3. Development Plans

3.1 Through development plan policies and supplementary guidance, local planning authorities should develop their retail evidence base and plan positively to protect and enhance the vibrancy, viability and attractiveness of their retail and commercial centres.



3.2 Local planning authorities should also work together when establishing their retail evidence bases and strategies, not only to identify cross boundary issues but also to better understand how their retail hierarchies fit in to the larger than local area (defined as larger than a single local authority). Retail catchment areas of established retail and commercial centres do not necessarily reflect local authority boundaries. Local planning authorities should consider the role and functions of such centres in relation to development plan allocations, policies and strategies.

4. Defining retail and commercial centre hierarchies

4.1 In guiding development to the most appropriate location, local planning authorities, in their development plans, should develop a local hierarchy to classify their various retail and commercial centres, and apply appropriate policies to those centres based on their characteristics. This locally-driven approach to defining higher and lower order centres is seen as most appropriate as urban and rural areas will have different scales and characteristics which cannot be defined consistently at the national level.

4.2 Higher order retail and commercial centres need to be accessible to a large number of people, and the scale and diverse range of uses present will reflect the needs of a population that is normally greater than the local community. Higher order centres are typically characterised by combinations of shops, offices, financial & professional services, food and drink establishments, hotels, education facilities, entertainment and leisure, non residential institutions as well as residential.

4.3 Lower order centres are characterised by smaller scale provision and fewer uses with the intention of primarily serving the needs of a local community. Lower order centres will typically include shops, financial & professional services, food and drink, and non residential institutions of an appropriate scale, but depending on the centre may include other uses.

4.4 In considering where centres may lie in relation to the retail hierarchy, local planning authorities should also take into account the likely future status of that centre. For example, if, as part of the retailing strategy a centre has been identified for growth and new sites allocated, then this should be reflected in the status of that centre. Likewise, if the strategy is to manage the decline of a centre, this should also be reflected in that centre's position in the hierarchy.

4.5 Once the hierarchy has been established, appropriate policies may be developed for different types of retail and commercial centre. These will primarily relate to changes of use of existing buildings and how flexible a local planning authority wishes to be in dealing with such applications, in accordance with their retail strategy and how they foresee retail and commercial centres developing in the future.



4.6 Out of centre retail parks whose development has been based solely on retailing should not normally be included in the local hierarchy. However, this should not preclude these destinations being assessed against locally-set criteria on the range and choice of services and the scale and nature of the retail floorspace, to ascertain if, through time, these centres have matured into retail and commercial centres in their own right, offering the same level of service provision and being as accessible as traditional centres. This process is intrinsically linked to the sequential approach to allocating new development sites; it should therefore be undertaken in the formulation of development plans and not on a case-by-case basis in relation to specific development proposals which arise outside of this process.

5. Retail Strategies, Masterplanning and Place Plans

5.1 The development plan should include a clear strategy for retail and commercial centres which sets out how the local planning authority wishes to see those areas develop over the plan period. This strategy should be developed with colleagues in local authority regeneration, economic development, public protection and estates departments, as well as stakeholder involvement from retail and commercial centre businesses, community groups and local chambers of commerce amongst others. Complementarity with the Single Integrated Plan or Well-being Plan is also important to ensure matters wider than the planning system, but which may have land use issues, are considered. Other factors affecting the quality of retail and commercial centres lie outside the planning system but can be important in supporting or complementing the aims of planning strategies set out in development plans. Effective management of retail and commercial centres through strategies, plans and where relevant by Town Centre Managers, can help to enhance their vibrancy, attractiveness and viability.

5.2 If a need (see Section 6) for further retail development has been identified the local planning authority will need to express through their retail strategy and development plan allocations how that need should be accommodated. For example: if there is an identified quantitative need of 2,500 sq. m of convenience floorspace alternative options might be to focus that provision in one large store or several smaller stores. Investigations of current provision levels would be needed to be evidenced together with consultation undertaken with stakeholders and communities to ascertain the most appropriate provision.

5.3 If that need requires new sites to be identified then local planning authorities should seek to identify sites within established retail and commercial centres depending on the scale of provision. If after investigation suitable sites within established centres are not available local authorities should consider whether a centre's boundaries should be extended in order to meet the need identified before out of centre sites are considered (see further guidance on the sequential test in section 7). The identification of these sites will need to take into account their availability and deliverability for new development within the plan period as well as the opportunities to regenerate or support retail and commercial centres through new development.



5.4 Similarly, if a retail and commercial centre has been identified as being in decline to the point of no longer being viable, this change should be managed as part of the retail strategy. This management, which will take a holistic approach in the planning for retail and commercial provision, should ensure that communities retain access to the goods and services which they require.

5.5 As part of the wider development plan vision, the local planning authority will also need to consider if new areas of growth will be adequately provided for in land use terms, and make appropriate provision within their retail strategy to accommodate this to ensure this strategic growth is focused on the most suitable locations.

5.6 Area-wide strategies, Place Plans, or masterplans should outline a vision for the centre setting out the land-use implications. Masterplans and strategies should be developed by local planning authorities in partnership with relevant stakeholders. Place Plans may also be an appropriate mechanism for outlining a strategic approach for a particular centre.

5.7 The night time economy is important for many retail and commercial centres. The benefits of developing this activity are that these centres are economically buoyant at various times of the day, adding their vibrancy and attractiveness. Issues surrounding public safety and amenity should be carefully considered. Retail and commercial centre strategies can help identify these aspects and how they relate to specific centres with land use planning policies and other initiatives identified in order to balance and address them.

5.8 Once developed, strategies, masterplans and Place Plans will have a dual role. Firstly they can be used to inform the evidence base behind policies within the development plan; this includes justification for new site allocations. Secondly, following the adoption of the development plan, they can be adopted as supplementary guidance to aid the implementation of policies and to resist inappropriate proposals, to help ensure that the vision for the retail and commercial centre is realised.

5.9 Supplementary guidance can also be useful in examining detailed issues surrounding retail and commercial centres, such as the treatment of the public realm or setting out the local planning authorities specific requirements for particular sites or areas within a centre.

6. Tests of Retail Need

6.1 The tests of retail need are the starting point for planning for new retail development in both development plans and development management. The quantitative needs test is based on forecasting of expenditure on a certain type of retail good (comparison or convenience for example) over a period of time, which is then assessed against the current level of provision. Any shortfall in the provision is then expressed, using expenditure per square metre calculations, as the level of new retail provision required.



6.2 The requirement to consider need for a development is not relevant for retail proposals within a defined retail and commercial centre in a development plan. However it will be required for any application in an edge-of-centre or out-of-centre location which is not in accordance with an adopted development plan.

6.3 The quantitative retail needs tests is a consistent way of calculating future retail provision. However the data used in these needs assessments can be sensitive to small changes, potentially altering the result. The Welsh Government does not prescribe any particular methodology for undertaking assessments and it is up to each local planning authority to be satisfied with quantitative retail need evidence in policy making or the development management process. Local planning authorities and developers should therefore ensure assessments are prepared in a clear logical and transparent way with the use of robust and realistic evidence. Such assessments usually include:

- Existing and forecasted population levels and distribution.
- Forecast expenditure for specific classes of goods to be sold, within the broad categories of comparison and convenience goods, which are provided at the lowest geographical area possible to reflect local circumstances.
- Sales density data for both existing and future retail provision which is realistic and benchmarked against similar retail developments in the area; and
- Catchment areas for centres and individual stores which reflect the size and scale of the development and the likely draw of a particular scheme.

6.4 Quantitative retail needs assessments can then feed into the retail strategy for the development plan where local planning authorities should make decisions on the future type, location and scale of new retail development which best supports the delivery of the overall development plan vision and the needs of the communities involved.

6.5 Planning Policy Wales is clear in the requirement to establish a quantitative retail need before other, qualitative aspects of need are considered. Where the current provision is sufficient, the need for further allocations must be fully justified in the development plan and supporting evidence.

6.6 Qualitative need is harder to justify and proposals based on this approach should be closely scrutinised to ensure that their development does not have unintended consequences and detrimental impact on existing retail activity within retail and commercial centres. The overall objective of applying the qualitative need approach would be to achieve an appropriate distribution and range of sites for retail stores which meets the needs of all communities, particularly of those in rural or deprived areas where existing provision is inadequate. These issues could be considered as part of the overall retail strategy for an area (see Section 4).



6.7 Planning Policy Wales highlights cases where qualitative need may be justified. It is unlikely that any of these aspects on their own could justify new retail development; rather a combination of several of these issues could make the case for further provision. These could include proposals which:

support the objectives and retail strategy of an adopted development plan or the policies in this guidance.

This may be where a retail development is linked to a large area of growth which is not currently served by any form of retail development.

are highly accessible by walking, cycling or public transport and/or contributes to a substantial reduction in, or alleviation of, car journeys, traffic congestion or over-trading.

Current travel patterns for communities to access existing retail provision may be problematic or result in extended and unreasonable travel times. This may be as a result of the store over-trading which is defined as the expenditure in store significantly exceeding anticipated or market average levels. Proposals which are well-located within existing communities may be able to assist to alleviate some of these issues.

contribute to the co-location of facilities in retail and commercial centres identified in the retail hierarchy; and/or significantly contributes to the vibrancy, attractiveness and viability of such a centre.

Existing provision in a retail and commercial centre may lack a certain type of development which is impacting on its ability to draw people from its catchment and reach its potential. Proposals for additional types of development could therefore be justified although these would need careful management by conditions to ensure those uses which will strengthen the centre are delivered.

address locally defined deficiencies and alleviates a lack of convenience provision in a disadvantaged area.

This relates to the ability of all communities and disadvantaged areas in particular to access the goods and services which they need on a day to day basis. Current provision may not meet these requirements resulting in expensive, unnecessary trips further afield. Local provision to meet this need would therefore be a positive step for these communities. Localised deficiencies may also arise when new residential development has recently been constructed.

6.8 Planning Policy Wales also advises that regeneration and additional employment benefits are not considered qualitative need factors in retail policy terms, though they may be material considerations in making a decision on a planning application. If there is no



quantitative retail need for a proposal the net impact on employment may be negligible as there may be economic impacts on existing stores in the area which would require them to reduce their staff numbers as a result. A local planning authority would need to fully investigate such cases, taking a holistic approach, before considering whether to approve such schemes on this basis.

7. The Sequential Test

7.1 The sequential test supports the Welsh Government's policy objective of promoting centres identified in the retail and commercial centre hierarchy, as the most sustainable locations to live, shop, socialise and conduct business. Development plan site allocations or planning applications for retail, leisure and other complementary uses should be subject to the sequential test. The sequential location of development plan allocations or planning applications should be considered in the following order:

- Firstly, within retail and commercial centres identified in the retail hierarchy where suitable sites, or buildings for conversion are available. Where this relates to a development plan allocation, they must be available for development within the plan period. Local planning authorities should ensure that any development plan allocation or planning application is of an appropriate scale in relation to the role and function of the centre.
- If no suitable sites are available in retail and commercial centres then edge-of-centre locations should be considered, with preference given to brownfield sites that are or will be well connected to the existing centre and accessible by a variety of means of transport, particularly walking, cycling and public transport.
- Only when retail and commercial centres and edge of centre locations have been considered and found to be unsuitable can out-of-centre options within, and then outside, a settlement area be considered. Where out of centre sites are concerned preference should be given to brownfield sites which are or will be well served by a choice of means of transport and are close to an established retail and commercial centre.

Suitability

7.2 Suitability refers to a site or building's attributes and whether these are sufficient to meet the development requirements of a particular proposal. Where a developer favours a development site on the edge of or outside a retail and commercial centre the developers will need to provide evidence to explain why potential sites or buildings within the centre are unable to accommodate the format, scale and design of a proposed development. This exercise should not necessarily be confined to an individual centre and developers should consult with the local planning authority to ascertain the extent of any search for other potentially suitable sites or buildings within the wider catchment area.

7.3 When a need for further convenience or comparison shopping provision is established as part of the development plan preparation process the local planning authority should consider how different retail formats, could be accommodated on a site. Where allocated



sites are on the edge of or outside retail and commercial centres local planning authorities should give consideration to the possible consequences of any subdivision of units that may be proposed by developers in the future and whether measures are required to restrict any such proposals. Developers seeking to include sites in development plans should be flexible and innovative, and should examine carefully how sites in established centres may be able to accommodate their requirements.

7.4 When allocating sites or when determining applications that are in edge of centre locations, local planning authorities should consider the distance that a site is from the edge of a retail and commercial centre for it to be accessible by foot. Wherever possible edge of centre site allocations or development proposals should be located adjacent to a designated retail and commercial centre boundary, where this is not the case it should not normally be more than 200 to 300 metres from the edge of the centre. Factors such as the size of the retail and commercial centre, local topography and presence of physical barriers to access may influence any assessment. It may be appropriate to use a shorter acceptable distance between the centre and the development proposal if the centre is small. Local planning authorities should consider whether to specify advice in their LDP about accessible distances from retail and commercial centres to edge of centre developments.

7.5 Developers and retailers should be flexible and innovative about the format, design and scale of proposed development and the amount of car parking needed, tailoring these to fit local circumstances. In particular, developers proposing large scale retail and/or leisure developments with a large quantity of car parking are encouraged to consider whether or not elements of their proposal could be located on a site or number of sites in a centre, rather than automatically seeking to locate on a single edge of centre or out-of-centre site. Such an approach could take advantage of shared parking facilities. The use of masterplans or Place Plans by local planning authorities could help facilitate such an approach.

Availability

7.6 Local planning authorities should identify, in consultation with stakeholders and the community, an appropriate range of sites to allow for the accommodation of identified need in the development plan. Identified sites should be capable of being brought forward for development during the development plan period. Consideration should be given to the needs of the community where the demand for retail and leisure provision (and other complementary uses) has been identified. Where phasing is a consideration priority should be given to sites in established centres and sites in areas of poor provision.

8. Retail Impact Assessments

8.1 Planning Policy Wales identifies the issues local planning authorities should take in to account when allocating new sites or determining planning applications for retail or other uses complementary to a retail and commercial centre (including redevelopment, extensions or the variation of conditions).



8.2 Retail applications of 2,500 sq. metres or more gross floorspace that are proposed on the edge of or outside retail and commercial centres should be supported by a retail impact assessment provided by the developer. Local planning authorities should undertake impact assessments to evidence a site identified in a development plan to meet a need of 2,500 sq. metres or more. Smaller retail planning applications or site allocations may also be assessed where local planning authorities believe it will have a significant impact on a retail and commercial centre. Requests for retail impact assessments by local planning authorities on smaller developments should be proportionate to potential impacts.

8.3 In addition to the needs and sequential tests, planning applications for retail developments on the edge of or outside a retail or commercial centre that are not in accordance with the development plan should be assessed against a range of impact criteria, for example:

- Impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area.
- Impact of the proposal on centre vitality and viability, including local consumer choice and range and quality of the comparison and convenience retail offer.
- Consideration of the cumulative effects of the development proposal in relation to any outstanding planning permissions.
- The impact of the proposal on allocated sites outside centres being developed in accordance with the development plan.
- Impact of the proposal on in centre trade and turnover in the centre and other centres in the wider area, taking account of current and future consumer expenditure capacity in the catchment area.
- Assessment of the proportion of customers using the development traveling by different modes of transport.
- Impact on travel patterns over the catchment area.
- Any significant environmental impacts.

9. Retail and Commercial Primary and Secondary Areas and Change of Use

9.1 Vibrant and viable centres are distinguished by a diversity of uses and activities. Where primary and secondary areas have been designated in established retail and commercial centres they can help promote and maintain an effective distribution and balance of uses and activities.

9.2 A primary area is generally characterised by a high proportion of A1 shopping uses, whilst a secondary area typically incorporates a broader mix of uses such as shops, and non A1 uses including cafes, restaurants, banks, other financial institutions, services, and other uses complementary to a retail and commercial centre. When the retail industry is buoyant and a centre's economic performance is strong such a distribution of uses is likely to be the most appropriate approach, and restrictions to non A1 uses in primary areas



are likely to apply. However, when a retail and commercial centre's performance is poor, due perhaps to local or national economic conditions, and frontages become characterised by persistently high vacancy rates, local planning authorities should consider applying a more flexible strategy. Local planning authorities should decide if restricting change of use from A1 to non A1 uses in primary areas is the most effective strategy. In these circumstances over emphasis on A1 uses alone in primary areas may serve to weaken the centre's prospects of being vibrant and viable; making it more vulnerable to decline. The positive role that non A1 uses such as food and drink, financial, and other services can bring to both primary and secondary areas should be examined by local planning authorities. In addition, the role that residential uses can play in supporting centres should also be recognised. Whilst residential use is unlikely to be appropriate at ground floor level in primary areas, residential use on upper floors can add to a centres vibrancy and viability, increasing footfall and contributing to both the daytime and evening economies of a centre.

9.3 Flexibility to expand or contract primary and secondary areas and to allow changes of use to attract investment and diversify the range of businesses is essential within vulnerable or declining centres. In larger more diverse centres that are more resilient to downturns in the economy a more restrictive approach to change of use may still be appropriate. However, in smaller centres this may not be the case and a more restrictive approach to change of use could act against opportunities to strengthen a centre through greater diversity. Local planning authorities may choose not to define primary and secondary areas in smaller centres where decline is being experienced. Local planning authorities should recognise the role that a retail and commercial centres play and where structural change is occurring identify the most appropriate strategy to address this through their development plan and retail hierarchy.

9.4 Restaurants together with some cafes/coffee shops can provide diversity and vibrancy in centres, increasing the period of time a shopper spends in a centre as well as providing places for social and business interaction. However, individual use classes may contain both desirable and undesirable forms of activity which when clustered together may have a negative cumulative impact. Planning conditions may be used to ensure the most appropriate development is permitted within a use class. The use of Local Development Orders can promote more positive approaches to diversification in established centres.

9.5 Long term vacant property can have a detrimental affect on the appearance and economic performance of a centre. Temporary or 'pop-up' units may be a positive short term option to reduce the impact of vacancies. A pop-up-unit is established on a short term lease through agreement with the landlord and where such shops are successful may lead to a long term tenancy. Whilst pop-up-units are typically used for shops they can be used for other purposes, for example, art galleries and community projects. Local planning authorities should consider using supplementary planning guidance to describe the types of pop-up uses likely to be acceptable in a retail and commercial centre and how they may, if necessary, be controlled through the planning system.



Changes of Use

9.6 The Town and Country Planning (Use Classes) Order, sets out where changes of use between use classes are permitted and do not require planning permission.

9.7 Changes of use can create new concentrations of single uses, such as take away food outlets, where the cumulative effects can cause local problems. Such proposals should be assessed against the development plan policies, on their contribution to diversification of the retail and commercial centre and on the cumulative effects on matters such as parking and local residential amenity.

10. Retail Planning Conditions

10.1 Local planning authorities should use planning conditions to ensure that the character of a development cannot subsequently be changed to create a form of development that would be unacceptable. For example, retail parks can change their composition over time and could in some circumstances create a development that the local planning authority would have refused due to its impact on the vitality and viability of an existing retail and commercial centre.

10.2 Planning conditions are normally applied to restrict or control goods sold, changes of use, division of units, internal increases in floorspace (mezzanine floors) and ancillary uses. Welsh Government Circular WGC 016/2014 – The Use of Planning Conditions for Development Management (2014) sets out how and when conditions should be used, and includes examples of possible planning conditions.

10.3 When considering applying conditions to restrict the sale of goods in out of town developments local planning authorities should consider what items if sold would have an adverse impact upon any established centre and apply an appropriate term, for instance food and drink, or limit the use to the sale of particular items. Any conditions imposed on the types of products sold should only refer to the main categories of goods for example, food and convenience goods, hardware, electrical goods, furniture and carpets and should not seek to control details of particular products to be sold.

10.4 In terms of restricting changes of use, a condition may prevent the change of use of a large retail premises to a food or convenience goods supermarket, where such use might generate an unacceptable level of additional traffic or have a damaging effect on the vitality of a nearby retail and commercial centre. Alternatively a percentage might be applied, for example limiting non-food retail to 30% of the gross retail floor space in a supermarket.

10.5 It may also be appropriate to impose conditions to control the number or size of units to prevent the development being subdivided into a large number of outlets (or vice versa), if the effect of such a change would be to change significantly the nature of the retail development to one that would not have been given permission.



10.6 Shops may be proposed as ancillary to other development such as, petrol stations, motorway service areas, airport terminals, industrial/employment areas, railway stations, sports stadia or other leisure, tourist and recreational facilities this is by no means an exhaustive list. Local planning authorities should ensure that in such cases the retail element is limited in scale and genuinely ancillary to the main development, and should seek to control this through the use of conditions.

10.7 Conditions can also be used by local planning authorities to resolve issues relating to the impact of the development on traffic and the amenity of neighbouring residents, such as the timing of the delivery of goods to shops. In considering restrictions on deliveries, local planning authorities should take account of all relevant factors, including impact on congestion, especially in peak periods. In considering how to mitigate night-time noise, local planning authorities should consider alternatives to a complete ban, such as including codes of practice in planning agreements relating to the number of vehicles and noise standards.

11. Mezzanine Floors in Retail Development

11.1 Mezzanines are a way of increasing floor space within a building. Whilst mezzanines can enable more efficient use of land, help generate increased turnover for a business, and in cases negate the requirement to develop elsewhere, they may in some cases undermine retail and commercial centres, generate additional traffic and increase parking requirements. The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2015 allows local planning authorities to control increases in internal floorspace. Developers are required to submit a planning application for mezzanine proposals greater than 200 square metres. The provision also ensures mezzanines do not undermine local development plan retail strategies. All new retail applications of 2,500 square metres or more of gross floorspace should be supported by an RIA. Local planning authorities may wish to apply an RIA to new mezzanine floor applications.

12. Local Development Orders

12.1 Local planning authorities are encouraged to consider how Local Development Orders (LDOs) can assist in the regeneration of retail and commercial centres. An LDO can grant planning permission for certain types of development within a specific area. Their purpose is to simplify the planning process by removing the need for developers to make a planning application. An LDO can cover a geographical area of any size within a local authority area.

12.2 LDOs can be a means of facilitating regeneration within a retail and commercial centre or be a catalyst for change. They can incentivise development and where successful help reduce vacancy rates leading to more vibrant and viable retail and commercial centres.



12.3 An LDO can make decisions on what is and is not acceptable in a designated area, for example, acceptable changes of use on ground or upper floors. LDO rights can be confined to specific developments or specified classes of development, but this is subject to limited exceptions. As with national permitted development rights, an LDO may also impose limitations, for example, by granting permission for a class of development but excluding specified types of development within that class, or development of that class which would be within a specified area or building.

12.4 Removing the requirement to submit a planning application has benefits for both the local planning authority and applicant. The local planning authority has the reassurance of predetermining acceptable uses and as a consequence may be able to direct resources to other schemes or priorities potentially reducing service costs. The applicant has greater certainty in terms of what development or changes of use are acceptable, has minimal engagement with the local authority resulting in lower costs.

13. Indicators of vitality and viability

13.1 Regular assessments or 'health checks' of retail and commercial centres provides one means of forming judgements about the impact of policies and developments.

13.2 The use of regular health checks provides a means of monitoring changes over time, and provides the local planning authority with a good understanding of the resilience of its retail and commercial centres to change, and to gauge the significance of the impact of new developments. Regular health checks can also help to inform plan making and development management decisions about the extent of the primary shopping and primary/secondary frontages area, for example, recognising where the role and function of different parts of the centre have changed over time. It is for the local planning authority to determine the frequency of health checks in their retail and commercial centres in order to build up a pattern of changes over time.

13.3 Local planning authorities may wish to use their own, locally specific, indicators as a means of monitoring change over time in their centres. However, the following information will be useful in measuring vitality, attractiveness and viability of established centres:

- turnover in relation to floorspace: turnover figures vary greatly and can be of assistance as an indication of the relative activity of different shopping areas and centres
- commercial yield on non-domestic property: (i.e. the capital value in relation to the expected market rental) may be of assistance in demonstrating the confidence of investors in the long-term profitability of the centre
- shopping rents: pattern of movement in primary shopping area rents (i.e. the frontage which attracts the highest rental value)
- retailer representation and change: present representation and demand from retailers wanting to come into the town, or to change their representation in the town, or to contract or close their representation



- the diversity of uses: how much space is in use for different functions, such as: offices; shopping; other commercial; cultural and entertainment activities; restaurants; hotels; educational uses; housing, and how that balance has been changing
- accessibility: the ease and convenience of access by a choice of means of travel, including the quality, quantity and type of car parking. The availability of public transport services and the quality of provision for pedestrians and cyclists
- pedestrian flow: the numbers and movement of people on the streets, in different parts of the centre at different times of the day and evening, and changes over time
- the proportion of vacant street level property: vacancies can arise even in the strongest town centres, and this indicator must be used with care
- customer views: regular surveys of customer views will assist authorities in monitoring and evaluating the effectiveness of town centre improvements and of town centre management
- environmental quality: this should include information on air quality, noise, trees, landscaping, open spaces, litter and graffiti
- perception of safety/occurrence of crime: this should include information on safety and security.

13.4 In addition to the data categories listed above information can also be collected through other monitoring processes. The Local Development Plan Annual Monitoring Report can be used to assess whether the policies contained within the plan are being implemented successfully and whether change is required. Also, where Local Development Orders have been adopted local planning authorities should seek to include targets that allow them to monitor the Order's success.

References

¹ Technical Advice Note 6 Planning for Sustainable Rural Communities, Welsh Government, July 2010

² Technical Advice Note 12 Design, Welsh Government, March 2016

³ See Part M of the Building Regulations

