

Date: 18 September 2006
Our ref: MBa/vpv
Your ref:

Kate Barker
Barker Review of Land Use Planning
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By post and email barkerreview@hm-treasury.gov.uk

Dear Ms Barker

Barker Review of Land Use Planning, Interim Report - Analysis (July, 2006) : Response by Marks & Spencer (M&S) plc

We are writing in response to the above Interim Report, published on 4 July, 2006.

By way of background, we responded to the Review Team's "Call for Evidence", by letter dated 28 March, 2006 (for ease of reference, a copy of that letter is attached). Your website states that this and the other responses to the "Call for Evidence" have been "taken into account in the drafting of the (interim) report, and will be used to inform the final recommendations". We also note from the Interim Report itself, and your Foreword to it, as well as from Review Team comments, that you are now asking for written responses covering the following matters:

- comment on whether your work is heading in the right direction;
- advice on whether there are gaps and missed points;
- detailed recommendations on how to remove complexity in the planning system;
- other detailed recommendations on how to reduce delay; and
- comment on matters that are currently dealt with by the planning system which are already/could be dealt with better in other regulatory processes.

In terms of whether your work is "heading in the right direction", and whether there are any "gaps and missed points", we consider that your final Report should further examine the role of PPS6 retail policy, in particular in relation to its impact on the wider economy. We note from section 5, "Planning, Enterprise and Competition" of your Interim Report, that your views (paras. 5.48 and 5.51) to date are that,

"It is too early to assess the impact of PPS6 both in the allocation of sites in the local plan and at the development control stage.

..... the relationship between town centre vitality, transport, and "town centre first" policy is more complex than often assumed."

The effects of PPS6 retail policy are however clear to us, from our practical, day to day experience. From our experience, it is evident that some balanced changes are required, to ensure that competition between retailers and thereby, consumer choice, are not stifled.

Therefore to assist you in considering further the impact of PPS6 retail policy, before preparing your final report, we set out below (under the heading (A) Planning Policy), our detailed comments on some of the retail-related policies of PPS6, “*Planning for Town Centres*”, and the detrimental effects of their overly-complex approach particularly on our proposed new convenience store developments. Under the heading (B), Planning Procedure, we highlight some of the harmful consequences of the slow speed at which the development control system works.

(A) Planning Policy

The planning policies that inform the operation of the planning system act in certain circumstances to inhibit grocery store development. However, in M&S’ view, this is inevitable in a land use planning process which imposes controls over development in order to meet and balance a number of potentially competing needs and objectives in the wider public interest. M&S recognises the requirement of the planning system to balance the objective of sustaining and enhancing town centres with the need to encourage new development which will encourage innovation and competition that provides consumer choice. But we consider that some changes to retail/town centre policies at national level could enhance the benefits that flow to customers from retail competition, without a negative effect on the overall objectives of the planning system.

PPS6, “*Planning for Town Centres*”

The “needs” test

In assessing need and the capacity for additional retail development, PPS6 requires that greater weight be placed on quantitative need for increased amounts of floor space in a catchment area, by reference to the sale of two broad categories of goods: comparison goods¹ and convenience goods². PPS6 provides that the assessment of quantitative need should have regard to:

- existing and forecast population growth;
- forecast expenditure on the broad category of goods; and
- forecast improvement in productivity of floor space³.

The quality of the retail offer in the catchment area - the “*qualitative need*” for additional retail floor space - is a secondary consideration, even though PPS6 recognises that a key consideration in assessing qualitative need is to provide for consumer choice by ensuring:

- an appropriate distribution of locations to improve accessibility for the whole community; and
- a range of sites which allow genuine choice to meet the needs of the whole community.

¹ Annex A, PPS6 defines comparison shopping or retailing as the provision of items not obtained on a frequent basis, including clothing, footwear, household and recreational goods.

² Annex A, PPS6 defines convenience shopping or retailing as the provision of everyday essential items, including food, drinks, newspapers/magazines and confectionery.

³ Also known as retail space productivity and based on the increase of sales density (£ per square metre).

M&S considers that currently, the PPS6 “needs” test does not give sufficient weight to the benefits of competition in grocery retailing. M&S considers that when local planning authorities (LPAs) assess the need for new retail development, whether in the context of making allocations for future development in Development Plan Documents or determining planning applications, they should be encouraged to give equal weight to both qualitative need and quantitative need. In its current form, by placing greater emphasis on quantitative need, the test in PPS6 fails to recognise the dynamic nature of the retail sector in responding to consumer demand and the distinctions between the offer of different retailers and different retail formats, as well as the benefits to consumers that can flow from competition between retailers.

If, in applying the current version of PPS6, decision-makers (i.e. LPAs, Inspectors and the Secretary of State), decide that new retail floor space should only be provided for or be granted planning permission if there is a quantitative need, this acts as a severe, long term constraint on the provision of new floor space. In particular, the slow forecast growth in convenience expenditure per capita and the requirement in PPS6 to take account of potential improvements in productivity in the use of floor space mean that in practice, unless it can be shown that a catchment area is significantly under-provided in quantitative terms, or that there is forecast to be substantial population growth within the immediate future (within the next five years⁴), new floor space will not be permitted. The result is that in many catchment areas, LPAs see little need to allocate sites for new convenience floor space, or consider positively any individual proposals which may be promoted by retailers in locations other than town centres. In many cases, tightly-defined retail town centres and competition from other uses for town centre sites, mean that there is a dearth of suitable town centre sites and as a result, the introduction of new competition to the sector is inhibited.

In many of these cases, the provision of modest amounts of new convenience floor space and the introduction of additional retailer and possibly locational choice, would stimulate competition to the benefit of consumers, without harm in terms of adverse retail impact on town centres or prejudice to the objective of sustaining and enhancing town centres.

This outcome affects most acutely those grocery retailers, such as M&S, which provide a distinguishable retail offer and which would otherwise create genuine consumer choice. It could be overcome by giving qualitative need equal weight to quantitative need in PPS6 and recognising that genuine choice (as referred to in PPS6) means a genuine choice of retailer. Thus considerable weight should be given to the need to encourage further retailer choice and competition within catchments, in ways which would not undermine the other objectives of PPS6.

The sequential approach

PPS6 provides that a sequential approach should be followed in selecting sites for additional retail floor space. In essence, this means assessing all options in a retail centre thoroughly before considering less central sites for retail development. The order for site assessment is given as follows:

- locations in existing centres;
- edge-of-centre locations, with preference given to sites that are or will be well-connected to the centre; and

⁴ See paragraph 3, 10 of PPS6

- out-of-centre locations, with preference for sites that are or will be accessible by a choice of means of transport and which are close to the centre and are likely to form links with the centre.

The application of the sequential approach in accordance with PPS6 can help to prevent M&S opening new stores. With reference to M&S Simply Food stores, for example, we are prepared to look at any location, whether town centre, edge-of-centre or out-of-centre, if a Simply Food store will complement our existing stores and if it will compete effectively with the offer of other food retailers in the area. However, the reality is that the combination of the needs test and the sequential approach in PPS6 limits considerably the availability of sites where M&S can realistically hope to obtain planning permission for retail development. This applies to new stores of between 280 to 1,400 square metres and to larger development (over 1,400 square metres). In such circumstances, in the absence of a quantitative need, policy may prevent development outside a centre. The heavy focus on the town centre in the sequential approach and as a consequence, the competition for town centre floor space from other types of retail and leisure uses, restrict the number of sites which are available and viable for new food stores. The result is that even where M&S identifies an opportunity in a catchment area, the considerable difficulties that can arise in meeting all of them mean that it can become impractical to pursue the proposals. M&S considers that a relaxation of the sequential approach to permit out-of-centre grocery development and changes of use - provided it is allowed in the context of a greater emphasis on qualitative need and genuine consumer choice in grocery retailing - would address the adverse effect of current policy, without compromising the objective of ensuring the vitality and viability of town centres.

M&S' ability to expand in out-of-centre locations, including acquiring and occupying existing retail units in retail parks, is often constrained by existing planning restrictions on the sale of convenience goods from those locations. Those restrictions will usually be in the form of a condition on a planning permission or an obligation in a planning (Section 106) agreement; sometimes the restrictions will comprise a prohibition on convenience goods retailing, in other cases they will include a limitation on the amount of floor space or the number of units that can be used for the sale of convenience goods.

To overcome these restrictions, M&S will usually need to vary such conditions, to allow it to trade from even modest amounts of convenience floor space in retail parks but this can be difficult to achieve. A number of points are relevant to this.

First, notwithstanding the requirements of Department of the Environment Circular 11/95, such planning conditions were often imposed initially as a precautionary measure rather than because they were necessary. For example:

- typically, an applicant promoting a retail park development will prepare a retail (and transport) assessment which demonstrates the acceptability of the amount and type of floor space proposed in the planning application. These studies do not examine the implications of introducing more floor space or different types of floor space. Floor space conditions would then be imposed simply to constrain the development to that which was proposed and justified in the application, rather than because a larger development or inclusion of convenience floor space would necessarily be harmful; and
- LPAs may have been concerned to prevent large convenience stores from occupying the development but have imposed conditions that effectively prevent any convenience floor space.

Second, if M&S makes a s73 application to vary such conditions, LPAs often seek to apply all the policy tests set out in PPS6, including the tests for need and the sequential approach, making it difficult to achieve permission for even modest amounts of convenience floor space in such locations because they are usually some distance from the town centre. However,

existing retail parks are often the type of locations where limited further convenience floor space could be permitted, without harming the objectives of PPS6. This is because:

- they provide the benefit of being established retail locations which are already used by many shoppers;
- in many cases, they are likely to be more sustainable than standalone sites, which may also be out-of-centre but closer to the centre than the retail parks and therefore preferable to them under the sequential approach in PPS6. The established retail parks are likely to be more sustainable because they provide an existing opportunity for linked trips between the different stores in the development and the critical mass of attraction is likely to sustain public transport facilities; and
- there is also a greater opportunity to serve a different area of local need than those sites which are close to existing centres.

Furthermore, where convenience goods turnover replaces comparison turnover, comparison turnover is freed up to support other existing and new floor space elsewhere within the catchment area i.e. in overall terms there is no change in retail floor space; changes between existing and new retail uses can happen elsewhere within the catchment of a town centre location without the need for planning permission in locations where there are no conditions or planning obligations restricting the sale of goods.

Finally, and in many cases, M&S will often already have stores within the existing town centre. The straightforward application of the sequential approach in circumstances where M&S is seeking to establish a Simply Food store at an out-of-centre retail park would effectively require M&S to duplicate its grocery retail provision in that centre, if a suitable site existed. This would simply prevent convenience floor space coming forward elsewhere. This would serve no useful planning purpose.

In response to the difficulty and time-consuming nature of dealing with the current policy tests, and in particular, need and the sequential approach and more generally the slowness of operation of the planning system (see below), M&S has been able to secure openings for its Simply Food stores largely through the acquisition of existing retail units or shells provided by developers. This has been the only way in which M&S has been able to expand the chain of stores quickly, to take advantage of the market opportunities that it has identified. However, in locations outside town centres, even this approach has met with difficulties.

(B) Procedure

The determination of planning applications

The slow speed at which the planning system works acts to inhibit or at least delay competition and therefore harmfully affects the wider economy. This is our experience and it can apply, to differing extents, to the development of new stores and to proposed improvements to existing stores. As observed above, the only way in which M&S has been able to develop the Simply Food chain of stores quickly has been by acquiring existing retail outlets or shells constructed by developers, to ensure that the potentially time-consuming stage of gaining planning approval for the initial development is bypassed. Only a very small proportion of M&S' additional floor space in recent years has arisen from schemes where it has obtained planning permission for the initial floor space.

We can also provide you with examples of the inordinate length of time that can be taken to achieve planning permission for a new town centre convenience store, simply because a scheme can be held up by, for instance, a vociferous group of local objectors influencing members without any sound planning basis, and/or legal challenge by a competitor.

Overall, we observe that there are a number of problems within the development control processes of the land use planning system which currently can contribute to delays. These in summary include:

- inadequately resourced planning departments in local authorities, leading to delays in handling applications;
- a shortage of planning Inspectors, leading to delays in the handling of both planning appeals and the independent examination of Development Plan Documents;
- an inherent conflict between requirements for greater community consultation and a desire to make the planning system work more quickly;
- the use of target timetables for the determination of planning applications that encourage LPAs to refuse applications, rather than negotiate acceptable alternatives;
- the lack of a clear timetable and transparency for the processing and determination of planning applications that are recovered by or called in by the Secretary of State; and
- the absence of any legislative procedure for making minor amendments to planning permissions which have already been issued.

All of these problems have an influence on our development programme and the speed with which M&S can implement it. They are matters on which M&S has consistently made representations to central Government, in relation to consultations on draft policy and legislative change, Government Committees and, most recently, to the Competition Commission.

Geographic differences in planning control

Geographical differences can also affect our prospects of obtaining planning permission. There are significant differences in national policy guidance in the four countries of the UK. In general, England has had the most restrictive guidance on retail developments outside existing centres, while Northern Ireland has had the least restrictive. However, it has also been M&S' experience that the Northern Ireland planning system works the most slowly in terms of development control.

But even LPAs in England can vary significantly in how they approach retail applications. There are some differences in procedure - for example, different LPAs will have different rules as to when and what scale of applications can be determined under delegated powers, as opposed to being considered by Committee. Also, the interpretation and application of national policy can differ between different LPAs. In broad terms, the difference in their application of policy normally relates to the way in which they weigh in the balance the benefits of investment against the weight of local opposition or, where relevant, the strength of the LPA's desire to restrict retail development outside town centres. M&S believe these differences can apply in relation to retail developments of any scale.

Conclusion

In conclusion, and in M&S' experience, the retail policies which currently inform the planning system and procedural difficulties in obtaining planning permission both inhibit retail development; and in particular, the development of new convenience stores and floor space.

M&S considers that the operation of PPS6's retail policies, in particular, affects most acutely grocery retailers, such as ourselves, which provide a distinguishable retailer offer that would otherwise improve customer choice.

However, M&S does not believe that a radical change to the planning system is needed. Instead, M&S would advocate:

- a greater emphasis in national retail policies on the need to provide a wider range of quality of retail offer and genuine customer choice in grocery retailing;
- a limited relaxation of the town centre-focused approach in retail policies, to permit out-of-centre grocery development in the context of providing a wider range of quality of retail offer and customer choice; and
- a better resourced planning system, so that LPAs are able to take speedier and more informed decisions in relation to retail development.

M&S considers that there is currently no need for radical change in planning policy or the planning system but believes that such modest changes being made to both policy and procedure could enhance the benefits which flow to consumers from real competition in grocery retailing, without a negative effect on the overall objectives of the planning system.

We trust that all of the above suggestions and comments will now be taken into account by the Review Team and that they will all be of assistance to you in drafting your final Report. We also would expect that our comments and suggestions, and any others made by other respondents, will be examined by a "*Review Panel*", to ensure that once they have been included in the Final Report's recommendations as feasible changes to the land use planning system that will have a positive impact on the economy, they will also be taken on to further stages and, eventually, to consultation and implementation.

Please do not hesitate to contact me in the meantime, if you would like case studies of proposed stores that have been subjected to inordinate delays in the development control process or if you wish to discuss any aspect of this response, and our response to your earlier 'Call for Evidence' that is attached.

Yours sincerely

Garreth Keating
Head of Estates

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