



PLANNING BULLETIN

YET MORE CHANGES TO THE PLANNING SYSTEM?

ASSESSMENT OF THE COMPETITION COMMISSION'S REPORT ON THE COMPETITIVENESS OF THE GROCERY RETAIL TRADE

In its provisional findings, published 31 October 2007, the Competition Commission's interim report on competition within the grocery trade, concluded that there is a lack of competition in certain local markets which creates not only disadvantages to consumers in those areas but also allows retailers to weaken their offer to consumers nationally.

The planning system is seen to be contributory factor in restricting competition in the grocery trade by limiting the construction of new food stores on out of centre or edge of centre locations and by imposing costs and risks on smaller retailers and potential entrants.

The Competition Commission recommends (see appendix I to this report all of the suggested changes to the planning system) that the planning system might have to be changed so that there are greater opportunities for foodstore developments on the edge of town centres, while maintaining constraints on out-of-town developments.

A key proposal is that the "retail needs test" should be revised and incorporate a "competition test" that would have to be satisfied before the grant of planning permission.

The report seeks views on whether competition should now be a planning consideration in the determination of retail planning applications and, if so, what the competition test should comprise of. The report makes the following suggestions:

1. This "competition test" could be framed so that a particular retailer would only be permitted to submit a planning application for a grocery retail store if the planned store would not result in its acquiring more than a certain percentage of the market in a given local area.
2. Changes to the planning system to permit local planning authorities to give fascia-specific consents or impose fascia-specific restrictions (i.e. granting consent for a grocery retail store operated by a particular retailer, or granting consent with a restriction that a particular retailer does not operate from the store).

The report's other key findings are:

- Some retailer land holdings and other practices, such as restrictive covenants, mean that competition is not as effective as it could be in a number of areas.

- The four largest grocery retailers own a significant number of landbank sites, as well as controlling further sites through leases to third parties, restrictive covenants and exclusivity arrangements.

The next steps

Parties are now invited to write to the Commission by 30 November with their reasons in writing as to why these provisional findings should not become final. The final report is to be published by 8 May 2008.

Commentary

The report's findings do not sit easily with existing planning policy in the form of PPS6 which promotes the "town centre first policy" via the application of the "sequential test" and the "retail needs" test.

The report's recommendations, if implemented, would mean Local Planning Authorities having to review their town centre boundaries and to identify sites in their forthcoming Local Development Documents for retail development in, and also at the edge of town centres.

However, because many Local Planning Authorities are so behind in the preparation of their Local Development Plans, retailers and developers will have to continue to have to make their case for additional retail space through planning applications, which increasingly are being assessed against out dated development planning policies.

The report's recommendations also brings forward the prospect of the greater use of personal planning permissions to named operators. This approach is, however, not existing Government guidance as given in Circular 11/95 "The Use of Conditions in Planning Permissions".

In the meantime, the report's findings might need to be considered as part of the yet to be issued supplementary planning guidance that accompanies PPS6 on how to undertake retail need and impact assessments.

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APPENDIX:

COMPETITION COMMISSIONS RECOMMENDED MEASURES TO ADDRESS BARRIERS TO ENTRY FROM THE PLANNING SYSTEM

The CC is considering recommending changes to the planning system that would facilitate greater availability of land for development outside the town centre. In particular the CC is considering and invites views on the following issues:

- a) Whether the planning system should distinguish edge-of-centre sites from out-of-centre sites, recognizing that edge-of-centre stores can benefit the town centre.
- b) The extent to which a possible amended planning test should recognize quantitative and qualitative aspects of need.

The CC is considering recommending measures that would result in a streamlining of the planning system. In particular the CC is considering and invites views on the following issues:

- a) Whether to recommend the abolition of one or more of the various tests included in the current system and if so how?

The CC is considering recommending changes to the planning system that would see the inclusion of a 'competition test' at some point in the planning process. In particular, the CC is considering and invites views on the following issues:

- a) Whether grocery retailers should be required to pass a competition test before being permitted to submit a planning application for a grocery retail store? If so:
 - (i) Whether all grocery retailers should be required to pass this test or whether the test should only be applied to certain grocery retailers and if so which ones?
 - (ii) Whether developers should also be required to pass this test if they wish to include a grocery retail store in a planned development (in relation to identifying which grocery retailers would be approved to move into the grocery retail store—see 28(b)(iii) below)?
 - (iii) How such a test should be framed? For example, should it be framed so that a particular retailer would only be permitted to submit a planning application for a grocery retail store if the planned store would not result in its acquiring more than a certain percentage of the market in a given local area, what would be the appropriate metric for that percentage, what would be the appropriate percentage limit, and how should a local area be defined?
 - (iv) Who should apply such a test? Should the test be applied by the OFT and if not by the OFT then by whom?

- b) Whether the planning system should be changed to ensure that planning officers and local authority planning committees take account of the effect on competition of a proposed scheme in their decision on whether to grant consent? If so:
- (i) How should competition be taken into account in the planning system? Should there be a relatively mechanistic test (for example based on number of fascia and/or shares of net sales area in a particular local area) or should competition be included in a list of factors to which local planning authorities should have regard?
 - (ii) Are local planning authorities well placed to apply any such competition test themselves or should a specialist body such as the OFT apply any such competition test? If a specialist body were to apply the test should that body have the status of a statutory consultee? Should that body be expected to take part in appeals on planning decisions that raise questions about the application of the competition test? How should any body applying the competition test be resourced to do so?
 - (iii) Should the CC recommend changes to the planning system to permit local planning authorities to give fascia-specific consents or impose fascia-specific restrictions (ie granting consent for a grocery retail store operated by a particular retailer, or granting consent with a restriction that a particular retailer does not operate from the store)?

In relation to all these possible remedies in relation to the planning system, the CC invites views on how these (or other planning remedies) could best be implemented, bearing in mind the differences between the systems in place in England, Wales, Scotland and Northern Ireland. As noted in paragraph 14 above, in choosing its remedies the CC may have regard to the way in which its remedies would interact with any wider public policy objectives. The CC therefore invites views on whether any of possible remedies in relation to the planning system, as outlined above, would work against the wider public policy objectives of the planning system and how any such tensions should affect its choice of remedies and their design.

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