



The City of London Law Society

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Response re Proposed Changes to Planning Policy Statement 6: Planning for Town Centres

The City of London Law Society (CLLS) represents over 13,000 City lawyers, through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response to the Proposed Changes to Planning Policy Statement 6: Planning for Town Centres has been prepared by the CLLS Planning & Environmental Law Committee (PPS 6). The Planning and Environmental Law Sub Committee is a specialised committee concerned with these areas of policy and legal practice and is made up of planning and environmental law specialists from nearly all the major firms of solicitors in the City of London together with representation from a local authority. The CLLS welcomes the opportunity to respond to the Government on its proposals to amend PPS 6, both in general terms and in relation to the specific questions that have been raised.

A General comments

1. The document does not provide a clear and concise statement of national policy, which is one of the Government's stated aims for streamlining the planning system. In many places it is unnecessarily repetitious. For example, paragraph 3.19(g) attempts to summarise the policy requirements in PPG13 and PPS1, which will already be material to any proposal. In addition, paragraph 3.19(g) includes considerations relating to town centre impacts which should be included in paragraph 3.19(e).
2. Further work is required to reconcile the competition issues examined by the Competition Commission, and PPS6. The proposed changes to PPS6 introduce numerous references to the importance of competition without distinguishing between different sizes and categories of traders. The Competition Commission investigation was primarily into competition between the big grocery retailers. PPS6, however, is mainly concerned with the impact of existing or new major grocery retailers on town centre traders.
3. We support the proposed removal of the need test, but it should be recognised that removal of the test is only likely to be helpful where there

would have been an open and shut case against an edge of centre or out of centre proposal. In practice, a thorough assessment of impact on the vitality and viability of a town centre and opportunities for claw back will mean that qualitative and quantitative need will be an essential part of an applicant's case. In addition, need is also likely to continue to be an important element in proposals for new retail allocations in the LDF. The introduction of competition as a material consideration, together with the new emphasis on social and economic wellbeing of a town centre will make the assessment of new proposals highly complex. Retail impact assessments (which can now be quite complicated particularly if there are competing proposals), will be regarded as simple and crude compared with the holistic assessments which will be required to satisfy the new test. In principle we welcome the encouragement of greater thoroughness and sophistication in the assessment of planning proposals, but it must be recognised that it brings with it considerable uncertainty and delay. The amount of material necessary to support a retail application will increase substantially, accumulating with the increased work necessitated by the recent introduction of transport assessments, sustainability statements and design and access statements. Many local authorities are likely to feel overwhelmed by the amount of material submitted, and for the same reason there is likely to be further alienation of the public due to the volume of material. The absence of clear objective tests will create many more opportunities for legal challenge.

4. In order to minimise this source of delay, cost and uncertainty for the majority of applications, we support the suggestion (consultation question 5a) that impact assessments should be limited to larger developments and should be confined to retail developments. In defining larger developments, there is a need to reconcile the threshold of 2,500 sq. m. in paragraph 3.19(b) and the 1,000 sq. m. threshold used by the Competition Commission. Clarity is also required in the language used to refer to larger developments. For example, in paragraph 3.19 reference is made to the need to assess impact on other centres where "a significant development" in a centre not in accordance with the development plan would "substantially increase" the attraction of the centre. As "significant" and "substantially" are not defined, there may need to be some form of screening. Alternatively, or possibly additionally, applicants may feel the need to submit assessments as a precaution against challenge from competitors in all but the smallest proposals.
5. The holistic assessment advised by PPS6 introduces the identity of the occupier as a material consideration. This is a major departure from the fundamental planning law principle that use rather than ownership is relevant to the application. This may encourage competition between the big grocery retailers but it may also mean that local planning authorities will determine applications on the basis of brand rather than impact and planning policy.
6. Overall, the broadening of the basis of assessment should eventually lead to a more thorough and sophisticated assessment of new large retail proposals but at a high price. Applications are likely to become substantially more costly and time-consuming to prepare and process and the established focus on the protection of the town centre is likely to become blurred by the introduction of concepts of "competition" and social and economic wellbeing which are hard to define objectively. In addition, the introduction of the

identity of the occupier as a material consideration is likely to lead to capricious decisions by some local authorities, increasing the likelihood of planning appeals and legal challenges.

B Consultation questions

Our responses to the specific consultation questions are as follows:

1. Will the proposed changes support current and prospective town centre investment?

Yes, with reservations. Please refer to paragraph A3 above.

Specifically, it must be recognised that the holistic assessments required to satisfy the new test and the introduction of competition as a material consideration, will make the assessment of new proposals highly complex and will introduce further uncertainty and delay to applicants. In addition, there will be an increase in the amount of material to be submitted to local authorities, resulting in local authorities feeling overwhelmed and further alienation of the public.

2. Does the scope of the new impact test achieve the right balance and is it robust enough to thoroughly test the positive and negative impacts of development outside town centres?

We are in favour of the new test in principle although our concerns listed above need to be addressed before we are able to provide an affirmative response to this question.

3. Is there scope to simplify and streamline the various impact considerations further?

Yes. Please refer to paragraph A1 above.

4. Is the consideration of consumer choice and retail diversity as part of assessing the impact of a proposal appropriate and will it be sufficient to help promote competition?

We believe that further work is required regarding competition issues before we are able to respond to this question. Please refer to paragraph A2 above.

5. It has been suggested by some stakeholders that we should consider limiting impact assessments to larger development proposals and that it should be confined to retail developments. PPS6 and our proposed revisions maintain a flexible approach to the preparation of impact assessments for all main town centre uses and do not limit assessments to larger developments or retail proposals. Do you think our flexible approach should be retained?

No, we support the suggestion that impact assessments should be limited to larger developments and should be confined to retail developments. Please refer to paragraph A4 above.

6. **Are the existing health check indicators in Chapter 4 sufficient to enable informed judgements to be made about the various impact considerations which have been identified?**

In broad terms, yes. But the amount of additional work that this will create should not be underestimated.

7. **Do you agree with the proposed approach to the practice guidance which will support PPS?**

No. We believe that the proposed Practice Guidance should have been published with the PPS6 Consultation Paper.

8. **Other comments on the scope of the proposed changes**

9. **We are committed to producing policy that promotes equality of opportunity and good relations between people of different racial groups and eradicates unlawful discrimination. We would welcome views on whether the changes we are proposing to PPS6 will impact differently on people from different ethnic groups, on people with disabilities and on men and women? We particularly welcome the views of organisations and individuals with specific expertise in these areas.**

No comments.