

# RETAIL DEVELOPMENT PROPERTY BRIEFING PAPER 10

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## Flexibility and The Sequential Approach.

Mr Caborn's speech to the British Council for Shopping Centres Annual Conference in November 1998 introduced some controversial views as to the proper interpretation of the thrust of government policy concerning flexibility and the sequential approach to site selection.

In this paper we highlight emerging differences of opinion on this important topic.

## ***Introduction***

PPG6 advises that developers and retailers will need to be more flexible about the format, design and scale of development, and the amount of car parking. On the other hand, it advises that the sequential approach to site selection also requires realism from planning authorities developers and retailers.

The point at which the demand for flexibility conflicts with the call for realism is being interpreted in many different ways up and down the country.

In the November 1998 speech, the Minister explained that with regard to the example of retail warehouse parks, the government had made it clear that the sequential approach applied to the constituent parts and not whether a more central site could be found for the whole development. He also explained that the government expected retail warehouse operators to try to fit into existing centres. Again the point was made that although firms selling bulky goods may prefer larger showrooms, in practice they could sell from town centre or edge of centre locations.

## ***Clarification on Flexibility?***

However, in the same speech the Minister also stated that there was a need for clarification of the issue of 'flexibility', and that such clarification would be tackled in due course

In the event, although a clarification on 'need' has been issued (February 1999), none has been forthcoming on flexibility and the sequential approach. With Mr Caborn's departure from DETR, it is unclear as to if or when the new Minister will turn his thoughts to this issue.

In the meantime, interpretation of the flexibility issue by Inspectors at appeal, and by the Secretary of State, has revealed a mixed picture, and many practitioners are finding it difficult to obtain a consistent 'steer'.

## **Conflicting Signals**

In September 1997, the Secretary of State determined applications for retail warehouses in Cirencester (APP/F1610/A/96/265795 and SW/P/5224/220/5). In the decision letter he set out that:-

*“Although PPG6 recognises that some types of retailing, such as large bulky goods stores, may not be able to find suitable central or edge of centre locations, no evidence has been adduced in this instance that there is a demonstrable need for stores as large as those proposed, or that the proportion of the proposed floorspace which would in fact be used for goods that could not be easily carried away or delivered to customers’ homes justified an out of centre location.”*

He also agreed that by ruling out any other trading format other than retail warehousing, the applicants had failed to demonstrate that there were no sites in or adjacent to the town centre suitable for retailing the kind of goods envisaged for sale in the proposed development. In this way, the SoS's interpretation of flexibility challenged the basic trading format.

However an entirely different approach has been taken elsewhere. The following quotes are taken from an appeal decision letter concerning proposals in Oxford (APP/G3110/A/97/281516/P4):-

*“The modus operandi of RWs as large single level stores providing mainly car borne shoppers with opportunities to buy bulky goods or view large display areas of items such as furniture, is recognised in the PPG as a legitimate enterprise in its own right. This much is clear cut from paragraphs 3.3, 3.6, 3.7 and Annex A of PPG6 as is their need for large showrooms, surface level car parking and good accessibility for cars. Opportunities to modify the operation of such enterprises to suit particular circumstances may sometimes be possible and in applying the sequential test and examining in-centre sites developers are expected to be flexible in their requirements (para 1.12 of the PPG6).” (para 27).*

*“In this latter respect I have had regard to the Secretary of State’s (SoS) decisions with regard to the Cirencester appeals (Document C12). I have noted that the SoS’s view was that by effectively ruling out trading formats other than RWs with free adjacent car parking the applicants have failed to demonstrate that there were no in-centre or edge of centre sites suitable for retailing the kinds of goods envisaged for sale. In the case of the appeal proposals before me however, I am satisfied that there are no such sites available even for a modified form of retail warehousing outlet. The adaptation required would, in my judgement, compromise their trading format to an extent well beyond the degree of flexibility which I consider is envisaged in paragraph 1.12 of the PPG”. (paragraph 28).*

### ***Flexibility or Abandonment?***

The Oxford decision indicated that in dealing with flexibility , retailers were not expected to abandon their usual trading format. A similar conclusion was reached at Eastleigh (APP/W1715/A/98/290937/P7) concerning a proposal by Staples. In this case, the planning authority argued that the requirement for flexibility meant that the proposed Staples activity could be accommodated in smaller locations with storage accommodation elsewhere and provision of a delivery service. However, the Inspector commented thus:-

*“It cannot always be right in my view that, because a retailer seeks to operate on a large scale, all other potential sites in and around the town centre are rendered inadequate by reason of the space required. But I note the view expressed by the judge in R v Teeside Development Corporation ex.p William Morrison Supermarkets and Redcar and Cleveland BC 1998 (JPL) 23, put in with your closing submissions, that in the context of assessing the suitability of town centre sites, some regard has inevitably to be given to the developer’s own estimate of need in terms of space. In the present case, it is my opinion that the format adopted by your client throughout the UK cannot lightly be set aside as irrelevant or inappropriate for Eastleigh; indeed PPG6 paragraph 1.12 also urges Councils to be sensitive to the needs of retailers. To my*

*mind, the Council is seeking to impose on your client a significantly different method of retailing similar to that of a catalogue store; this I consider goes beyond the need referred to in PPG6 for a retailer to demonstrate flexibility".*  
(paragraph 40).

**Fundamental Question**

As we see it, the inconsistencies and difficulties relate fundamentally to the question: should the sequential approach be primarily addressed to the type of operation proposed or the kind of goods to be sold?

The latter proposition could lead ultimately to a situation where no out of centre retail development would be allowed since it will always be possible to find sites and/or premises in town centres from which some food and non food goods can be sold, regardless of the size of those sites/premises. This would do little if anything to encourage retailers to be innovative and competitive.

**Should the animal remain, recognisably, the animal?**

In these circumstances, there are good grounds for preferring the Inspectors' analyses, as set out above, whereby they essentially agree that in considering the sequential approach, 'the animal should remain, recognisably, the animal'. However this does raise the potentially embarrassing possibility of preferring Inspector's interpretations of policy, rather than the Secretary of State's interpretation of his own policy!

**Flexibility & Realism**

Hopefully, the signalled clarification to the 'flexibility' issue will not be delayed for long. We can only hope that the issue of flexibility is not divorced from realism. It would be helpful to practitioners for the clarification to consider what kinds of retail formats are realistic in town centres; not all are. In town centres there is inevitably competition for space from many potential users, e.g. retail, leisure, residential and employment. All add vitality, but which should have priority? Bulky goods retail warehouses tend to have low sales densities, low pedestrian footfall, dead frontages and make a limited contribution to the evening economy. In this way, they do not contribute a great deal to town centre vitality. Is it realistic to force them into town centres?

## **FURTHER INFORMATION**

In recent years, Jim Morrissey has advised many private sector clients and over 30 local planning authorities on retail strategies, policies and proposals as Planning Director of Chase & Partners, Commercial Property Consultants and previously as Director of Planning and Development Consultancy at Colliers Erdman Lewis, the West End Property Consultancy.

Graham Chase, Senior Director of Chase & Partners is the immediate past Chairman of the Commercial Market Panel of the Royal Institution of Chartered Surveyors and in his capacity of Retail Property Spokesman appeared before the House of Commons Select Committee investigating Shopping Centres and their Future.

***Further copies of this and previous briefing papers may be obtained from Jim Morrissey as may additional information or assistance on planning and development issues.***

***Chase & Partners provide comprehensive retail planning and development services to the private sector and Local Authorities, including 'health checks' and retail impact assessments, and the sequential approach. Graham Chase and Jim Morrissey, Directors of Chase & Partners, have advised over 100 private sector clients and 50 Local Authorities on retail planning matters in the past 4 years.***

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