

**Draft PPS4 “Planning for Prosperous Economies”**

**TOWN CENTRE USES & OTHER MATERIAL CONSIDERATIONS**

**Chris Katkowski Q.C.**

1. I was discussing the draft PPS with a client recently when it became clear that there is a perception that the draft does not change matters much if at all when it comes to determining planning applications for retail and other main town centre uses. I sought to explain, and will seek to explain in this talk, that at the heart of the draft PPS lies a much clearer and far more structured approach to making such decisions in which what I would describe as the “wriggle room” for arguing for a different result than the policy would seem to indicate has been much reduced.

The New Order: the sequential test is king

2. Most strikingly the draft PPS concentrates on setting out *policies* (rather than “how to” guidance) and doesn’t sit on the fence about the consequences that should follow from non-compliance.
3. The best illustration of this is Policy EC21 which deals with: “The consideration of planning applications for development for town centre uses not in a centre nor allocated in an up to date development plan.”
4. What should be the consequence of not complying with the sequential approach? The answer is given in unequivocal terms in EC21.1 (1) – refuse permission: “local authorities should determine planning applications ...in the following way: 1. refuse planning permission where the applicant has not demonstrated compliance with the requirements of Policy EC19 (the sequential approach).”

5. Contrast the unequivocal position concerning the sequential approach, i.e. non-compliance = refuse planning permission such that, if you will, the sequential approach is king, with the position where there is non-compliance with the impact test.
6. What should be the consequence of not complying with the impact test? The answer depends upon whether the impact would be *significantly* harmful or not.
7. Where the impact would be significantly harmful then EC21.1 (2) tells us that permission should be refused: “local authorities should determine planning applications ...in the following way: 2. refuse planning permission where there is clear evidence that the proposal is likely to lead to significant adverse impacts in terms of mitigation or of adaptation to climate change or any one or more other key impacts under Policy EC20.1 (3) (the impact assessment).”
8. The “key impacts” listed in EC20.1 (3) cover a far greater range of considerations than the traditional concept of “retail impact” – eight “key impacts” are listed the first of which is: “a) whether the proposal has been planned over the lifetime of the development to limit carbon dioxide emissions, and minimise vulnerability and provide resilience to, climate change.”
9. Thus permission should be refused in a case in which it is concluded that the carbon balance-sheet of the proposed development would be significantly adverse.
10. The same approach applies where significant harm would arise from any of the other “key impacts” listed in EC20.1 (3) which are impacts on (b) the spatial planning strategy; (c) investment in centres; (d) scale; (e) accessibility; (f) trade/turnover; (g) town centre vitality and viability and (h) design.

11. Some of these items can readily be described as “impacts” e.g. (f) trade/turnover, whereas others are perhaps more aptly described as “considerations” or “requirements” e.g. (h) that “the proposal secures a high quality and inclusive design.”
12. Be that as it may, if a proposal would cause significant harm as a result of one or other of these “key impacts” then permission should be refused: EC21.1 (2).

The New Order: significant wider benefits have a limited role to play

13. Where any such impacts would not be significant then EC21.1 (3) tells us that proposals should be considered “favourably” where “any adverse impacts” which “are not significant are likely to be outweighed by significant wider economic, social and environmental benefits arising from the proposal under Policy EC20.1 (4) or other material considerations.”
14. There is a lot wrapped up in this sentence. Permission should be granted where significant wider benefits outweigh insignificant key impacts. We can see from this what the role is of economic, social and environmental benefits in the new order of the draft PPS. Most strikingly, such benefits – which need to be significant in order to enter the weighing scales – are given a role to play only where adverse key impacts would be insignificant.
15. EC21.1 (3) refers to two categories of considerations which, if significant, can tip the balance in favour of granting permission, namely [a] “wider economic, social and environmental benefits arising from the proposal under Policy EC20.1 (4)” and [b] “other material considerations.”
16. As to the first of these: Policy EC20.1 (4) list four “wider impacts”, the first of which “a) the impact on allocated sites outside town centres being developed in accordance with the development plan” seems, at least to me, to be opaque – in any event it is

not easy to see how this type of wider impact could give rise to potentially decisive wider economic, social and environmental benefits; it reads, again at least to me, as a potentially negative consideration.

17. Contrast that, or at least my reading of the first of the potential wider impacts, with the remaining wider impacts listed in EC20.1 (4) namely (b) deprived areas and social inclusion objectives; (c) local employment and (d) regeneration, which are potentially positive considerations.
18. Thus, by virtue of EC21.1 (3) if a proposal would e.g. cause a harmful impact on town centre trade but that impact would not be significant and the proposal would bring significant regeneration benefits then permission should be granted.
19. The second category of potentially decisive benefits referred to in EC21.1 (3) is “other material considerations.” Unsurprisingly, the draft does not seek to define or illustrate what these might be; this category must surely be intended to sweep up benefits which would arise in a given case from considerations other than the economic, social and environmental matters addressed in EC20.1 (4).
20. It must surely also be the case that if it is concluded that any wider economic, social and environmental benefits would not be significant (and thus would not, according to EC21.1 (3), qualify as potentially capable of outweighing insignificant key impacts) they should not be put into the weighing scales as “other material considerations.” This is because the draft PPS ascribes a role to such wider benefits where they would be significant – it would, it seems to me, circumvent the structure of the policies in the draft PPS to treat insignificant wider benefits as potentially decisive.
21. An alternative view would be that this is too legalistic a reading of the policy statement and “other material considerations” being, intentionally, undefined should not be constrained in this way.

This highly structured approach is quite different to the current PPS6

22. In contrast to the highly structured approach of the draft PPS, which tells us that the consequence of failing to comply with the sequential approach or of causing a significant key impact is that permission should be refused whereas permission should be granted where an insignificant impact would be outweighed by a significant benefit, the current PPS6 lacks the clarity of the draft.
23. PPS6 [3.4] lists the matters that applicants should be required to demonstrate (need, appropriate scale, that there are no more central sites, no unacceptable impacts, accessibility) and tells us [3.5] that: “As a general rule, the development should satisfy all these considerations. In making their decision, local planning authorities should also consider relevant local issues and other material considerations.”

Town centres first for town centre uses

24. The precedence given to the sequential approach in the draft PPS is understandable in view of the heavy and repeated emphasis given by the Government to its “town centres first” policy.
25. The Government’s “town centres first” policy is emphasised in Margaret Beckett’s ministerial Foreword to the draft PPS – we are told that town centres “are the bedrock of our economic future” being “not only the engine of the country’s economy - ...but ...also the hub of community life...”
26. These themes are picked up in the Introduction which precedes the text of the draft PPS itself and which explains that: “Vital and viable town centres, as well as being key drivers of our economy, are also at the hearts [sic] of sustainable communities.”
27. Later on, the Introduction summarises the policies in the draft PPS as ones which: “...emphasise the importance of our cities and towns by safeguarding the town centres which are key drivers of the economy and the centre of community life.”

28. The draft lists [4] “the main uses to which the town centre policies in this statement apply” as retail; leisure; offices, and arts, culture and tourism.
29. One of the Government’s objectives for prosperous economies [6] is to “promote the vitality and viability of town and other centres as important places for communities and ensure that they are economically successful...” to which end the draft explains that “the Government wants: - new economic growth and development to be focused in existing centres...”
30. The “Plan Making Policies” (EC1 to EC11 inclusive) set a whole host of tasks for regional and local plan-making. To pick out just a few of those that bear upon the town centres first agenda: at local level, the need for additional floorspace for all main town centre uses should be assessed as should the capacity of existing centres to accommodate new development, including, where appropriate, the scope for extending the primary shopping area and/or town centre: EC1.3 (3), (4).
31. The draft distinguishes between qualitative need for retail and leisure uses and “additional benefits in respect of regeneration and employment” which “are not to be taken into account” when assessing qualitative need “(although they may be material in the site selection process)”: EC1.4 (5). This is another example of the way in which the draft seeks to define the concepts it deploys so as to reduce the room for debate about its meaning and intent.
32. It is for RSS to define a network and hierarchy of higher level centres and to make strategic choices about which centres in the hierarchy will accommodate major growth: EC3.1 (1), (2).
33. It falls to core strategies at local level to define a network and hierarchy of lower order centres and make choices about which centres will accommodate any identified growth [EC5.1 (1), (2)], to define the extent of primary shopping areas and

town centres [(6)] and where growth cannot be accommodated in existing centres, expand centres with “carefully integrated” extensions [(8)].

34. The draft considers smaller shops and markets to be important for town centres: EC6.1 (3), (4).

35. Sites are to be selected and land assembled for town centre uses by addressing need, scale, the sequential approach, impact and accessibility: EC7.1 (1 – 5) and only “after addressing the above requirements” should local authorities consider whether “other considerations” such as regeneration, employment, investment, and social inclusion bear upon site selection: EC7.1 (6).

36. Sufficient sites should be allocated to meet the identified need for at least the first five years “although for large town centre schemes a longer period may be appropriate to allow for site assembly”: EC7.6.

37. Turning to “Decision Making Policies” (EC12 – EC24 inclusive) we are told straight away in EC12.1 that: “Local planning authorities should adopt a positive and constructive approach towards planning applications for economic development” – but the policy cross-refers to EC21 which is the policy discussed at some length earlier in this paper which makes it plain that this “positive and constructive approach” does not extend to applications for town centre uses not in a centre which do not comply with the sequential approach and / or which would cause significant key impacts.

38. Applications for town centre uses not in a centre (nor allocated in an up-to-date development plan) should be accompanied by “evidence” in relation to a sequential assessment and an impact assessment: EC18.1.

39. The sequential assessment is explained in Policy EC19 in very similar, indeed largely identical, terms to paragraphs 3.13 – 3.19 of the current PPS6. It is disappointing that the opportunity has not been taken to clarify (if not to narrow down or even get rid of) the concept of “disaggregation” of elements of a proposed retail unit which has caused a great deal of difficulty and wildly inconsistent decisions on appeals and call-ins by the Secretary of State – see my paper to last year’s Oxford Planning Law Conference (“Has Retail Planning Delivered the Goods?”) which is available on my page on Landmark’s website and was published by the JPEL in its 2008 Occasional Papers.
40. The scope of impact assessments is set out in Policy EC20 – this is the subject of a paper by one of my fellow speakers this morning and so all I will reiterate is that the list of “key impacts” is extensive and begins with carbon footprint issues – in other words, much more than traditional retail impact considerations.
41. I note in passing that Annex A sets out thirteen town centre health check indicators and that although Annex B is entitled “Definitions” this is really a list of types of data that may be useful, rather than a glossary of terms (such matters are left to the draft Good Practice Guide).
42. The draft Good Practice Guide gives a great deal of practical advice to those drawing up or considering sequential site and impact assessments although as it explains it “is not intended to be prescriptive or stifle innovation” [1.8] and it “does not set out new policy, nor does it seek to prescribe a single methodology, or data source. Alternative approaches may be equally acceptable...” [1.11].
43. In other words it is a compass and not a list of commandments.
44. The Good Practice Guide suggests that a simple scoring system in a matrix might be useful in making decisions on planning applications [8.17 – 8.21] but I have to say



that I am not convinced that nuanced and balanced planning judgements can – or more to the point should – be reduced to “x” points for this consideration and “y” points for that consideration. Having said that, the beauty of the Guide is that it does not seek to impose any particular approach on decision-makers (nor could it).

45. In overall conclusion, the draft PPS continues but gives even greater emphasis to the Government’s “town centres first” policy, seeks to confine (and largely succeeds in confining) itself to structured statements of policies rather than mixing policies in with “how to” tips and emphatically places the sequential approach at the heart of deciding planning applications for town centre uses.

**Christopher Katkowski Q.C.**  
**Landmark Chambers**  
**June 2009**