

Determining competing Supermarket Planning Applications

Introduction

This section is intended to provide general guidance on the most appropriate approach to adopt when considering two competing supermarket applications.

First and foremost it is important not to take into account the names or reputations of the supermarkets involved or to approve or refuse on the basis of which appears to attract the most support locally. This is particularly important where that support is not based on the Development Plan and material planning considerations of need, impact on the town centre, location, etc but rather on brand loyalty. To that end and for the purposes of these reports, the presentation to Committee and the ensuing debate, the supermarkets will be referred to as the northern store (Sainsburys) and the southern store (Tesco).

The Approach

1. If the planning applications are both acceptable individually in planning terms the starting point is that both should, in principle, be granted planning permission.
2. However, consideration also needs to be given as to whether the grant of two planning permissions in this case would be acceptable in planning terms. Of relevance here will be the Development Plan Policies. If there are any policies that permit a number of planning permissions to be granted or alternatively prevent a cumulative build up of retail permissions this needs to be taken into account in the judgement. Of particular relevance will be The East Devon Adopted Local Plan Policy LSE1, which applies to the Seaton Regeneration Area and which requires retail uses within the Regeneration Area to complement town centre facilities (criteria 4 of LSE1).
3. Other material considerations should also be taken into account, including PPS6 "Planning for Town Centres". This deals with matters such as need, scale, the sequential approach to site selection, impact on existing centres and accessibility.
4. In relation to impact on the town centre, PPS6 outlines the circumstances in which an Impact Assessment is required and the proposal should be examined against the criteria set out. As a general approach, the aim of the guidance is to ensure an assessment of the impact of the proposals on the vitality and viability of existing centres is undertaken and part of that is to consider the cumulative effect of the permissions. Although PPS6 does not specifically cover the situation where two sites are being considered at the same time, looking at the cumulative impact of both proposals is necessary and in line with the general approach taken in PPS6.
5. Changes to PPS6 were consulted upon in July 2008, which proposed removing the 'need test' and introducing a new 'impact test'. Also in 2008 the Competition Commission issued a report on the Groceries market which proposed a competition test for proposed new retail store

developments. However, the Competition Commission's report was successfully challenged in the Competition Appeals Tribunal in April 2009 and this has resulted in the whole issue being the subject of reconsideration by the Competition Commission, the outcome of which is awaited. Meanwhile, Communities and Local Government have issued new draft PPS4 'Planning for Prosperous Economies', which would include retail policy currently covered by PPS6. Consultation draft PPS4 has just completed its consultation exercise. As this policy document is in its early stages it can only be given limited weight in considering whether a range of different supermarkets is an appropriate planning consideration for increasing consumer choice. The Competition Commission are pursuing the question of consumer choice and intend to bring out a further report in October. However, at this stage this can only be regarded as an intention, with some way to go before any regard can be had to this issue. These applications must be determined as Central Government policy stands at present, not on any future expectations of changes.

6. It should be noted changes to PPS6 were consulted upon in July 2008 which proposed removing the 'need test' and introducing a new 'impact test' which would have considered impact on consumer choice and competition. However, the introduction of a competition test was successfully challenged in the Courts and this has resulted in the whole issue being the subject of reconsideration, the outcome of which is awaited. The new draft PPS4 'Planning for Prosperous Economies' has just completed its consultation exercise and was designed to replace the current PPS6. However as this policy document is in its early stages it can only be given limited weight in considering whether a range of different supermarkets is appropriate for consumer choice. The competition commission however are pursuing the question of consumer choice and intend to bring out a further report in October. However, at this stage this can only be regarded as an intention, with some way to go before any regard can be had to this issue. These applications must be determined as matters stand at present, not on any future expectations of changes to the required facts, against which it is understood there will be exceptions anyway, such as a particular store having the potential to facilitate other development.
7. Existing PPS6 does not view enhancing consumer choice as a key objective but as a second tier objective that needs to be taken into account. The emerging draft PPS4 requires both a sequential approach and an Impact test, but does not seek to make competition a consideration of equal importance to these. The potential provision of a wider range of shops is material but whether there should be different operators should not be seen as a material consideration of such importance as the sequential approach in the assessment of the applications before this committee.
8. Where Development Plan Policy provides no guidance and the cumulative impact cannot be established (i.e. there is no evidence indicating that both schemes being approved will be harmful) then it might be legitimate to grant both permissions and allow the market to decide what gets built. However, if there is evidence that the cumulative impact of both permissions being implemented would be unacceptable in planning terms, then that evidence should be taken into account in dealing with the two applications. In this case, a Retail Impact Assessment has been undertaken by Grimleys of both supermarket proposals on behalf of the Council and Grimleys suggested that the cumulative impact of the two supermarkets together would be likely to have an unacceptable impact on the town centre"
9. If it is judged that the two proposals' cumulative impact is unacceptable to the extent that only one permission can therefore be granted, then the approach to be taken is a full comparative assessment of each site against the other in order to decide which scheme is preferred in

planning terms. Any comparative assessment would need to be conducted in accordance with any relevant criteria in the Development Plan and in this case the Seaton Regeneration Development Brief, and/or against the material facts of the sites proposed. A comparative assessment will include consideration of the location of the proposed sites, any additional benefits each scheme would bring, traffic impact, visual impact, parking provision, employment generation, residential amenity issues and impact on the town centre.

10. In undertaking this analysis it is important to make sure that only material considerations are taken into account. To that end it is necessary to ensure that any Section 106 offers which are irrelevant in planning terms or unrelated to the development are not taken into account. Conversely relevant Section 106 offers should be assessed.
11. It is considered inappropriate to deal with, and resolve upon the competing applications in the order in which they appear sequentially on the agenda, without having regard to the other competing schemes. Consequently, whilst the consultee responses have been separated out for the two applications both north and south, the analysis has been done of the two stores together in order to give the comparative position as set out above. The separate recommendations are a consequence of that analysis.

Council as Landowner

12. It is necessary to point out before these applications are determined to briefly consider the position of the Council as landowner in respect of these applications.
13. In respect of the northern supermarket (application number 09/0557/MFUL) this Council holds the freehold of the majority of the application site. Part of the site is leased by this Council to the Seaton Town Council. The remainder of the application site is held by Devon County Council as highway authority. The applicant has no ownership or control over this land or any adjoining land.
14. In respect of the southern supermarket site (application number 09/0019/MFUL) the land is within the ownership and control of the applicant with the exception of the highway within the red line. However, the Council owns the land over which the pedestrian link to the Underfleet and thence to the town centre needs to be secured i.e. between the application site and the Underfleet. There have been initial negotiations between the applicant and the Council (as landowner) over the appropriate value of this land in order to secure a link routeway. No formal agreement has been entered into at present.
15. In respect of application number 09/0022/MOUT which is for the southern store plus housing, hotel and tourism development, the Council owns all the land within the red line immediately to the east of the Underfleet currently occupied by the Council's car park, tram station tourist information centre and youth centre. The proposal submitted includes the location of a proposed possible visitor centre on the Council's land as well as the pedestrian link to the town centre which crosses Council owned property.
16. The Council as Planning Authority should have no regard to any financial benefit the Council as landowner may obtain if either of the competing schemes is permitted and developed.