

Swindon
DMC/C10225

14th February 2014

Mrs L White
Senior Planning Officer
Built Environment
Cheltenham Borough Council
Council Offices
The Promenade
Cheltenham
GL50 9SA

Dear Lucy

**Planning Application 13/02174/FUL Land at 86 Cirencester Rd
Cheltenham**

I refer to your instructions and write to set out our assessment of the Retail Impact Assessment submitted with this application. As background, we will first set out our understanding of the proposal as it is relevant to this and briefly the relevant retail planning policy. We are familiar with the area and have visited the shops in preparing this report. We are also aware of the public response to the application from the Council's website.

The Proposal

The proposal is for a convenience food shop with 371 sq m GIA and two A3 units with 46.5 sq m each. The food shop impact assessment is based on a sales floor of about 280 sq m. This is a reasonable sales to gross ratio for a unit of this size, but in practice it is likely to be a maximum of 278 sq m to comply with the Sunday Trading law maximum of 3000 sq ft. This corroborates the net sales area assessed, because it is unlikely that a new convenience store would be built which could not trade on Sundays.

The layout plan indicates 16 parking spaces and a service area along the street frontage and separated from it by bollards. The access to this servicing area would be from the south only and the egress to the north, and the access and egress to this area would be restricted by removable bollards. There is apparently no named user, but the store would be capable of accommodating a Tesco Express or similar, but nothing larger.

The site is on the west side of Cirencester Road just over 100m north of the Croft Rd/Cirencester Rd Neighbourhood Centre. Other centres in the area are some 600 m to the north on Lyefield Road West, and the Church St Neighbourhood Centre some 500 m to the east by road. I will consider the characteristics of these centres in relation to the likely impact.

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Planning Policy

The requirements of the NPPF in relation to retail development are well known and continue the long established sequential and impact tests. Where proposals fail to comply with either of these they should be refused (para 27). The threshold for requiring impact assessments is given as 2,500 sq m unless otherwise stated in a development plan. The proposal is clearly substantially under this threshold, but that does not, in our view, make retail impact immaterial, although it does influence the level of detail that it is reasonable to expect. The applicant evidently agrees and has submitted an impact assessment.

The development plan for the area is the Cheltenham Borough Local Plan 2nd Review. The Core Policies are described at the heart of the Plan. Policy CP1 requires account to be taken of the principles of sustainable development. Policy CP2 sets out a sequential approach to the location of development for all development which generates a significant number of trips. The emphasis is on development in the Core Commercial Area, and district and neighbourhood centres are favoured over out-of-centre locations. Policy CP4 sets out the criteria by which development will be judged to achieve a safe and sustainable living. These are the impacts on the amenity of neighbours and the locality, the impact of the traffic generated on the environment, the impact on crime and disorder and maintaining the vitality and viability of the town centre and district and local shopping facilities. These principles, applicable to all development are, for retail development, echoed in the retail policies, and I shall examine these proposals in relation to the retail rather than the general policies.

Policy RT1 sets out the sequence of locations within the Borough where retail development should be accommodated, with the order of preference being the Central Shopping Area, Montpellier and High St West End, elsewhere in the Core Commercial Area, district or neighbourhood centres, and then out of centre sites which are accessible by a regular choice of means of transport.

Policy RT4 states that proposals for retail development will be permitted within the defined boundaries of district and neighbourhood centres, subject to being appropriate in scale and function to the centre, retail impact, traffic impact, and the impact on on-street parking. It is noted that the boundaries of district and neighbourhood centres are defined on the proposals map and amplified in Appendix 6 of the Plan.

Policy RT 6 states that proposals for new local shopping centres will only be permitted in an area of identified deficiency.

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Policy RT7 states that retail development will only be permitted outside the defined shopping areas where the need for additional floorspace has been demonstrated and the proposal would not harm the vitality and viability of the town centre or any district or neighbourhood centre.

Policy RT8 permits proposals for new retail floorspace outside of the defined shopping centres subject to a size limitation of 100 sq m.

Neighbourhood centres are defined in the Plan's Glossary as

"A local shopping centre comprising a small group of shops, selling mainly convenience goods to a catchment drawn from adjacent residential areas."

The Plan identifies the three centres we identified nearby as neighbourhood centres.

Policy Appraisal

The application site is not within any identified centre and is for more than 100 sq m of floorspace. It therefore falls to be considered under Policy RT7. However, RT7 is not entirely up to date in its reference to need. This was expressly dropped in PPS4, and there is no reference to it in the NPPF. Mango states that the policy can therefore no longer be afforded any legitimate weight in the consideration of the application. I believe that this overstates the case considerably. The Council is statutorily obliged to have regard to the development plan policy but the NPPF remains a material consideration to which considerable weight should be given and which would be given by the Inspectorate. The Council should in my view not place any great weight on the demonstration of need. However the remainder of the policy is consistent with the NPPF and should be accorded due weight.

In relation to policy RT6, Mango claims that the proposal would not be a local centre and draws attention to the definition of a local centre in PPS4. However, this is of little assistance in understanding the policy. PPS4 was not operative when the plan was drawn up, or adopted in 2006. Nor is it operative now that PPS4 has been superseded by the NPPF. The NPPF contains no definition of local centres. There is little difference between the facilities offered in the development and those offered in the smaller neighbourhood centres around and I conclude that the proposal would be a new local centre in the context of the Local Plan.

However, the policy is based on the concept of an identified need and I must conclude that the policy would be unlikely to be found fully up-to-date or accorded much weight at an appeal.

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However, this is largely immaterial in this case. Para 11.51 of the explanatory text is clear that the purpose of the policy RT6 is to protect district and neighbourhood centres. These are also protected under policy RT7 and if the proposal would cause significant harm to any centre, planning permission can be refused under that policy regardless of the weight to be accorded to policy RT6.

Mango lays great stress on the presumption in favour of development set out in para 14 of the NPPF. However, the section quoted by Mango applies only where the development plan is absent or silent or out-of-date and that the specific policies of the Framework take precedence over the general presumption in favour of development. The specific policies for retail development are those contained in para 23- 27.

Mango also quotes at some length the Ministerial Statement, Planning for Growth, of March 2011. If there is conflict between this statement and the NPPF, greater weight must logically be given the NPPF as the more recent expression of Government policy. That is not to say that the Council should ignore any economic benefits of the development, but they need to be balanced against any harmful effects of the proposal – in effect the specific policies of the NPPF should be given more weight than Planning for Growth.

The benefits the additional retail facilities would provide for the public are material and I shall assess those in the context of the existing retail facilities when I consider the question of the likely impact on the centres.

I therefore conclude from this assessment of policy that the main policy issues are the impact of the proposal on recognised centres and the availability of sequentially preferable sites.

The Sequential Test

At the outset, there were no obvious opportunities to accommodate a development of this nature in the three neighbourhood centres and unless the Council is aware of any there is no need to consider the issue of flexibility within the test. The main issue is, therefore, in my mind, the area of search. Policy RT1 of the Local Plan sets out the sequence which, in short, starts with the town centre, then district and neighbourhood centres and only then out-of-centre sites which are accessible by a regular choice of means of transport. Mango accepts this policy is update (para 4.14).

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Mango has not considered sites in the town centre of which there are a number. However, it is arguable that since the purpose of the proposal is to increase the convenience shopping facilities locally, none of the sites in the town centre could be considered suitable. Planning policy should be applied with a view to the objectives of the policy rather than construed as statute. Within the context of the current proposal, I consider that the Council would have difficulty in sustaining an objection based on the failure to comply with the sequential test on this basis.

I therefore conclude that unless the Council can identify a suitable available site in the Charlton Kings area, it should not object to the proposal as failing to comply with the sequential test.

Retail Impact

The impact of the proposal on existing centres is a material consideration, and the Council must be aware of the likely impact if it is to determine the application according to planning policy. However, a full retail impact is not required because the proposal is substantially below the threshold for their requirement. I will approach Mango's assessment in that context.

It is also worth commenting at the outset that it is difficult to assess the impact of the proposal on local facilities because these are dominated by independent retailers. Not much is known about their trading performance and they generally do not have the reserves of capital to support trading at a loss for any length of time. The Portas Review, an independent review of the future of the high street prepared by Mary Portas in 2011 at the request of the Prime Minister, suggested that a 15% drop in margins could be sufficient to make an independent retail business unviable.

Existing Provision

Croft Rd/Cirencester Rd Neighbourhood Centre.

Mango starts by reviewing the existing centres. The Croft Road/Cirencester Road is identified as having 4 units, of which two are occupied by food shops, the Nisa and the butchers. The other units are used by a hairdresser and beauty salon. Mango claims that the butcher would be protected by its speciality role, and as the proposed store would only sell pre-packed meat, that they would not be in direct competition.

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This is true only to a certain extent. People would not buy significantly more meat as a result of the proposal and the sales are going to be diverted from some retail outlet. I will return to that point in assessing the likely impact.

Mango describes the Nisa as having a relatively limited offer particularly with regard to fresh fruit and vegetables, meat and other perishable goods, and somewhat carpingly, that goods are stored in the sales area. My own view is that the Nisa is a well stocked shop for its size, recently refurbished and bright and modern inside.

The Centre does not have off-street car parking and Cirencester Road at this point inhibits parking on the main road. This would be a significant factor in the impact of the proposal on the centre.

Mango claim that the household survey carried out as part of a retail study for the Joint Core Strategy provides evidence that this centre

“does not provide the range and choice of goods required to provide a genuine alternative for top-up shopping to the larger supermarkets further afield.”

While it is self-evident that it does not provide the range and choice of goods available in larger supermarkets; that is a reflection of its role as a neighbourhood centre. No such inference can however, be drawn from the household survey. This was a survey of shopping behaviour at a strategic level, and neither the sample size nor the questions were designed to identify shopping patterns at this local level.

Church Street Neighbourhood Centre

Mango describes this centre as serving a different catchment area. I do not believe this to be true. Church St is a significantly larger centre, with a historic village centre and a modern precinct accommodating a Library, Youth and Community Centre, Council Offices and a playground, with a car park which serves the whole centre. As well as the Co-op and Forge News, there is a choice of take-aways, two hairdressers and a pub. It clearly serves as a hub for the local community at a higher level than Croft Road and there must be a considerable overlap in the catchment areas.

Lyefield Road West Neighbourhood Centre

This is a small centre at the junction of Lyefield Road West and Copt Elm Road. It contains a recently refurbished Budgens store with a good range

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of fresh food as well as the usual convenience store goods. The centre also contains a pharmacy and café. The only post office serving the whole of the residential area in question is further along Lyefield Rd West outside the neighbourhood centre but I was given to understand that it was shortly to be moving to the Budgens store.

Overall, I consider that the area is quite well served with local shopping. While the proposed development would add to these, I do not believe that there is a dearth of shopping for local residents which would justify giving this great weight in determining the application.

Turnover of the Proposal

Mango state that there is no named occupier but that the proposal is aimed at leading food retail companies. Mango estimate the turnover of the proposal at £1.26m based on a sales of £4,500/sq m and the sales floorspace of 280 sq m. It goes on "test the sensitivity" of this sales density assumption by using a figure of £6,000/sq m which it describes as reflecting previous discussions with DPDS on a similar proposal. This was in Barton Street Gloucester and concerned the conversion of the India Public House to a foodstore (Application No 12/00459). In fact Mango used a sales density figure of £5839/sq m for the main proposal and £6,000 to assess a fall back position. We commented that a higher sales density could be expected assuming a national multiple operator.

That remains our view in respect of the current proposal and we note that at the Barbourne Road appeal, quoted by the applicant, the appellant's evidence indicated a turnover of £1.5m from a sales floorspace of 212 sq m (para 14 of decision letter). This equates to £7,075/sq m in prices at that time. Taking that to be in 2008 prices (the appeal decision was in 2009) it would equate to a figure of about £8,400/sq m in 2014 prices. There must be considerable uncertainty about the turnover that the proposal would achieve, but given that the proposal is intended to be occupied by a national multiple retailer, we conclude that the turnover is likely to be in excess of £2m. At £8,400/sq m, it would be £2.35m.

Trade Draw

Mango's figures are based on the assumption that 80% of the trade of the proposal would be drawn from Morrison's at Up Hatherley, Sainsbury's at Priors Road, Waitrose at Honeybourne Way and other supermarkets further afield. Mango made similar assumptions in relation to the India House proposal referred to above.

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DPDS questioned that assumption on the basis that it conflicted with broad view that like competes with like (see Practice Guidance on Need, Impact and the Sequential Approach – DCLG 2009) and the impact would be experienced by other local top-up facilities. However, in that case the local convenience stores in the nearest centre were specialist retailers and there was an Asda in walking distance of the proposal. In this case all the foodstores mentioned are a long distance from the site and it is unlikely that top-up shopping from this area is taking place in those stores to any great extent. There is certainly no evidence to indicate that it is.

The proposal is however, on a busy main road carrying traffic from Cheltenham to Cirencester and beyond. Although not the primary route, it is well used by local traffic avoiding traffic queues at the Air Balloon junction at peak times. Given the car parking proposed it would be an attractive place to stop for top-up shopping and a significant proportion of its trade could be expected to arise from pass-by traffic. In contrast comparatively little of the turnover of the existing centres could be expected from these trips because of their location and, in the case of Croft Road, the lack of convenient parking. It would be reasonable to make an allowance for, in my judgement about one quarter of the turnover to come from passing traffic, leaving about £1.7m to come from elsewhere, including the local area.

The proposal would prove attractive to local residents making car borne trips elsewhere because of the convenient parking. The three local centres all suffer from poor parking facilities or poor access by car. It is reasonable to expect a considerable proportion of the £1.7m to come from the local centres.

In para 6.22 Mango state that the Retail Study household survey results indicate that none of the centres is performing a top-up shopping role. We have already commented on the use of the survey results in this way, but it is immediately apparent from the centres themselves that that is exactly the role they perform.

However, not all of the top-up shopping expenditure in the local area will be spent in the local centres. Allowing for about 50% would indicate about £850,000 would be diverted from the centres to the proposal. At 30% the figure would be about £500,000. Of course there is no real way of knowing but Mango's estimate of £230,000 (13.5% of the proposals turnover once the pass-by trade is deducted) appears implausibly low.

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Mango estimates that the trade draw from the Nisa would be £75,000 out of an estimated turnover of £650,000 - £750,000, giving a trade impact of 10-12%. No explanation of the turnover estimate of the Nisa is given. I note that the assumed sales density works out at between £4962/sq m and £5725/sq m. This might not be unreasonable.

After Mango's trade diversion of £75,000, the sales density would be £4893/sq m - £5153/sq m. This compares with Mango's estimated sales density for the proposal of £4,500/sq m based on the leading national multiple food retailers offering adjacent car parking and all the benefits claimed by Mango.

This is not credible. I must conclude from Mango's analysis that the impact on the Nisa would be much greater. This is because of the underestimation of the likely turnover of the proposal and the unrealistic assumptions about trade draw. Mango's "worst case scenario" based on a sales density for the proposal of £6,000 would increase the impact to 13-15%. At a sales density more comparable with national retailers the impact would be in excess of that. Mango's calculations indicate a significant impact that would leave the future of the Nisa store in doubt. Taking account of the conclusions on Mango's estimates on the proposal's turnover and trade draw, the closure of the Nisa must be regarded as likely.

Mango describes the butcher shop as a speciality offer which is very different from the mainstream pre-packaged offer and would therefore not be in direct competition with it. The butcher appears to sell the normal range of meat and I would not describe it as a speciality butcher. Both shops would sell meat and would be in competition with each other and some impact from the proposal would be expected. However, butchers do trade near to small supermarkets in many places and appear to be able to compete in price and exceed in quality. I would, however, expect the butcher to lose some turnover. It is extremely difficult to know how much or how much the business could lose while remaining viable because very little is known about its trading circumstances. However, I do not think there is enough evidence to suggest it would close as an immediate result of the proposal. It might be one factor in a decision to close. For instance if closure had been under consideration for some time, it might provide the stimulus to a firm decision, or not to renew a lease at some time in the future. It is these personal circumstances that make the impact on independent shops so difficult to judge.

Mango does not address the impacts on the Co-op in the Church St centre or Budgens on Lyefield Road West in any detail, simply

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commenting (para 6.25) that the impacts on these stores would be less. I agree that the impact would be less and the closure of the Budgens would be significantly less likely. The Co-op is unlikely to close. The company has the financial resources to keep trading and this is usually the best option where property is leased and the company would remain responsible for the rent whether trading from the premises or not. Independent retailers, trading from a single store are not in the position to trade at an operating loss and more immediate closure is more likely.

In summary, I conclude that the impacts on Church Street and Lyefield West neighbourhood centres are unlikely to be sufficient to justify the refusal of planning permission on retail impact grounds. The impact on the Croft Road centre would be severe and common sense, let alone the impact assessment, suggests that the closure of the Nisa store is likely.

That would indicate that the proposal is contrary to policy RT7. However, I am concerned that such a decision would not find support at an appeal. The protection of local centres does not generally receive great support at appeal. Planning decisions have to be made in the public interest and should not be used to protect private interests. Although Croft Road is designated as a neighbourhood centre, it essentially consists of no more than four private businesses, two of which are unlikely to be affected by the proposal, and the public interest the centre serves is not entirely clear. While it is generally in the public interest to have a wide range of local shopping opportunities, in this case, the existing shop would, at worst be replaced by an arguably better facility nearby. If the public interest that lies behind the policy to protect neighbourhood centres is to ensure the widespread availability of local shopping facilities, that objective would not be harmed. On the contrary, the proposal could be seen as enabling the modernisation of local facilities and a refusal as protecting what are essentially private interests.

Overall Conclusions

The proposal would extend the range and quality of shops available in the local area, as would most retail developments, but there is no “qualitative need” in the area to which special attention should be paid.

The Local Plan policies for retail development are not wholly up-to-date and the Council should rely only on those parts of the main retail policies which are in accordance with the NPPF to determine the application. This overall policy context indicates that the main issues are the sequential and impact tests. The issue of the need for the proposal should not be given significant weight.

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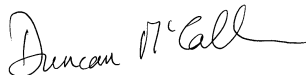
With regard to the sequential test the Local Plan policy RT1 sets out the order of preference to include the town centre ahead of local centres. Sites within the town centre can be ruled out as unsuitable because they would not serve the intended catchment area. There are, as far I can establish, no suitable opportunities within the neighbourhood centres, including vacant buildings and the sequential test is therefore met, unless the Council is aware of any less obvious opportunities.

The Mango Retail Impact Assessment does not give a convincing assessment of the likely impact on the three neighbourhood centres but there is considerable uncertainty about this. That is primarily because there is no clear evidence on the top-up food shopping patterns in the catchment area of the proposed store and even if there were, there would still be great uncertainty because most of the shops likely to be affected are independently run and their trading position is not known. This lack of information is not the result of deficiencies in the impact assessment and is not easily overcome.

I have aimed to give our best assessment on the likely retail impact based on an assessment of the applicant's impact study and my own knowledge. My conclusion is that main food shops in the Church Road and Lyefield Road West Neighbourhood Centres are unlikely to close and the impact on those centres is unlikely to be so great as to merit a refusal of planning permission on retail impact grounds.

I do however, conclude that the impact on the Croft Road/Cirencester Road Neighbourhood Centre would be severe and that there is a very significant risk that the main food shop there would close as a result of the impact of the proposal. This would be contrary to policy RT7. However, decisions have to be made in the public interest and a technical breach of policy should not be sufficient to refuse planning permission, if the proposal would not harm the objective of the policy. If the existing store were to close, the public would still have local, and arguably better, shopping provision. Furthermore this centre is so small that the decision could be seen as protecting private rather than public interests. I consider that there would be a very significant risk that a retail impact reason for refusal would not be upheld at appeal.

Yours sincerely

A handwritten signature in black ink that reads 'Duncan McCallum'.

Duncan McCallum
Consultant

Development Planning & Design Services Ltd