

Please Reply to: Swindon
Our Ref: DAM/jsb/C10225
Your Ref:
Date: 18th September 2014



Mrs L White
Senior Planning Officer
Built Environment
Cheltenham Borough Council
Council Offices
The Promenade
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Dear Lucy

Planning Application 4/01436/FUL - Land at 86 Cirencester Rd Cheltenham

I refer to your email of 27th August 2014 requesting our comments on the application. This is a repeat of an application which was refused earlier this year. That application was refused for three reasons, but we are asked to comment only on retail planning matters. In relation to that earlier application, we concluded that the proposed foodstore would not have significant impact on Church Street or Lyefield Road West Neighbourhood Centres but, on the basis of the information submitted in the Retail Assessment, would be likely to lead to the closure of the Nisa Store in the Croft Road Neighbourhood Centre. We also advised that this impact was unlikely to be given much weight in an appeal decision.

Retail Impact

The applicant has resubmitted the same retail impact assessment together with some local examples of where convenience stores are trading in close proximity to each other. This is not good evidence of the likely impact of the proposal on the Nisa store on Cirencester Road because the circumstances of each centre and their catchment areas vary so much. For example, Bath Road is a large district centre with a wide variety of shops and services and clearly a much larger pool of expenditure to draw on. It is of little guidance in assessing the likely impact on the Cheltenham Road/Croft Road neighbourhood centre. I attach a short note on the examples. This draws attention to the main reason for our earlier conclusion on the impact on the Nisa store – that, on the evidence submitted, there is not sufficient expenditure to support both. The applicant had suggested a turnover of some £1.26m, based on a net sales floorspace of 280 sq m and a sales density of £4,500/sq m and had produced a “worst case scenario” of £1.51m based on a sales density of £6,000/sq m. We regarded the sales densities as too low for the retailers referred to in paragraph 6.13 of the impact assessment.

Nevertheless, the applicant estimated that 80% of the turnover would be drawn from the main large foodstores in Cheltenham and only £75,000 from the nearest direct competitor, the Croft Road Nisa. This is implausible, but even at this level the proposal was estimated as having an impact of between 10% and 15% on the Nisa store. It follows from our view of the turnover and trade draw that the impact would be significantly higher. Independent stores are regarded as being vulnerable to relatively small losses of trade and we concluded, on the basis of the applicant’s figures that the Nisa was likely to close.

Continued/.....

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The applicant argues in paragraph 6.7 of the Planning Statement that *“the retail offer proposed in this case would not mirror exactly what is currently offered locally and would not therefore directly conflict with the neighbourhood centre but complement what is on offer”*. It goes on, in paragraph 6.8, to state that it would provide a different offer from that currently available in the centre but does not explain in what way it is different. In the absence of any explanation of the statement, it appears to us that it would be essentially the same – providing for top-up convenience goods shopping for local residents.

There is nothing therefore in the resubmission which leads us to change our view on the likely impact.

The Weight to be given to Policy RT7

The Planning Statement (paragraphs 6.7 to 6.10), however, addresses two further matters raised by the first reason for refusal – the weight which should be accorded retail impact and to local plan policy RT7 and to the impact on the facilities available to the local community.

In relation to the first matter, the key question is whether the policy is up to date and in accordance with the National Planning Policy Framework and the National Planning Practice Guidance. The applicant argues that retail impact is not a material consideration because it is less than 2,500 sq m and there is no other, locally set threshold. The applicant has attached two appeal decisions to support this view. In the first, at Coggeshall, the Inspector concluded that there was no requirement to submit a retail impact assessment, but nevertheless went on to consider the likely impact on the centre. In the second appeal, the Inspector noted that both parties agreed, in the light of the Framework, that there was no need to consider impact in that case (paragraph 27 of the Decision Letter) but he nevertheless went on to consider impact before concluding that it would be *“insignificant in planning terms”*.

The National Planning Policy Guidance was issued in March this year. As noted by the applicant, it states that *“The impact test only applies to proposals exceeding 2,500 sq m gross of floorspace unless a different locally appropriate threshold is set by the local planning authority”*.

On the face of it, this goes against the wording of the Framework which states (paragraph 26) that *“in considering applications for retail, leisure and office development which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set, threshold”* (or the default threshold of 2,500 sq m). The Framework does not indicate that the impact on existing centres is not material for retail development under 2,500 sq m or locally set thresholds.

There is no clear indication from either appeal decisions or the Courts, how the Guidance in this respect should be interpreted vis-a-vis the Framework. It is however, clear from the Taylor Review (External Review of Government Planning Practice Guidance) that practice guidance is not intended to override Government planning policy but to clarify it. To give overriding weight to the statement in the Guidance would be to promote the status of the Practice Guidance over that of the Framework. In the absence of a local threshold, the national threshold of 2,500 sq m applies. The proposal is so far below that threshold that we consider that only limited weight should be given to the impact on centres in this case.

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It appears to us that policy RT7 cannot be regarded as fully up-to-date with current Government Policy with regard to retail impact in this case (as well as with regard to the requirement to demonstrate need). Although generally consistent with the Framework in relation to impact, Policy RT7 provides protection to the town centre, district centres and neighbourhood centres. However, the definition of town centres in the glossary of the Framework includes district and local centres but specifically excludes "*small parades of shops of purely neighbourhood significance.*" This is exactly what the Cirencester Road/Croft Road centre is and policy RT7 cannot be regarded as up-to-date in respect.

Para 215 of the Framework indicates that due weight should now be given to relevant policies existing plans according to their degree of consistency with the Framework. In determining this application the Council is not obliged to follow Government Planning Policy and Guidance, but must have regard to it and be clear why it is not following the Government advice in any particular case.

The Council should also bear in mind that the Planning Inspectorate is likely to give considerable weight to the Framework and the Guidance at any appeal and limited weight to policy RT7.

The Loss of Local Facilities

In relation to the second point, the reason for refusal states that the proposal would lead to the loss of local facilities and is therefore contrary to policy RT7 and paragraph 70 of the NPPF. The provision of local facilities is the objective behind the policy with regard to neighbourhood centres and the substantive objection to the earlier application in the reason for refusal.

In paragraph 6.8 of the Planning Statement the applicant makes the claims that the proposal would be complementary to the existing offer and would "*not reduce the community's ability to meet its day to day needs*" The statement goes on to claim that the proposal would make the neighbourhood centre more attractive and thereby increase its vitality and viability.

This appears to be predicated on the assumption that the Nisa would continue trading and, the complementarity of the proposal and the centre has not, in our view, been established. However, even if the Nisa store did close, it could not be said that the community would be left without local shopping facilities for its day to day needs – the proposed store would meet these. There would be no loss of facilities to the community. We therefore conclude that there is significant weight in the applicant's claims in this respect and that a reason for refusal based on the loss of local facilities would be unsustainable at appeal.

Conclusions

In conclusion, we find no grounds to change our view on the risk of closure of the existing Nisa store in the new application. We also conclude that the proposed foodstore would not have an adverse impact on any of the other centres.

There has been a shift in the national guidance given to local planning authorities since the previous application was determined, and we consider that the Council would have to explain why it was giving overriding weight to Policy RT7 in relation to neighbourhood centres in the context of the National Planning Policy Framework and National Planning Practice Guidance if it were to refuse this application for the same reason as the previous one. We consider that the Planning Inspectorate would give greater weight to the Framework and Guidance in any appeal – both because the Local Plan policy cannot be regarded as up-to-date in ways which impact directly on the application proposal and because the proposed store is so far below the applicable threshold.

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We also conclude that the applicant has demonstrated that there would be no loss of local facilities and that the objective of the policy and paragraph 70 of the Framework would still be met if the Nisa store did close.

In the absence of a significant adverse impact on town centres as defined in the National Planning Policy Framework, we therefore conclude that any appeal against a retail impact reason for refusal is likely to be upheld.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Duncan McCallum'.

PP **Duncan McCallum BA (Hons), MPhil, MRTPI**
Consultant
DPDS Consulting Group

Annex - Examples of convenience stores trading in close proximity

In its letter of 12th May Mango (Appendix 1 to the Planning Statement) sets out examples of convenience stores trading near to each other. We consider each example in turn.

Queens Drive/Gloucester Road

The Tesco Express has only been trading for about 2-3 years and it is not clear what effect it will have on the Co-op outlet in the longer term. The Co-op is, in any case, supported by a wide network of shops and is capable of absorbing impacts on individual stores. It is likely to take long term decisions based on whether it owns or leases the unit and how long the lease has to run since it would be liable for rent whether trading or not. They are also unlike the Cheltenham Road/Croft Road neighbourhood centre, in that they are near the station and benefit from increased pedestrian footfall from a wide catchment area.

Spar and Martins Caernarvon Road

We have not visited these particular stores. Martins is owned by McColls, which does operate convenience stores, but Martins is operated as a newsagents and it seems from the applicants description of it as a newsagents that it operates as Martins. It therefore has a very different retail offer from a Spar.

Co-op and Premier Leckhampton Road

My impression is that the Co-op is considerably smaller than the proposed store and the Premier significantly smaller than the Nisa at Croft Rd. The ability of a location to support two shops or an amount of retail floorspace depends on its catchment and thus where the alternatives shops are. Little can really concluded from this example.

Sainsbury Local/Co-op and Natural Grocery Store Bath Road

Bath Road is a large local centre with a wide range of shops and services and clearly attracts custom from a substantial area. It is clearly not comparable to the Croft Rd Neighbourhood Centre.

The Co-op and Esso PFS Six Ways, London Rd.

Six Ways is a significantly larger centre than Cirencester Road/Croft Road. Petrol sales obviously fundamentally alter the viability of a convenience store and it is not comparable to the Nisa at Croft Road. My impression from visiting the Esso store for petrol is that many of the other sales in the Esso store are ancillary to the petrol sales.

Mace/BP PFS and East End Store, London Road

These are not comparable to the Cirencester Road/Croft Road situation if the proposal were permitted – both stores are considerably smaller and petrol sales fundamentally alters the viability of the Mace store.

Hewlett Road

There is limited overlap between the retail offer of Bargain Booze and the Tesco Express. A greengrocers shop did close when Tesco opened.

Morrisons, BP Garage and Best One Stop Convenience Store Prestbury Road

Morrisons has only opened very recently and it is too early to tell what the impact will be. The BP garage sells petrol and is not comparable. My impression from using the BP garage is that some customers do not buy petrol at the same time but that the majority of the goods sales are linked to petrol sales.

Conclusion

We conclude that there are significant differences between the examples and situation as it would be if the proposed store were permitted. None of them therefore provides sound evidence of the likely impact of the proposal on the Nisa store. Convenience stores can trade in close proximity to each other, district centres indicate this clearly, but it depends on their size compared to their catchment area and the amount of competition within that.