Retail Planning Decisions under the NPPF

Commissioned by the Association of Convenience Stores

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Research Objectives and Method

The primary purpose of this research project was **to discover how local planning authorities are applying the sequential and impact tests of the NPPF in taking decisions on new retail development.** Other objectives included discovering what types and sizes of new retail developments are being permitted and refused by local planning authorities under the NPPF, and their locational status;

The research was based on searches of local authorities' websites for planning applications for major retail developments; was limited to England (excluding Inner London); and covered applications for which the decisions were taken after the NPPF came into force in March 2012. It used a random sample of 50 Case Studies of such applications, estimated as a 50% sample of all those across the country. The data collected for the Case Studies was drawn from the relevant documentation for each application.

Key Findings

Of the 50 applications, 5 were in town centres (10%), 10 were edge-of-centre (20%) and **35 were out-of-centre** (70%). The great majority of proposed major retail developments were therefore out-of-centre.

34 applications included a foodstore (68%); comprising 9 superstores, 17 supermarkets and 8 discount supermarkets – in some cases combined with other retail uses such as retail warehouses or small shops. 21 included substantial non-food stores, mainly retail warehouses (combined with foodstores in 6 cases).

43 of the applications were approved (86%). 5 of those approved were in town centres (12%), 7 were edge-of-centre (16%) and 31 were out-of-centre (72%). 29 of the 43 permitted developments included a foodstore.

The out-of-centre developments were larger than the others, so **76% of gross retail floorspace permitted was out-of-centre**.

Overall Conclusions

Retail Impact Assessments supporting planning applications are advocacy documents, despite their objective language and use of extensive quantitative analysis. They were universally criticised by independent consultants instructed by the LPAs.

The sequential test lacks teeth, being a mainly qualitative assessment. Developers are now widely applying a format-driven approach to applying it – with some flexibility as to scale but little as to retail format.Development plans are frequently inadequate to provide a clear guide to LPAs in their assessment of whether or not a proposed major retail development complies with the plan.

Decision-taking by LPAs was always on the basis of a balanced judgement of the pros and cons of the proposed development. The sequential and impact tests in the NPPF are not being applied as pass or fail 'gateway' tests, but as only two of the factors to be taken into account in arriving at a balanced judgement on the application.

The NPPF has not succeeded in achieving increased retail investment in town centres and less out-of-centre. In fact the opposite has occurred. Since the NPPF was introduced, the ratio of permitted new retail floorspace in major retail developments out-of-centre, to that in town centres and edge-of-centre locations combined, has been in excess of 3 to 1.

Introduction

1.1 In July 2013, I was commissioned by the Association of Convenience Stores (ACS) to undertake a research project on Retail Planning Decisions under the National Planning Policy Framework (NPPF). The primary purpose of the research was **to discover how local planning authorities are applying the sequential and impact tests of the NPPF in taking decisions on new retail development.**

1.2 The research was also intended to discover:

- What types and sizes of new retail developments are being permitted and refused by local planning authorities under the NPPF.
- The locational status of permitted new retail developments, i.e. town centres, edge-of-centre or out-of-centre
- Whether there are any similarities, differences or common factors in key claims by applicants, e.g. job creation, levels of impact; and how these are accepted or rejected by local planning authorities.

1.3 Because the project was aimed at establishing how the NPPF is being applied in practice to proposed new retail developments, the research was limited to planning decisions since the NPPF came into force in March 2012. The research was also limited to England, as the NPPF does not apply in Scotland and Wales. However inner London was excluded, as being atypical of planning applications and decisions nationally.

1.4 The research was based on a random sample of 50 case studies of planning applications for new retail developments, using the research method described in detail in Appendix A. In summary, it involved searching local authorities' websites for **planning applications for 'major retail developments' (or similar designation)[1], on which the decisions were taken after the NPPF came into force**. Once such applications had been identified, relevant published supporting documents, Officers' Reports and Decisions were examined; to obtain information on each application, the decision taken, and the principal retail planning reasons why.

[1] This limitation was simply to exclude the very large numbers of minor retail applications, such as alterations to or changes of use of 'High Street' shops, applications for variation of conditions, non-material amendments of permissions granted, and other small-scale retail developments. All except one of the 50 applications reviewed were for Class A1 retail floorspace exceeding 1,000 sq m gross retail floorspace.

1.5 I estimate that the 50 case studies represent about 50% of all such retail planning applications in England (excluding inner London). It is therefore a sample large enough to give substantial confidence in the overall results.

1.6 I must stress that my instructions from ACS did not include any directions as to the types, sizes, locational status, or other characteristics of the proposed developments to be used as case studies – other than that they should be of a size and type designated by local planning authorities as 'major retail development' or similar. Neither did ACS indicate any hypothesis which the research was to test, nor any results which were expected or required. I was required to undertake the work with due 'academic rigour', and to provide an objective and unbiased report. This research project and report is therefore not in any way advocacy on behalf of any commercial or other interest, but an objective attempt to understand how decisions on major retail planning applications have been and are being taken under the NPPF.

1.7 It was not within the scope of this research to critique the decisions taken by local planning authorities, or the information submitted by applicants in support of their applications. Claims by applicants regarding retail impact, job 'creation' and compliance with the sequential test are therefore merely reported; and the reliability of such information was not examined. However in the final section of this report I make some general comments on the propensity of applicants to submit reliable or unreliable retail impact forecasts and sequential test assessments; and on the way in which local planning authorities assess applications and take decisions, as indicated by the case studies.

1.8 In Section 2 of this report I set out and describe my research findings: both in terms of the numbers of applications and decisions by type, size, locational status, and other characteristics; and my qualitative findings regarding the applications and decisions. The report ends with Section 3, in which I present my overall interpretation of the research results and comment upon the findings. The appendices describe the research method; set out a summary of the case study results; and present the 50 Case Study Datasheets, from which any of my findings can be checked.

Research Findings

2.1 Appendix B sets out a summary of the 50 case studies, and Appendix C the detailed Case Study Datasheets. In the presentation of the results which follows, all percentages are rounded to the nearest integer, so the sum of the components does not always equal 100%.

Characteristics of the 50 Proposed Developments

2.2 Of the 50 planning applications comprising the random sample case studies, 5 were in town centres (10%), 10 were edge-of-centre (20%) and **35 were out-of-centre** (70%).

2.3 Of the 50 planning applications, **34 included a foodstore** (68%). These comprised 9 superstores, 17 supermarkets and 8 discount supermarkets – in some cases combined with other retail uses such as retail warehouses or small shops. Figure 1 shows the breakdown of foodstore types and locations, also indicating approvals and refusals.

Figure 1: Foodstore applications by type and locational status, approved and refused

Foodstore type	TC	E-o-C	O-o-C	Totals
Superstore		2 🗑	6 🗑 1 🖶	8 🗑 1 🖶
Supermarket	4 🗑	2 🗑 2 🖶	8 🗑 1 🖶	14 🗑 3 🖶
Discount supermarket		1 🗑	6 🗑 1 🖶	7 🗑 1 🖶
Totals	4 🗑	5 🗑 2 🖶	20 🗑 3 🖶	29 🗑 5 🖶

🗑 Approved 🖶 Refused

6 of these developments also include non-food stores of varying sizes.

2.4 Of the 50 applications, 21 included substantial non-food stores, mainly retail warehouses (combined with foodstores in 6 cases). Figure 2 shows the breakdown of these applications by locational status and decision.

Figure 2: Substantial non-food applications by locational status, approved and refused

	TC	E-o-C	O-o-C	Totals
Developments including substantial non-food floorspace *	2	3 1	14 1	19 2

Approved Refused

* Excluding non-food floorspace in foodstores. 6 these developments also include foodstores of varying sizes.

2.5 Of these 21 applications, **only 2 were in town centres** (10%, representing only 4% of all 50); 4 were edge-of-centre (19%, and 8% of all 50); whilst 15 were out-of-centre (71%, and 30% of all 50).

2.6 It is therefore clear that **the great majority of proposed major retail developments** (35 or 70%) **were out-of-centre**. Only 5 were in town centres (10%), whilst 10 (20%) were edge-of-centre.

2.7 The out-of-centre applications were for (on average) larger developments than those in town centres or edge-of-centre. In terms of gross retail floorspace (food and non-food) applied for therefore, the balance was even more heavily weighted towards out-of-centre locations. 9% of new gross retail floorspace applied for was in town centres, 15% was edge-of-centre, and 76% was out-of-centre.

Applications Permitted and Refused

2.8 **Only 7 out of the 50 applications (14%) were refused planning permission** – of which 3 were refused because there was a competing similar proposal in the same town, which was preferred and permitted (for a variety of reasons).

2.9 **Of the 43 permitted**[2] (86% of all applications), 5 were in town centres (12%), 7 were edge-of-centre (16%), and **31 were out-of-centre** (72%).

2.10 All of the 5 town centre applications were approved. 7 of the 10 edge-of-centre applications (70%) were approved; and 31 of the 35 out-of-centre applications (89%).

2.11 **76% of gross retail floorspace permitted was out-of-centre**, 14% was edge-of-centre, and 9% was in town centres.[3]

[2] Or subject to a resolution to grant permission subject to signing of a S106 Agreement.

2.12 Of the 43 applications permitted, **29 included a foodstore** (67%). These comprised 8 food/non-food superstores, 14 supermarkets and 7 discount supermarkets.

2.13 The 43 permitted developments also included 19 non-food schemes, 6 of which also included a foodstore.

Size Variations

2.14 Apart from Case Study 4 (which was an outline application for a retail-led mixed use development in which the total Class A1 floorspace was not specified), the 49 other applications comprised gross retail floorspace ranging from 929 sq m to 14,564 sq m. 30 of these 49 proposed developments were over 3,000 sq m. Of these 30, 29 were granted planning permission[4] – an approval rate of 97%. Of the remaining 19 under 3,000 sq m, 13 were granted planning permission – an approval rate of 68%. Thus **the larger proposed developments had a significantly higher approval rate than the smaller**.

2.15 The average gross retail floorspace of the 31 out-of-centre developments permitted was **5,206 sq m**; within a range of 1,369 to 14,564 sq m. For the 7 edge-of-centre developments permitted, the average was **4,264 sq m** gross; within a range of 929 to 10,404 sq m. For the 5 developments in town centres, the average was **3,971 sq m** gross; within a range of 1,417 to 5,411 sq m. This may reflect the fact that in general, larger sites are available out-of-centre than in town centres.

Regional Variations

2.16 To assess regional veriations, England was divided into 5 areas, viz., Outer London; the North (comprising the North-East and North-West); the Midlands (East and West Midlands); South-East (excluding London) and East Anglia; and the South West. Only one Case Study was identified in Outer London, which is much too small a sample from which to draw any general conclusions for this sub-region. The samples in the other four areas are also fairly small, so caution is necessary in drawing general conclusions on regional variations. However excluding Outer London, Figure 3 shows the regional variations between the applications, their locational status, and whether they were approved or refused.

2.17 Subject to the above caveat about the small sub-samples in each regional area, Figure 3 shows that in the North all the applications were approved; whereas in the South West 75% were approved. The Midlands and South East & East Anglia showed similar approval rates

[3] This and following references to amounts of gross retail floorspace are to the primary retail elements of the proposed developments; and do not include other small elements such as small unit shops, for which a flexible Use Class was sought, for example Classes A1/2/3/5.
[4] The development refused was CS48, a food/non-food superstore in St Austell; where a smaller competing superstore nearby was approved (CS47).

of 80% and 85% respectively. Whilst the 100% approval rate in the North is of some interest, possibly reflecting the relatively difficult economic conditions there, the results do not indicate any substantial regional variations in the pattern of approvals and refusals. There are also no significant differences between the types of development applied for, approved and refused between the regional areas. The significant common factor is that **the great majority of approved developments are out-of-centre in most of the regional areas**.

Figure 3: Applications by area and locational status, approved and refused

Area	TC	E-o-C	O-o-C	Totals	Approval Rate
North	2 🗑	1 🗑	10 🗑	13 🗑	100%
Midlands	3 🗑	3 🗑 3 🖶	6 🗑	12 🗑 3 🖶	80%
South East & E Anglia*		1 🗑	10 🗑 2 🖶	11 🗑 2 🖶	85%
South West		2 🗑	4 🗑 2 🖶	6 🗑 2 🖶	75%
Totals	5 🗑	7 🗑 3 🖶	30 🗑 4 🖶	42 🗑 7 🖶	86%

🗑 Approved 🖶 Refused

* Excluding London

Job 'Creation' Claims

2.18 40 of the applications stated the number of jobs which were expected in the proposed new retail stores and shops. Some specified these as the total of full-time and part-time jobs, whilst others as full-time equivalents (and in some cases as both). Whilst the numbers varied widely, when standardised as the number of jobs (full & part-time) per 1,000 sq m gross retail floorspace, some clear differences between different types of development emerged. Figure 4 shows these differences.

Figure 4: Average claimed job 'creation' by type of retail development applied for

Type of development *	Claimed jobs 'created' per 1,000 sq m gross **
Discount supermarkets	16.9
Retail warehouses	22.6
Food/non-food superstores	44.3
Other supermarkets	53.4

* Excludes developments which included substantial non-retail uses.

** Based on the total number of jobs (full and part time). In some cases applicants indicated a narrow range of jobs, eg 25 to 30. The upper figure was used in this table. Use of the lower, or a mid-range figure would lower the numbers slightly.

2.19 Perhaps not surprisingly, the discount supermarkets claimed the lowest numbers of jobs 'created' – as their business model depends on a low cost base. Retail warehouses are clearly less labour intensive than foodstores (apart from discount supermarkets); particularly if they sell furniture, floor-coverings, large electrical appliances and other 'bulky' goods. The difference between the figures for food/non-food superstores and those for other supermarkets appears to indicate that there are economies of scale in terms of labour costs, as the size of foodstores increases.

2.20 The case studies included only one proposed retail-led mixed use town centre development, CS8, and one such close edge-of-centre development designed to extend the town centre, CS4 (both of which were to be anchored by a large foodstore). These stated job 'creation' of 500 and 'at least' 500 respectively. These two applications indicated greater numbers of jobs than any of the others (in most cases much greater), the vast majority of which were not in town centres. One of the reasons is that they included a range of other uses in addition to the anchor foodstore. This sub-sample of 2 developments is of course extremely small. However it suggests that further research is needed on whether town centre developments, which might be more likely to include a range of uses than out-of-centre developments, and achieve linked trips benefits for other town centre businesses, have the potential to result in more jobs than the same amount of retail floorspace developed out-of-centre. Such research should of course take account of the overall net effects, not just the jobs in the new development itself.

2.21 Within these averages for the four development types, **there were some striking differences between job 'creation' claims for individual applications**. Thus for example for Aldi stores (which are all of very similar size), the number of jobs claimed varied between 15 and 30. For the two Next free-standing out-of-centre retail warehouses (which were of significantly different sizes), the number of jobs per 1,000 sq m gross were 16.9 (the smaller store) and 30.3 (the larger store) – which runs counter to the economies of scale argument.

This suggests that the number of jobs claimed in any individual case should be treated with caution. It is not unlikely that the number claimed varies according to local concerns, perhaps expressed during pre-application discussions, rather than being founded in fact.

2.22 **The figures for jobs 'created' were without exception for the numbers of jobs in the proposed new development itself** (although other information was sometimes submitted, for example the number of existing jobs retained or 'safeguarded' for various reasons). In no case did the applicant state how many existing retail jobs would be lost from town centres or existing non-central stores, with which the proposed development would compete, as a result of their forecast retail impacts. The job 'creation' figures claimed are therefore not the net increase in retail jobs in the town. This is a serious omission from custom and practice for retail impact assessments prepared for applicants.

Retail Impact Claims

2.23 Retail impact forecasting for a proposed new retail development involves estimating the likely loss of sales from nearby town and district centres, out-of-centre superstores and retail parks; based on a series of assumptions about catchment area expenditure and shopping patterns, existing and future sales, and changes in market shares, etc. It can also involve ranges in some of the assumptions, and sensitivity testing. This means that it rarely, if ever, boils down to a single figure for the proportion of sales which would be lost by a single town centre, forming the basis for the impact test in the NPPF. In the case studies therefore, the 'headline' retail impact on the nearby town centre, or on anchor stores in the town centre, forecast by each applicant has been recorded where possible (as the complexity of recording and analysing all forecast impacts would be beyond the scope of this project); but it should be noted that this is not the complete picture. Some applicants provided forecast impacts on town centres as a whole, whilst others provided only impacts on individual stores such as foodstores; and/or convenience goods impacts only. Also, cumulative impact with other permitted or proposed developments was an issue in some of the case studies but not in others, thus further complicating the picture.

2.24 It is not practicable or appropriate to analyse the recorded retail impacts against store size or type and attempt to draw conclusions about the applicability of the results elsewhere. This is because every town and every shopping catchment area is unique. Each town has its own unique shopping patterns, depending on the location of shopping facilities relative to residential areas, their scale and nature, the road system and public transport facilities, and the location and type of other generators of movement and activity. Further, the severity and significance of any particular forecast percentage impact depends on how well or badly the town centre or store impacted is trading. Thus a town centre which is trading very well would not suffer any significant loss of vitality and viability, etc, from a retail impact of x% of its sales; whereas one which is trading badly would suffer such a loss from the same impact of x%. Also, whether a particular store would close due to a given percentage loss of trade depends on how well it is trading before the impact occurs. Clearly these factors all make it difficult for local planning authorities to apply the impact test in the NPPF, and to interpret the results.

2.25 Caution should therefore be applied in interpreting the claimed impacts. However the 'headline' retail impacts on town centres or town centre stores claimed for the case studies (some of which were on convenience goods sales only) ranged from negligible to 34.5% (the latter being convenience goods impact on a single store). The great majority were less than 5% (21 cases), with 10 cases claiming impacts between 5% and 10%, and only 7 cases indicating impacts greater than 10% (of which 4 were between 10% and 20%, and 3 were over 20%). The general picture is therefore of most applicants claiming low impacts; and where apparently high impacts are indicated, these were dismissed by applicants as being insignificant because they were impacts on a single store, or the store in question was 'overtrading' substantially and would withstand the loss.

2.26 Probably because of the reasons discussed above, there was no correlation between the 'headline' impacts claimed by applicants, and the size of the proposed developments. This is also because larger developments tend to be proposed in larger towns than in smaller; so the town centres impacted are also larger, thus suffering lower percentage impacts.

2.27 A substantial number of local planning authorities instructed consultants to review the applicant's retail assessment, and advise them on its reliability. 48% of all the applications had been subject to such scrutiny and critique. In some cases retail impact assessments were not submitted, for example town centre developments; and smaller retail developments where the gross retail floorspace was less than the 2,500 sq mm threshold for impact testing specified in the NPPF. Excluding the 5 town centre applications (where no retail impact assessments were submitted), of the 30 applications for over 2,500 sq m gross retail floorspace, 20 (67%) were subject to critique by specialist retail planning consultants instructed by the local planning authority. In most cases, the consultant which had undertaken the local authority's own retail study as part of the evidence base for the development plan, was instructed.

2.28 **In every application subject to such critique, the Council's consultants advised that the applicant's consultants had under-estimated likely retail impacts** on town centres and town centre stores. A variety of reasons were given, including data used, assumptions made and other technical deficiencies of the forecasts. The response by applicants' consultants was usually to dismiss the criticisms or accept some of them, and then modify their forecasts slightly or run some sensitivity tests – and then to claim that the revised figures made no difference to their overall conclusions that that there would be no significant adverse impacts on town centres. Clearly, despite their apparently objective language, applicant's retail assessments are advocacy documents designed to enable the application to pass the impact test, rather than genuinely objective statements of likely retail impacts. This undermines the effectiveness of the impact test in the NPPF.

Application of the Sequential Test

2.29 Apart from the proposed town centre developments, sequential assessments were submitted by all the applicants. However these ranged from minimal (a few paragraphs in very general terms), to detailed assessments of a number of potential alternative sites, which had been agreed with the local planning authority in pre-application discussions. Where a reasonably full sequential assessment was submitted (i.e. in most cases), the tests applied were essentially those of suitability, availability and viability. These are all largely qualitative tests[5], leaving considerable scope for interpretation and advocacy.

2.30 In applying these tests, most applicants applied some flexibility in terms of the development proposals which they were testing on potential alternative sites. Thus for example a smaller store than that being applied for would be tested – but still with an adjacent surface car park, on the grounds that the retailer could not operate without it. Thus **there was very little flexibility as to format, although some flexibility as to scale**. Despite this, in none of the case studies was it concluded by the applicant that their sequential assessment had identified a sequentially preferable site; which was suitable, available and viable for the proposed development, even with flexibility of scale. The Dundee case[6] was mentioned in support by some of the applicants, and sometimes also the North Lincolnshire Case[7]. These were widely claimed to mean that the development which the applicant wished to develop (after applying flexibility as to scale in formulating the proposal) should be assumed, when assessing potential sequentially preferable sites.

2.31 Thus **none of the applications was shown by the applicant to have failed the sequential test**. It is of course possible that in pre-application discussions of other potential developments, the sequential test caused them to fall at this first hurdle, and never become the subject of planning applications. However it is outside the scope of this research to examine that possibility.

2.32 A small number of applicants considered the sequential test, but stated that it was not really applicable in their case; for example because their development was designed to meet a particular need, which could not be met in any other way or on any other site. They claimed that their application therefore passed the sequential test, because there were no

[5] Viability could be a quantitative test – but to apply it in this way would involve designing (at least schematically) a potential development on each site, and then undertaking a financial appraisal of it; which would be time consuming and costly to do. It is not accepted custom and practice to do so, and no such financial appraisals of potential alternative developments were submitted by any of the case study applicants.

[6] *'Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland)'* - Hilary Term [2012] UKSC 13.

[7] *'The Queen on the application of Zurich Assurance Limited trading as Threadneedle Property Investments and North Lincolnshire Council and Simons Developments Limited'* - [2012] EWHC 3708 (Admin), Case No: CO/4764/2012.

sequentially preferable sites which could meet that need. In those cases, no flexibility of format, scale or location, was applied by the applicant.

Officers' Recommendations to Committee

2.33 In 42 of the 50 case studies (84%), the Council's Officers recommended approval of the application (usually subject to S106 Agreements); and in 8 cases (16%) they recommended refusal. The reasons for recommending approval were many and various, and difficult to summarise. However, some common features could be discerned, comprising combinations of the following:

- The proposed development complied with the development plan in whole or in part;
- If it did not fully comply with the development plan, there were benefits which more than offset any non-compliance;
- The proposed development passed the sequential test, in that there were no sequentially preferable sites which could realistically accommodate it;
- The proposed development would not have an unacceptable impact on the town centre, or any other defined centre;
- Any impacts on the town centre would be more than offset by other benefits; such as new jobs, regeneration, clawback to the town of expenditure leaking elsewhere, environmental and highways improvements, financial contributions to town centre improvements, meeting an identified need;
- The proposed development would result in overall benefits, which would exceed any harm;
- There were not sufficient grounds for refusal.

2.34 The reasons for recommending refusal were more or less the obverse of those for recommending approval. Common reasons for recommending refusal included combinations of the following:

- There was a sequentially preferable site, and/or;
- The proposed development failed the impact test, and the benefits would not outweigh the harm to the town centre;
- As a result, the proposed development was contrary to the NPPF;

- It was contrary to the development plan for a variety of reasons, including loss of employment land;
- A competing scheme in the same area would not result in the same disbenefits.

2.35 In general, Officers' Reports to Committee were extensive, thorough and well argued. The small number of delegated decision reports were less extensive, but clearly set out the principal reasons for the decision. However an important finding is that **in almost every case, the Officers' Report did not apply the sequential and impact tests as pass or fail 'gateway' tests, but as merely two of the many factors to be taken into account** in arriving at a balanced judgement of the recommendation. This was the case with recommendations for approval and refusal. I comment further on this issue in Section 3 below.

Decisions by Members

2.36 **In the great majority of cases, 43 of the 50 case studies (86%), the Committee decision was in accordance with the Officers' Recommendation**; but in 7 cases (14%) it was contrary to the recommendation. Of these 7 cases, 4 applications were approved which had been recommended for refusal, and 3 were refused which had been recommended for approval. 2 of the 7 cases (CS47 & CS48) involved two applications for competing out-of-centre superstores nearby in the same town, where one had been recommended for approval and one for refusal – but Members took the opposite view from Officers as to which should be approved and which refused.

2.37 The decision on CS34, which was approved contrary to the recommendation, involved a difference of interpretation of the NPPF. Officers had recommended refusal on the grounds of there being a sequentially preferable site, and of adverse impact on the town centre, i.e. failure to pass the sequential and impact tests in the NPPF paragraphs 26 and 27, (and other grounds). However Members approved the application in essence on the grounds that it complied with the NPPF paragraph 14, as it would result in economic development and the attraction of a major retailer to a new 'flagship' store for the company on a high profile site. Members were not persuaded that the retailer would go to any of the town centre or edge-of-centre sites if their out-of-centre application was refused, or that the impact on the town centre would be sufficient to warrant refusal. This decision does rather expose a degree of inconsistency between paragraphs 14 and 27 of the NPPF; or at least the difficulty of interpreting and applying these two requirements in practice.

2.38 In the 3 cases where Members refused permission contrary to Officers' Recommendations, the principal reasons (in summary) were:

- Loss of heritage assets and social and community facilities, and unacceptable design and materials (CS2).

- Design, scale and massing of part of the development was unacceptable (CS15).

- Adverse impact on the character and appearance of the area, including loss of mature trees; and a better site was available to meet identified needs.

Thus none of these reasons related to the sequential or impact tests or other retail planning issues.

2.39 In the 4 cases where Members granted permission contrary to Officers' Recommendations, the principal reasons (in summary) were:

- It would provide further shopper choice, economic regeneration and job creation; would reduce carbon emissions through reducing car journeys elsewhere; and would tidy up the site (CS23).

- Job creation and inward investment (CS34).

- Increased retail choice; loss of employment land but overall increase in jobs; design, traffic and parking were acceptable (CS35).

- Redevelopment of a derelict brownfield site adjacent to existing retail and leisure facilities. Little adverse impact on the town centre (CS47).

Thus job creation was a reason common to three of these four cases. Environmental improvement and design was also common to three.

Overall Conclusions

Applications are advocacy

3.1 Standing back from the details of the case studies, the high rate of approvals, the strong preponderance of out-of-centre developments comprising foodstores, a number of overall conclusions emerge. Some of these flow from the 50 case studies, whilst others from the process of searching a large number of local authorities' websites for applications which complied with the case study selection criteria. These general conclusions are discussed below.

3.2 It is clear from the advice to local planning authorities from their independent consultants that applicants' retail assessments are advocacy documents, designed to enable the application to pass the sequential and impact tests. Whilst using apparently objective language and numerical data, and purporting to be objective, without exception they manipulate quantitative retail impact assessments to indicate the lowest possible impacts on town centres. This means that it is essential for local planning authorities to instruct independent consultants to review and critique applicants' retail assessments, and to advise on their realism and veracity. It also means that the impact test (in particular) is potentially weakened by the propensity of applicants to submit less than objective assessments.

The sequential test is lacking teeth

3.3 The sequential test is very largely qualitative rather than quantitative, thus leaving substantial room for interpretation and advocacy. This means that applicants are too easily able to dismiss potential sequentially preferable sites. The Dundee and North Lincolnshire court cases (reinforcing the abandonment of the previous 'needs test') have further tipped the scales in favour of developers of out-of-centre schemes – as following these cases, developers can now more easily claim that their business model does not enable them to operate from town centre format stores and/or without adjacent free surface car parking. Developers are therefore now reverting to the old 'format driven' method of applying the sequential test – which had been proscribed by previous versions of national planning policy for town centres and retail development. And local planning authorities and their consultants are tending to accept this approach.

Development Plans are frequently inadequate

3.4 In accordance with local planning authorities' statutory obligation, Planning Officers struggle heroically to assess whether or not applications comply with the Development Plan[8]. However the problem they face is that development plans are usually either out-of-date, and/or silent on the site or type of development in question, and/or lack sufficient policies or sufficient detail to give a clear indication of what the decision indicated by the Plan should be. Officers therefore have to interpret the Plan, and assess the degree to which the proposed development would comply with each of its policies. They also have to interpret and apply the NPPF, particularly where the Development Plan is silent or out-of-date. This introduces considerable uncertainty into the process; and flexibility for Officers to interpret the application's compliance with the Plan in whatever way best suits the Council's current agenda.

The sequential and impact tests are not being applied as 'gateways'

3.5 Probably as a consequence of this longstanding balanced judgement approach, the sequential and impact tests of the NPPF are not being applied by local planning authorities as pass or fail 'gateway' tests. Instead, they are being applied as two of the many factors to be taken into account in making a balanced judgement on the application. If it was the government's intention that that these tests should be 'gateway' tests, as is implied by a literal reading of paragraph 27 of the NPPF, this needs clarification and reinforcement, for example by means of the forthcoming new practice guidance. Conversely, if the government wishes these two tests to be applied as just two of many factors, this too should be clarified.

The NPPF is not achieving much new retail development in town centres

3.6 Only 9% of permitted gross retail floorspace in the case studies was in town centres, 14% was edge-of-centre[9] and 76% was out-of-centre. Thus the great majority of new retail floorspace permitted in major retail developments since the NPPF was introduced has been out-of-centre. From searching Councils' websites to find case studies of major retail developments, it was apparent that local planning authorities have also been receiving a large number of minor retail applications involving town centre shops. A high proportion of these (which it was outside the scope of this research to quantify) were applications to change the use of Class A1 retail shops to other uses, for example Class A3 uses, tattoo parlours, health and beauty establishments, and other retail-related services. Whilst this can potentially increase the diversity of town centre uses, it results in a reduction in retail attractions in town centres.

[8] Which can comprise a range of Development Plan documents with varying degrees of detail and consistency.

[9] One of these edge-of-centre applications was immediately adjacent to the existing retail area and designed to extend the town centre to include it.

3.7 Of course some of this is due to general economic and social trends, and some to specific local circumstances. However it is occurring in parallel with the continuing shift of retailing from town centres to out-of-centre locations, as evidenced by the case studies. It would be difficult to conclude that there is no cause and effect involved. **The NPPF has therefore not succeeded in achieving increased retail investment in town centres and less out-of-centre. In fact the opposite has occurred.** Since the NPPF was introduced, the ratio of permitted new retail floorspace in major retail developments out-of-centre, to that in town centres and edge-of-centre locations combined, has been in excess of 3 to 1.

Appendix A

RESEARCH METHOD

This research project was aimed at identifying how the NPPF is being applied in practice to proposed new major retail developments. It covered local planning authorities in England, excluding Inner London. It was therefore based on 313 local planning authorities comprising Outer London Boroughs, District Councils and Unitary Authorities.

The project was entirely desk-based research, using case studies of planning applications on which the decisions were taken after the NPPF came into force. The criteria for selecting case studies were that they should be of applications which were designated by each local planning authority on its website as:

- Major retail, or
- Large scale retail, or
- Large scale major retail, or
- Small scale major retail.
- In the event that no such designation was applied, they were of a scale similar to that of applications to other local planning authorities which fitted those designations.

Within these scale designations, certain types of applications and developments were excluded, in particular:

- Renewals of extant permissions and applications for extension of time;
- Applications to vary conditions on existing permissions;
- Applications for approval of reserved matters on existing permissions;
- Installation of mezzanine floors in existing retail warehouses;
- Applications for non-material amendments of existing permissions;
- Applications which were still pending decisions at the time of the research;
- Mixed use developments where retail was not the dominant use proposed;
- Major town centre developments being promoted by the local authority and a developer in partnership (although very few of these were found in the course of all the website searches).

All applications designated as minor retail developments were also excluded. This eliminated the large numbers of applications relating to small 'High Street' shops; a high proportion of which were for change of use to non-A1 uses, or for minor alterations to existing shops. These were not material to the research.

The websites of 277 local authorities were visited to search for planning applications which complied with the above criteria. The 36 not visited were excluded because sufficient case studies had already been identified in that geographical area, and so as not to bias the sample towards any particular sub-region. Of these 277 local authorities, 120 lacked adequate search facilities on their websites to enable searching for particular types of development or land use. In these cases it was impossible to identify case studies without searching through lists of very large numbers of all planning applications for all types of development. They were therefore excluded. The remaining 157 local authority websites yielded the 50 case studies.

157 local planning authorities is almost exactly half the total of 313 in England (excluding Inner London). If the same pattern of decided applications exists for the 156 local planning authorities not covered by the research as for the 157 which were included, it would mean that the 50 case studies amount to a sample of approximately 50% of all such major retail planning applications in England (apart from Inner London), which have been decided since the NPPF was introduced. The research is therefore based on a very large sample of such applications, which gives substantial credence to the overall results.

Selection of the 50 case studies was random; in that it depended upon the local planning authority having adequate search facilities on its website – a matter which is entirely unrelated to the nature of the planning applications it receives or how it takes decisions upon them. The 36 local planning authorities excluded to avoid regional bias were excluded by means of alphabetic searching by local authority name – which is another matter entirely unrelated to the planning applications they receive or how they take decisions. The 50 case studies where therefore not selected to provide any particular results. They were genuinely random selections, subject only to the requirement to provide a broad spread across the country and avoid any regional bias.

Once a case study had been identified, the applicant's retail assessment was downloaded, together with the Officers' Report to Committee, Committee Minutes and other relevant explanatory documentation such as a critique report by the Council's retail planning consultants. These were reviewed to extract the key information regarding the proposed development and the decision taken by the local planning authority; which was then summarised in the Case Study Datasheets in Appendix C. A summary of the key features of the 50 case studies is provided in Appendix B. Once the 50 case studies had been completed, the results were analysed in various ways, yielding the results set out in detail in this report.

Appendix B

SUMMARY OF CASE STUDIES

CS	Town	Type of Development	Location Status	Retail Floorspace (sq m gross)	Decision	Decision Date	Independent Critique	Principal Reasons for Decision						Comment
								Impact Test	Seqtl Test	Job Creation	Clawback	Regen.	Other	
1	Croydon	Food/non-food superstore	OoC	8,814	RG	18-Jul-13	n/a						✔	Site already has restricted A1 use
2	Kings Norton, Birmingham	Supermarket	EoC	929	R	31-Aug-12							✔	Refused contrary to recommendation on grounds of loss of community facility
3	Lincoln	Supermarket	TC	1,417	A	01-Oct-12			✔					District centre location.
4	Dudley	Retail-led mixed use	EoC	n/a	A	18-Apr-13		✔	✔	✔		✔		Scheme would extend the TC
5	Oundle	Supermarket	OoC	2,203	A	23-Nov-12	✔	✔	✔	✔	✔			Would meet identified need
6	Thrapston	Supermarket	TC	3,341	A	19-Jun-13	n/a	✔	✔		✔	✔		Would meet identified need
7	Thrapston	Supermarket	EoC	2,827	R	05-Jul-12	✔		✔					Sequentially preferable site available (CS6)
8	Uttoxeter	TC retail development	TC	5,206	A	07-Sep-12	n/a			✔		✔		TC scheme on mainly vacant site
9	Arnold	Discount supermarket	OoC	1,476	A	30-May-13		✔	✔	✔		✔		Expected to have a low impact.
10	Newcastle-Under-Lyme	Large retail warehouse	OoC	13,010	A	19-Oct-12	✔	✔	✔				✔	Demolition of extg rwhss, but large increase in A1. Seq test finely balanced
11	Sleaford	4 large stores in old s/store	EoC	5,046	RG	n/a	✔	✔	✔	✔	✔			Resolved to grant in 2009. Revisited under NPPF.
12	Rugby	Major retail park extension	OoC	14,031	A	01-Jul-13	✔	✔	✔	✔	✔		✔	Benefits held to outweigh impact on TC
13	Shrewsbury	Supermarket & garden centre	OoC	9,485	A	21-Feb-13		✔	✔	✔			✔	Provided new local centre for a planned urban extension
14	Stamford	6 Retail warehouses	OoC	6,335	A	14-May-13	✔	✔	✔		✔			Long history, inc High Court quashing original permission
15	Market Deeping	2 Non-food stores	EoC	1,672	R	28-Mar-13							✔	Refused on design, contrary to Officers' recommendation
16	Tunstall, Stoke-on-Trent	Superstore & retail warehouses	EoC	10,404	A	17-May-13	✔	✔	✔	✔	✔	✔		Non-compliant with dev plan, but outweighed by benefits
17	Balidon, Bradford	DIY goods store	OoC	2,480	A	14-May-13	✔	✔	✔			✔		Restricted to DIY goods, etc
18	Brighouse	Discount supermarket	OoC	1,369	A	28-May-13		✔	✔					Concluded compliant with development plan
19	Chester	Supermarket & 2 retail units	TC	5,411	A	30-Oct-12						✔	✔	Compliant with Local Plan. Sustainable economic dev.
20	York	5 Retail warehouses	OoC	6,713	A	21-Jun-13			✔	✔			✔	Part replacement of extg r/wh. 'Bulky goods' condition.
21	Anlaby, Hull	5 Retail warehouses	OoC	2,380	A	07-Jun-13	✔	✔	✔	✔		✔		Fairly small scheme with low impacts.
22	Beverley	Discount supermarket	OoC	1,477	A	23-Aug-12	✔	✔	✔				✔	First discount supermarket in the town. Delegated decision.
23	Cottingham, Hull	Supermarket	OoC	3,436	A	09-Apr-13	✔			✔	✔	✔	✔	Approved contrary to Officers' recommendation. Committeed decided impacts outweighed by benefits.
24	Birtley, Gateshead	Supermarket & 3 A1/2/3 units	TC	4,480	A	20-Dec-12						✔		TC scheme replacing a vacant supermarket.
25	Leeds	Discount supermarket	EoC	1,424	A	n/a			✔	✔			✔	Would support designated local centre.

26	Manchester	Food superstore & retail units	OoC	14,564	A	18-Jun-13		✔	✔	✔		✔	✔	Council's retail study supported the scheme.
27	Gosforth, Newcastle	Supermarket	OoC	1,618	A	12-Jun-13		✔	✔					Concluded compliant with development plan
28	Newcastle	Discount supermarket	OoC	1,473	A	29-Aug-12		✔	✔	✔			✔	Concluded compliant with development plan
29	Wallsend	Retail warehouse	OoC	1,672	A	08-Jan-13		✔	✔	✔				Decision shows the difficulty of resisting incremental expansion of retail parks.
30	Chichester	Retail warehouses	OoC	5,110	A	26-Jun-13	✔	✔	✔				✔	Impact glossed over. Potential EoC site ignored. But seen as Phase 1 of a larger development of the wider area.
31	Hemel Hempstead	Discount supermarket	OoC	1,447	R	05-Jul-13							✔	Refused on design and landscaping. Revised application submitted subsequently and pending decision.
32	Staplehurst	Supermarket	OoC	2,818	R	16-May-13							✔	Alternative to CS33. Refused on loss of open countryside.
33	Staplehurst	Supermarket	OoC	3,150	A	14-Mar-13		✔	✔				✔	Alternative to CS32, but without the disbenefits.
34	Maidstone	Retail warehouse	OoC	5,748	A	13-Sep-13	✔			✔			✔	Next store. Decision contrary to recommendation. Approved on grounds of job creation & inward investment.
35	Edenbridge	Food superstore	OoC	5,016	RG	n/a	✔		✔	✔	✔			Decision contrary to recommendation. Decision on competing store deferred pending SoS decision on call-in.
36	Sevenoaks	Discount supermarket	OoC	1,918	A	05-Sep-12		✔	✔				✔	This will be the first discount supermarket in Sevenoaks.
37	Saffron Walden	Retail warehouses & discount supermarket	OoC	5,109	A	10-May-13	✔	✔	✔				✔	Extant permission for (slightly less) retail warehouses on site. Scheme appears premature in retail capacity terms.
38	Watford	Food superstore	OoC	6,911	A	18-Dec-12	✔	✔	✔			✔	✔	Complies with emerging Core Strategy & meets identified need for a new foodstore in the area.
39	High Wycombe	Retail warehouse	OoC	7,261	A	16-Jul-13	✔	✔	✔	✔			✔	Next store. Large CIL payment made.
40	Wymondham	Supermarket	OoC	3,720	A	06-Mar-13	✔	✔	✔					Best connected site to TC. Competing application withdrawn.
41	Haywards Heath	Supermarket & A1/2/3/4 units	OoC	4,122	A	05-Feb-13	✔		✔	✔		✔	✔	Impact not insignificant, but a range of balancing benefits.
42	Woking	Food superstore	EoC	7,661	A	31-Dec-12		✔		✔			✔	Decision mainly based on adopted Core Strategy for increased retailing in local area. Sequential test not applied.
43	Bristol	Change of Use from D2 use to A1 retail warehouse	OoC	2,926	R	02-Aug-13	✔	✔	✔				✔	Decision was mainly because inadequate information was submitted to show compliance with seq. & impact tests.
44	Swindon	Supermarket and 3 small shops	OoC	4,480	A	02-Jul-13		✔	✔		✔			Follows a previous permission for a similar scheme (also assessed under the NPPF) where JR was threatened.
45	Holsworthy	Supermarket	EoC	2,213	RG	27-Jun-13			✔					Judged not to cause harm, and to comply with the development plan.
46	Camelford	Supermarket	EoC	3,100	RG	23-Aug-12	✔		✔	✔	✔		✔	Significant adverse impact balanced by various benefits. Decision still not issued.
47	St Austell	Food superstore	OoC	5,296	A	06-Sep-13	✔	✔	✔			✔	✔	Decision contrary to recommendation. Competing store (CS48) refused also contrary to recommendation.
48	St Austell	Food superstore	OoC	7,435	R	18-Jun-13	✔						✔	Decision contrary to recommendation. Competing store (CS47) approved also contrary to recommendation.
49	Verwood	Food superstore	OoC	5,891	A	06-Sep-12		✔	✔	✔	✔		✔	Replaces an extg Morrisons supermarket of approx half the size, which is heavily over-trading.
50	Sailsbury	Retail warehouses	OoC	5,110	A	22-May-13	✔	✔					✔	Replaces less than 1,973 extg A1 floorspace & Class B uses. Very strict 'bulky goods' condition applied.

Appendix C

CASE STUDY DATASHEETS

Credentials

Jonathan Baldock specialises in advising local authorities and other public sector clients on planning and development; particularly retail planning policies, town centre improvement strategies, and the impact of retail developments. He has directed many retail planning studies for local authorities; and has developed important techniques of retail analysis and planning which are now in common use. He has over 40 years professional experience, including that of Project Director on a large number of major consultancy projects, some overseas. Over the last 27 years, he has had extensive experience in retail and town centre planning; and in preparing and presenting retail evidence as an Expert Witness on behalf of local planning authorities, at very many Public Inquiries. On behalf of local planning authorities, he has reviewed and prepared critiques of a large number of retail assessments submitted in support of planning applications for major retail developments.

Jonathan was a Director of the Association of Town Centre Management from 1996 to 2006; a Director of Action for Market Towns from 2002 to 2005; and a member of the former Countryside Agency's English Market Towns Advisory Forum.

Since 2005, he has been a Director of the National Retail Planning Forum (NRPF) and a member of its Research Group. On behalf of the NRPF he convened and chaired a Retail Definitions Working Group, to prepare new definitions for retail planning, which now form Appendix A of the DCLG *'Practice guidance on need, impact and the sequential approach'*.

He has given over 50 lectures, seminars and conference papers on planning and town centre topics; including at conferences run by national organizations, and in the USA, Sweden, the Irish Republic and Belgium. He has also published in professional journals many papers on retail planning and town centre issues.

Jonathan has substantial planning research experience. In 1999 and 2000, he led the research project for the NRPF on *'The Sequential Approach to Retail Development'*. The report showed how the sequential approach of PPG6 was then being applied in practice. In 2003 and 2004, he led a major national research project *on 'The Role and Vitality of Secondary Shopping – A New Direction'*, for the NRPF, and was the author of the final report. The report set out recommendations for improving the prosperity of secondary shopping in large and small town centres and district centres. Working with DTZ, in 2009 he led a research project for the DCLG on how local planning authorities were using planning tools to promote and safeguard retail diversity in town centres.