

ALL OVER FOR THE SHOP – FUTURE TOWN CENTRES

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Summary

1. The public and private sector have a shared interest in town centres being vibrant places where people can come together. What that means for the planning and development of town centres has been changing for a number of years and the coronavirus lockdown may quicken that change in thinking.
2. National and local policies continue to seek to ‘save the high street’ by preventing certain types of development. This can be seen through the sequential and impact tests in the NPPF and in many local plans. The future of vibrant town centres and good placemaking is not about preserving an image of the past, it must be about creating the environment for change – reducing barriers to investment, encouraging innovative uses of space, being flexible. People’s shopping habits have changed and so, whilst retail will be a part of the new high street, it may not be the centrepiece. Or it may be shops Jim, just not as we know it.

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3. Tools are available for local authorities to work with industry to promote regeneration, but these are complex legal powers that require careful application – Compulsory Purchase Orders, Local Development Orders and Neighbourhood Development Orders, and the use of PD Rights for temporary uses.
4. It also requires plan makers to engage with the sector and ask the difficult questions about what is possible in their town centres. The ability and the tools are available in local government to develop innovative and forward looking plans for retail and town centres, but it needs a positive approach to enable change and an acceptance that it takes time.
5. Local plans should not focus on how we save the high street, but on how we change the high street.

Introduction

6. The death of the high street is a familiar refrain and the sector has been going through a difficult period for some time. The principal focus being the movement of shoppers from the high street and town centres to online retailers, and the high business costs of trading on the high street that impacts on profit margins.
7. The coronavirus lockdown comes on top of those existing problems and the consequences for the sector, whilst potentially relatively short-lived, could be stark. The Centre for Retail Research¹ recently revised their forecast for 2020 in light of the current lockdown. Their published forecast predicts job losses to rise further to 235,704, with 20,620 store closures. Whilst this may not be new, the figures are worrying.
8. The difficulties for the high street come in the context of slow growth in consumer spending over a number of years. This is born out in a halving of applications for new retail units in five years.

¹ <https://www.retailresearch.org/retail-crisis.html>

9. Of course the Coronavirus has had a massive impact on consumer spending. The ONS Retail Sales Update² from March 2020 reports that March 2020, the monthly retail sales volume fell sharply by 5.1%; clothing stores sales fell by 34.8%.
10. However the continuing growth of the food stores and non-store retailing was evident in the growth in March. Perhaps unsurprisingly, food stores saw a growth of 10.4%, their strongest on record. This can be seen in the continued success of the so-called discount supermarkets, where Aldi, pre-coronavirus, set themselves a target of opening a new store in the UK every week for the next two years. Of course, new stores will likely mean new consents required.
11. In addition the way we spend has changed fundamentally as a result of the lockdown. The ONS reports a record high of 22.3% of all retailing taking place online.
12. In this context, the Government, through national policy and guidance, places significant weight on the importance on the role of retail – see chapter 7 NPPF, “Ensuring the Vitality of Town Centres”. They are not just places where we spend our money, but are important community spaces, being a central focus of placemaking. It is also not an unreasonable assumption to say that residents, businesses and politicians want to see a vibrant and healthy town centre. The issue is what role does retail play in the modern vibrant and healthy town centre, and what can developers and local authorities do?

Retailing into the future

13. The future high street and tomorrow’s retailers need to combine new concepts and ideas about both their roles. The conventional relationship between them is now broken, and a new symbiotic relationship is required for both to survive. The common ingredient that will underpin the new relationship is experience - but what that is will vary considerably from location to location as well as between retailers.

² <https://www.ons.gov.uk/businessindustryandtrade/retailindustry/bulletins/retailsales/march2020>

14. Smaller centres, for example, cannot be expected to host flagship stores - and so the future of their high streets probably requires the high street itself to become the focus of experience lead retailing.
15. This will mean that the high street has to explore how new spaces can be created to be shared between all its users – shoppers, retailers and service providers. The concept of space has to be redefined. The distinction between public and private space needs to become blurred. Local Authorities should lead the way in exploring how to make wider concepts of shared spaces more acceptable and meaningful to all users.
16. This model will incorporate tech, adopting the internet as part of the infrastructure of the high street. This will create a distinctive environment to provide informal meeting opportunities for both people and businesses. Retail will, of course, be a key role in a vibrant town centre of the future, but it is not always going to be the principal focus.
17. It is essential that plan makers talk to retailers about what they think can work in the their town centre.
18. Developers and local authorities will need to work together to bring forward places that support successful businesses, that will include health, housing, arts, education, entertainment, leisure, business/office space. Place making, that has technology and social interaction at its heart. The effect is that no longer do people go to locations for their goods; but that goods flow directly to them.
19. This will require local authorities to invest in advanced technology and infrastructure in their high streets and other spaces. The infrastructure needed to support internet and hub-based technology should be as second nature, as providing street lighting and hard paved surfaces are today. Accepting that all this comes at a cost, local authorities will have to explore how to use funding streams more imaginatively than at present.
20. Local authorities that want to gain a competitive advantage might also assess the suitability of longer-term investment programmes by borrowing, and / or working in partnership with digital providers, using opportunities such as the Nationwide Gigabit Broadband Voucher Scheme (GBVS), and the Digital Infrastructure Investment Fund.

If local authorities fail to engage with new and emerging retail realities risk being left behind.

21. Of course all of this requires good planning through local plans; the use of existing powers in Local Development Orders, Neighbourhood Development Orders, and where appropriate Compulsory Purchase Orders.

Delivering the Future High Street – Law and Policy

22. The National Planning Policy Framework (‘NPPF’) and the Planning Practice Guidance (‘PPG’) emphasise the Government’s approach to retail as town centre first. It encourages policies that “*create the conditions in which businesses can invest, expand and adapt*”³. It encourages flexibility to respond to market changes and investment in infrastructure to create favourable conditions for businesses.
23. The NPPF defines ‘Town Centre’⁴ and ‘Main Town Centre Uses’⁵. Both definitions would support the broad aim of the future high street.
24. In the NPPF, the main tests for new development that is not in the main town centre nor allocated in a plan, are the sequential test and the impact test. It is for the applicant to demonstrate compliance with these tests. The sequential test⁶ requires Main Town

³ NPPF §80

⁴ ‘Town centre - Area defined on the local authority’s policies map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area. References to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance. Unless they are identified as centres in the development plan, existing out-of-centre developments, comprising or including main town centre uses, do not constitute town centres’.

⁵ ‘Main Town Centre Uses: Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).’

⁶ NPPF §86.

Centre Uses to be located in town centres, then in edge of centre locations⁷; and only if suitable sites are not available should out of centre⁸ sites be considered.

25. For those promoting retail schemes, there are a number of key battlegrounds that need to be managed for a successful application. Firstly, on the location of the scheme – whether town centre, edge of centre or out of centre.
26. In the application of the sequential test, the sites shouldn't vary according to the identity of the applicant but the content of the application. Suitable means for the intended use, not the particular company - *Aldergate Properties v Mansfield DC* [2016] EWHC 1670 (admin).
27. The second test is the impact test⁹. This is likely to form the main point of argument at any appeal for a new retail scheme that is not within the town centre:

When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m² of gross floorspace). This should include assessment of:

*a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal;
and*

⁷ Also defined in the NPPF – ‘Edge of centre: For retail purposes, a location that is well connected to, and up to 300 metres from, the primary shopping area. For all other main town centre uses, a location within 300 metres of a town centre boundary. For office development, this includes locations outside the town centre but within 500 metres of a public transport interchange. In determining whether a site falls within the definition of edge of centre, account should be taken of local circumstances’.

⁸ Defined in the NPPF – ‘Out of centre: A location which is not in or on the edge of a centre but not necessarily outside the urban area’.

⁹ NPPF §89

b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).

If it fails the sequential test, or has a significant adverse impact, it should be refused.

28. Clearly a considerable amount of work is required to assess the impact of a proposed new out of town centre scheme on the town centre. Detail on the relevant considerations within the impact test are set out in the PPG¹⁰ and include establishing the state of existing centres and the nature of current shopping patterns, the trade draw of the proposal, and considering a range of plausible scenarios in assessing the impact of the proposal on existing centres and facilities. As above significant scope for disagreement and stresses the importance of early engagement with an expert team.
29. The policy parameters and guidance promote the town centre and the high street, but permit appropriate out of town centre uses – particularly important for food and bulky goods retailers. They also set the direction for flexibility and mixed uses of town centre space that will be essential for future retailing.
30. However, policy and guidance does not always equate to delivery. That these policies have been in place for some time, but yet we continue to talk about the death of the high street, shows that policies aren't working, or perhaps that we are trying to keep alive something which is now not fit for purpose.
31. The broad direction of the NPPF that encourages a positive approach to encourage flexibility and growth in town centres is correct. What may need to change is the idea that in every town centre it will be led by traditional retail and that space must be preserved for traditional 'high street' uses.
32. In order to deliver the flexibility and growth for town centres that the framework requires, the PPG points to a number of available tools to promote retail.

¹⁰ Paragraph: 018 Reference ID: 2b-018-20190722

33. The lawful use of these tools will be paramount if local authorities and developers are to develop successful and vibrant town centres in their area:

33.1. Local Development Orders and Neighbourhood Development Orders – a development order that deems planning permission to have been granted for specific development or specified classes of development within a defined area (s.61A TCPA and s.61E(2)). Both carry a number of important restrictions and legal requirements and therefore care must be taken by LPAs to exercise the power correctly. Developers with an interest in the area to be covered by a potential LDO must monitor its progress and participate throughout to ensure that their interests are not adversely affected. This can include legal challenge of the process or substance of an LDO.

33.2. CPO – Section 226 TCPA creates a broad power of compulsory purchase that can be used to bring together land for regeneration of the High Street, including the acquisition of empty shops, if the council thinks that the acquisition will facilitate the development or improvement on or in relation to the land. The relevant guidance also requires a compelling case in the public interest, which would place the socio/economic factors of sustainable development at the fore. Again this is a useful power but one that requires careful and detailed application.

34. Finally, it may well be that there is no substitute for old fashioned plan making when it comes to re-invigorating town centres post the coronavirus. This will require developers and local authorities to take a co-operative and innovative approach to developing flexible policies that can truly change with the demands of modern retail to deliver vibrant and healthy town centres.

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