

**Matter 9: Matters raised by the inspector in relation to retailing and town centre policies****Date: 9<sup>th</sup> December 2016**

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At the Examination Hearing on 6<sup>th</sup> December 2016 to discuss town centre and retailing policies, the Inspector asked the Council to prepare a note to clarify a number of issues. These are:-

Issue 1: Application of the sequential approach and impact assessments.

Issue 2: The wording of policies TC6 and TC7 (primary retail frontages and secondary retail areas) with regard to whether a more flexible approach may be justified in situations where there is evidence of long term vacancy

Issue 3: The relationship between policies for secondary retail areas (policy TC7) in so far as they relate to, and overlap with, the Royal Leamington Spa Restaurant and café quarter (policy TC9).

**Issue 1: Application of the sequential approach and impact assessments**

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There was some discussion at the Examination of the interpretation and application of town centre policies insofar as they relate to provisions of the NPPF and in particular with regard to any requirement to undertake a sequential test or impact assessment. The Inspector asked the Council to:-

- a) set out, for the avoidance of doubt, how the requirements of the NPPF are met in the Local Plan, and
- b) consider whether any modifications to the Plan would help with consistency and clarity.

The Council considers that the Local Plan does correctly apply the NPPF requirements. The definitions it uses for various elements of the town centre, and how these relate to the equivalent terms in the NPPF is set out in table 1 at the end of this note.

**a) How are the requirements of the NPPF met in the Local Plan?****A) Application of the sequential test****The NPPF**

The NPPF requires that “*Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan.*” (para. 24) The sequential sequence for suitable sites is (1) in town centres, then (2) edge of centre locations and then (3) out of centre locations.

The NPPF does, however, have a different definition of “edge of centre” (and thereby by inference “out of centre” locations) for retail uses as opposed to other main town centre uses.

- For retail uses, edge of centre means “a location that is well connected and up to 300 metres of the primary shopping area”. (NPPF glossary)
- For all other main town centre uses, it means a location within 300 metres of a town centre boundary. For office uses, “this includes locations outside the town centre but within 500 metres of a public transport interchange.” (NPPF glossary)

#### The Local Plan

For **retail uses**, the Local Plan requirements for any sequential test are set out in **policy TC2** and are as follows:-

Firstly, locations within the **Retail Areas** (Primary Shopping Areas in the NPPF)



Then “edge of centre” sites in the following order of preference:-

(1) **Chandos Street** allocation (**policy TC4**)

(2) **Area of search** for major retail uses (**policy TC5**)

(3) Other edge of centre locations



Then “out of centre” sites

For **other main town centre uses** (specifically new meeting places, tourism, leisure, culture and sport development), the Local Plan requirements for any sequential test are set out in **policy CT1** and are as follows:-

Firstly, locations within town centres (as defined on the policies map)



Then “edge of centre” sites (in accordance with the NPPF)



Then “out of centre” sites (in accordance with the NPPF)

#### B) Requirement for an impact assessment

##### NPPF

The NPPF requires that: “When assessing applications for retail, leisure and office development outside of town centres, 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 floorspace threshold.” (para. 26)

##### The Local Plan

The Local Plan follows the NPPF approach with, where justified, a locally set floorspace threshold.

**Office uses**      **Policy EC1** states that an impact assessment will be required for out of town

proposals over 2,500 sq.m.

**Retail uses** Para 3.58 (supporting **policy TC2**) states that “*In assessing proposals outside of the town centres, the Council will require a Retail Impact Assessment for proposals over 500 sq. m....*”

**Culture / leisure uses** **Policy CT1** states that in respect of edge of centre or out of centre sites (which by definition are outside of the town centres as set out above and in the NPPF), “*evidence of the impact on the town centre will be required where the proposal is above 500 sq.m gross floorspace.*”

**b) Could any modifications to the Local Plan help with consistency and clarity in this matter?**

As set out above, the Council considers that the approach in the Local Plan is in accordance with the NPPF. It does recognise, however, that some additional clarity may be helpful and would accordingly offer the following suggestions to the Inspector.

**Suggested change 1: Policy TC2**

Amend policy TC2 to remove references to the “area of search” and clarify that the Chandos Street site and Warwick “mixed use” area are “edge of centre” locations.

Suggested wording is as follows (new wording is underlined; deleted wording is):-

**TC2 Directing Retail Development**

Within the town centres, new retail development should be located as a first preference in the retail areas defined on the Policies Map. Where suitable sites are not available in these areas, sites in edge-of-centre locations will be considered and, if no suitable sites are available in any of the preferred locations, out-of-centre sites will be considered.

In considering edge-of-centre location in Royal Leamington Spa and Warwick, preference should be given to:-

a) in Royal Leamington Spa: the Chandos Street allocation defined on the Policies Map in accordance with Policy TC4;

b) In Warwick: the mixed use area of Warwick town centre defined on the Policies Map in accordance with Policy TC11.

Where edge-of-centre or out-of-centre sites are considered, preference will be given within each category to accessible sites that are well connected with the town centre. Evidence of the impact on the town centre will be required where the proposal is above 500 square metres gross floorspace.

Philip Clarke 7/12/16 16:22

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Philip Clarke 7/12/16 16:18

**Deleted:** Where a suitable site is not available for a large scale retail development proposal within these areas in Royal Leamington Spa, the order of preference is: -

Philip Clarke 7/12/16 16:19

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**Deleted:** b) the area of search defined on the Policies Map in accordance with Policy TC5. -

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... [1]

Philip Clarke 7/12/16 16:16

**Moved up [1]:** Where suitable sites are not available in any of these areas, sites in edge-of-centre locations will be considered and, if no suitable sites are available in any of the preferred locations, out-of-centre sites will be considered.

## Reason

Policy TC5 (which defines the “area of search”) indicates those areas where the Council will seek to identify opportunities for town centre development as part of its positive planning of the town centre. As such the policy is legitimate. It is recognised, however, that there is no strong planning justification for why it should become an additional “layer” of preference within any sequential assessment. The “area of search” covers many of the edge-of-centre locations in Leamington town centre that are not otherwise covered by protective designations (eg: areas in residential use and parks and gardens of special historic interest). The designation does not therefore have a clear planning purpose within the broader NPPF definition of edge-of-centre sites.

In contrast, the Chandos Street site is a policy in the Local Plan and the Council is seeking to bring forward a development proposal on it. It is appropriate that it is given special status as such in policy TC2.

## Suggested change 2: Para. 3.56

As a consequence of the above change to policy TC2, amendments are necessary to paragraph 3.56.

3.56 The sequential approach to be followed requires that locations are considered in the following order; first sites and buildings within the defined “retail areas” of the town centres, and then, edge of centre sites, and then out-of-centre sites. In considering edge-of-centre sites, preference should be given in the case of Royal Leamington Spa to the Chandos Street development allocation and in the case of Warwick the mixed use area set out in Policy TC11. In Kenilworth, the whole of the town centre is within the retail area.

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Philip Clarke 7/12/16 17:29

**Deleted:** In all town centres this is then followed by edge of centre sites, and then out-of-centre sites.

**Issue 2: The wording of policies TC6 and TC7 (primary retail frontages and secondary retail areas) with regard to whether a more flexible approach may be justified in situations where there is evidence of long term vacancy**

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The Council agrees (following discussion at the recent EIP hearing) that Policies TC6 and TC7 would benefit from the addition of wording in the policy explanation in order to set out a more flexible approach for the consideration of change of use proposals for units that have been vacant for long periods. We do consider that greater flexibility should be applied in secondary retail areas and also that it is vital that any alternative uses retain an active frontage.

**Suggested change 3: additional paragraph following 3.75 (supporting text to Policy TC6)**

xxx It is clearly not in the best interests of the District's town centres, (both economically and environmentally) for units to remain vacant for long periods. In instances where there is thorough evidence to substantiate that a unit has been vacant and actively and appropriately marketed for over 12 months the Council will consider setting aside the requirements of Policy TC6 and allowing other A class uses. In considering such proposals, the Council would expect the new use to include an active frontage.

**Suggested change 4: additional paragraph following 3.77 (supporting text to Policy TC7)**

xxx It is clearly not in the best interests of the District's town centres, (both economically and environmentally) for units to remain vacant for long periods. In instances where there is thorough evidence to substantiate that a unit has been vacant and actively and appropriately marketed for over 12 months the Council will consider setting aside the requirements of Policy TC7 and allowing other uses. In considering such proposals, the Council would expect the new use to include an active frontage. It will furthermore reserve the right to remove permitted development for any new use granted that is not in accordance with the policy.

**Issue 3: The relationship between policies for secondary retail areas (policy TC7) in so far as they relate to, and overlap with, the Warwick Café Quarter (policy TC8) and Royal Leamington Spa Restaurant & Café Quarter (policy TC9).**

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Within Warwick and Royal Leamington Spa town centres, the boundaries of the secondary retail areas (**policy TC7**) include those areas also designated as the Warwick Café Quarter (**policy TC8**) and Royal Leamington Spa Restaurant & Café Quarter (**policy TC9**). The Council recognises there could be potential confusion here for two reasons. Firstly, policy TC7 would permit (in certain circumstances) A3, A4 and A5 uses whilst policy TC8 only permits A3 and A4 uses, and policy TC9 permits A3 uses but expressly forbids A4 uses (and is silent on A5 uses). Secondly, policy TC7 puts a limit on non-A1 uses within secondary retail areas, however policies TC8 and TC9 clearly do not.

The Council considers that it is not illogical for the areas covered by TC8 and TC9 to also be considered as secondary retail areas. Both the Warwick Café Quarter and Leamington Restaurant &

Café Quarter do fulfil the role of secondary frontages as defined in the NPPF glossary (page 57); namely that they are “*adjoining or closely related to the primary shopping frontage*” and also that they “*provide greater opportunities for a diversity of uses such as restaurants, cinemas and businesses.*” They should properly be considered part of the “Retail Areas” in the Local Plan (the “Primary Shopping Areas” in the NPPF) for their respective town centres for the purposes of any sequential assessment.

The Council does agree, however, that it would be helpful to clarify the wording of both policies to be clear that policies TC8 and TC9 take precedence over TC7, particularly in respect of A4 and A5 uses. This clarity could be given by amendments to the following sentences.

**Suggested change 5: additional final sentence to paragraph 3.79 (supporting text to policy TC8)**

“.....The pedestrianisation of, and enhancements to the Market place has created the opportunity to capitalise on this by the creation of a café quarter where A3 and A4 uses will be encouraged. Although the Café Quarter also lies within the secondary retail area, the provisions of this policy will take precedence over those in TC7.”

Philip Clarke 8/12/16 09:56

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**Suggested change 6: paragraph 3.81 (supporting text to policy TC9)**

“.....Furthermore, changes of use to drinking establishments (use class A4) or hot food take-aways (use class A5) will not be acceptable in this area. Although the Restaurant & Café Quarter also lies within the secondary retail area, the provisions of this policy will take precedence over those in TC7.”

**Table 1: How definitions within the NPPF for retailing and town centre uses relate to those in the Warwick District Local Plan.**

NPPF term	NPPF ref	Equivalent description / definition in Local Plan	Local Plan ref
Town centre <i>"Area defined on the local authority's proposal map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area."</i>	Glossary (p57)	Town centre boundaries for Leamington, Warwick and Kenilworth are shown on proposals map. Policy TC1 sets the basis for protecting and enhancing town centres.	Proposals maps for Leamington, Warwick and Kenilworth Policy TC1
Primary Shopping Area <i>"Defined area where retail development is concentrated (generally comprising the primary and those secondary frontages which are adjoining and closely related to the primary shopping frontage)."</i>	Glossary (p55)	Retail Areas <i>"The Policies Map identifies "retail areas". These are the "primary shopping areas" as defined by national planning policy and comprise the primary retail frontages (see policy TC6) and secondary retail areas (see policy TC7) where existing retail development is concentrated within the town centres."</i> (para. 3.55)	Policy TC2 and specifically para. 3.55.
Primary frontages (within the "Primary Shopping Area") <i>"Primary frontages are likely to include a high proportion of retail uses which may include food, drinks, clothing and household goods."</i>	Glossary (p55)	Primary Retail Frontages	Policy TC6 (see also extract from para. 3.55)
Secondary frontages (within the "Primary Shopping Area") <i>"Secondary frontages provide greater opportunities for a diversity of uses such as restaurants, cinemas and businesses."</i>	Glossary (p55)	Secondary Retail Areas	Policy TC7 (see also extract from para. 3.55)