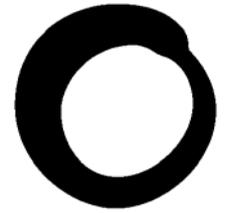


February 2007



**Friends of
the Earth**

Briefing

Making a strong case against new supermarkets

A guide

Executive Summary

This guide is designed to help those using the development control planning system to object to planning applications for supermarket and other retail developments. For more detailed information on the planning system and on effective ways to use it to oppose supermarket planning applications and promote good development, please refer to other Friends of the Earth briefings [see http://www.foe.co.uk/campaigns/real_food/index.html]. This briefing focuses on how to make planning objections to applications that have been submitted for new supermarket developments or for extensions to existing developments. It refers to applications considered either by the local authority, or by the Planning Inspectorate (which happens if the application has gone to appeal or been called in by the Secretary of State.) The briefing outlines some of the useful arguments that you can make against supermarket applications. It also summarises some recent decisions that have gone against supermarkets, and the ways in which communities have influenced those decisions. By making a robust submission, you can have a real influence on the decision made.

This guide contains the following sections:

1. **Brief introduction to the planning system**
2. **Using local and regional planning policy** – decisions must be based on what is set out in local and regional planning documents for the area. These aim to guide the shape of development and applications must comply with them, so it is crucial to use these documents to make your case.
3. **Using national planning policy**, especially Planning Policy Statement 6, which is the key piece of national planning legislation which guides decisions that are made on retail applications (as well as other applications for town centre landuses). PPS6's aim is to protect town centres. It does this by focusing new development on sites that are as central as possible, and by limiting the circumstances in which development will be allowed in out-of-centre or edge-of-centre sites. Decisions that go against supermarkets are normally made because the application conflicts with guidance in PPS6.
4. **Using past decisions** – ten case studies are presented with short summaries of recent decisions that have been made against supermarkets by the Planning Inspectorate and Secretary of State. These may be useful to you if similar issues are involved in your case as in the case studies here. If you want further information, longer summaries and downloadable versions of the full decision are available from the Tesco website at www.tescopoly.org.
5. **Further resources** that may be helpful to you are highlighted in the Further Resources section at the end of this briefing.

(1) Brief introduction to the planning system

When a planning application is submitted, it will be considered by local authority planning officers. They will make a recommendation on the application based on local and national planning policies, and should take into account submissions that they have received from members of the public. Using this recommendation, the elected planning committee of the Council makes a decision on the application.

- **If the application is refused** the applicant can appeal the decision. Sometimes an appeal is also lodged by the applicant if the local authority has taken too long to make a decision on the application. In these cases, the application will be considered by the Planning Inspectorate, a Government agency which serves the Department for Communities and Local Government (DCLG) in England and the National Assembly for Wales in Wales. Scotland and Northern Ireland have separate planning inspectorate bodies. The Planning Inspectorate will make a decision based on compliance with local and national planning policy.
- **If the application is approved**, there is no right for third parties to challenge the decision. However, in some cases the application is called-in for consideration by the Secretary of State and dealt with by the Minister for Communities and Local Government. You can press for an application to be called-in by writing to the Secretary of State or the Regional Government Office. An application can be called in if it conflicts with local planning policy or if it is especially controversial. The decision to call-in rests with the Secretary of State. If the application is called-in, it will be decided on by the Secretary of State, based on a recommendation made by the Planning Inspectorate.

In both scenarios the Planning Inspector appointed must thoroughly assess the evidence for and against the application, and may hold a public hearing. The process therefore offers an excellent opportunity for you to make your voice heard. For more information on the process please see Friends of the Earth's guide to Planning Inquiries at http://community.foe.co.uk/resource/guides/43_public_inquiries.pdf.

(2) Using local and regional planning policy

Applications must be shown to fit well with the local and regional planning documents which local authorities are required to create to guide the future shape of planning in the area. It will be worth looking at your local and regional planning documents to see if the application fits with the relevant policies. The documents will contain a range of policies (some of which may be contradictory), and there is likely to be something in there that supports your case. This may be about traffic for example rather than specifically about shopping provision. Make sure you reference the local and regional documents in your submissions, as this will give your objections much more force in the decision-making process.

- **Local planning documents**

New legislation requires local authorities to replace their current planning documents (normally Unitary Development Plans or Local Plans) with a new set of documents. The new documents will take the form of a folder, known as a Local Development Framework (LDF), which contains a set of general and site-specific planning documents. LDFs are currently being prepared by most local authorities and are at differing levels of completion. Depending on the situation in your specific local authority, it may be worth using both the existing Local Plan/ Unitary Development Plan and the in-development LDF documents. You could also get involved in the process of creating your LDF by making submissions outlining the policies you would like to see included in the final documents. This will then oblige the local authority to ensure that its development control decisions comply with this policy. For further information, please see the Friends of the Earth introduction to LDFs at http://community.foe.co.uk/resource/guides/3_4_local_dev_framework.pdf and the Friends of the Earth guide to getting good retail policies included in LDFs at http://www.foe.co.uk/resource/briefings/ldfs_and_retail_policy.pdf. To find the current policy documents and to find out about the LDF process for your local authority, please visit your local authority's website or contact its planning department directly.

- **Regional planning documents**

The decision should also take account of the Regional Spatial Strategy (RSS) produced by the regional planning body for your region, which is normally the regional assembly. The RSS is a crucial document and LDF policies must comply with it. For further information on these please refer to the website of your regional assembly, and Friends of the Earth's briefing on Regional Spatial Strategies and sustainable development at http://www.foe.co.uk/resource/guides/rss_2nd_edition.pdf.

(3) Using national planning policy

A number of national planning policy documents may be useful to use in opposing a supermarket planning application. A list of planning policy documents is available on the Department for Communities and Local Government website at <http://www.communities.gov.uk/index.asp?id=1143802>. You may find particularly useful Planning Policy Statement 1 on delivering sustainable development, Planning Policy 6 on planning for town centres, and Planning Policy Guidance 13 on transport. However if specific issues are involved in the application you are objecting to such as loss of open space, the historic environment, flood risk and noise, then it is worth consulting the relevant Statement or Guidance.

This briefing concentrates on Planning Policy Statement 6 (PPS6) on planning for town centres. PPS6 is a key tool in any objection to a planning application for a supermarket as it aims to concentrate town centre landuses (including retail) in town centres. Originally released as Planning Policy Guidance 6 in 1997, it was revised in 2005 by the then Office of the Deputy Prime Minister (which has since been replaced by the Department for Communities and Local Government).

The basis of PPS6 is the 'town centre first' principle for new development, which aims to reverse the increased trend over the past few decades of developments with town centre functions such as retail and entertainment being built in out-of-town locations. This has resulted in increased reliance on cars and a deterioration in town centres. The town centre first policy suggests that to reduce environmental impacts, protect town centres from decline, and encourage strong and inclusive communities, such development should be focused in town centres. A 'sequential approach' to development is introduced whereby any development outside or on the edge of town centres must be justified by showing that there are no more central sites available. Development proposals must also be justified in terms of their impact on existing town centres. Below is a short summary of PPS6, which it is definitely worth referencing in a retail application as the application must be shown to comply with PPS6.

PPS6 states that "the core principle underpinning planning" is "facilitating and promoting sustainable and inclusive patterns of development." In terms of town centre planning this means "the creation of vital and viable town centres," in order to ensure "successful, thriving, safer and inclusive communities." **The provisions of PPS6 are designed to protect and enhance town centres by encouraging new development to be located as centrally as possible and imposing strict limits on the circumstances in which developments can be allowed outside the centre. But even if the proposal you are opposing is in the town centre you can find support in PPS6; for example the store must be of an appropriate scale for the town.**

- "Positive planning" for town centres

Local authorities should have a plan-led approach to planning for town centres. They should develop "a network and hierarchy of centres" each with its own appropriate roles, by

focusing growth in existing centres, and by being proactive in promoting appropriate development in the right locations. Local authorities should use the creation of local planning documents, compulsory purchase powers and town centre strategies to achieve this.

- **Development control**

As well as proactively planning for development, local authorities must make certain considerations when assessing planning applications for any town centre use. The following must be demonstrated, both for proactive planning and for development control:

- a) The need for the development
- b) That the development is of an appropriate scale
- c) That there are no more central sites for the development
- d) That there are no unacceptable impacts on existing centres
- e) That the location is accessible

PPS6 states that “as a general rule, the development should satisfy all these considerations.” Depending on the circumstances, any of these could be reasons for a development being refused by the local authority. Most refused supermarket applications are rejected on the basis of not fulfilling any or all of these requirements.

a) The need for development (p.22)

“It is not necessary to demonstrate the need for retail proposals within the primary shopping area,” but “need must be demonstrated for any application for a main town centre use [including retail] which would be in an edge-of-centre or out-of-centre location.” The local authority must also consider qualitative considerations of need, mainly that consumer choice is provided for by ensuring an appropriate distribution of locations, and “range of sites for shopping... which allow genuine choice to meet the needs of the whole community, particularly the needs of those living in deprived areas.”

b) Appropriate scale of development (p.23)

A development should not be larger than is appropriate for the centre within which it is situated. Appropriate scale is “directly related to the role and function of the centre and its catchment... The scale of development should relate to the role and function of the centre within the wider hierarchy,” the aim being “to locate the appropriate type and sale of development in the right type of centre.”

c) The Sequential Approach to site selection (p.23)

The sequential approach sets out the process by which development should be allowed only where there are no more central sites available and viable. PPS6 states that “in selecting sites, all options in the centre should be thoroughly assessed before less central sites are considered.” A developer has to show that this assessment has been met, and has to be flexible around it: “Developers and operators should be able to demonstrate that in seeking

to find a site in or on the edge of existing centres they have been flexible about their proposed business model,” for example “enabling the development to fit onto more central sites by reducing the footprint.” It is also part of this exercise “to explore whether specific parts of a development could be operated from separate, sequentially preferable, sites,” though a single operator is not expected to split its proposed development. “Where it is argued that otherwise sequentially preferable sites are not appropriate for the particular developments,” this must be demonstrated in terms of availability, suitability and viability.

d) Assessing impact (p.24)

“Impact assessments should be undertaken for any application for a main town centre use which would be in an edge of centre or out-of-centre location.” This includes the impact on other centres of in the region. PPS6 states that “In assessing sites, LPAs should consider the impact of the proposal on the vitality and viability of existing centres within the catchment area of the proposed development, including the likely cumulative effect,” and points out that an “identification of need does not necessarily indicate that there will be no negative impact.” The assessment should take account of “changes to the range of services provided by centres that could be affected,” the “likely impact on the number of vacant properties,” any “potential changes to the quality, attractiveness, physical condition and character of the centre or centres and to its role in the economic and social life of the community,” and “the likely impact of the proposed development on trade, turnover and on the vitality and viability of existing centres... and, where applicable, on the rural economy.”

e) Accessibility (p.25)

“Developments should be accessible by a choice of means of transport, including public transport, walking, cycling, and the car.” This should relate to Planning Policy Guidance Note 13 on Transport which aims to create sustainable transport patterns. Local authorities should consider the likely impact on car use and levels of congestion.

Other matters

Other “relevant matters” should be taken into account both for proactive planning and development control. These are

- Physical regeneration (the “benefits of developing on previously-developed sites which may require remediation”)
- Employment – “net additional employment opportunities... particularly in deprived areas”
- Economic growth – “increased investment in an area”
- Social Inclusion – including “increasing the accessibility of a range of services and facilities to all groups.”

PPS6 doesn’t make specific points about which formats of development would best provide these other benefits. Supermarket applicants often argue that they will bring employment and economic growth and occasionally regeneration to an area, but it can be argued that the

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net impact to the area would be harmful as supermarkets retain less within the local economy than local businesses. They also tend to provide fewer net jobs and lower quality jobs than independent stores.

Extensions

The same considerations that apply to new developments should equally apply to extensions to any existing developments of over 200 sq m.

Edge-of-centre development

One of the less useful provisions of PPS6 is the encouragement of large scale-development. It suggests that “larger stores may deliver benefits for consumers” so “local planning authorities should seek to make provision for them.” If necessary, this can include “extension of the primary shopping area or town centre” when the scale of the development “cannot be accommodated within the centre.” In some circumstances, then, PPS6 would encourage development in edge-of-centre locations in order for large stores to be built.

The guidelines in PPS6 should underpin any decision made by a local authority on a supermarket application, so it is always worth referencing PPS6 in a submission. For further information, please read PPS6, which is available to download from the Department for Communities and Local Government website at <http://www.communities.gov.uk/index.asp?id=1501955>. There may be specific statements in PPS6 that relate to your situation.

(4) Using past decisions

It is useful to look at decisions already made against supermarkets to see the sorts of arguments, language and policy points that are behind such decisions. The following case studies are short summaries of recent decisions made by the Planning Inspectorate on applications that went to appeal, and by the Secretary of State on applications that were controversial so were called-in for national consideration. They relate to different issues that were involved in the decisions, with retail planning remaining the central issue for most but covering other issues such as use of open space, transport, historic environment, regeneration, and residential amenity. They also relate to different kinds of applications (different sizes of store and new developments/extensions) and different kinds of locations (from small towns to neighbourhood centres in big cities.) The major issues involved in each decision are highlighted in bold in the summaries below.

If the issues in any of these decisions are ones that affect the application you are opposing, it will be useful to read a more detailed summary of the arguments used in the decision, or the full refusal notice itself. These are available on the **Tescopoly** website (www.tescopoly.org), at the web address specified below the summary. Alternatively contact us at josh.gilbert@foe.co.uk for a full summary or refusal notice. Your objection should be relevant to local circumstances and as the notices show, decisions will be based on compliance with local and regional planning documents, so do use these as well.

a) Trafford, Greater Manchester, November 2006

Tesco's two applications to **extend a store that was not yet constructed** but had received permission, by nearly doubling the size with extra non-food floorspace, were subject to an appeal. The Inspector doubted whether there was need for the extra floorspace, and suggested that there were sequentially preferable sites and that Tesco had not been sufficiently **flexible in considering other formats** to meet these. The Inspector rejected the projected impact figures submitted by Tesco, and expected that the store would have a strong negative **impact on existing centres**. In reaching this conclusion the Inspector made use of a survey undertaken by a group of **local campaigners** against the application, which investigated the impact of a nearby Tesco store on existing shops. The Inspector considered the impact on **small shops** in local centres and suggested that these shops played an important social role which the Tesco application could detract from.

The Inspector also had strong objections to the **design** of the proposed store, which would dominate the area and harm its attractiveness. It was also suggested that the application would cause noise and damage the **residential amenity** of local residents.

See the summary at <http://www.tescopoly.org/index.php?option=content&task=view&id=525>

b) Burnham-on-Sea, Somerset, August 2006

Tesco's application for an **extension to an existing store** on the edge of Burnham-on-Sea in Somerset by doubling its size was approved by the local authority, but then called-in by the Secretary of State because of a conflict with national policies. The Inspector argued that the application was against the **landuse allocation in the development plan**, which

favoured residential development on the application site, that the proposal was of an **inappropriate scale** and there wasn't enough **need** for the additional floorspace.

See the summary at <http://www.tescopoly.org/index.php?option=content&task=view&id=482>

c) Worthing, Sussex, July 2006

The Inspector dismissed Asda's appeal, made in partnership with Worthing College, for a superstore. This was based on the conclusion that the site was **not in a town centre location** and that it would have an **unacceptable impact on existing shops**. This was despite the fact that the redevelopment of the 6th Form College was dependent on its alliance with Asda for funding. The Inspector argued that these benefits were not sufficient to outweigh the considerable harm the proposal would involve to **local shops**, which would go against government planning guidance for sustainable development and Local Plan documents. The Inspector also argued that the impact of the store would be greater because of **Asda's status as a major chain retailer** with significant buyer power.

See the summary at <http://www.tescopoly.org/index.php?option=content&task=view&id=481>

d) Dartford, Kent, July 2006

The Secretary of State refused a proposal for a **massive mixed use town centre development** including a Tesco Extra hypermarket. The Inspector dealt with **traffic, housing, the historic environment and conservation of open space** as well as retail issues, and concluded that it was a "finely balanced" case, but that the costs to the built environment and open space were too high. The Inspector argued that the application would bring some benefits, including some in terms of retail, but that there was the potential for **damage to the other shops in the centre because it was poorly connected** despite its central location. In reaching the decision, the Inspector made use of evidence submitted in opposition to the Inquiry by local MP Dr Howard Stoate and took into account the **significant local opinion** against the park.

See the summary at <http://www.tescopoly.org/index.php?option=content&task=view&id=501>

e) Newington Green, London, January 2006

The Planning Inspector rejected the application for a development in Newington Green, North London because of the impact it would have on the character of the area, which is a **Conservation Area**, and **the impact on local shops**. In both issues the **size of the unit** was key to the decision, because of the Inspector's view that it would be likely to be **operated by a national chain**, which would cause a bigger impact. The Inspector confirmed that concern about the future of existing shops is an important issue because of the need to protect the vitality and viability of the area.

See the summary at <http://www.tescopoly.org/index.php?option=content&task=view&id=480>

f) Newquay, Cornwall, February 2005

The Planning Inspector dismissed Aldi's application for a new store based on **design and regeneration issues**. The application conflicted with two emerging supplementary local planning documents. These documents were not yet finalised so could not be the basis for a

refusal, but the Inspector decided that if they were based on sound principles then these principles could be used to assess the application. He found that the proposals would not guarantee the regeneration objectives these documents were aiming for.

See the summary at <http://www.tescopoly.org/index.php?option=content&task=view&id=496>

g) Sittingbourne, Kent, November 2004

The application for a Lidl foodstore, other retail units and a pub in the Thames Gateway site was refused by the local authority then by the Inspector, though there was already outline permission for a development on the site. The main objections were the **design and layout** and the impact on **residential amenity**, and the location of the site which was judged to be an important area. These conflicted with local planning policies, so the Inspector dismissed the application.

See the summary at <http://www.tescopoly.org/index.php?option=content&task=view&id=497>

h) Middlesbrough, August 2004

The Inquiry related to two applications for large stores, by Asda and by Tesco, both in very **deprived wards**. The Council favoured the proposals because of their expected **regeneration** benefits, but after calling in the applications the Secretary of State decided that the **impact on other town and district centres** in the area would be too great (including in other local authority areas) and that there were **sequentially preferable sites**. The Inspector suggested that the regeneration benefits of the stores would not actually be as significant as the Council had thought.

See the summary at <http://www.tescopoly.org/index.php?option=content&task=view&id=502>

i) Wallasey, Merseyside, April 2004

The Inspector judged that although there was sufficient need for the store, it was in an out-of-town location away from any existing centre, and there was a **sequentially preferable site**. The Inspector noted that Lidl's success relies on its standardised formats, and that the chain had not made sufficient attempt to adapt its plans to the more appropriate, smaller site – against the PPS6 stipulation that applicants should demonstrate **flexibility** in accommodating the sequential approach.

See the summary at <http://www.tescopoly.org/index.php?option=content&task=view&id=483>

j) Stirchley, Birmingham, September 2003

The Inspector dismissed Asda's appeal for a store in an edge-of-centre site in Stirchley, a district centre within Birmingham. In retail terms, the Inspector considered that there was not sufficient **need** for the store, that there was a **sequentially preferable site**, and that there would be a detrimental **impact** on Stirchley. Also key to the decision was its current **manufacturing industrial use** – local plan policies relating to industrial land would be undermined by its use for retail.

See the summary at <http://www.tescopoly.org/index.php?option=content&task=view&id=503>

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Some of these decisions, especially those for Dartford and Trafford, show the significant impact that community groups and strong planning objections can make to supermarket applications. Another recent example also shows the role that opposition can play: in **Darlington** proposals by Tesco for a new store were ruled out by the Council following opposition from the community before any application was submitted. Tesco's plan was to build on the site of the current Town Hall and fund new buildings for the Council, and Tesco and the Council had been in negotiations about the development for three years. However, following a Council-run community consultation exercise that revealed substantial local opposition to the scheme (with 78% of residents opposing the plans in one poll), the Council decided to abandon the plans it had been working on and refuse Tesco's development.

(5) Further resources

1. The Friends of the Earth briefing “how to oppose a supermarket planning application,” is a useful starting point for objecting to an application. It is available to download at:
http://www.foe.co.uk/resource/briefings/campaigning_against_supermarkets.pdf
2. The Community Rights Resource Pack on the Friends of the Earth Planning website has many useful resources on the different elements of the planning system. The pack, which contains sections on your rights to access information, on your rights to get involved in the development plan system and the development control system, and on your rights to challenge decisions, is available at
http://community.foe.co.uk/campaigns/rights/resource_pack/index.html
3. The Tescopoly website (www.tescopoly.org) has a large number of resources for campaigners against supermarket applications, including more detailed summaries of the decisions against supermarkets highlighted in this briefing, and case studies from over 70 local campaigns against supermarkets.
4. Corporate Watch and Grassroots Action on Food and Farming’s “Check out Chuck out guide, another useful introduction to opposing supermarket developments, is at
<http://www.corporatewatch.org/?lid=2338>.
5. Planning Aid (<http://www.planningaid.rtpi.org.uk/>) provides free, independent professional support and advice on planning issue.
6. The Environmental Law Foundation (<http://www.elflaw.org/>) can provide help to communities in finding legal and technical expertise. It could be useful if you are considering launching a judicial review against a decision.
7. The Planning Portal (<http://www.planningportal.gov.uk/>) is the government’s online planning resource.
8. The Campaign to Protect Rural England has a useful planning website at
<http://www.planninghelp.org.uk/>.