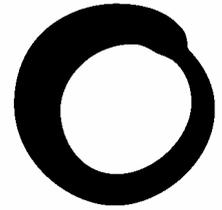


July 2003



**Friends of
the Earth**

Briefing

How supermarkets avoid planning controls

Proposal to close major loophole in
Planning Bill

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Introduction

Friends of the Earth has discovered that Asda (owned by the American retailer Wal-mart) is building mezzanine floors in existing stores in order to significantly expand its non-food retail floorspace. In doing this Asda is exploiting a loophole in UK planning law which excludes internal building works from the definition of development requiring planning permission¹. Such works can go ahead as long as they do not affect the external appearance of the building however significant their other impacts may be. The addition of significant areas of retail floorspace, in some cases equivalent to a new store, may have significant negative impacts on local high street stores and lead to increased traffic levels and levels of noise and disturbance. Yet local planning authorities will have no opportunity to assess these impacts and there will be no chance for local communities to be involved. Although this briefing focuses on Asda to illustrate the problem the same loophole could be exploited by any retailer owning suitable stores making the potential for uncontrolled retail expansion huge.

Supermarket loophole

Wal-mart, the American owner of the Asda supermarket chain, is the world's largest company by revenue². Wal-mart's expansion plans for the UK include the take-over of Safeway, but it has also found a way to expand in the UK without the scrutiny of the competition authorities or local planning authorities by exploiting a major loophole in our planning system. The company has already embarked on building mezzanine floors in at least two existing Asda stores without planning permission and states that it aims to do this in 40 stores. The first mezzanine floor was installed in York and a second is under construction in Sheffield. In both cases the local planning authority has been powerless to act and local communities have been denied the right to be involved in the normally democratic process of reaching a decision on a planning application. Sheffield planners have confirmed that the development does not require planning permission because despite the huge increase in commercial floorspace the construction of the floor involves internal works only.

This loophole makes a mockery of planning guidance on retailing (PPG6) which seeks to maintain a diversity of local shops and to sustain and enhance the vitality and viability of town centres by protecting them from the negative impacts of large scale out of town developments. In the case of Asda's expansion PPG6 has become irrelevant due to the absence of any planning application even though the scale of development may be equivalent to a new out-of-town store. In Sheffield Wal-mart is adding 33,000 sq ft, with the specific aim of expanding its non-food goods which will change the nature of the store and pose a new threat to non-food shops in the local area. There will inevitably be an increase in traffic to the store too. An Asda spokesperson has commented on how the non-food range in the York mezzanine is encouraging people to drive to the store from further afield³.

Friends of the Earth is questioning the value of a system that allows the unopposed large scale expansion of the world's largest retailer whilst much smaller developments come under close scrutiny including farmers markets and farm shops. We consider that the impacts of this large scale expansion in retail floorspace should be dealt with in the same way as an external extension or new store. Impact on town centres, increases in traffic and in levels of noise and disturbance are all legitimate planning considerations that should be subject to an assessment by the local planning authority. Friends of the Earth also considers that in the

face of such significant impacts on their quality of life, local communities must be given the opportunity to take part in the decision making process.

Closing the loophole: proposed amendment to the Planning Bill

Section 55 of the 1990 Act creates a broad definition of development (subsection 1) and then provides for various qualified exceptions. The suggested amendment extends the qualification to the exceptions in subsection (2) to exclude the material increase of retail floor area. This would have the effect of making such an extension 'development' and therefore subject to planning control.

Amendment to Planning and compulsory purchase Bill 2003 to control the extension of retail premises by increasing the internal floor area.

1. Amendment to Planning and compulsory purchase Bill 2003 Part 4 Development Control (c.45) 'Miscellaneous'

1) In the principle Act after section 55 Part III (meaning of development) subsection (2A), there is inserted –

“(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land-

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which

(i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building

(iii) do not materially increase the overall retail floor area of the building

and are not works for the making good war damage or works begun after December 5 1968 for the alteration of a building by providing additional space in it underground;”

Progress

A Friends of the Earth survey of local planning authorities carried out in early 2004 found widespread concern about uncontrolled internal expansion such as mezzanine floors. It revealed that councils had been unable to stop these expansions going ahead, even when they had imposed a condition on the planning permission restricting floorspace expansion. Local authorities told Friends of the Earth that this loophole undermined their attempts to protect and regenerate town centres. With the help of Baroness Maddock, we presented this evidence as the Planning Bill was debated in the House of Lords. Subsequently the Minister Lord Rooker made a commitment to bring forward legislation to close the loophole – a significant success for Friends of the Earth.

Next steps

The government will now consult on a threshold above which planning permission is required for internal extensions to retail stores. Friends of the Earth is recommending that this should

be around 250 square metres, so that there is no negative impact on small independent shops. We are concerned that any delay in bringing this important legislation forward will allow supermarkets to push ahead with extensions. Asda has already announced that it intends to put in more mezzanine floors this year.

References

¹ The Original 1990 TCPA Act, Part III, Meaning of “development” and “new development”

55.-(1) Subject to the following provisions of this section, in this Act, P55.01

except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

[(1A) For the purpose of this Act “building operations” includes-

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.]

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land-

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which-

- (i) affect only the interior of the building, or
- (ii) do not materially affect the external appearance of the building

² Financial Times 7 January 2003

³ European Retail 3 March 2003