

April 2007



**Friends of  
the Earth**

# Briefing

## Shopping the Bullies

Why the planning system for retail needs to be strengthened, not weakened

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**Friends of the Earth, 26-28 Underwood Street, London N1 7JQ  
Tel: 020 7490 1555 Fax: 020 7490 0881 Website: [www.foe.co.uk](http://www.foe.co.uk)**

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## Executive Summary

It is a crucial time for our town centres and high streets and for the planning policies that are supposed to support them. The Competition Commission and the Treasury are both scrutinising the planning system – concerned that it may be hindering competition and the further growth of the major supermarkets. Proposals that would make it easier for supermarkets to build more huge out of town stores are expected to be released by the government in May 2007.

This report shows that the big supermarkets don't need any help with their expansion plans. It reveals that supermarkets employ a range of tactics to manipulate the planning rules to their own advantage, sometimes even presenting inaccurate information to local decision makers. It updates Friends of the Earth's previous report "Calling the Shots" which found that the biggest supermarkets (Tesco, Sainsbury's, Asda and Morrisons) already held a disproportionate degree of influence and advantage in the planning system. The Competition Commission has suggested that abuse of the planning system is not widespread but this report indicates that it is.

The new report also looks at how recently recommended reforms to the planning system would play further into the hands of the big supermarkets allowing them to increase their already dominant position in the market and pushing more local shops out of business. The forthcoming Planning White Paper due in May 2007 may recommend removing the 'needs test' that currently requires supermarkets to demonstrate the need for out of town stores.

New surveys of local authority planning officers reveal significant concerns about the threat to our town centres should the proposed reforms go ahead. Less investment in town centres; more traffic congestion and associated pollution; poorer access for those without cars and a further decline in independent shops are some of the predicted outcomes if retail planning policy is weighed further in the supermarkets' favour.

Key findings from the case studies and survey include:

- Submissions made with supermarket planning applications are often inconsistent or substandard and in some cases inaccurate and misleading.
- The mismatch between the resources available to supermarkets and local planning authorities gives supermarkets an advantage in the planning system and can make it harder for local authorities to challenge inaccurate submissions.
- Big chains' ability to offer 'sweeteners' to local authorities gives them an advantage over other operators.
- Supermarkets ability to fund major developments alongside their store has overcome valid planning objections.
- The fear that supermarkets may appeal refusals and claim costs if they win is an added pressure on local authorities and may influence their decision making.
- Supermarkets are using legal clauses in land deals which restrict local authorities' options for alternative retail development.

- Supermarkets use staged applications to ease their way through the planning process.
- Local development plans which should be drawn up with the local community have been altered to accommodate a supermarket development due to lobbying by the retailer.
- Supermarkets present local communities with misleading images and claims to sway opinion in favour of their development.
- Supermarkets disregard conditions attached to planning permissions even where these are aimed at protecting town centres
- The majority of local planning officers in our survey said that proposals to remove the need test would make it harder to protect and promote town centres
- Planning officers also warn that removal of the needs test would make it harder to promote sustainable forms of development and may lead to increased reliance on car based shopping.

The report makes the case for retaining key elements of Planning policy that are working well and makes recommendations for where it needs to be strengthened, not watered down.

**Note on relevance to Scotland, Wales and Northern Ireland**

Most of the tactics highlighted here that are used by supermarkets to gain planning permission for their stores apply equally in England, Scotland and Wales but are less applicable in Northern Ireland where the system is more centralised. Proposed policy changes to be brought forward by the Government in May 2007 including the removal of the need test will apply specifically to England but are also likely to influence policy elsewhere especially in Wales. Some of Friends of the Earth's recommendations relate specifically to PPS6 which is applicable in England only.

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## Introduction

### **a) History of planning legislation and supermarket expansion**

The history of supermarket expansion since modern supermarkets emerged in the 1950s has been closely linked to the changing shape of national planning legislation. In the 1970s and 1980s liberalised planning laws encouraged supermarket expansion and led to the development of large scale out-of-town retail outlets. The impacts of this expansion on traditional independent shops in the High Street began to be felt strongly in the 1980s, as the new forms of development led to the decline of town centres.

Policy-makers responded in the 1990s with the realisation that town centres could only be effectively renewed if the growth of out-of-town retail development was stemmed. Planning Policy Guidance 6 (PPG6) for town centres was published in 1996. PPG6 was based on the premise that the government could only achieve its aims for urban social inclusion and regeneration if the trend for more and more car-based out-of-town shopping was reversed. PPG6 introduced the 'sequential approach' to promote sustainability by focusing new development to town centre sites if available.

In 2004 PPG6 was updated as Planning Policy Statement 6 (PPS6), with the stated aim of "facilitating and promoting sustainable and inclusive patterns of development, including the creation of vital and viable town centres." [1].

Independent retailers have continued to go out of business (13,000 specialist stores closed between 1997 and 2002, and 2200 independent shops closed in 2004 alone) suggesting that the policy is not achieving diversity. [2] However, PPG6 and PPS6 have had a major impact on the location of new retail development. The result has been that town centres have been protected and in many cases rejuvenated. While the proportion of new retail development taking place in town centres had plummeted to a low of 14% in 1994, it rose to 27% by 2003 [3] and 35% by 2005

However, much of the increase in town centre retail development is attributable to shopping centres, while only 23% of new supermarket development is taking place in town centres (even less if mezzanine floors and extensions are taken into account). [4].

### **b) Threats to the current planning system**

Town centres are now under threat again. The Barker Review of the planning system, commissioned by the Treasury, reported with recommendations in December 2006 [5], and despite controversy about its findings many of the recommendations are likely to be incorporated into a Department for Communities and Local Government White Paper on planning to be published in May 2007. Barker believes that businesses do not have a sufficient say in the planning system and proposes deregulation of the system and removal of certain local authority and democratic controls.

The Competition Commission is also investigating whether any parts of the planning system may represent a barrier to competition, and expects to publish its findings in September 2007. The danger here is that the Competition Commission may

conclude that competition will be increased by allowing more big new supermarkets to be built in places where one supermarket is already dominant. Friends of the Earth fundamentally disagrees with this approach as it will not increase choice but damage it by leading to the closure of even more independent shops.

One of the proposals in the Barker report is the removal of the 'need' test in PPS6. The need test requires developers wishing to build out of town stores which are not identified in the local plan to demonstrate that the additional floorspace is required. By doing so it prevents oversupply of retail floorspace that would lead to diversion of trade away from town centres and independent stores. The need test helps PPS6 focus new development in town centres and scrapping it could be extremely detrimental to them.

### **c) Supermarkets are already using the planning system to their own advantage**

Despite PPS6, supermarket chains (most notably Tesco) are expanding rapidly into the hypermarket sector. Tesco already has 130 "Extra" format hypermarkets and holds ambitious expansion plans in this sector. The proportion of its total floorspace constituted by "Extra"s has risen to over a third in the 7 years since the first Extra was opened. [Tesco figures]

One reason for this expansion was a loophole in planning regulations allowing supermarkets to build mezzanine floors without the need to apply for planning permission. This loophole was closed by the Office of the Deputy Prime Minister (ODPM) in March 2006, but its existence allowed many supermarkets to expand outside local authority control. And supermarkets use other means of manipulating the planning system to ensure their expansion plans are realised.

Friends of the Earth's previous report "Calling the Shots" revealed how supermarket chains already have a significant degree of influence over the planning system. This report uses new case studies to show that the practices discussed in "Calling the Shots" are still taking place, and that it is already easier for these chains to gain planning permission than smaller and independent retailers. This expansion allows them to grow national market share and gain considerable local dominance.

Friends of the Earth recommends that the Competition Commission acknowledges this imbalance and acts to restore a level-playing field.

### **d) The costs of supermarket growth**

Supermarket chains repeatedly claim that their growth is driven by their superior offers to consumers, rather than by any abuse of the system. However, their clever use of the planning system, long term land acquisition tactics (especially in the case of Tesco) and the significant influence derived from their buyer power and massive resources have certainly given the major chains an unfair advantage over other operators in the sector. And with independent shops closing at the rate they are, consumer choice is dwindling, not growing.

Contrary to what supermarkets would have us believe, more people would oppose a new supermarket in their neighbourhood (59%) than would welcome one<sup>6</sup>.

And shoppers believe that a number of disadvantages arise when independent local shops are bought by superstores:

- 63% of consumers believe there is less choice of where to shop
- 68% believe that this damages the fabric of their local community
- 38% believe there is a reduced range of things to buy
- 62% believe this results in less friendly and personal service when you shop

From Populus (2004). LLM/Association of convenience stores poll, October, 2004]

John Bridgeman, former Director General of the Office of Fair Trading suggested at the launch of a parliamentary report on small shops in January 2006 that government policy, not consumer preference, had given rise to the current market dominance of the multiples; by enabling supermarkets to establish themselves in out-of-town locations with major competitive advantages and better carparking facilities than remained in town centres. This gave them an edge over small shops. Mr Bridgeman also suggested that Tesco was bigger not because it had a better consumer offers, but because it had been most successful at securing large amounts of land, particularly in new developments, over the past few decades. [7]

There are environmental and social costs associated with the supermarkets increasing dominance at the expense of smaller chains and independent high street stores. Hypermarkets are among the least energy-efficient buildings in the retail sector<sup>8</sup>They rely heavily on car-based shopping, which has massive environmental costs and excludes lower-income communities - a contradiction to Tesco's claimed plans to be a better neighbour and have a lower environmental impact<sup>9</sup>. Major supermarkets are also less likely to stock genuine locally sourced produce, and as alternative markets shrink farmers are more dependent on supermarkets and are being squeezed harder and harder by them.

### **e) Methodology of this report**

In this report a number of different case studies are examined. Friends of the Earth has come across many of these through monitoring local media cuttings over the past 18 months and by being contacted directly by campaigners and residents from some of the case studies. We undertook research on these case studies using local authority documents. We have also submitted a number of requests to local authorities under the Freedom of Information Act 2000, and obtained decision letters and reports from the Planning Inspectorate for decisions made by the Planning Inspectorate or Secretary of State.

In December 2006 we carried out a survey of all local planning authority planning departments in England on their views on PPS6 and the Barker proposals, some of which have been included in this report. All the views expressed represent opinions of planning officers who are involved in development control, rather than an official view of the council endorsed by members. A further source of information has been the Tescopoly Alliance, of which Friends of the Earth is a member. The Tescopoly website ([www.tescopoly.org](http://www.tescopoly.org)) has attracted a large number of emails from local campaigners from which this report has used information and case studies.



## Supermarkets' superior resources give them an unfair advantage in the planning system

The supermarkets already have several advantages which allow them to manipulate the planning system to push forward with their expansion plans. This section focuses on one of these advantages - the mismatch in resources between supermarkets and local authorities. This puts them in a very powerful position in the process of negotiation over applications and can give them an unfair advantage over smaller retailers. Case studies examined for this report show that supermarkets can sometimes get away with submitting substandard applications that go unchallenged by the local authority. And the supermarket chains can make offers of other services and facilities as 'sweeteners' for their proposed developments.

Academic studies have also noted that this imbalance in resources impacts in real terms on planning, and it is known that the larger players devote huge amounts of money to negotiating the planning system, paying above-value land prices and making offers through section 106 agreements and support for other local authority projects.

This is just one reason why current assumptions that the planning system needs to be made to work better for businesses such as supermarkets are fundamentally flawed.

### **a) Local authorities have less access to planning expertise and resources than retailers**

#### **i) Submissions made with applications are often inconsistent or substandard and in some cases misleading**

***"Most of the time assessments are poor, misleading or inaccurate. Assumptions are subject to personal interpretation and conclusions are relatively weak...the whole issue is mired in deceit." – an officer from a North East authority***

A number of local authorities have raised concerns that the submissions sent in with planning applications, including retail impact assessments and assessments of need for the additional floorspace (see section 4b), are difficult for them to assess. This is both a problem of consistency and a problem of resources, with the result being that it can become too easy for developers to prove what they want to prove about need or impact. According to one local authority planning officer, "consultants [are] always likely to substantiate any proposal submitted," so there is a "need for [an] independent check on conclusions."

In terms of **consistency**, many planning officers acknowledge that there are differing interpretations of need and that much is open to opinion. According to a planning officer from North Devon District Council, "we have disagreed with their assumptions and forecasts, but that is an issue of different opinions/assessments rather than lack of detail or quality." An officer from a North West authority said that "differing methodologies is the main problem." An officer from South Tyneside District Council raised problems with "understanding and following through the methodology used in all the complex data and how the results of all the different calculations are achieved, which isn't always clear and easy to follow."

In terms of **quality and accuracy**, one local authority officer said that “often the assumptions are questionable, and another that they contain “usually **inadequate or biased data**.” An officer from Sheffield City Council stated that “we quite often find heroic assumptions about where a store's turnover would otherwise be spent - e.g. broad assumptions that x% would come from 'outside the area' - i.e. not causing any impact to centres within the area.” Another officer said that “it is common in this authority to receive inadequate/no assessments in the first instance, which are only supplemented on demand of the LPA. I get the sense that applicants like to ‘test’ the knowledge of the LPA to see if they can get away with inadequate assessments.”

According to an officer from a North East authority, “Most of the time assessments are poor, misleading or inaccurate. Assumptions are subject to personal interpretation and conclusions are relatively weak. When challenged, often developer will amend figures which significantly changes the outcome of the assessment, but then they will argue a different corner to justify it. The whole issue is **mired in deceit**.” According to an officer from another North East authority, “it is whether the assumptions and conclusions are biased that needs to be assessed to test whether what the applicant is saying will happen if their scheme was to be approved is correct.”

A number of recent submissions that significant problems have been raised with include

- In assessing Asda's application for a store in **Worthing, Sussex**, the Planning Inspector who decided against the store raised various issues with the need assessments that had been produced <sup>10</sup>.

The Inspector found that there were various interpretations of the need for the store: while Asda's submissions indicated a significant capacity for additional convenience retail, other assessments by the Council and the Co-op found no capacity. The Inspector suggests that “the appellants have sought to use those figures that benefit their case” and identifies **“various elements where I have found that there are inaccuracies or poorly substantiated assumptions such that I do not feel I can have the necessary confidence in their figures to support the proposed development.”**

There were even different figures given for existing convenience floorspace, “matters that might be thought purely factual”, which the Inspector suggests “has contributed a degree of opaqueness to the exercise which has not been helpful to me or to its credibility.” The Inspector also queried figures given for the amount of consumer spend currently 'leaking' outside the area. The applicants referred to a leakage out of the catchment area of £13.88 m to named stores and £26.33 m to other unnamed stores. The Inspector stated that **“the exchange with Mr Littman revealed numerical mysteries on a grand scale and I find it difficult to be convinced that the £26.33m has much to do with reality or whether it is the result of some statistical juggling.”**

- Tesco applied for increased floorspace for non food (comparison goods) at a store it had gained permission for in **Stretford, Greater Manchester**. In this case the Inspector questioned the retail impact figures, calling some of the figures given **“unrealistic” and “irrational.”** The Inspector also raised

doubts about the points that Tesco had made in its need assessment. According to the Inspector, Tesco had put forward the argument that there was a qualitative need for the store. Tesco cited a lack of consumer choice because “it is underrepresented in the catchment area, so a store on the appeals site would provide an alternative shopping destination for consumers, and would fill a gap in the appellant’s store provision in the general area of south Manchester.” The Inspector rejected this argument, stating that “I am doubtful... as to whether this represents an overwhelming qualitative need.” [11]

- In **Penistone, South Yorkshire**, figures submitted to support an application for a Tesco store were refuted by an assessment done by the Council’s own planning consultants. A retail assessment was carried out by Development Planning Partnership (DPP) on behalf of the developers. The existing convenience shops in Penistone were a Spar and a Co-op, which together constituted 18% of the floorspace of the proposed Tesco. DPP suggested that the loss in turnover would amount to “a combined impact of just 7.38% on Penistone town centre as a whole which we consider to be acceptable.” DPP suggested that Penistone had “sufficient vitality and viability to sustain this minor degree of impact.” [12]

However, Antony Goss Planning (AGP), consultants used by Barnsley Metropolitan Borough Council in 2001 disagreed with this assessment. AGP suggested that “there will doubtless be a significant diversion of trade from the existing small supermarkets... it is most likely that one of these stores will close,” as well as smaller shops. AGP stated that “it seems improbable that there would be capacity for both the Co-op and the Spar stores to continue trading.” AGP predicted that the Co-op store would close and that Spar would lose 52% of its turnover. [13] Local campaign group Penistone Residents Against Large Supermarkets warned that “The Barnsley MBC Planning Committee should consider very closely how two consultants could come to such different conclusions” and recommended “that Barnsley MBC commission a further independent retail impact assessment.” [14]. Despite these contradictions the development was granted planning permission in March 2007.

- The Co-operative Group questioned projected impact figures submitted by Tesco to support an application at **Yiewsley, West London**. An inquiry was held into the application and it was turned down in March 2007. According to the Co-op’s submission to the inquiry, “the appellant’s Retail Assessment fails to offer a comprehensive or accurate assessment of the retail need and likely impact of the proposal being considered by the Inquiry” and refers to “**weaknesses, over estimations and omissions.**” [15] This case once again illustrates the possibility for inconsistency and confusion that exists around these submissions. Campaigners in Yiewsley also questioned the figures for trip generation rates submitted by Tesco for the store. [16]
- In 2003 Tesco applied for a store in **Sheringham, North Norfolk**. The County Council advised North Norfolk District Council’s planning officer that “the applicant’s retail study adopts a **debatable methodology** and is likely to over estimate capacity and underestimate impact.” [17]
- Local authority officers mentioned specific inaccurate submissions made in certain instances by Lidl and Morrisons.

- An officer from an outer London borough mentioned an application from a major food retailer under consideration that had “**significant deficiencies.**”

One solution to this problem would be simple: clearer guidance to direct the carrying out of such assessments. According to an officer from South Tyneside Council, “clearer guidelines would be useful for standardising how retail needs, capacity and impact studies should be undertaken, the methodologies, etc. to ensure that there's consistency in what's submitted by developers/applicants and that they can be easily understood and calculations followed through.” Clearer guidance would help local planning authorities to reject inadequate submissions but there is also a problem with the resources available to local authorities to deal with supermarket applications.

## **ii) Local authorities often lack the resources to effectively assess and challenge these submissions**

The local authority planning officers responding to Friends of the Earth's survey mentioned that resources are constrained within the authority to deal with assessing the applications that were received. Many said that they struggle to gather the resources needed to deal with applications, in terms of staff time and the costs involved in hiring expensive planning consultants.

A planning officer from North Devon District Council said that “**we have always found the required resources, but at the expense of other projects.**” An officer from South Tyneside Council said that “given the complexity of the data, there is a need for a good understanding of such assessments in order to assess whether they are reasonable in their conclusions, and going through them can take up significant amounts of staff time and resources.” An officer from a Metropolitan Borough Council said that “**it is a struggle to resource the handling of major retail applications within existing staffing levels due to their complexity and the amount of time required to assess them thoroughly.**” A local authority planning officer with “some expertise in this area” said that it was “very time consuming looking through retail assessments.”

Not all authorities have that expertise. According to an officer from a North East authority, “the Planning Team does not have the necessary retail expertise within it to effectively assess major retail planning applications. When we receive such applications we must use consultants with the resulting additional cost.” One authority said that buying in external expertise “**costs the authority money better spent on other services.**” A planner from Rotherham MBC also raised the problem that a reliance on external consultants could “impact detrimentally upon the capacity of the authority to deal with or develop expertise in retail matters.”

Many other officers said that the expense of involving external consultants was problematic, and a total of 57% of officers raised problems experienced by the authority in assessing submissions accompanying planning applications.

An interesting perspective is also provided by *Accessible Retail* – promoters of out-of-town development “*A major cause of delay is that LPA town planning departments have experienced severe recruitment difficulties. At the same time planning has become more complex and the public and LPAs have made ever more demands on planning staff. Applicants now need the advice of Planning Consultants, where once an Architect or Engineer may have fulfilled the role. In order to meet the consequent client demand, planning consultants have gone to the only*

***suitable place to recruit, LPAs, and stripped them of their more competent staff.”***

A study undertaken by the University of Stirling for the National Retail Planning Forum noted a wider imbalance in the resources and literature available to local authorities in their dealings with retailers. The study suggested that “it is clear that planners do not have at their disposal major academic research which will give them case study material or broader analyses to be used in interpretation of their local materials,” and that “what research there is... is in literatures often following other agendas” as “the dynamism of the retail sector has created a literature which is often relatively foreign to planners.” According to the study, this “**disempowers**” planners. [18]

Dr Alan Hallsworth, Reader in Retailing at the University of Surrey describes how the information available to planners has changed; “Thirty years ago County Councils were putting in place formal Structure Plans and were employing many really very competent retail planners. We even had the Unit for Retail Planning Information set up to act as an advice source – with funding from the authorities. As Thatcherite liberalisation took over (starting with the demise of the Census of Retailing) it was assumed the market would know best. Instead, much public information was effectively privatised and, of course, the big retailers can buy information once and re-use it many times. Local Authorities tend to be tied to knowledge specific to their own area”.

Indeed, several of the planning officers responding to Friends of the Earth’s survey pointed to gaps in the research available for them to use. A planning officer from Sheffield City Council mentioned that “**such specialist data that exists (e.g. from Verdict etc) is often priced at a level that retail companies / developers may be able to afford but which local authorities cannot.**” In particular, this planner referred to a “problem with impact assessments” because “the lack of information on which to base them” on areas including the turnover of individual stores, the turnover of town centres, and said that there were “no recent studies are available to suggest where new retail stores would take their turnover from.” An officer from an outer London Borough said that “an area where more research is urgently needed is that of sales density (floorspace efficiency) change... Whilst much data is available for the consideration of change in the expenditure base, little research has been undertaken into changes in the ability of existing floorspace to absorb forecast growth in expenditure.”

The fact that local authorities rely on often sub-standard submissions sent in by retailers, and lack the resources with which to assess these submissions, means that local authorities may be making decisions on the basis of poor quality and even incorrect information.

Dr Alan Hallsworth sums up the problem: “***There are nowadays many large authorities with virtually no-one who can read a retail proposal and make sense of it. Of course, that also incentivises any developer who has a controversial scheme to make it as complex as possible – in the hope that Planners will simply give up in despair***”.

**b) Planning gain and involvement in large projects: big chains' ability to make offers to local authorities gives them an advantage over other operators**

The larger supermarket chains also use their extensive supply of resources to give local authorities facilities or money as a 'sweetener' to developments. These are under section 106 (S106) agreements or by sponsoring large-scale mixed-use developments including such things as homes or sports facilities. The examples looked at in this section include some from Wales and Scotland as well as England, as these issues affect the process across the UK.

**i) Section 106 agreements**

Section 106 agreements are agreements signed between local authorities and applicants, relating to the provision of money or facilities by the developer to the local authority. The agreement is not part of a planning approval or conditions. The use of section 106 agreements was introduced so the negative impacts of a new development could be mitigated and so that the community could share in some of the benefits accruing from the increase in land value once it receives planning permission.

There is some concern that the use of section 106 agreements gives developers – especially ones with large amounts of resources such as large supermarket chains – an ability to influence the process and exert leverage over local authorities. The Competition Commission's Emerging Thinking report referred to a case study it had been made aware of in **Hanley, near Stoke on Trent**, where "Tesco was granted consent for a new Extra store, principally on the strength of its offer to build a new link road." [19] The ability to offer resources for section 106 agreements is imbalanced: where large retailers can offer large amounts of money with relative ease, this will not be a possibility open to smaller chains and independent retailers.

In **Streatham, South London**, the Mayor of London overturned an earlier demand that Lambeth Borough Council refuse permission for a development by Tesco because of an inclusion in the revised plans of a section 106 agreement in which Tesco agreed to rebuild leisure facilities. [20] The Mayor's earlier objections were predominantly that the leisure facilities were not safeguarded, but also that the development had "inadequate design quality," and did "not reflect sustainable development principles," [21] and was "contrary to good strategic planning for greater London." [22] In 2005 the Mayor "decided to cancel my objection... having considered an amended draft Section 106 agreement." [23]

Further examples of this practice can be found in Friends of the Earth's earlier report *Calling the Shots*.

**ii) Sponsoring new council facilities**

Supermarket chains have leant their support and co-operation to a large number of large-scale projects for urban regeneration or for facilities and features that the local authority and members of the community will want to see go ahead. This has the potential to ease the local authority's and community's opinion of the entire project, including supermarket development, which is often presented and perceived as a unified whole. Worryingly, a reliance on the resources offered by the supermarket for

other unrelated parts of the development seems to be considered as a material consideration. For further examples of this, please see Friends of the Earth's report "Calling the Shots" from January 2006, which highlighted this issue. The examples included here are new ones that we have come across since then, and illustrate that the situation has not changed.

In **Burton-on-Trent, Staffordshire**, the future of a redevelopment of the East Staffordshire Borough Council's leisure facilities has become closely linked with that of a Tesco supermarket plan. After long negotiations and several failed proposals, the Council has agreed to make the current site of the leisure centre available to Tesco so that it can use the money received from the land sale to fund the building of replacement leisure facilities.

The Council had been considering how to modernise leisure facilities at Meadowside Leisure Centre in Burton, with the view that it could not do so without private sector involvement. It was at this stage that Tesco first approached the Council, which was understandably, given the circumstances, receptive to its advances. According to a 2005 report, "fortuitously, at the time we were considering the course of action to recommend with regard to the Meadowside, including the possibility of a Public Private Partnership we were approached by Tesco, who were looking for a site..." [24] At this stage, the proposal was for a direct land swap between the Council's leisure site and Tesco's existing store. Tesco's solicitors suggested at this stage that "the arrangement is simple and would bind both parties into an arrangement whereby the delivery of their respective schemes is guaranteed."

The possibility for a land swap fell through, as did the second possibility of Tesco acquiring further land and redeveloping the entire site, including both the store and the leisure centre. Finally, the Cabinet agreed in principal to a direct cash sale of the site to Tesco. The purchase would be dependent on full planning consent being obtained by Tesco for the 75,000 sq ft store. [25]

In **Worksop, Nottinghamshire**, Henry Boot submitted two separate applications, on the same date in 2003. One application was for a retail development, including a 72,000 sq ft foodstore, the other for a leisure development which included a cinema. The plans relate to a site outside the defined town centre. It was made explicit the applications were conjoined and dependent on one another. According to a Council report of November 2006, "although the application for the store at Carlton Road and the leisure development are separate applications they are put forward as a regeneration package... the leisure development will only go ahead if the retail development is accepted. Accordingly the linkage between the developments may be taken as one of the planning considerations for each application." The report went on to recommend approval on the basis that some disadvantages raised by the County Council, particularly relating to traffic and open space, were outweighed by the regeneration benefits of the overall scheme. [26] The Council voted in favour of the scheme in November 2006 subject to referral to the Secretary of State.

In **Darlington**, a Tesco proposal was developed over three years of negotiations with the Darlington Borough Council. The proposal involved the offer of a new Town Hall to be built by Tesco for the Council as its proposed store would be on the site of the existing Town Hall. A report prepared by Council Officers for a Council Meeting in November 2006 advised that "in terms of capital costs [the development] would provide a new town hall at a nil cost therefore relieving the council of the need to spend a considerable sum on refurbishing the existing town hall." The report also warned that "the Council must not give any impression that it is pre-judging the development or making decisions because of benefit (actual or perceived) that the

Council gets from the new offices or financially.” [27] The Council Meeting voted against the development proposals on the basis of the results of a public consultation process that were heavily opposed to them.

### iii) Football stadium Developments

Sports stadium developments tend to have a large degree of public interest and popularity, with new football stadiums especially receiving significant local interest and coverage. In this context, retailers have recently entered some huge projects in partnerships with football clubs, aware that that an involvement with the football club and its prospects will shape peoples’ views of the development. It may even involve aspirations and pressure in favour of the development, which has the possibility of easing the local community and authority’s view of the retail side of the development as well. Football clubs in difficulties may welcome lucrative partnerships with the retail sector. According to The Grocer, “more than amenable to joining Redevelopment City FC in exchange for new superstores in out-of-town locations otherwise out of bounds, the likes of Sainsbury’s began regular reviews of opportunities.” [28] In the words of Asda Senior Development Surveyor, “Asda has experience in enabling sporting facilities to become a reality.” [29]

The supermarket chains involved in such projects often promote them on the basis that the stadium development in question is dependent on the retail development going ahead. A leaflet prepared by Asda and Sheffield Wednesday Football Club for a proposed development in **Hillsborough, Sheffield**, stated that the separate proposals were “linked to each other and both are vital for Sheffield Wednesday’s future...One can’t happen without the other. The proposals rely on each other, we’re relying on you. We need your support.” [30] A successful proposal in **Milton Keynes** by Asda and Milton Keynes Dons Football Club, for a stadium development and Asda’s largest UK store at the time it opened in November 2005, also involved according to Milton Keynes Today a “leaflet, distributed to thousands of homes across the city, is the slogan: ‘No ASDA – no stadium. No Stadium – no Wimbledon FC. No Wimbledon FC – no future.’” [31]

The **North Coventry** regeneration project includes the Ricoh Arena, with Coventry City Football Club’s ground, a conference and exhibition centre, hotel, fitness centre and casino all adjacent to a retail park including Tesco’s largest store in Europe at the time of opening, a 140,000 sq ft hypermarket. Coventry City Council secured the whole site, then sold part of the site to Tesco for £59 m, a sum “above the current market value for the site” and including £17 m for “infrastructure and remediation works” on the remaining area of the site, the “retained land,” on which the Arena would be developed. [32]

Tesco refers to its involvement in the Ricoh Arena project as “the main catalyst for a major mixed use development including a sports facility that provided a new stadium for Coventry City FC and helped to create over 1,000 jobs.” [33] According to Ricoh Arena Chief Executive Paul Fletcher, “The money from the Tesco deal is a major foundation stone in making the Arena a reality,” [34] and according to Councillor Bob Copland, “**If it turns out that there were not to be a stadium, just this superstore... it would be really, really bad for Bedworth... Even if the whole development goes ahead it will have an effect on Bedworth, but that’s almost acceptable because of the whole package.**” [35] Coventry City Council’s keenness to secure the additional parts of the development is indicated by a reference in a 2002 report to “intense negotiations to button down the details of the... works to be



carried out by Tesco.” [36] See section 3.a for further information on the Ricoh Arena development, and Tesco’s exclusive land sale agreement with Coventry City Council.

Asda signed up in January 2006 as a tenant for a new stadium proposed by Cardiff City Football Club in **Cardiff**. They were to be one of a number of tenants in the stadium and retail development, and would construct a 55,000 sq ft store on the site. Cardiff City’s plans had already encountered significant obstacles and delays, with the club receiving extensions from the Cardiff City Council to produce a business plan for the development. According to local media reports, Asda signing up to the development acted as a major boost, providing the funding to enable it to go ahead, and being described as a “watershed.” [37]

In December 2006 Everton Football Club announced it had entered a partnership with Tesco for a stadium and retail foodstore development in **Kirkby, Merseyside**. The site would be on the outskirts of Liverpool and four miles from Everton’s current ground. The football club and Tesco as well as Knowsley Council agreed to pursue a joint initiative with all three agreeing to “look exclusively into the potential opportunities and the viability of such a development in the area.” [38] In February 2007, plans were submitted to Knowsley Council for the retail and leisure development at a preferred site in Kirkby. [39] Shareholders as well as fans at Everton have already expressed concerns at the impact on the club, and on the environment, of Everton moving to a location outside Liverpool and so far from the existing ground at Goodison. [40]

#### iv) Applications including housing

Another strategy for the large supermarket chains has been including the provision of housing in applications for retail developments. This new strategy has a dual impact. It firstly gives the supermarkets an advantage in gaining planning permission for their stores. According to Gavin Rothwell, a retail analyst at Verdict Research, *“it significantly helps their application if they can be seen to be adding housing and services to the local infrastructure, as well as being good for the public face of the retailer.”* Secondly, it gives the supermarket a wider role in shaping urban development – *“It also doesn’t hurt that they have an instant captive audience for their store.”* [41] As Tesco Corporate Affairs Manager Katherine Edwards put it, *“We’re now thinking a lot more like a developer and not just like a retailer.”* [42]

Some examples of supermarket developments that include housing are **Partick in Glasgow’s West End**, where Tesco has submitted proposals for what would be one of its largest Scottish stores at 80,000 sq ft and housing including student accommodation. In **Wolverhampton**, Tesco put forward a plan for a hypermarket of 140,000 sq ft (which would be one of the largest in the UK) on the edge of the centre, including a parallel development of 430 housing units. [43] Asda and Sainsbury’s are also diversifying into similar developments. [44]

In some cases, the inclusion of housing has helped the retailer gain planning permission. Tesco submitted a major application for a mixed use development, including commercial, retail and residential units as well as the superstore, in **Higham’s Park** in northeast London. The proposals were approved by Waltham Forest Borough Council in September 2005, but called-in for consideration by the Secretary of State Ruth Kelly, with a public inquiry taking place in January 2007. In answering a question by a London Assembly member in December 2006 about his support for the proposal, the Mayor acknowledged that the other elements of the application determined his attitude to it. According to London Assembly member

Jenny Jones who tabled the question, the development “goes against all the advice from the London Food strategy, in terms of supporting local independent shops, traffic reduction, reduction of noise pollution and community cohesion.” The Mayor’s response was that “the Highams Park proposal was not just for a food store... The Tesco food store included in the scheme was the enabling development needed to deliver” the other elements of the development.

#### v) Sponsoring educational facilities

In **Walsall in the West Midlands**, Tesco has worked in a joint initiative with a number of public bodies under the badge “Walsall First” to promote a development on the edge of the town centre. The Walsall First initiative includes Walsall College of Arts and Technology, the Metropolitan Borough Council and Walsall Re-generation Company. A hybrid planning application was submitted by Tesco and the College for a 111,000 sq ft foodstore with residential and office units, and erection of college facilities for Walsall College to replace existing buildings on the site of the foodstore. The foodstore is outside the primary shopping area and considered an edge-of-centre location. In this case, the Council deems the application to be acceptable in retail planning terms, despite the fact that “there is not a retail need for all of the floorspace proposed.” However, the attitude to the development is explicitly shaped by the other elements involved in the proposals. According to the Council’s planning report, “although the application site is split with each element of the proposal mutually supports each other to make the application viable.” The report further concludes that “the application proposal as a whole is unviable without the inclusion of the Tesco element. The retail proposal therefore helps to deliver significant social, economic and regeneration benefits which are important material considerations.” The application “has strong support from organisations concerned that the college proposal should be supported,” and it is stated that “the development package relies on the funding unlocked from the redevelopment of the existing college site for retailing.”[Report of Acting Head of Planning, Regeneration, 21/06/2006, to Development Control Committee, Walsall Council]

In Walsall, the benefits brought about by the educational element of an application that involved both educational and retailing shaped the decision that was made. At another application in **Worthing, Sussex** submitted jointly by Asda and Worthing College, the Planning Inspector who decided on the application judged that the benefits of a new college building were not sufficient to justify the retail impact. This case and the Inspector’s decision offer a context within which to view the Walsall decision, and reveal the significant pressures that such joint applications bring.

In Worthing, the redevelopment of the 6<sup>th</sup> Form College was dependent on the Asda application going ahead, and the college’s OFSTED report stated that it was suffering from the age and layout of its buildings. The college was having difficulties finding replacement funding elsewhere, but the Inspector questioned “whether the Asda store is the only means of making proper education provision,” and in the end the Inspector did not “agree that the redevelopment of the College could only come about through this scheme.” In the end the Inspector’s conclusion is that the benefits of the College “would not justify the serious and harmful conflict with retail policy at all levels,” and decides to refuse the proposals. [Planning Inspector’s decision, Worthing, July 2006]

But the arguments raise serious issues for other cases: were the level of conflict with retail policy to be slightly lower, but still substantial, would that have been justified by the college redevelopment? If the college had exhausted all the possible avenues of

funding, would its reliance on the Asda application have then led the Inspector to a different conclusion, despite the conflict with retail policy? Companies such as Asda are able to put themselves into a position in which local authorities or other public bodies are relying on their retail applications being approved to secure unrelated developments with major public interest. This gives them a serious advantage.

Whether they involve housing, sports stadiums, leisure centres or colleges the developments looked at above involve major projects in which significant retail developments are closely tied up in the provision of other developments and facilities. The type of connected applications looked at are large in scale and can only be achieved by large retailers with significant resources and budgets to spare. At the same time, they put pressure on the planning process by giving major incentives for the community and local authority to look favourably on the development. Many of them involve large retail units outside town centre areas. In some of these cases the decisions reached by planners on the retail units may have ultimately been the same regardless of the separate developments they are attached to, but it is undeniable that the process binds together different types of development and that this has a bearing on the ways decisions are reached, as acknowledged by some of the Council reports quoted above. This level of involvement is something that is only open to certain types of retailer and as such offers them an unfair advantage, brought about by their superior resources – resources superior not just to those of competitors in the form of independent retailers and small chains, but superior also to those of the local authorities deciding on the applications.

**c) The fear that supermarkets may appeal refusals is an added pressure on local authorities**

Concerns have been raised about the impact on local authority decisions of the fear of facing costs at appeal. When planning applications are refused, the developer can appeal the decision which will face consideration by the Planning Inspectorate. If the Inspector rules in the supermarkets' favour, in other words that the local authority has wrongly decided on the case based on the evidence available, then the local authority may also face a decision by the Inspector to award legal costs to the successful appellant. This should never be a factor considered by a local authority when deciding on a planning application, as only material planning considerations may be the basis for a decision. Many planning issues are open to interpretation – particularly as some of the concerns raised above about the inconsistency of applying some of the PPS6 tests – but if the Council Members believe from a thorough examination of the available evidence that there is a strong planning case against the application, they should not let the fact that the Inspector may rule against them affect the decision they reach.

The Competition Commission carried out a survey of local planning authorities for its investigation into the supermarkets. It found that 40% of LPAs responded that the likelihood of an appeal was taken into account in making a planning decision, and 14% indicated that the possible cost of an appeal was a motivating factor. But in reality the number of decisions being affected by fear of appeal costs may be higher given that this survey was answered by planning officers and it is ultimately elected councillors who make the final decision and may be swayed by the fear of costs.

There is some evidence that these concerns have at times been a factor in decisions made by Council Members, although it is difficult to determine what level of influence these concerns have exerted. At a Development Control Committee meeting of North

Norfolk District Council in January 2004, a letter was read out from Tesco's solicitors regarding a proposal for a store in **Sheringham, Norfolk**. The letter argued that there *"were no grounds of refusal that could be substantiated or sustained at appeal."* A councillor at the meeting spoke in favour of approving the application as *"he considered that if the application were rejected the applicants would appeal and the store would be approved on their terms."* The application was approved at this meeting. <sup>[45]</sup> However, a further decision saw the application refused in September 2005 and as of February 2007 a new application on the site is being considered by North Norfolk District Council. According to John Sweeney, North Norfolk District Council Leader, *"they [Tesco] are too big and powerful for us. If we try and deny them they will appeal, and we cannot afford to fight a planning appeal and lose. If they got costs it would bankrupt us."* <sup>[46]</sup> [See section 3a for further on Sheringham]

In Peasedown St John in Somerset, Parish councillors were shocked to hear that the risk of costs being awarded against the local authority was being put to Councillors before they took a decision on whether to grant permission to a new Tesco store. Parish Councillor Mary Kennedy is sure that this influenced the decision commenting that ***"You could feel the atmosphere change from one of support for us to one of away from us and to the developers. Even the discussion before this remark was to refuse the application"***. Mary Kennedy feels that the resources of supermarkets like Tesco gives them a huge advantage in these cases ***"The feeling is our village is that because the likes of Tesco have an army of people involved in getting planning application through, volunteers like myself, a Parish Councillor, have no chance against them"***

## Supermarkets are manipulating the planning system for their own advantage

Friends of the Earth has found evidence that supermarkets use legal agreements to restrict retail development on other sites which could be developed by rivals hindering competition and potentially restricting consumer choice.

The larger retail chains also have the time, resources and flexibility, unlike smaller chains and independent retailers, to submit repeated or stage applications for a development, or wait till the time is right for it to achieve the development it wants. In some cases they apply for substantial extensions to stores immediately after being granted planning permission for a smaller store – showing no regard for local planning authorities decision to restrict store size in order to protect town centres.

Other tactics we have discovered include strong lobbying of local authorities and local communities in some cases painting a misleading picture of the supposed benefits the new store will bring in order to sway local opinion.

And despite their claims to listen to communities supermarkets try very hard to get out of conditions that local authorities impose on planning permissions – again showing a lack of respect for local decision makers and community opinion.

### a) Supermarkets are using legal clauses in land deals which restrict local authorities' options

Friends of the Earth has discovered that in some cases supermarket chains have imposed restrictive clauses on land sale agreements they have signed with local authorities. These clauses have prevented local authorities from selling land to other supermarket chains under certain circumstances. They have therefore had the potential to affect local planning authorities' ability to fulfil their obligations under national planning policy, by diverting the basis for decisions from legitimate planning concerns to the terms imposed by the agreements. Such an agreement first came to light in April 2006 when it emerged that North Norfolk District Council had been prevented from pursuing a course for retail development in **Sheringham** by its interpretation of an agreement it had signed with Tesco in 2003. The *Sunday Times* alleged that around twelve similar deals had been signed elsewhere <sup>[47]</sup>. Friends of the Earth subsequently investigated whether similar agreements had been entered elsewhere, by lodging Freedom of Information requests with every local authority in England, Wales, and Scotland, and found that at least 10 local authorities had entered comparable agreements. The major findings are summarised in the table below.

<p><b>Sheringham, Norfolk</b></p> <p>North Norfolk District Council</p>	<p>Tesco has been trying to gain planning permission in Sheringham since 1996, first at an out-of-town site, and then from 1998 negotiating with North Norfolk District Council (NNDC) for a more central site. The site in question, on Cromer Road, was part of the Town Centre as defined by the 1998 Local Plan, but was outside the town's Core Retail Area, and was judged by the Council's retail consultants to be poorly linked with shops on the High Street <sup>[48]</sup>. In 2003, Tesco signed a confidential agreement with NNDC over the sale of Council land for its site assembly, which contained a clause that <i>"the Seller [NNDC] as estate owner shall not (to</i></p>
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	<p><i>the extent that is not prohibited by law or the functions of the Seller as local authority) take any action (or promote any competing development or planning application) which is or might be or become detrimental to, or increase the cost of the endeavours to obtain Satisfactory Planning Permissions.” [49]</i></p> <p>In September 2005, NNDC’s Development Control Committee voted to refuse Tesco’s application on planning grounds, and resolved instead to pursue a development brief for retail development on a more central site, which also happened to already have planning permission, secured by Budgens, for a smaller store. [50] However, in April 2006 NNDC dropped the plans for a development brief for the Budgens site, and withdrew its opposition to Tesco’s application (which was now to be considered by the Planning Inspectorate), based on its interpretation of the clause in the 2003 agreement. [51] The current draft of the Local Development Framework policy on retail as of February 2007 agrees that the site is not available, stating that “planning permission has been granted for a small supermarket on the Station Road Car Park. However the owner of the site (District Council) has indicated that it is not available for use as a supermarket.”</p> <p>Friends of the Earth believes – and wrote accordingly to NNDC and the Competition Commission – that to fulfil its functions as a local authority, NNDC must only consider planning considerations in deciding on the application and the development brief, not this agreement. [52] But according to the Council’s retail consultants, there is not enough district-wide capacity for the store, it could have a considerable impact, and there is a preferable more central site available [53]. If Tesco do succeed in blocking the Budgens application and its own application is approved, this decision will have been made based on the 2003 agreement, not on the basis of it being the most appropriate form of retail development for Sheringham.</p>
<p><b>Ricoh Arena (Coventry)</b> Coventry City Council</p>	<p>A restrictive agreement was signed between Tesco and Coventry City Council (CCC) relating to Tesco’s involvement in the Ricoh Arena Development in North Coventry, a large redevelopment project involving Coventry City Football Club’s new grounds, a conference and exhibition centre, a hotel, a fitness centre and a casino. These are adjacent to a retail park including a 140,000 sq ft Tesco Extra hypermarket, the biggest Tesco store in Europe at the time of opening. CCC secured the full site for the redevelopment, then sold part of the site to Tesco for its store for £59 m, a sum “above the current market value for the site” and including £17 m for “infrastructure and remediation works” on the remaining area of the site, the “retained land,” on which the Arena would be developed. [54] The land sale agreement, from January 2003, contained a clause ensuring that “neither the Council nor its successors in title nor the owner or occupier of the Council’s Retained Land will use the Council’s Retained Land as a retail store for the retail sale of food and/or alcohol.” [55] Securing the development was very important to CCC, due to the anticipated regeneration benefits for North Coventry, and it was very keen to secure Tesco’s involvement, referring in a 2002 report to “intense negotiations to button down the details of the... works to be carried out by</p>

	Tesco.” <sup>[56]</sup> Keen enough it seems to accept a restrictive agreement on future retail development on the rest of the site.
<b>Liverpool</b>  Liverpool City Council	Liverpool City Council (LCC) agreed to enter a covenant with Tesco in 1998 limiting alternative retail development on a specific site, the Childwall site, for five years, so that Tesco would go ahead with a store plan at Prescott Road (Project Orchid). No application was submitted on the Childwall site, but Asda expressed an interest in this site and entered negotiation with LCC officers <sup>[57]</sup> . In 1998, LCC expressed concern about the conflict between this proposal and Tesco’s Project Orchid proposal “in which the City Council has both a financial interest (income based on 10% of rentals achieved) and a regeneration interest.” <sup>[58]</sup> LCC was concerned that if the Childwall development went ahead Tesco “have indicated that they would withdraw from Project Orchid” and “the City Council will lose substantial income” and “the regeneration and other financial benefits will not accrue.” LCC resolved in August 1998 that the Childwall site was not for sale, but this did “not go quite far enough so far as Tesco are concerned”, and proposed a deed of covenant as “comfort against the threat of competition from the school site.” LCC resolved in December 1998 that “on the basis that Tesco make an immediate contractual commitment to the Project Orchid scheme, the City Council enter into a Deed of Covenant in respect of Childwall Community Comprehensive School restricting its sale for retail purposes... subject to the payment of a fee by Tesco.” <sup>[59]</sup> The covenant states that “ <i>no person shall during the Covenant Period use the Property or any part of it for the retail sale of food and convenience goods... or as a pharmacy or petrol filling stations.</i> ” <sup>[60]</sup> In this case, Tesco had pushed the Council into a restrictive clause in order to ensure it would not have competition from the alternative considered retail development in the area, even stating that a resolution by the Council not to sell this site was not enough for it to agree to proceed with the development.
<b>Nailsea, Somerset</b>  North Somerset District Council	Tesco entered an agreement for land transfer with North Somerset District Council in 2001, as part of its land assembly for the development at a store at Nailsea. This agreement included a clause that within five years, no part of an adjacent area of land owned by the Council would “ <i>be used for a retail outlet having a gross internal area of more than 1,000 sq ft for the sale of food and other convenience items... or as a petrol filling station.</i> ” <sup>[61]</sup>
<b>Hamilton, South Lanarkshire</b>  South Lanarkshire Council	South Lanarkshire Council entered an agreement with Asda in 1997 over the sale of land at the Palace Grounds, a retail park on the edge of the town centre of Hamilton. Asda’s development involves an 80,000 sq ft store. The agreement contains a clause restricting convenience retail use for a further superstore on this site, stating that “ <i>The Landlords undertake of the Tenants that they shall not sell, let or otherwise dispose of an interest in any part of the Palace Grounds (other than the Subjects) at any time for the purpose of the erection or use thereon of a retail superstore for the sale of convenience goods which exceeds 20,000 square feet gross internal floor area and that the grant of any such interest shall contain a provision prohibiting such erection or use.</i> ” <sup>[62]</sup> Asda demanded this clause to protect its investment into the site, and it was judged by the Council to be a “reasonable compromise.” It may have seemed so compared to the offer made by Tesco, which was “seeking a total

	prohibition on the construction of a second food superstore on Palace grounds for 150 years.” [63]
<b>Skegness, Lincolnshire</b>  East Lindsey District Council	East Lindsey District Council entered an agreement relating to the sale of land to Tesco at Skegness which included a clause restricting the use of immediately adjoining land owned by the Council “for the sale of food and convenience goods... or as a Petrol filling station.” [64] After the Council decided to offer its land at this site for sale for supermarket development, it put out a tender, receiving three offers, for £965,000, for £4,267,000, and for £7,000,000. Tesco’s, the highest bid, was accepted in April 2001 as “an opportunity for the Council to receive a major capital sum,” and the agreement including the above clause signed subject to Tesco receiving planning permission, [65] which it did in 2002. [66]
<b>Livingston, West Lothian</b>  West Lothian Council	In 2000, West Lothian Council entered into an agreement over the sale of a land parcels to Asda, connected with Asda’s redevelopment of a store in Livingstone. The agreement restricted use of a further site, the Dedridge site, “for the purposes of food and or groceries retailing prior to 31 December 2002, a period of 2 years and 9 months.” [67] This agreement was the result of negotiations with Asda, which “wanted some comfort that as the food retail market for that size of redevelopment was at that time uncertain, their investment would not be compromised.” [68] The Dedridge site, to which the 2000 agreement related, was subsequently sold to Morrisons in 2004. [69]
<b>Houghton le Spring, Sunderland</b>  Sunderland City Council	Sunderland City Council sold a site at Houghton le Spring to the Co-operative Group for a supermarket development in 2002, agreeing to a restrictive clause on the development of other council owned land in the area around Houghton for food retail within 15 years. [70]
<b>Kidderminster</b>  Wyre Forest District Council	In 1998 Wyre Forest District Council (WFDC) agreed to enter into a restrictive covenant with Tesco when selling Tesco land for a development in Kidderminster. The covenant related to a piece of council owned land at Green Street and bound the site so that “no person shall use the Property or any part of it for the retail sale of food and convenience goods... for five years from the date of this deed.” [71] The site was not allocated for retail use and was still in use by WFDC. WFDC decided to enter the covenant, despite a small “risk that it might have an adverse effect on value,” because it would “increase the viability of the development.” [72]
<b>Bridgnorth, Shropshire</b>  Bridgnorth District Council	Tesco acquired a site near Bridgnorth town centre, Old Smithfield, from Bridgnorth District Council (BDC) for a supermarket development in 2003, with an agreement which restricted the sale of council-owned land. The development would have included a compulsory purchase order, and the landowner brought a judicial review to the High Court, which quashed Tesco’s planning permission for failing to take into account the acquisition of an adjacent store by Sainsbury’s, which wanted to expand the store. However, the Sainsbury’s proposals could not proceed because of the restrictive agreement BDC had signed with Tesco in 2003. In July 2006, BDC refused Tesco’s renewed application and in October 2006, it voted to



abandon the 2003 agreement. [ <sup>73</sup> ]
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## b) Lobbying local authorities and communities

The Competition Commission previously investigated whether retailers carry out significant lobbying. The main chains admitted to using consultants and PR companies to assist their interaction with local government. Tesco additionally said that it interacted with local government with regard to formulating development plans. 80% of LPAs said that retailers have some involvement in the development of the development plan. The Commission maintains that “we have not seen any evidence to suggest that lobbying during the preparation of the development plan favours large retailers over smaller retailers.”

However, it is the case that larger retailers have more substantial resources at their disposal with which to lobby local government, from the ability to employ consultants to the ability to put large amounts of time into this process. Friends of the Earth has found examples of supermarkets using their clout to change local plans in their favour.

- In **Dartford, Kent**, the Borough Council modified the Local Plan to include plans for a Tesco. In this case a developer’s proposals, including a 130,000 sq ft Tesco, had been worked up in collaboration with the Council as a redevelopment scheme for Dartford town centre. Amendments were suggested to the Local Plan in January 2004 and voted by the Council in April 2004 to include the specific proposals made by the developers. This stage of amendments also deleted previous statements that “*any individual food and convenience floorspace unit should not exceed 500 m<sup>2</sup> gross floorspace,*” and that “*residential accommodation will generally be the preferred land use.*” [<sup>74</sup>] The application was approved in August 2004. [<sup>75</sup>]

Since that time the approved application for the Tesco store has been called in, and was refused after a Public Inquiry by a Planning Inspector in November 2006. The Inspector did not attach weight to the revisions of the Local Plan. The Inspector’s report states that:

*“I take a differing view on the status of the abandoned Local Plan Review. Those aspects of the Plan dealing with the Lowfield Street site, which were revised in effect to accord with the applicants’ proposals, have not been the subject of full statutory examination, which will not now occur. I consider therefore that the detailed criteria of draft policy TC11 [which allocated the specific details of the proposals on that site] should be given very little weight.”* [<sup>76</sup>]

As reported in “Calling the Shots” in **Hadleigh, Suffolk**, Tesco lobbied Babergh District Council to alter the Local Plan so that it would be more favourable to Tesco’s application.

The larger chains also have money to invest in **lobbying local communities**, to ease their attitude to a proposed store and prevent local residents from objecting to the application.

For example a promotional website for the Dartford development (described above) [www.next2thepark.co.uk](http://www.next2thepark.co.uk) claimed that the proposal was a “**flagship new Tesco store on the High Street**”. However, the Inspector wrote that “**the Tesco store and its 569 parking spaces would be to all intents and purposes a self-contained development at the edge**

**of the retail area.”**

The website talks of “**new playing fields**” yet the inspector finds that “**overall area of general open space would be reduced by the take-up of the road**”

Please refer to “Calling the Shots” for other examples of websites set up by Tesco to try to persuade local communities of its plans.

### **c) Use of staged applications to make the planning application process easier**

Friends of the Earth has looked at a number of cases in which the multiple retailers submit staged planning applications, either by

- applying for a smaller store then very quickly submitting a further application for an extension or a larger store once the first application has been approved, or by
- applying for a store then quickly submitting an application to vary conditions imposed on the original planning permission, in particular conditions relating to the class of goods sold in a store.

In both cases these actions show a lack of respect for the local planning process where local planning authorities impose floorspace restrictions and other conditions to the planning permission for important planning reasons including protecting the vitality and viability of town centres.

In a large number of cases an application for an extension, or a variation of conditions, has been submitted within 6 months of the store opening and in quite a few cases before the store has opened or even before construction has commenced. In further cases, such applications, often for very significant increases in floorspace, have been submitted within a few years of a store opening. In many of these cases, conditions had been imposed with the original planning consent limiting the size of retail floorspace for the specific reason of protecting the vitality and viability of an existing town centre. There is no evidence that these applications for extensions are simply a response to an acknowledged need for additional floorspace, indeed this explanation seems unlikely given the short time between the original planning permission being issued and the new application being submitted.

The number of cases that have come to our attention suggest that this approach may be part of a systematic tactic for these retailers to ease the process through the development control system. It may constitute an easier way to gain planning permission for a larger store than the local planning authority would have considered appropriate had one single application for the final size store been submitted. It seems as though the power and resources of these companies is being used to influence the local planning authorities' decisions, which should be taken purely on the planning merits of the case. Even if additional floorspace need had been identified we are concerned that the supermarkets' ability to influence local planning decisions may be inhibiting the provision of alternative retail outlets – ideally a wider consultation should take place in order to assess the best way of meeting additional floorspace need to protect the vitality and viability of town centres and ensure consumer choice.

The issue is also being investigated by the Competition Commission, which has suggested that it may be easier for existing retailers to apply for extensions once a need has been identified, thereby frustrating the entry by competitors building new stores. The Commission will continue to examine timing of applications for extensions to see if they are submitted as a response to competitors' applications for new stores.

**Some examples of these practices, across England, Wales and Scotland, are included in the table below:**

<b>Ruthin, Denbigshire</b>	<b>Stalham, Norfolk</b>
Tesco applied to increase the size of its floorspace by over 50% to 44,000 sq ft just a week after the store opened in August 2006, despite the original planning consent limiting future increases in floor area "in order that the local planning authority retains control over the use in the interests of the vitality and viability of the town and locally."	Planning permission was received for a Safeway foodstore in October 1999. The application included the condition that "the net retail sales area of the store... shall not exceed 1,400 sq m [15,000 sq ft]." Tesco submitted a further application which was approved in 2002, and in 2006, shortly after the store opened, submitted an application to extend the store.
<b>Brighouse Rd, Queensbury, West Yorkshire</b>	<b>Sowerby Bridge, West Yorkshire</b>
Planning permissions were granted for food stores of 15,000 sq ft gross and 35,000 sq ft gross. Tesco sought to use these existing planning permissions to justify a development of 59,000 sq ft as well as petrol station, which it applied for to Bradford Metropolitan Borough Council in July 2005. Consideration of this application is still pending.	Outline planning permission was granted by Calderdale MBC for a store in 1998, and permission for reserved matters in 2002. This specified a store size of 31,000 sq ft. An amended application was approved in 2004, and a further application, this time by Tesco, with further design amendments was approved in 2005. In January 2006 Tesco submitted an application for full planning permission for a store at the larger size of 36,000 sq ft (an increase of 19% on the 2002 application). By this stage no building works had commenced on the store. This application was approved by the Council in June 2006.
<b>Pwllheli, Gwynedd</b>	
Gwynedd Council gave Safeways planning permission for a store of 12,000 sq ft retail floorspace in 2002, with a condition limiting the store to that size as a maximum "to ensure a satisfactory development and to safeguard the vitality and viability of the town centre." In May 2005 Asda took over the site, and applied and was given approval in February 2006 to increase the retail floor area by 26% to 15,000 sq ft, despite the 2002 conditions, with up to 10% to be used for the sale of comparison goods. In August 2006 Asda made a further application to vary the conditions, to "allow the sale of comparison goods from 5,000 sq ft of the net retail floorspace," 33% of the retail floorspace in comparison to the 10% that had been imposed with the previous planning permission. At the stage of this application the store was under construction but had not yet been completed. In October 2006 the planning committee turned down this proposed variation on the grounds of the "impact on the viability and vitality of the town centre." The store opened in October 2006.	
<b>Leyland, Preston, Lancashire</b>	<b>Huntley, Aberdeenshire</b>
Tesco's store opened in 2002 in Lancastergate, Leyland. In October 2006 Tesco gained planning permission from South Ribble District Council for a 24,000 sq ft extension to the store to allow an increase in sale of comparison goods.	Asda applied to remove restrictions limiting the amount of non-food goods to be sold shortly after winning planning permission for the store.
<b>Orpington, Bromley, Southeast London</b>	<b>Carlisle, Cumbria</b>
Tesco received planning permission in September 2005 from the London Borough of Bromley for a foodstore of 42,000 sq ft retail floorspace. In April 2006 it submitted an	Planning permission was granted in 2002 for a superstore, with conditions stipulating that its gross floor area should not be "greater than 3,700 sq m [40,000 sq ft]." In March 2005,

application to extend the size of the store to 80,000 sq ft, representing an increase of 90%.	before building had started, Tesco submitted an application to increase the gross floorspace of the store by 78% to 71,000 sq ft, an application the City Council refused in August 2005 and on which an appeal is pending.
<b>Gerrard's Cross, Buckinghamshire</b>	<b>Burnham, Somerset</b>
After a Public Inquiry in 1998, Tesco's application was approved with conditions on the store size. Contractors occupied the site in 2003 and with building work still taking place in early 2005, Tesco applied to increase the store size by 30%. The permission has still not been implemented as the tunnel being constructed collapsed in June 2005.	Tesco acquired a 11,000 sq ft store on the edge of the town in 1997, and applied in 1999 to extend the store by 146% to 26,000 sq ft, an extension that was granted and implemented. In 2004 Tesco submitted a further application, to increase the floorspace by 97% to 52,000 sq ft, an application that was refused in August 2006 by the Secretary of State.
<b>Carbis Bay, St Ives, Cornwall</b>	<b>Dibdale Road, Dudley</b>
Tesco applied in 2002 to remove conditions on trading and goods delivery hours on a planning permission for a store that had been granted in 1994. The application was refused by Penwith District Council but allowed on appeal in 2003.	Midland Co-operative Society applied in November 2001 to vary conditions attached to planning permission received in 2000 relating to trading hours. The application was refused by Dudley Metropolitan Borough Council but allowed on appeal in August 2003.
<b>Stretford, Manchester</b>	
Trafford Borough Council released a site for retail development and granted planning permission for a 40,000 sq ft store in 1998. Tesco acquired the site and received planning permission in 2004 for a store of 49,000 sq ft, an increase of 22%. It then submitted two further applications, to increase the floorspace by 74% to 84,000 sq ft and to increase the floorspace by 99% to 95,000 sq ft, with the majority of the additional floorspace constituting non-food goods. Both applications were rejected on appeal by the Planning Inspectorate in November 2006.	

#### d) Use of a nominee company

In January 2007, the Evening Standard and the Guardian reported that Tesco had been using nominee companies in attempts to gain planning permission:

- In **Rayners Lane, Harrow, in Northwest London**, a car dealership was granted permission for retail use with a new shop front for a site it owned. The company had already entered a sale agreement for the site with Tesco. Once permission was received from Harrow Council, Tesco completed the land purchase and was able to receive permission for alterations, and converted the site to an Express store.

In **Finchley, North London**, a carpet retailer submitted an application for retail planning permission at a Tesco-owned car showroom. According to the Evening Standard, Tesco and its consultants agreed to allow a nominee company to acquire the site and gain permission, so there was precedence for retail use of the site thus making it easier for Tesco to subsequently gain permission. Barnet Council gave permission for the store with a condition that only carpets could be sold at the site in May 2005. Less than six months later, Tesco submitted an application to vary that condition which Barnet Council refused and which then went to appeal. According to a planning expert interviewed by the newspaper, Tesco was "trying to get back door planning permission without being open and honest... we know this goes on all the time but it's unusual to get the evidence." [77]. In this case Tesco did not get its way as the council's decision was upheld by government planning inspectors who said such a store could "harm the viability" of nearby town centres.

In each case, the Council would have to consider the application fully regardless of the operator. But the fact that a separate company was applying meant that the local community and local businesses would have been unaware that this was one of the major retailers such as Tesco, so would have been denied an opportunity to object on this basis.

### e) Sitting on sites – land banks

The ability of the large chains to develop strategic and ambitious land acquisition strategies has had another impact; the development of substantial land holdings of owned but undeveloped sites. The Competition Commission's Emerging Thinking report of January 2007 identified that Tesco had the largest land bank, and that other chains "also have land holdings that are a significant proportion of their existing retail space" and "are in the process of acquiring significant amounts of land." [78] In October 2005 *The Times* projected that if all Tesco's land bank sites were developed, its national market share could potentially increase to up to 45%. [79]

What could the impacts of these land holdings be? The Competition Commission is investigating whether they present a barrier to competition by blocking rivals' access to a local market. A number of case studies shows that the large-scale land ownership of major supermarket chains has also blocked alternative plans or possible development options for the sites in question:

- In **St Albans, Hertfordshire** Tesco has owned a site for 5-10 years which included a row of derelict houses. Residents and councillors felt that this site would be suitable for housing development due to proximity to the train station. Because of tough targets for new houses in St Albans, the fact that this site could not be developed for housing increased the pressure on out-of-town Greenfield sites for new housing. In January 2007 Tesco unveiled its plans for the site. [80]
- In **Sunderland**, Tesco owned the site of the former Vaux Brewery, on the riverbank in the edge of the city centre. This caused problems for Sunderland City Council's ambitions to use the land for a regeneration scheme for the city, which would have brought the riverbank area into public use. The regeneration plans were submitted by regeneration company Sunderland Arc. [81] According to the Council, "the site represents a strategic location... [its] development provides a unique opportunity... to ensure that the physical and environmental fabric of this part of the city is greatly enhanced... [and] to underpin the Council's wider regeneration objectives." Its aspiration was to "establish a new sustainable residential community at the heart of the City" including employment opportunities, and any other uses must be "complementary, and not an alternative, to the preferred use." [82]

Tesco submitted its own plans for a 112,000 sq ft superstore on the site, and in October 2005 appealed the Council's failure to decide on its application. In January 2006, the *Sunderland Echo* reported that Tesco had offered to give up the land – on condition it was given planning permission for a store elsewhere in the city. [83] A Public Inquiry took place into Sunderland Arc's plans for the site in

July 2006, with a decision on the plans expected in March 2007. According to Sunderland Arc, Tesco was the sole objector at the Inquiry to the Arc's plans. According to a representative of Sunderland Arc at the Inquiry:

*"The only objection comes from the landowner, Tesco, who have no remit in relation to good planning or regeneration, no special connection with the area and whose primary and probably sole objective in pursuing the objection is the purely commercial one of securing a large foodstore on the site. In the like manner that no one else has a freestanding objection to the arc scheme, not a single person has come forward to support Tesco's objection on the basis that a Tesco superstore is desirable or needed on the site or, indeed, for any other reason."* [84]

## f) In some cases, retailers are breaking planning conditions

### Tesco goes beyond the boundaries

Friends of the Earth's 2006 report "Calling the Shots" looked at the example of **Portwood, Stockport**, where Tesco had built a store 20% larger than it had planning permission for. The store, which opened in November 2004, had a total floorspace of 119,000 sq ft instead of the approved 101,000 sq ft (an addition of 18,000 sq ft, or nearly 20%). Additionally, the retail sales area of the store was 6,000 sq ft higher than permission had been granted for, in breach of a further condition. Both the total floorspace and the sales area had been limited by conditions imposed by the Council, to protect the vitality and viability of the town centre and mitigate traffic impacts. Stockport Council's planning consultants suggested that "the development is unlawful... planning permission ref 74640 has not been implemented; instead Tesco has chosen to undertake a different development, without planning permission." [85] The Council was also advised that the increment was the "direct result of a management decision within Tesco." [86]

Despite the Council's assertion in May 2005 that "at the present time the whole store is unauthorised," Tesco applied in November 2005 for retrospective planning permission for the full store, despite missing a deadline imposed by the Council of Spring 2005 for submission of such a proposal.

In March 2006, Tesco replaced the November application with a new one, in which the sales area would be restricted to the amount originally allowed. This recognised the effect of substantial local opposition to what had happened. Tesco introduced as a "goodwill gesture" a cordon around the additional sales area. Local trader Steve Parfett commented that "any other business that built something 18,000 sq ft too big and then offered to cordon off 6,000 sq ft would be laughed out of town." [87] This application did not address the issue of the extra 18,000 sq ft in total floorspace, or the reasons given by the Council in the 2003 permission for the limits on overall floorspace. It also did not agree to take the 6,000 sq ft permanently out of use.

This further planning application was itself withdrawn in June 2006 and replaced by a new but substantially similar version. This June application was finally approved by Stockport Council Planning and Highways Regulations committee in September 2006 after the local Tame Valley area planning committee had been persuaded by the weight of opposition to vote to reject the application. The planning report advising the full committee meeting also

noted that the UDP policies had changed since the 2003 permission. The report states that “the current application has to be assessed against the current policy regime and in doing so it is not considered to fully comply with the Review UDP policies and there is a degree of conflict with the RSS... the fact that the retail situation has moved on (new stores developed) since the previous consideration means there is a degree of harmful impact on the smaller centres such as Reddish and Heaton Chapel.” However, the report goes on to note that as the existing planning permission from 2003 could still be implemented, and as “the store has now been modified to ensure it will have no greater retail floorspace than that already committed,” there were no grounds to refuse the retrospective application. [88]

The decision made by the September 2006 committee effectively allowed Tesco to maintain the store that it had built on breach of planning permission. Local residents were shocked that Tesco was able to get away with breaching planning conditions imposed for a good reason. According to one local resident who campaigned for Stockport Council to bring Tesco to task over the breach:

*"Local people and businesses who contravene planning laws in Stockport, whether by accident or design, are dealt with very severely. The local newspaper has in the past reported a £10,000 fine for putting up a business sign without planning permission. A house built a few inches too high has to come down. If you believe Tesco built their store at Portwood, Stockport 20% too big by accident, then I guess you also clapped for Tinkerbell! What has been their penalty for all this? Nothing." [Sheila Oliver, Stockport]*

“Calling the Shots” also looked at other case studies in which conditions have been broken by major retailers.

### **g) Trying to escape conditions**

Where conditions have been imposed, retailers have often tried as hard as they can to avoid them. See section 3.c on staged applications for examples of retailers submitting applications to remove conditions.

In **Sheringham, North Norfolk**, Tesco disputed conditions that North Norfolk District Council had voted to impose in a Joint Development Control Committee meeting in January 2004. Tesco’s agents said that Tesco was “unable to agree” to some of the imposed conditions. The disputed conditions included, amongst others:

- A condition that a car park management scheme be set up and run by the Council, which Tesco’s agents disputed demanding that “the car park would be Tesco’s in entirety.” The agents also disputed the Council’s desire that free car parking be given or three free hours rather than two. By imposing a two hour limit Tesco would be reducing the likelihood that shoppers would also visit existing high street shops
- A condition that no future extensions to the store be allowed
- A condition that no internet or door-to-door deliveries take place from the store, which Tesco objected to on the grounds that “such a condition could set a precedent which would not be welcome”
- A condition that a pedestrian link with the town centre be provided to encourage shoppers to also visit existing high street shops
- A condition restricting sale of specific non-food goods, imposed to protect the existing shops in Sheringham town centre. Tesco’s agents said that “Tesco would sell flowers... and would sell pharmaceutical goods. Accordingly, there should be no restriction on the sale of such goods.” Tesco also objected to the attempt to limit an instore cafeteria on the basis that “customer cafeterias are important to the operations of Tesco’s stores and Tesco considers there to be no planning justification for such a restriction.”

## Shopping the Bullies

The dispute over the conditions in Sheringham became a lengthy negotiation which was not fully resolved. North Norfolk District Council sought legal advice on the legitimacy of the conditions that Tesco challenged. [<sup>89</sup>]



## New threats to the planning system

The case studies above show that the existing planning system is not robust enough to prevent manipulation by the big supermarkets. There are problems with the implementation of some existing elements of policy such as the need test. But there are several relatively straightforward measures that Government and local authorities could take to change the balance of power so that local communities and local authorities are better able to influence the retail future of their areas – these recommendations are set out in section 5.

Yet instead of considering how it can strengthen the current system, the Government is currently considering a major shake up of planning that would tip the balance further in favour of the big supermarkets by reducing public involvement in the planning process and by scrapping a key part of retail planning policy – the need test. Our survey of local planning authorities reported in this section confirms that the proposals relating to retail planning are flawed and would lead to unsustainable forms of development and further damage to town centres and independent shops.

### **a) The Barker Review**

#### **i) Introduction to Barker**

In December 2005 the Treasury commissioned Kate Barker, previously an advisor at the Confederation of British Industry (CBI), to carry out a review of land-use planning in England. This review comes hot on the heels of the most recent shake-up of planning, the Planning and Compulsory Purchase Act 2004. The Barker Review was, based on the assumption that the system needs to be made to work better for business interests. The Treasury website states that “the purpose of the review was to consider how, in the context of globalisation... planning policy and procedures can deliver better economic growth and prosperity alongside other sustainable development goals.”<sup>[90]</sup> The recommendations, published in December 2006, include streamlining the processes and reducing community participation, as well as removing certain barriers to development (such as the need test for retail applications). However, evidence shows that:

- The planning system already works well for business – in the context of retail, supermarket chains already have a high degree of influence on decisions that are made.
- Community involvement has contributed to better decisions being made and more sustainable and appropriate forms of development being undertaken – helping to create places where people want to live.
- Changes to policy on retail planning – specifically, to the need test in Planning Policy Statement 6 – would significantly undermine government aims for town centres, by effectively allowing more out-of-town retail development.

The current planning system emerged from an understanding that uncontrolled private sector development led to a wide range of social, environmental and economic problems. Yet the Barker review aims to ease the process for big business.

Despite controversy about the proposals and recognised flaws in the analysis (see below) the recommendations from the Barker report are likely to be incorporated into a Planning

White Paper to be published in May 2007. Our new survey of local planning authority officers shows that this would significantly undermine attempts to protect and promote town centre shops.

## **ii) What does this all this mean for town centres?**

As the analysis and feedback from local authority planning officers below shows, the impact of these proposed changes to PPS6 could be significant. It is suggested that it will become harder for local authority planning officers to resist out-of-centre or edge-of-centre development. The result will be that local authority planning departments will find it harder to ensure that development takes place in a sustainable way, protects the vibrancy of town centres, and encourages a shift to more sustainable means of transport. If more large, out-of-town supermarkets are allowed to be built than there is need for, bitter competition will arise to capture retail spend. This will impact most heavily on existing small shops in town centres. These shops find it hard to compete with the big retailers because of their excessive buyer power.

Communities and consumer choice will suffer from the loss of different types of retail format. At the same time, there will be considerable impact on the environment from the increased amount of large hypermarkets (which are less energy efficient than smaller stores) and from the increased amount of car use for food shopping.

## **iii) The wrong kind of planning reforms?**

The planning system in England has seen a large number of changes in recent years. There was a Planning and Compulsory Purchase Act in 2004 which introduced a new system of local plan making. The current version of PPS6 was only introduced in March 2005. Some of the local authority planning officers responding to Friends of the Earth's survey suggested that current planning regulations have only been given a short amount of time to operate, and that it is too early for further reassessment or reform.

An officer from a Somerset authority said that "the best prospects for PPS6 is to allow it time to become part of the retail policy framework and LPA's, developers and investors to become familiar with it and its application. Continued tinkering with detailed aspects of it will only result in continued confusion as to the role, function and direction of national retail policy as happened with the 1996 version of PPG6." An officer from an inner London Borough said that "PPS6 needs to be given time to bed in and the effects of its policies analysed and understood. This is not the time to update PPS6."

Friends of the Earth supports the view that existing policy has merit and should not be overhauled before it has a chance to deliver. Planning policy has made a contribution to revitalising town centres and to creating more sustainable forms of development. But the system is still far from perfect – reform could be used to give communities a stronger voice and create a more level playing field for smaller retailers. This would not require a major shake up of the planning system.

## b) Removing the need test from development control

The Barker Final Report has proposed the removal of the 'need' test from development control in retail planning policy. The report claims that the test is damaging competition, and that it is not crucial to the 'town centre first' policy which is at the heart of Government approaches to retail development. According to Barker, "it is not the role of the local planning authorities to turn down development where they consider there to be lack of market demand or need for the proposal." [91]

The threat to the need test may be compounded by the Competition Commission. Its Emerging Thinking report in January 2007 did not corroborate Barker's view that the need test restricts competition, but the Commission will continue investigating this issue and may reach different conclusions in its final report, due out in September 2007. [92] The Competition Commission is keen to promote competition between large operators which could lead it to back a freeing up of the retail planning process in order that other large supermarkets can directly compete in areas where Tesco is dominant.

Evidence from the United States where there has been no need test suggests that increased competition does not result from a less restrictive planning regime. Despite the lack of planning controls in most states a highly concentrated market has emerged with Walmart dominating many areas. Ironically the situation has led some States to consider the introduction of a need test.

### A lesson from America

Stacy Mitchell, Institute for Local Self-Reliance

"Most American states embody what the Barker Review recommends: they have no comprehensive planning policy and no needs test to prevent harmful and unnecessary out-of-town retail development. Yet this free-for-all has not produced the competitive retail market the Barker Review predicts. We have a highly concentrated retail sector and it is only becoming more concentrated by the minute. The top five supermarket chains have more than doubled their market share in the last ten years. In a growing number of towns, Wal-Mart is the only choice people have for groceries and certain household staples.

"Meanwhile, unrestrained big-box store development has imposed very high costs on society, including dead downtowns, destroyed rural landscapes, thousands of vacant shopping centers, an explosion of shopping-related driving, and higher government costs for infrastructure and road maintenance.

"The terrible irony is that, while the U.K. considers dismantling its planning policies, many in the U.S. are beginning to see the wisdom of having a needs test. Several states are looking at legislation that would require towns to conduct an economic impact assessment—essentially a needs test—before deciding whether to approve a large retail store."

Interestingly the proposals in Barker closely resemble Asda-Walmart's submission to the Competition Commission on planning issues.

Friends of the Earth believes that the impact of the removal of the test on development control would be devastating. The need test is there to safeguard town centres by not allowing retail development to take place that substantially increases demand. This is something that emphatically **is** the role of local planning authorities. It does not exist to

interfere with market demand, rather it plays a crucial role in the development control process.

**i) Friends of the Earth survey**

In January 2007, Friends of the Earth carried out a survey of local authority planning officers in England. These officers are responsible for implementing the town centre first policy. A significant majority of officers responding to the survey believed that the ‘need’ test was very important in development control, and that its removal would make it harder to focus development in town centres. The reforms would make it harder for local authorities to assess the impact of developments, while making it easier for developers to gain permission for out-of-town developments. Many of the planning officers believed that the removal of the need test would result in less vibrant or sustainable town centres. The detailed results are set out in the next section.

**ii) Why is the ‘need’ test important?**

The need test requires developers, such as large supermarkets, to demonstrate that there is a need for the amount of additional floorspace being proposed. It only applies to proposed developments on out-of-centre or edge-of-centre sites which are not identified in the Local Plan<sup>1</sup>. Because of this it is an important way of allowing local authorities to steer retail development in what they see as an appropriate pattern, and is a way of ensuring that speculative out-of-centre developments do not damage existing town centres. The result of excessive provision of retail floorspace outside town centres will inevitably draw trade away from existing stores in the centre. Because the test applies to speculative out-of-town developments it gives confidence to developers wishing to invest in the town centre.

Friends of the Earth’s survey of local planning authority planning officers’ opinions on the need test showed a strong belief in its importance and apprehension about its removal.

- **95% of the officers believed that the need test is important (86% believed it was very important).**
- **81% of officers believed that the absence of a need test would make it harder to focus new development in town centres.**

<b>Local authority planning officers overwhelmingly believe that the need test is an important part of the development control process. Some of their views on why this test is important include:</b>	
<i>A Sefton Borough Council planning officer</i>	<i>“If a proposal fails to satisfy the test of need there is no requirement to look at sequential alternatives and impact on existing centres. It therefore provides a robust test against which to judge out- of- centre retail applications and to ensure that out-of-centre retail development only takes place when it is needed.”</i>
<i>A North West authority planning officer</i>	<i>“This test helps to protect Town centres and also continues the concept of Town Centre first objectives.”</i>

<sup>1</sup> An old style local plan or new Local development Framework will set out the council’s vision for retail provision in their area but may also contain specific sites allocated for retail use to meet an identified need for additional floorspace.

A Cumbrian authority planning officer	<i>"The needs test is an important item as it provides a quantitative yardstick with which to judge applications and their potential impact upon established centres."</i>
An inner London Borough planning officer	<i>"The needs test provides a sustainable and manageable way to control retail development. It gives clear consideration as to where a particular retail development should be located and set in the most appropriate area to ensure survival of town centres."</i>

### iii) The impact on sustainable development of removing the need test

***"If there is no need for an out of town development, it will compete with and undermine the vitality and viability of the town centre, increasing the need to travel by cars." [a planning officer from North Devon District Council]***

The outcomes of the removal of the need test would be a new wave of speculative out-of-town development and, in the grocery market, an increase in dominance of the market leaders. According to a Hambleton District Council planning officer, ***"[the need test is] vital, otherwise new large operators will force out the traditional small stores and it'll be a shopping environment dominated by the big multiples - Tesco, Asda/Walmart, etc."*** Diversity would be lost and low income shoppers would find it even harder to access food locally. Transport related carbon emissions would rise as more shopping trips would be car based. According to a Lancaster City Council planning officer, ***"I think it's likely to result in the continuing decline of existing shopping centres, which are less car friendly but much more readily accessible by public transport."***

<b>Local authority planning officers believe that the removal of the need test would inhibit their ability to promote vibrant town centres and to realise the policy aims of sustainable development and urban regeneration. Comments from planning officers on the overall impact of this include:</b>	
A Cumbrian authority planning officer	<i>"Its removal would also be contrary to the sustainability agenda upon which most policy is based."</i>
A Braintree DC planning officer	<i>"Significant increase in food and non-food retail."</i>
A local authority planning officer	<i>"More speculative out of town applications for new stores or extensions to existing ones."</i>
a Warrington MBC planning officer	<i>"More edge-of-centre and out-of-centre retail development would probably happen on unsustainable sites and it is entirely possible that the town centre would suffer as a result"</i>
A North West authority planning officer	<i>"Could lead to an over supply in some areas and could place pressure on land allocated for other uses such as Industrial or Housing."</i>
A Newcastle City Council planning officer	<i>"It would represent an opportunity for the large stores to expand to compete with each other (a major pre-occupation) in high income areas where there is always "leakage" of spending; and disengage from comparatively difficult sites essential to renewal of town centres."</i>
A North Devon District Council planning officer	<i>"Pressures for additional out of town stores will be harder to resist and the vitality and viability of the town centres will be threatened .... back to the policies of the late 1980s"</i>

A local authority planning officer	<i>“Without a requirement to demonstrate need there is greater potential for over-provision overall and the likelihood that this will result in more out-of-centre development and promoting less sustainable development patterns.”</i>
A local authority planning officer	<i>“Fragile centres would lose facilities. Town centres would suffer. More out-of-centre superstores and overprovision may result.”</i>
A South Tyneside Council planning officer	<i>“Could result in unsustainable developments that adversely impact on the vitality and viability of other shops in the shopping centre and other centres within the likely catchment area.”</i>
A Rotherham MBC planning officer	<i>“Whilst Rotherham is taking forward urban renaissance as part of Yorkshire Forward's Renaissance Towns programme, there is potential that without a consideration of need that when out of centre schemes are proposed there are fewer grounds to defend town centre.”</i>
An outer London Borough planning officer	<i>“The removal of the need test from development control considerations would remove the incentive for developers to seek to secure sites through the plan-making process, and is therefore in our view a retrograde step”</i>
A local authority planning officer	<i>“The needs test is an essential part of the toolkit with which a local authority attempts to control the location of new development. Without it retailers are likely to be able to open new stores even if there is no demand for floor space. Removing the needs test will make it more difficult for the planning system to play a strategic role in creating sustainable communities.”</i>
A local authority planning officer	<i>“This can have extreme negative effects for town centres as large retailers would have limited restraints which could lead to ‘Walmart’ type developments outside of town centre boundaries. This form of development would not be in keeping with the strategy for the authority’s development plan.”</i>
A North East authority planning officer	<i>“The removal of need testing is an excuse for Developer to get the foot in the door more easily.”</i>
A Somerset authority planning officer	<i>“Removal of the ‘needs’ test would result in retail developers and operators no longer having to justify why a new retail unit is required. This would effectively place the responsibility for demonstrating the unsuitability/ inappropriateness of a development back on the Local Planning Authority with no real guarantee that any such evidence provided would be deemed to be a material consideration if a proposal went to appeal.”</i>
An Inner London Borough planning officer	<i>“Without this there would be the un-sustainable and undesirable impacts that would ultimately undermine the viability of existing retail/town centres.”</i>
A planning officer from a West Midlands authority	<i>“It is considered that the removal of the needs test could result in a higher level of edge of centre and out of centre proposals coming forward potentially threatening the vitality and viability of our market towns.”</i>
A North East authority planning officer	<i>“The Council would have less control and in particular relating to the timing of provision, where we have always defended refusals on out-of-centre schemes by stating that town centre schemes must come forward first, even if there is more than enough need.”</i>
A Rotherham MBC planning	<i>“Removal of the needs test is likely to place greater pressure on these areas for further retail development, and greater emphasis</i>

officer	<i>upon assessing sequential and impact tests in PPS6. There is also likely to be greater pressure on limited local authority resources to make sites available, or assemble development sites in appropriate centres.”</i>
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**iv) The removal of the ‘need’ test will make the other PPS6 tests harder to implement**

***“Removing [the need test] would make the sequential approach ineffective by making in-centre sites less likely to be developed.” [a planning officer from Sheffield City Council]***

The Barker Review suggests that impacts on town centres could still be assessed if the need test was removed. Friends of the Earth considers that the ‘need test’ is an essential part of the assessment of the impact of out-of-town retail development on town centres and that its removal would seriously undermine the town centre first policy. Without understanding existing need and the impact of a development on meeting that need, it is hard to see how the impact of the development could be fully assessed. The majority of the planning officers surveyed, ie those that are involved in applying the ‘town centre first’ policy, have contradicted Barker’s assumption that this policy can work without the need test. The Competition Commission also suggests that the ‘need’ test is “closely related to the ‘sequential approach.’” [93]

The Need Test was introduced as a response to the fact that the sequential test on its own was not enough to stop inappropriate development taking place. It was introduced by a Ministerial Statement (Caborn Statement) in 1998, as a clarification of Planning Policy Guidance 6 (PPG6) which had been published in 1996. PPG6 introduced the sequential approach to development, in which out-of-town sites were only acceptable for development if there were no more central sites available. But the guidance left it unclear as to how acceptable out-of-town retail development was if there was no forecast shortage of retail space.

The 1998 Statement came as a response to an application for a large retail development outside a small town centre, where there were no more central sites but no need for a development of that site. The Statement required developers to demonstrate a forecast need for additional retail floorspace for out-of-centre proposals.

Barker believes that the sequential test and impact test (more information on this in section 4.b.vi) are enough on their own and that *“the requirement for applicants to demonstrate need should be removed, and can be done without harm to the overall policy.”* However, this assertion fails to take account of the issues which the need test address. While the sequential approach deals with the *siting* of new retail development, the need test is crucial to determine whether there is a capacity for that development in the first place.

**v) The impact of removing the need test on the working of the sequential test**

Without a need test, retail development of any size could be considered acceptable. The larger the size of the application, the less likely there are to be sequentially acceptable sites – and without the need test the barrier of being required to prove that there is capacity would have been taken away. Retailers could target locations where there are no town-centre sites, and would no longer be constrained by the requirement for the development to be appropriately sized and meeting a proven need, so could effectively build huge out-of-town stores anywhere, whether or not such a store is needed.

The impact of this would be a diversion of trade from town centres to out-of-town locations, and the inevitable impacts on traffic and the undermining of vitality and viability of town centres. The policy would restore market forces as the only control on the extent of new developments, and remove the current vision whereby such forces are moderated by proactive planning and control of development to make sure it is in line with capacity so that town centres, the environment, and social fabric of communities are all protected.

The consensus of the local authority planning officers surveyed was that the tests worked together, and that the other tests without the need test would not be as effective.

According to a planning officer from Rotherham MBC, “sequential tests help direct development towards town centres but is most effective when combined with all other PPS6 tests.” A planning officer from Sheffield City Council suggested that “the other PPS6 tests can be relatively easy for applicants to overcome if no in-centre or edge-of-centre sites are available, as is often the case.” And according to a planning officer from Sefton MBC:

*“To remove the test of need will place the onus on sequential alternatives and impact in considering whether to refuse an out-of-centre retail proposal, the latter of which is often very contentious and subject subjective judgement. **Accordingly, it will make it more difficult to LPAs to resist inappropriate out- of-centre retail development, undermine much good work that has been done in protecting existing centres (some of which are vulnerable) and weaken the ‘town centre first’ approach enshrined in PPS6, potentially leading to inappropriate out-of-centre retail development.**”*

Some of the planning officers suggested that without the need test, the working of the sequential test itself would be impaired. According to a planning officer from an outer London Borough, “the need test is also integral to the sequential location test as sites need to be assessed in accordance with the identified need. The removal of the need test would therefore inhibit the intended operation of the sequential location test.” According to a Somerset planning officer, “whilst the sequential test would still need to be met in terms of location of development, this could effectively be rendered redundant if LPA’s are unable to assess retail development proposals on locational issues in the absence of need that could not be met in-centre.”

**vi) The impact of removing the need test on the ability to assess impact**

Under PPS6, planners are required to assess a proposal in terms of the expected impact it would have on existing town centres. Barker proposes leaving the impact test intact. However, Friends of the Earth believes that without a requirement on developers to demonstrate that there is the need for the development, it will become far harder for local authorities to calculate the impact that a development would be likely to have. **Of those surveyed, 88% agreed that the absence of a need test would make it more difficult for the authority to assess the impact of a proposed edge of town or out of town supermarket development on a town centre (66% strongly agreed).**

<b>Local authority planning officers believed that removing the need test would decrease their ability to assess the impact of proposed developments.</b>	
<b>Comments included:</b>	
A Warrington MBC planning officer	<i>“If a need assessment is not undertaken, it will be even more difficult to come to robust conclusions regarding economic impact. One assessment follows naturally from another.”</i>



A Rotherham MBC planning officer	<i>“In the absence of any needs test then any consideration of impact on town centres would need to consider how other development would impact on plans for, and the ability for development to come forward in these town centres. Therefore there will need to be some element of consideration of need and capacity – removing this as a specific test could either displace it to consideration elsewhere or remove completely.”</i>
A North West authority planning officer	<i>“The needs test is crucial element in assessing impact by using both qualitative and quantitative methods. Free market will lead to the death of the Town Centre.”</i>
a local authority planning officer	<i>“Retail impact calculations are easier to manipulate to suit developers’ desired outcomes than those of capacity, and a combination of the two creates a thorough approach.”</i>

### **vii) The need test is a crucial source of information for local authorities to use**

The existence of the need test provides a useful source of information for local authorities. Removing the information from which local authorities can make decisions will shift the focus further towards giving developers the benefit of the doubt rather than scrutinising the application. Though local authorities are required to plan proactively based on assessing retail need, the need test provides a continuous mechanism for monitoring retail development and town centre situations.

According to a Somerset planning officer, “[the tests]also act as a reminder to LPA’s of the need to ensure that their information and knowledge of the local area is up-to-date and robust in order to deal with development proposals that are inconsistent with and/or not provided for, through the current development plan.” According to a Metropolitan Borough Council planning officer, removing the need test would reduce “the knowledge the LPA has about the need for retail development reduces our ability to plan properly for the area” and “would reduce the amount of control the LPA has over potentially harmful out-of-centre developments.”

### **viii) The ‘need’ test is not stifling competition**

The need test is designed to ensure that new retail development is accommodated in as sustainable a pattern as possible and in town centres if sites is available. It does not work to restrict competition by blocking supermarket development altogether. The Competition Commission’s Emerging Thinking, published in January 2007, does not support Barker’s view that the town centre first policy is anti-competitive. The report notes the significant expansion of large format stores since the policy was introduced, and concludes that “the need test, by itself, does not represent a constraint on the construction of larger supermarkets.” [94]

The removal of the need test is supported by a particular group of companies including US retail giant Asda-Walmart. Friends of the Earth believes that it is not for planning policy to accommodate the specific needs of a particular business sector especially when those needs come at the expense of small businesses and a communities rights to shape the retail future of their areas.

Rather than stifle competition, the need test works to encourage developers to actively seek

out sites in town centre locations by making it easier to carry out development there. A planning officer from Sheffield City Council gives his opinions on the workings of the test:

*“Removing [the need test] would make the sequential approach ineffective by making in-centre sites less likely to be developed. A retail developer preferring a cheaper, more easily developable, out-of-centre site would wait for any in-centre site to be taken by another developer and then propose the out-of-centre site. There would be less incentive to pursue development on an in-centre site if a cheaper out-of-centre alternative were available. However the Needs test might well have limited the amount of further retail floorspace that could be allowed, once the in-centre site was developed. Knowing that out-of-centre alternatives would not be allowable would have acted as an incentive for developers, retailers and land owners to actively pursue in-centre sites.”*

#### **ix) The need test helps identify inappropriate developments**

In the Competition Commission’s survey of local planning authorities for its grocery market investigation, it found that 95% of LPAs said that quantitative need was a factor considered in determining planning applications (as well as 16% saying it was the most important factor – third to 51% identifying conformity with the development plan as the most important factor and 17% identifying retail impact assessment as the most important factor). [95]

#### **x) Shopping centres and supermarkets**

Research suggests that much of the return to town centres since the introduction of PPS6 has been the result of new shopping centre development being heavily focused in town centres (around 78%). However, the majority of large towns and cities have had new shopping centres in the past decade so developers are turning to smaller towns, where the risks are higher.

For the return to town centres to continue to take place, a continued commitment by the Government to town centre first policy is needed. According to this research, “If such a change [to the need test in PPS6] were to encourage out-of-centre, large-format developments, such as hypermarkets selling a mix of convenience and comparison goods, these medium-sized and smaller town centres would no longer be attractive places to invest in shopping centres – the only type of retail development that is likely to deliver the Government’s “town centres first” policy.” [96]

#### **c) The presumption against development**

Barker proposes the re-introduction of a presumption in favour of development which was replaced in the 1980’s with a presumption against. As illustrated by some of the case studies throughout this report and in Friends of the Earth’s report “Calling the Shots”, local authorities already find it hard to say “no” to new supermarket development even when there are strong arguments against it. At the moment the level of refusals for planning applications is very low: in 2006 Tesco received ten refusals for 194 planning applications, and in 2005 they received fourteen refusals for 197 planning applications (these figures exclude appeals). [97]

Currently, when there is a fine balance between the reasons for and against a development, local authorities should presume against the development – not risking facing its negative impacts by deciding in favour. This is also amongst the controls against development that

Barker proposes scrapping. Barker recommends that “Where development plan provisions are indeterminate or where they are not up to date, the application should be approved unless there is a good reason to believe the likely environmental, social and economic costs of the development will outweigh the respective benefits.” [98]. This move would undermine the neutrality of the planning system and would make it harder for local authorities to resist a development even if they have serious concerns about the impact it may have. It will also encourage speculative development that has not been tested by the development plan process.

An illustration of the sort of impact this change may have on the planning system can be gleaned from looking at some decisions against supermarkets. In July 2006 the Secretary of State decided against a major application by developers for a Tesco hypermarket development in the town centre of **Dartford, Kent**, which the Planning Inspector investigating the application believed was “a finely balanced case.”

The Inspector concluded that there was a major potential for regeneration benefits to be gained from the development. However, he also had reservations about how strongly these might be felt – the benefits were “far from certain,” particularly due to the poor linkage with the town centre – and could see some potential damage the development may inflict. It would constitute a “dramatic change in the nature of the town,” by significantly altering the built environment, the character of the town, the commercial characteristics, and removing open space. The impact, both positive and negative, was far from certain, in part due to the huge scale of the proposals, as few retail developments in the UK are this big.

In the end, the Inspector judged that the risks and potential costs in the development were too high to allow it despite the benefits he judged might arise. [99] Under Barker’s proposals it is likely that similar cases would not be refused in the future. In that case, other English towns may see large-scale developments taking place, and face the risks and dramatic transformations that were judged to be too severe in Dartford’s case.

#### **d) Democratic involvement in planning is a crucial part of the process, helps secure better development and does not slow down the process**

##### **i) The benefits of community participation**

Friends of the Earth and Tescopoly have come across an incredible number of groups and individuals wanting to get involved in the planning process by making their voices heard on supermarket development applications local to them. Some of these have opposed supermarket expansion, others have opposed specific details of the development in question, and others have had strong views about how the development could best reflect local needs.

Of the 84 recent campaigns listed on the Tescopoly website ([www.tescopoly.org](http://www.tescopoly.org)) as of February 2007, 45 involved active use of the planning system by groups to oppose supermarket planning applications. A much higher number of individuals who have contacted Tescopoly by email have used the planning system to make their voices about supermarket development heard.

This public interest is a major opportunity for local democratic engagement and participation, at a time of dropping voter turnouts and public disengagement with politics. It also offers an opportunity in the wealth of local knowledge, expertise and creative ideas that people often

have about the ways their communities could develop. Reducing opportunities for public involvement in this sphere would be a missed opportunity and a real loss to the quality and sustainability of development, and to the empowerment of communities; both of which are professed Government objectives.

The value of community participation has been confirmed by the Planning Inspectorate in decisions it has made about supermarket planning applications. In July 2006 the Secretary of State decided to refuse an application for a major town centre development in **Dartford, Kent** that would have included a Tesco hypermarket. There was substantial local opposition to the plans, something that was referenced by the Inspector reporting on the application. According to the Inspector's report:

*"The scheme has generated substantial interest among the population of Dartford and its surroundings, the greatest area of controversy being the impact of the proposed road on Central Park...I also give considerable weight to the thousands of objections to this particular aspect of the scheme. The applicants rightly said that strength of reaction alone is not sufficient to justify refusing a scheme if not substantiated by sound arguments... nevertheless from my own assessment I consider that the public's fears are based on tangible concerns backed up by evidence about the nature of the road, the traffic levels it would carry and common sense about its likely impact with regard to noise, visual intrusion and perception of safety."* <sup>[100]</sup>

The Inspector's report also attached considerable weight to submissions made by Dr Howard Stoaite, Dartford's MP, who had played a part in the local campaign against the development.

Likewise, the Planning Inspector deciding on an application by Tesco for a larger store than it had existing planning permission for in **Stretford, Greater Manchester**, used information submitted by a local group, Manchester Friends of the Earth. The group had carried out a survey on the impact of a new Tesco store in Burnage, a nearby area of Manchester. The Inspector, while expressing doubt about some of the impact projections submitted by the applicant (see below for more on this), states that:

*"What is persuasive, however, is the evidence produced by interested persons on the effects of the opening of a Tesco Extra store at Burnage in south Manchester. Although the study is not a rigorous or comprehensive piece of research, it does provide what I accept as worthwhile empirical evidence of the effects on small neighbourhood shops on the opening of a superstore... local shops cater well for the needs of those shoppers who, in particular, do not have their own means of transport."* <sup>[101]</sup>

In this case, campaigners were delighted that their submissions had been taken into account, and felt as though their involvement had been exonerated and hard work paid off. According to Paul D'Ambra of Manchester Friends of the Earth, *"the planning system can seem confusing and difficult to understand... we all thought that we were making a gesture rather than having a real effect. So this result shows just how important it is that people stand up for themselves and their communities and what an effect they can have."*

Local retailer Debbie Clarke said that *"contrary to how we often feel, there is a real opportunity to make our voices heard in these cases. I feel we have been listened to and we have made a difference and it's a process definitely worth getting involved with."*

In **Darlington**, community involvement made a significant difference. Tesco and the Borough Council were in negotiations for three years <sup>[102]</sup> until the Council opened public

consultation on the proposals in September 2006. The proposals would have involved a town centre redevelopment scheme with Tesco building on the current site of the Town Hall and providing replacement facilities for the Council. The consultation process, described by an officer as “probably the largest and most far reaching public consultation ever undertaken in Darlington,” revealed widespread opposition to the plans, with 78% of residents “not in favour” in a poll. [103]

Despite the three years of negotiations, the Council voted to abandon them in November 2006. [104] According to the report to the Council meeting:

*“Whilst a decision on whether to proceed or not with any development proposal properly rests with the elected Members of the Council, the views of the public and other stakeholders in Darlington make an important and valued contribution to the development of policy and should be given proper consideration in this instance... the views expressed during the consultation and the results of the Mori survey do carry significant weight.” [105]*

The June 2006 Friends of the Earth report “Listen up: community involvement in the planning process,” at [http://www.foe.co.uk/resource/briefings/listen\\_up.pdf](http://www.foe.co.uk/resource/briefings/listen_up.pdf), shows through a number of case studies the value of strong community inclusion in the planning process in securing better development. This report includes a case study from **Uttlesford, Essex**, where residents voiced their opposition to Tesco plans through the local authority planning process in 1998 and through a Public Inquiry in 2000.

## ii) Does the planning system slow down development?

A number of retailers have suggested that the planning system is slow and complex, and that it should be speeded up to aid new development. Asda in particular put forward this case in its submissions to the Competition Commission. The Barker Review supports this view, arguing that the planning system should be speeded up.

However, the Competition Commission’s Emerging Thinking report found that the planning process was just as likely to be slowed down by the retailers themselves. According to the Commission, “at least some of the delays in the approval process may be the result of development submissions being made that are not in accordance with local development plans and/or that there has been limited consultation with the LPA.” [106]. According to the Commission’s survey, nearly a third of LPAs believe that less than one tenth of planning applications are made in accordance with the development plan. Friends of the Earth’s research into submissions made to back up planning applications shows that many are inadequate or inaccurate, and that planning officers believe that this makes it harder for them to assess the impacts of proposed developments (see section 2.a.i).

Many local communities facing supermarket planning applications find that their experiences would match the view that it is retailers, not community involvement or LPA scrutiny, which is responsible for slowing down the system:

- In **Hadleigh, Suffolk**, Tesco has submitted several applications on a site it owns since the earliest application in 1999. The application was refused by a Planning Inspector in 2000, since when Tesco has lobbied for changes to be made to the Local Plan. Changes were made to allocate retail development to Tesco’s site and approved by the Inspector in November 2005. Tesco announced in October 2006 that it would be submitting a new application in Hadleigh [see the [Tescopoly website](#) for more information on Hadleigh].

- In **Darlington** a public consultation process in August 2006 showed widespread opposition to plans that the Council had been negotiating with Tesco for three years. If the Council had carried out the consultation before entering into negotiations with Tesco, three years of Council officers' time (as well as of Tesco staff time) would have been spared. The Council could have been working instead with the community and local businesses to come up with an acceptable plan for the town centre. [for further information on Darlington, see section 2.b.ii and the previous section]
- In **Icknield Street, Birmingham**, Tesco purchased a site in 2003. Planning permission had been granted for a store on this site in April 2002. Tesco did not do anything on the site until applying in November 2006 for a renewal of the 2002 planning permission. By this stage, Tesco had opened a further store only a few minutes' walk from the site. The 2006 application is still under consideration by Birmingham City Council as of February 2007 [<sup>107</sup>].
- In **St Albans, Hertfordshire**, Tesco acquired a site number of years ago, yet it only unveiled plans for development of the land in January 2007. The chain received criticism for its failure to use the site, which included a row of derelict houses [see land bank section below and the [Tescopoly website](#)].
- In **Sheringham, North Norfolk**, the progress of an application was slowed down by objections raised by Tesco over conditions on its proposals that the Council was attempting to impose [see section 3.e for more on Sheringham and the dispute over conditions].

## A better way forward: how the planning system could deliver vibrant and diverse retail development

The implication of Kate Barker's recommendations to Government is that the planning system should be weakened to allow big business a bigger say and to reduce public involvement – and these recommendations are likely to be included in the forthcoming White Paper on Planning. But several features of the planning system already give bigger retailers a better chance to get planning permission than smaller chains or independents and make it hard for local communities to resist developments that they do not want. This report has exposed several of the ways in which supermarkets use their power and resources to manipulate the planning system to their advantage – recommendations to address this are set out in this section.

This behaviour is made easier because aspects of national retail planning policy (set out in Planning Policy Statement 6) favour the big supermarkets for example by encouraging local authorities to make allocations for large stores. This is perhaps not surprising given the intense lobbying that supermarkets carry out in order to influence planning policy. A study for the National Retail Planning Forum concluded that the number of meetings held between major supermarkets and ODPM officials while PPS6 was being drafted “lend credibility to the feeling that the big retailers... do have a considerable impact on the shape of policy.” [108]. This section therefore also looks at ways planning guidance should be made more robust.

We believe that the measures set out in this section would support local authority planning departments in implementing planning policy more effectively and consistently. This section includes the reaction of local planning officers in our survey to the recommendations we are putting forward. By tipping the balance further towards promoting retail diversity instead of helping big supermarkets expand the planning system could play a vital role in improving access to food in deprived areas and promoting more sustainable patterns of development.

The following recommendations are for Government to act on but we would like to see them being backed by the Competition Commission as these measures would help to promote competition and choice in grocery retailing.

### Recommendations

#### **1. Amend national planning policy (Planning Policy Statement 6) to remove large store bias**

One limitation of PPS6 is that it contains an explicit bias in favour of large format stores and an effective license for their approval in edge-of-centre sites. PPS6 says that “larger stores may deliver benefits for consumers and local planning authorities should seek to make provision for them in this context... to identify, designate and assemble larger sites adjoining the primary shopping area (ie in edge-of-centre locations).” This is despite evidence from the Office of the Deputy Prime Minister (ODPM) that edge-of-centre stores can draw trade from shops in the centre especially where they are not well linked to the existing centre. [109] The bias in favour of large stores works in the favour of the bigger chains, which are more likely to operate large superstores and hypermarkets. There may be a case for these stores in some circumstances, but there is a stronger case that other forms of retail deliver more significant benefits, including street markets and small specialist independent shops. There

is no sound planning reason for retail need in the centre or edge-of-centre to be provided by a large format store rather than an alternative format, particularly in the case of convenience and food shopping. PPS6 contains no equivalent encouragement for farmers markets or street markets in the policy despite an acknowledgement of their role in boosting the vitality and viability of town centres.

In Friends of the Earth's survey about a third (33%) of local authority planning officers said they would support a proposal to remove this provision in PPS6. Others felt the provision was unduly prescriptive and some felt that it was useful for bulky goods retailing. However, many of those who thought the provision should be kept, thought so on the basis that it gave additional control to local authorities in siting development. Friends of the Earth believes that the planning system should be strongly plan led at the local level with strong community involvement – local planning authorities should be able to decide future allocation for retail and allocate specific sites in appropriate locations without there being a policy bias towards a particular format in the national policy.

## **2. Issue additional guidance to support local authorities in making decisions**

PPS6 should be supplemented by additional guidelines on some of its provisions, so that local authorities have the tools with which to implement those provisions and so that they are implemented in a more consistent and robust way. Of particular use could be guidance about the appropriateness of scale, and additional information on need and retail impact – that was promised in PPS6.

PPS6 states that “guidance on undertaking assessments of need and impact for retail and leisure uses will be published separately.” [110]. But before the guidance had been published the Barker report was commissioned and the Government is now considering scrapping the need test.

According to an officer from Warrington MBC, ***“the whole guidance [PPS6] could be improved if the associated documents, promised to be forthcoming at the time of publication, were released. This includes assessing need and impact of new retail and leisure development, applying the sequential approach and strategies for smaller centres.”***

A planning officer from Rotherham MBC called for “publication of supporting guidance which was promised, more advice as to the scale of development to which policies apply,” and an officer from Sheffield City Council said that there was a “need to produce the daughter document - further guidance on Need and Impact assessments.” A planning officer from North Devon District Council stated that “I would welcome clarification that a store serving more than the local centre should only be considered sequentially from the town/city centre, rather than sequentially from the nearest local centre.” An officer from Rotherham MBC called for “clear guidelines regarding appropriate scales of development which should be set out in Local Development Frameworks.” An officer from an outer London Borough suggested that “the issuing of the promised guidance on need, sequential and impact tests would be helpful.” An officer from the London Borough of Haringey called for “guidance on the applying the sequential approach and preparing impact assessments.”

A planning officer from North Devon District Council said that “guidance would be useful in setting a moderate threshold above which it is appropriate to have a store split on separate



sites (para 3.18 of PPS3), rather than having a single huge store due to 'flexibility'."

### 3. Extend the need test to town centres to prevent overprovision of retail floorspace

PPS6 has been successful in protecting town centres, by introducing its strict tests for out-of-centre and edge-of-centre stores. However, while the impact test applies to all stores, the need test only applies to stores outside town centres or on the edge of town centres. This is on the basis that its purpose is to ensure that retail outside the centre will not be able to divert trade away from existing centres. There is a strong case, however, for extending the need test to cover all locations, including town centres, in the interests of promoting vibrant town centres. A town centre store may still impact negatively on other shops in the town centre, particularly if it is poorly linked with the rest of the town centre, by diverting trade from existing shops (see box).

Extending the need test to town centres would allow local authorities to ensure that large retail developments within town centres would not be over-providing for the retail capacity of its catchment, thereby potentially diverting trade away from existing shops in the centre or in other centres.

**Of the planning officers Friends of the Earth surveyed, 69% agreed that the need test should be extended to town centres.** According to a Somerset planning officer, ***"If the 'need' test is to be retained, it should be applicable to all types of significant retail development irrespective of proposed location. This would ensure that the approach would be both transparent and fair."***

A Friends of the Earth study in **Hove, Sussex** in November 2006, revealed that a new 30,000 sq ft Tesco store in central Hove had resulted in an average drop in turnover of 15% amongst existing businesses in Hove town centre. Though the store is situated on one of the main roads in the town centre, it has no entrance on the street. Local traders complained that the pedestrian linkage from the store to the pedestrianised George Street was poorly lit and not visible enough.

When refusing the application for a 100,000 sq ft Tesco hypermarket in **Dartford, Kent**, the Planning Inspector concluded that despite the fact the store would be in the town centre, it would not be well linked with the existing shops by the proposed raised travelator, so would have a negative impact on the existing centre. The Inspector claimed that at that size the store would be "to all intents and purposes a self-contained development at the edge of the retail area" and that "such a large store would have some adverse retail impact on existing stores in the town." [111]

### 4. The need test should be enhanced to promote local retail diversity

The evidence gathered for this report shows that the need test is not working perfectly. This could in part be addressed by issuing clearer guidance to local planning authorities and ensuring that they have adequate resources to properly assess retailers' submissions (see above). But if the Government is going to review the need test Friends of the Earth believes

that – rather than scrap it - it should consider ways of enhancing it so that it delivers the policy aspirations of diverse and vibrant town centres.

A new test must retain the key assessment of need and impact of new retail development. But an enhanced need test could also provide an opportunity to bring forward a set of qualitative measures designed to give an understanding of the impact of new development on quality of places and quality of life including the issues of retail diversity and retail experience.

Friends of the Earth believes that quality of life is strongly related to diversity. The Competition Commission shares our concerns that individual supermarkets have become dominant in local areas (see box below). But we differ from the competition authorities view that what matters is choice of different multiple retailers in a locality – such as a Tesco and an Asda instead of two Tescos. Local authorities should, through the plan making and development control processes, be able to ensure that there is a wider choice of different forms of retail within an area, including small specialist shops, farmers markets, street markets and independent convenience stores as well as supermarkets.

Access to local retail outlets is especially important for groups on low incomes and without access to private transport, for whom the ability to use small shops and street markets with affordable fruit and vegetables is crucial.

#### **Local dominance**

The Competition Commission, in its Emerging Thinking report of January 2007, noted that in some local areas specific retailers may have an unusually high market share. It stated that this was an area that would become the focus for its ongoing investigation, and that it may be a serious problem with the market. In particular, Tesco has an especially high market share in certain localities.

In October 2006 market research company CACI revealed that out of 121 postcode areas in the UK, Tesco had the highest market share in 81. It had the second highest in a further 24. It had a higher than 50% market share in 6 postcode areas: Southall in West London, Truro in Cornwall, Swansea, Inverness, Twickenham in West London, and Perth. There were only four postcode areas where it had no market share: Shetlands, Orkney, the Outer Hebrides and Harrogate, North Yorkshire, where Tesco as of February 2007 is waiting to submit a planning application. [<sup>112</sup>]

See the [Tescopoly website](#) for information about campaigns in **Inverness**, against a further store application by Tesco, and in **Harrogate, North Yorkshire**.

An enhanced need test could also provide a more robust means of measuring local economic benefits; for example to take account of whether money spent by shoppers will stay in the local economy or leak outside of the area.

Friends of the Earth believes that an improved need test would not be a departure from existing policy but would help Government and local planning authorities to deliver on existing policy aspirations. For example PPS6 already encourages local authorities to:

- **consider qualitative need.** Local authorities should consider how well new applications serve specific parts of the community such as whether a new store will

increase access to food among low income groups. PPS6 calls on local authorities to ensure that “provision is made for a range of sites for shopping, leisure and local services, which allow genuine choice to meet the needs of the whole community, particularly the needs of those living in deprived areas.” Local authorities are supposed to tackle deficiencies in retail provision on deprived areas. [113]

- **take account of the benefits offered by alternative types of retail.** PPS6 states that local authorities “should, where appropriate, seek to protect existing facilities which provide for people’s day-to-day needs.” In particular, village shops and farm shops are acknowledged to contribute to communities and economies. [114]

## 5. Confirm that store ownership should be considered in decisions if it makes a material difference in planning terms

Currently, PPS6 does not require consideration of the type of retail operator or store ownership of an application, on the basis that this is not a material planning issue. However, the large chains’ buyer power and brand influence gives them an unfair advantage over other types of retailer; for example through the ability to run short term promotions which smaller retailers cannot match. The planning system is not supposed to consider competition issues but if one type of retailer is likely to have a higher impact on existing shops and therefore on the future of the town centre, then this is a material planning issue. This has in fact been acknowledged in some recent decisions made by the Planning Inspectorate (see box below).

In considering an application for an Asda store in **Worthing, Sussex** the Planning Inspector concluded that Asda’s position would allow it to have too big an impact on the existing centre: “in that it would offer the same goods, albeit with a greater range and at cheaper prices because of the company’s considerable purchase power, I consider that [the store] would act like a Goliath to the existing shops in what would prove to be an unequal fight. It would effectively unbalance the centre.” [115] Similar considerations were taken into account by a Planning Inspector considering an application for a retail unit in **Newington Green, in Islington, North London**. Permission already existed for a mixed use development including two small restaurant units. The Inspector was considering a further application to replace the smaller units with a larger retail unit, and concluded that the larger unit would be too harmful to residential amenity. However, the impact would be even greater for “a supermarket operated by one of the major foodstores, which is a very likely prospect in my judgement”, which would cause an even greater amount of traffic. [116]

The Competition Commission’s survey of local planning authorities found that 44% said they take some account of the choice of grocery retailers when reviewing planning applications, while 42% felt that the planning system could reduce the choice of grocery retailers in the area. [117]

Allowing local authorities to take account of store ownership combined with an enhanced need test aimed at increasing retail diversity could help to prevent the proliferation of ‘Tesco towns’ where Tesco gradually increases local dominance by a series of planning applications and takeovers as it seems to be doing in Birmingham (see box below) and other towns and cities.

### Birmingham case study – Tesco town

Birmingham is one city that has seen a large number of Tesco stores opening in recent years. The case study below is neither comprehensive nor does it suggest that Birmingham is a unique case. Instead, it attempts to illustrate what Tesco's growing market share in a local area means on the ground.

#### Recent applications in Birmingham

- an application for an Express store in **Hagley Road, Harborne**, in November 2006 (reference S/06394/06/FUL) [<sup>118</sup>]
- an application to renew planning permission for the construction of a superstore with other developments at **Pershore Road, Stirchly**, submitted in November 2006 (reference S/06669/06/OUT) [<sup>119</sup>]
- an application to renew planning permission for a store in **Icknield Street, Spring Hill**, submitted in November 2006 [<sup>120</sup>].
- An application for a 60,000 sq ft foodstore at **Bromford Lane/Coleshill Road, Ward End**, submitted in May 2005 and still under consideration as of February 2007 (reference N/04147/05/OUT) [<sup>121</sup>]
- A major application for a mixed use development at **Bristol Street** on the edge of the city centre. The application was submitted in June 2006 and as of February 2007 is the subject of a Public Inquiry due to being called-in by the Secretary of State. The application involves an 90,000 sq ft foodstore. The Bristol Street application has met a campaign from local residents who want to see a regeneration scheme funded by a proposed Asda development on the site take place. The residents are concerned at the lack of supermarket choice in the area. See the [Tescopoly website](#) for more details.
- Planned developments for a 55,000 sq ft supermarket development at **Hodge Hill**. Birmingham City Council's planning committee has recommended approval of the application in December 2006, but as of February 2007 it is facing a Public Inquiry after being called in by the Secretary of State. Local residents, in a campaign backed by the local MP, are protesting about the loss of playing fields that would result from the development.
- Planned developments at **Yardley**

#### These applications supplement applications recently approved and stores recently built:

- A store at **Coventry Road, Sheldon** which Tesco acquired from Safeway in 2005 and has submitted plans to increase the size of.
- Plans for **Ridgacre Road, Quinton**, which have been approved in 2006
- A recently opened Tesco Express store in **Old Square**
- A recently opened Tesco Express store in **Hurst St**
- A recently opened Tesco Express store in **The Mailbox**
- A Tesco Metro store in **New Street** opened in 2006
- An approved Tesco Express store in **Linden Road, Cotteridge**

These supplement existing stores in the city at Caxton Gate, Sutton Road in Erdington, Castle Bromwich, Bristol Road in Bournbrook, Ladywood Middleway in Edgbaston, Corporation Street, Stratford Road in Shirley, Warwick Road in Olton, Dickens Heath, Tollgate Precinct in Smethwick, Hobs Moat in Shirley, and Hermitage Road in Solihull. [<sup>122</sup>]

## 6. Introduce a floorspace cap in national planning guidance with flexibility for tighter caps at regional or local level

Friends of the Earth has suggested implementing a national floorspace cap of 30,000 sq ft as a limit to the size of new retail foodstores or extensions to foodstores. This cap would help stem the growth of large out-of-town hypermarkets. Studies suggest that 30,000 sq ft is the tipping point above which productivity levels cease increasing<sup>123</sup> In recent years Belgium, Norway and Denmark have all set 3,000m<sup>2</sup> caps with the underlying research assumption that there are no further size-related efficiencies to be gained from stores larger than that.

**In Friends of the Earth's survey of local authority planning officers, nearly a third of officers (31%) agreed that a cap would be useful.** Officers disagreed over whether national, regional or local level would be the best place for such a cap to be set, and some suggested that the creation of regional or local planning guidance would be the most appropriate forum to set it.

Comments in favour of a cap include:	
A planning officer from a North East authority	"Would support the investigation of caps on floorspace for out-of-centre stores of various types - may be overly restrictive/anti-competitive - but it could contribute to the more efficient and sustainable use of land."
A planning officer from an inner London Borough	"Yes, this would avoid the growth of out of centre retail parks which would place significant pressure on the viability of small and medium sized town centres."
A planning officer from Stratford District Council	"Yes. Possibly – to try to prevent stores that are over-dominant within the local retail sector. Most towns now have food-based superstores. This approach could help to resist another store of the same scale/nature when what is needed is a more diverse offer."

## 7. Provide more expertise to assist local authorities in assessing retail applications

The fact that local authorities rely on often sub-standard submissions sent in by retailers, and lack the resources with which to assess these submissions, means that local authorities may be making decisions on the basis of poor quality and even incorrect information (see section 2). Friends of the Earth believes that local authorities should be provided with further resources with which to assess and consider applications. This could include expertise at the regional level from which local authorities could draw support and information or ensuring that expertise is available in enough local authorities that could then be shared between authorities in the same area. **In Friends of the Earth's survey 77% of planning officers agreed that extra resources at the regional level would be useful** (44% strongly agreed). One major advantage of this would be that the impact and capacity for stores could be assessed beyond the boundary of local authority areas – store catchment areas cannot be confined by local government boundaries. However, some authorities did raise the concern that regional involvement could lack knowledge of local circumstances which indicates that the idea of sharing of local expertise is worth exploring.

**8. Reform the system of S106 agreements (planning gain) so that they cannot be used as a local sweetener for an otherwise undesirable development.**

Evidence suggests that the ability of major retailers to make major contributions to local facilities gives them an unfair advantage over smaller retailers and can also distort the decision making process as objections are overcome by financial gain.

Diverting planning gain to a central fund would remove the possibility of local 'bribes'. The Government's proposed Planning Gain Supplement where the local authority would identify infrastructure needs associated with new development and levy a set charge would go some way to overcome the more extreme abuse of this system. It would at least reduce local negotiations because the contribution to be made would be codified. However this system could still favour large companies and large developments which could bring the most additional resources to a scheme – the Government needs to ensure that small businesses are not disadvantaged by the new system.

**9. Clarify the situation regarding award of costs to give elected councillors more confidence in the decision making process**

Evidence suggests that there are cases where the threat of costs when made by a major supermarket can influence the decision of elected councillors. The Government could help to restore confidence in what should be a democratic process of decision making by issuing advice on the award of costs. Firstly councillors should be reminded that there have been no incidents of a councillor being surcharged as a result of a successful bid for costs. The Government should also make it very clear that bullying behaviour on the part of a developer – in the form of letters sent direct to councillors from retailers solicitors or agents for example - is unacceptable in the planning process. Councillors have a key role as representatives of their local community and this role must not be allowed to be de-valued by the interests of big business.

## Conclusions

This report shows that the planning system is already heavily weighted in the favour of the big supermarkets. Friends of the Earth has identified a number of practices and imbalances in the system that make it easier for larger retailers to gain planning permission for stores. Yet the Government is considering a shake up of the planning system that would tip the balance further in favour of big business. In our view this would seriously undermine the credibility of the system.

The superior resources held by large multiple chains such as Tesco, Asda, Sainsbury's and Morrisons give them huge advantage. They can make offers of new facilities to local authorities. They have the capacity to spread their applications over long periods of time and find ways to use the planning system to their own advantage. At the same time, local authorities face a lack of resources which makes it harder for them to assess often sub-standard submissions while dealing with supermarket lobbying and taking account of a frequently changing system. But despite these challenges and imbalances current policy has contributed to more sustainable patterns of development and when the system does work well local communities are able to convince decisions makers to reject supermarket proposals and draw up alternative plans.

In this context, the changes that are needed are ones that would make sure that communities are consistently able to make their view count, and that would make the planning system more robust and create a level-playing field. Reforms are not needed to speed up the process and give big business ever greater influence over decisions. PPS6, still in its infancy, needs to be given time to sink in and become embedded before major changes are made. But local authorities should be given the additional guidelines that were supposed to come with PPS6. They should also be given additional resources for dealing with development control. Additionally, reforms to current policy are needed to remove bias in favour of the big supermarket and strengthen local authorities' ability to deliver diverse and vibrant town centres.

The imbalance currently existing in the planning system shows that a removal of the need test in PPS6 is not necessary. It is already easier for large retailers to enter the planning system than smaller chains. The need test, like the other PPS6 tests, is a vital addition to the development control process that allows local authorities to protect town centres and pursue urban regeneration and social inclusion. A threat to the need test is a threat to local authorities' ability to pursue those aims. If we are to achieve vibrant town centres and social and environmental sustainability, the development control powers currently held by local authorities need to be preserved and strengthened, not diluted.

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