

# THE NATIONAL RETAIL PLANNING FORUM

Chairman: Mr Chris Brearley, CB, DL

The Inquiry Secretary  
(Groceries Market Investigation)  
Competition Commission  
Victoria House  
Southampton Row  
LONDON  
WC1B 4AD

31<sup>st</sup> March 2008

Dear Sir,

## **Groceries Market Inquiry Provisional Decisions relating to Planning Remedies**

I am the chairman of the National Retail Planning Forum (NRPF) and am writing to you on its behalf. The Forum is a cross- sector organisation, founded in 1996. Its members include major retail firms, investment institutions and property development companies as well as the Local Government Association. Its aim is to be a focus for improving understanding between private and public sectors on planning and its impact on retailing, which it does through a programme of research and collaborative events. It also inputs to relevant consultations by Government and organisations such as yours that have implications for retail planning.

A recent Board meeting was the first opportunity we had to discuss the Provisional Decisions relating to Planning Remedies of your inquiry into the Groceries Market which you had published on 15 February. Some very clear views were expressed on your proposal for a 'competition test' within the planning system and these are set out below. I know that this response (from which one of our members, ASDA, dissociates itself) is after your deadline, but you set a very short consultation period of only 3 weeks. We hope you will find our response helpful even now and be able to take it into account in reaching your final recommendations.

Your recommendation to the relevant government departments is that a 'competition test' should be introduced when local planning authorities are assessing planning applications for new large grocery stores. The OFT would act as a statutory consultee to the local planning authority to carry out the test. Our concern (shared we note with others who have already contributed to your study) is that such a test would sit very uneasily inside the planning system and the way in which both plan-making and development control are operated. I should add, however, that the NRPF has not taken any view on the merits of a competition test as such. It is only because your proposal is to place it in the planning system that our interest is engaged.

In particular:

- In short your proposal is to make a material planning consideration out of something – the identity of the applicant (or occupier) and their local market dominance – which has never been regarded as an issue relevant to planning. It is usually regarded as entirely improper for planning decision makers to take the identity of the applicant or any non-planning consideration into account. We think that such a radical change in the system ought to be contemplated only if no other way of achieving the competition objective is available, and we do not believe that this has by any means been demonstrated.

*Please reply to: George Nicholson, 6 Copperfield Street, LONDON, SE1 0EP, Tel/Fax 020 7633 0903 email [Gnicho6499@aol.com](mailto:Gnicho6499@aol.com)*

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- Evidently, the test could be applied to the occupation of premises independently of any planning decision about the development of premises. Indeed the Commission's proposal is that such a test should be available outside the planning system where, for example, a company wants to move into existing premises.
- The only argument advanced for incorporating the test in the planning system is that 'it would be desirable to allow Local Planning Authorities to trade off competition issues and other (sic) planning issues at the margin in the interests of local people' (*Provisional Decision on Planning Remedies*, para 132) It seems to us, however, that there would be much scope for argument about how such a discretion should be exercised, thereby complicating further the already complicated planning process and giving further occasion for delay and legal challenge – about which there is already much concern.
- Furthermore, such an approach would seem to put in place two inconsistent regimes: one where development and planning permission is involved where there would be, in effect, a local discretion to vary the OFT's decision on the test, and the other (for example, property purchase) where no planning decision is needed and the OFT's decision would be final. But, from the point of view of the interests of local people, it is not obvious that there is a distinction between these two cases.

I am sending a copy of this letter to Mario Wolf at the Department of Communities and Local Government so that they too are aware of our views in this area.

Yours sincerely

Chris Brearley

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