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Kirklees Local Plan Hearing Sessions
Matter 18 – Retailing and town centre policies
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This letter forms a Hearing Statement, submitted by NJL Consulting on behalf of Coal Pension Properties Ltd (CPPL) (the owners of Leeds Road Retail Park, Huddersfield). This letter sets out CPPL's concerns with retail policies (particular PLP13) within the emerging Kirklees Local Plan.

Matter 18 – Retailing and town centre policies

Issue – Does the Plan set out positively prepared policies for protecting and enhancing town centres and supporting retail growth, which are justified, effective and consistent with national policy?

a) Paragraph 4.2.15 in the Council Retailing and Town Centres Technical Paper (BP15) indicates that boundaries of the Local Centres are not mapped. Does this have implications for the application of the sequential test and impact test as set out in Policy PLP 13?

Our previous Statement on behalf of CPPL suggested retail hierarchy changes so the Local Plan, as required by NPPF Paragraph 23, ensures “needs for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability”.

Given the apparent unmet retail capacity in Kirklees, Leeds Road Retail Park should be identified as a Commercial Centre capable of supporting the retail hierarchy.

On this basis, all centres within the hierarchy should have identifiable boundaries.

b) Are the requirements relating to development proposals in out of centre locations, as set out in the bullet points in section B of Policy PLP 13, justified and in line with national policy and guidance?

NPPF Paragraph 24 is clear that in applying the sequential test, “*Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale*”. However, the draft policy is not supported by evidence and is inconsistent with the NPPF. The additional detailed sequential test requirements, requiring an assessment of, for example, retailer/applicant business model, economic benefits, site connectivity and access, are out of kilter with established national policy requirements.

The detail of any sequential assessment should be proportionate to the circumstances of the application, the site and overall retail market in the area. For example, applications for retail floorspace can be speculative (i.e. with no named tenant) and in such cases there would be no information on business models. Information on a business model can be informative in applying the test but should not be a policy requirement. Likewise, it is inappropriate for a policy to specify that all such assessments should have an extensive audit trail.

Furthermore, regeneration and economic benefits are relevant in the overall planning balance, but are not a direct requirement for the sequential test (which focusses on the availability and suitability of alternative sites), and are unjustified in this part of the draft policy. The same principles apply to transport requirements.

Although the policy includes a caveat that... “*The scope and content of any Sequential Test shall be agreed with the council and shall be reflective of the scale, role and function of the proposal.*”... it does not provide sufficient clarity on the sequential test.

As set out in our Publication Local Plan representations, the sequential test portion of PLP13 should be amended to comply with national policy.

c) Is the threshold and approach to small-scale proposals in non-urban areas, as set out in section B in Policy PLP 13, clearly defined, justified and in line with paragraph 25 in the National Planning Policy Framework (NPPF)?

CPPL has no particular comments to make on this matter.

d) Are the Impact Assessment thresholds in Policy PLP 13 (section C) justified and based on local evidence?

The national policy approach to considering ‘town centre uses’ development is set out at paragraphs 24 to 27 of the NPPF. Of note for these representations, paragraph 26 (retail impact assessments) allows local planning authorities a ‘proportionate, locally set floorspace threshold’. Planning Practice Guidance (‘PPG’) provides further detail on how the local threshold should be set (see PPG paragraph 016 Reference ID: 2b-016-20140306), namely:

"In setting a locally appropriate threshold it will be important to consider the:

- *Scale of proposals relative to town centres*
- *The existing viability and vitality of town centres*
- *Cumulative effects of recent developments*
- *Whether local town centres are vulnerable*
- *Likely effects of development on any town centre strategy*
- *Impact on any other planned investment."*

The draft policy is not supported by robust evidence. The suggested lower threshold stems from the WYG Retail Capacity Study for Kirklees District (2014), subsequently updated in August 2016 (the Kirklees Retail Capacity Study Update (2016)). However, these studies conclude that centres in Kirklees (and in particular, Huddersfield) are generally healthy, i.e. there are no critical issues which need to be addressed by an onerous threshold.

Nevertheless the 2014 study advises (at paragraphs 5.72 to 5.81) that significantly lower thresholds are required. Paragraph 5.76 of the 2014 study advises:

"In our experience, it will only generally be development of a scale greater than these thresholds... [the lower thresholds set in the Draft Local Plan]... which could lead to a 'significant adverse' impact, which could merit the refusal of an application for town centre uses..."

WYG base their advice on experience rather than a rigorous assessment of the suggested thresholds in the context of the current retail picture in Kirklees. Nor do the thresholds reflect gaps in the current retail offer which could be addressed by focussing development to the town centre(s). As such, the recommendation is unsubstantiated and is not a credible base to form Local Plan policy.

Our previous Local Plan Hearing Statement set out justification for amendments to the retail hierarchy to ensure retail destinations, such as Leeds Road Retail Park, which positively contribute to meeting retail needs, are recognised in the hierarchy. Given these suggested changes, local retail impact threshold for such locations (i.e. 'Commercial Centres' should be removed.

In this instance the default national threshold should apply only to new retail units for general (open) retail uses (e.g. food or fashion retail). Other development, such as bulky goods retail or retail mezzanines within existing units has been demonstrated to be acceptable in locations such as Leeds Road Retail Park and therefore should not be subject to retail impact assessment requirements.

In summary, the retail impact thresholds should be changed to:

- Recognise the presence of 'Commercial Centres' such as Leeds Road Retail Park;
- Include a more relaxed retail impact threshold overall; and
- Not require and assessment of impact for bulky goods or mezzanine floorspace within Commercial Centres.

e) Policy PLP 13 states that proposals which fail to pass the sequential test or would have a significant adverse impact on surrounding centres will not be supported. Is this approach in line with national policy and guidance?

The sequential and impact tests are established and important means of considering town centre use development and should be applied appropriately. However, failure to comply with one or both tests should not automatically result in the refusal of planning permission.

National policy, as considered by the Courts, advocates a balancing exercise where key issues are considered in the round and weighted accordingly. This moves away from an absolute position where non-compliance with sequential and/or impact policy means that proposals cannot be supported.

As with other strands of planning policy (for example relating to housing delivery) there will be examples where material considerations could outweigh other concerns. In terms of town centre use policy, there might be a scheme which does not satisfy the sequential test, but by generating very significant regeneration and employment opportunities, could still be considered acceptable. However, such a scheme would fall foul of the wording policy currently used in the policy.

The policy should be updated to remove "will not" or "shall not" be supported.

f) Policy PLP 14 establishes the approach to retail development in core areas of town and district centres. What is Council's approach to retail development and proposals for change of use from retail in Local Centres?

CPPL has no particular comments to make on this matter.

g) Does 'retail' development/use, as defined in Policy PLP 14, relate to units in Use Class A1 to A5 and AA, or just A1?

CPPL has no particular comments to make on this matter.

h) Does Policy PLP 14 provide sufficient clarity for applicants regarding the extent of non-retail uses that may be permitted in Primary Shopping Frontages and Secondary Frontages?

CPPL has no particular comments to make on this matter.

i) Is the requirement that residential proposals should only be permitted on upper floors, as set out in criterion a in Policy PLP 15, justified and effective?

CPPL has no particular comments to make on this matter. However, it is important that the Local Plan plans positively for a mix of uses which assist in delivering vital and viable centres. Upper floor residential uses are one such way of retaining activity within the town centre.

j) Where food and drink and licensed entertainment uses are proposed, how will harm to the character, function and vitality and viability of a centre will be assessed (as set out in Policy PLP 16)?

CPPL has no particular comments to make on this matter.

k) What form of anti-social behaviour does criterion b in Policy PLP 16 seek to address, and how would it be mitigated?

CPPL has no particular comments to make on this matter.

l) Does Policy PLP 16 provide a clear framework for assessing proposals for food and drink uses and licensed entertainment uses outside defined centres?

CPPL has no particular comments to make on this matter.

Summary

Based on the above, draft Policy PLP13 is not sound. It is not positively prepared, is not properly justified, is not effective, nor consistent with the NPPF. However, these concerns can be addressed through focussed changes as referred to above and within previous representations on behalf of CPPL.

We have registered to attend the Local Plan hearing sessions.

We trust that you will find the above in order. Should you require any further information please contact me.

Yours sincerely,