

Working paper on planning issues

Introduction

1. This paper sets out our analysis, based on the evidence received to date, of the impact of the planning system on competition between grocery retailers. Our analysis of grocery retailers' land banks and related land use issues is contained in the working paper on land issues.
2. This working paper commences with a brief overview of the planning regime in the UK and then discusses the impact of the planning system on competition in grocery retailing. We look, first, at the impact of planning considerations and policies on competition in grocery retailing, and second, at the extent to which grocery retailers seek to gain a competitive advantage through their interaction with the planning system.
3. The paper includes reference to the replies received from a questionnaire on planning issues that the CC sent to all (around 400) of the Local Planning Authorities (LPAs) in the UK. Our interim analysis, based on these replies received from 80 LPAs, is in Annex A.
4. To put our analysis in context, it is worth noting that neither the primary nor sole objective of the planning system is to promote or otherwise influence competition in grocery retailing. As a result, any analysis of the costs and benefits of the planning system in terms of its impact on competition in grocery retailing can only be a partial analysis of the overall benefits and costs of the planning system.

5. We note that the Barker Report¹ has already undertaken a wide-ranging assessment of the planning system and has considered a number of issues relevant to our assessment of the impact of the planning system on competition in grocery retailing. In this paper we have sought, where relevant, to refer to the analysis contained in the Barker Report and to take this into account in our own consideration of the issues.

The planning framework

6. This section provides an overview of the law and policy primarily relating to retail planning in England with key differences in Wales, Scotland and Northern Ireland summarized later in this section.

7. The principal framework through which planning policies are delivered is the Town and Country Planning Act 1990 (TCPA) as modified by the Planning and Compulsory Purchase Act 2004.² The TCPA establishes a plan-led system of land use regulation with the following key features:
 - (a) There is a hierarchical structure of guidance and plans at national, regional and local level against which planning applications are assessed. These include Regional Spatial Strategies (RSS), developed by the regional planning body (in all regions outside London the regional planning body is the Regional Assembly) and Local Development Frameworks (LDF), developed by the Local Planning Authorities (LPA).
 - (b) Decisions on planning applications should be made in accordance with the LDF unless other 'material considerations' are sufficient to override the plan. The majority of planning applications are decided by the LPA.
 - (c) The outcome of a planning decision may take one of three forms:

¹The Government announced in the 2005 Pre-Budget Report that Kate Barker has been asked to lead an independent review of land use planning, focusing on the link between planning and economic growth. The Final Report: *Barker Review of Land Use Planning Final Report—Recommendations*, Kate Barker, December 2006, is available on: www.communities.gov.uk/index.asp?id=1504875.

²Extends to England and Wales.

- (i) unconditional permission;
- (ii) permission subject to conditions; or
- (iii) refusal.

(d) A planning permission decision (including a refusal or granting of permission subject to conditions) may be overturned on appeal to the Secretary of State for the Department of Communities and Local Government. On appeal the Secretary of State must arrange for a public local inquiry or other hearing (often an informal hearing when issues are straightforward).

8. The Secretary of State is able to direct and shape planning policy. At the national level planning policies are set out in Planning Policy Statements (PPSs). PPSs are replacing Planning Policy Guidance notes (PPGs) and reflect more recent Government policy on planning (for example, PPG6, 'Town Centres and Retail Developments', had been interpreted by a number of ministerial statements which are reflected in its replacement, PPS6, 'Planning for Town Centres'). PPSs and PPGs are prepared by the Government after public consultation to explain statutory provisions and provide guidance to LPAs and others on planning policy and the operation of the planning system. They also explain the relationship between planning policies and other policies which have an important bearing on issues of development and land use.³ At the local level the Secretary of State can make representations regarding the RSS or LDF and, if necessary, direct modifications to be made. A small number of planning applications will also be 'called in' each year and decided by the Secretary of State (ie bypassing the LPA).⁴ These applications are among the most complex and controversial⁵ and will be considered at a public

³For a full list of PPSs and (where the PPS has not yet replaced it) PPGs, see: www.planningportal.gov.uk/england/professionals/en/1020432881271.html.

⁴Section 77, TCPA 90. For retail planning, schemes with gross retail floor space over 2,500m² normally require referral to the Secretary of State under the terms of the Town and Country Planning (Shopping Development) (England and Wales) (No 2) Direction 1993.

⁵For reasons such as planning issues of more than local importance, proposals may conflict with national policies or have wider implications.

inquiry. The Secretary of State will take a decision, following the inquiry, after consideration of the report and recommendations of a planning inspector.

9. Under PPS6, 'Planning for Town Centres', applicants are required to demonstrate:
 - (a) that there are no more central sites for the development (the sequential approach);
 - (b) the 'need' for the development;
 - (c) that the development is of an appropriate scale;
 - (d) that there are no unacceptable impacts on existing centres; and
 - (e) that locations are accessible.⁶

The sequential approach—town centre first

10. Since 1988, the Secretary of State has set out retail planning policy for England in PPG6, now replaced with PPS6 in March 2005. PPG6 sought to protect the 'vitality and viability' of town centres. This protection developed over several versions of PPG6.⁷ The 1996 version of PPG6 introduced the 'sequential approach' for site selection. The underlying rationale was to promote sustainability and was built on the premise that town centres are the most accessible locations. The sequential approach sought to direct retail development to sites in a town centre, then (if no central sites were available) to an edge-of-town centre or district centre and then (if no more central sites were available) to out-of-centre locations where a number of criteria could be satisfied. The result of the 1996 version of PPG6 was thought to create a much more restrictive approach to out-of-town development.

⁶Paragraph 3.4.

⁷The first PPG6 was in 1988. Further editions were published in 1993 and 1996.

11. PPS6 retains the 'sequential approach' so that applicants wishing to develop a retail site outside a town centre⁸ that has not been allocated to retailing in an up-to-date development plan are required to demonstrate that there are no more central sites for the development.

The requirement to demonstrate 'need' (the need test)

12. Closely related to the 'sequential approach' to site selection is the requirement to demonstrate the 'need' for a retail development for a site in an edge-of-centre or out-of-centre location and which is not included in an up-to-date development plan. The requirement to show 'need' seeks to match new retail investment with unmet demand in a particular area.

13. PPS6 attempted to clarify the concept of 'need' in England. Under PPS6, a 'quantitative assessment' of need should take into account the likely future demand for additional retail and leisure floor space, having regard to a realistic assessment of:
 - existing and forecast population levels;
 - forecast expenditure for specific classes of goods to be sold, within the broad categories of comparison and convenience goods and for main leisure sectors; and
 - forecast improvements in productivity in the use of floorspace.

14. PPS6 states that quantitative assessments of need are pre-eminent. However, it also states that 'qualitative considerations' should be addressed and their nature and

⁸Off-centre locations can be categorized as either 'edge of centre', which is defined as being more than 300 metres away from the primary shopping frontages of the centre, or 'out of centre'.

importance will vary on a case by case basis. The Barker Report (see paragraph 38) proposed that the need test should be abolished.⁹

Scale of development

15. PPS6 also introduces the requirement to demonstrate that a development should be of an appropriate scale of the catchment it serves, that is, regional provision in regional centres and local provision in local centres.

Impact of development

16. A further means by which decisions on new retail investment must take into account demand is the requirement for a retail impact assessment (RIA) for any development of more than 2,500 sq metres of gross floor area that are in edge-of-centre or out-of-centre locations and not in accordance with an up-to-date development plan.
17. An RIA involves assessing the impact of the proposed development on the vitality and viability of existing centres within the catchment area. A separate identification of need does not necessarily indicate that there will be no negative impact in terms of an RIA. We were told that after the introduction of the requirement to demonstrate need, fewer planning applications were (or, if advanced, would have been) rejected solely on the grounds of impact and that this is a consequence of the stringent nature of the need test. However, we were also told that, were the need test to be relaxed, some sites which previously failed it would also fail an RIA.

⁹Paragraph 7 of the Final Report proposed a number of reforms to national planning policy including: ensuring that planning is based on the consideration of spillover effects, rather than trying to predict market demand. Planners should not be attempting to determine if there is sufficient 'need' for a given application—rather the applicant, who is bearing the risk, should be responsible for assessing that likely demand is sufficient to make the development viable. This has implications for the 'town-centre first' policy. Protecting the vitality and viability of town centres is, rightly, an important policy priority. There are a number of means whereby this goal is promoted, including the sequential test and the impact tests of Planning Policy Statement 6. These should be retained. But the requirement for applicants to demonstrate need should be removed, and can be done without harm to the overall policy. In addition, where there are concerns about potential consumer detriment caused by restricted competition in local retail markets, should the Competition Commission conclude that there is evidence of anti-competitive conduct, the Government will also need to consider whether the planning system should play a role in encouraging new entrants to a market when a new site becomes available.

Accessibility

18. In considering proposed new developments, applicants are also required to show:

- the need for accessibility by a choice of means of transport; and
- the impact on car use, traffic and congestion.

PPS6—objectives

19. The Government's key objective set out in PPS6 is stated to be the promotion of 'vital and viable' town centres by:

(a) planning for the growth and development of existing centres; and

(b) promoting and enhancing existing centres, by focusing development in such centres and encouraging a wide range of services in a good environment, accessible to all.¹⁰

20. PPS6 also refers to 'other objectives' which need to be taken into account of in the context of the key Government objective set out above:

- enhancing consumer choice by making provision for a range of shopping, leisure and local services, which allow genuine choice to meet the needs of the entire community, and particularly socially-excluded groups;
- supporting efficient, competitive and innovative retail, leisure, tourism and other sectors, with improving productivity; and
- improving accessibility, ensuring that existing or new development is, or will be, accessible and well-served by a choice of means of transport.

21. Finally PPS6 refers to wider policy objectives including:

- promotion of social inclusion;
- regeneration of deprived areas;
- promotion of economic growth;

¹⁰Paragraph 1.3.

- delivering more sustainable patterns of development; and
 - promotion of good design.
22. The first two 'other objectives' set out in paragraph 20 above indicate that under PPS6 competition is a factor that should be considered in assessing planning applications.¹¹
23. We do not have a clear view of how the competition factors set out in the objectives of PPS6 are taken into account in practice by the LPAs. The results from the questionnaire to the LPAs shows that 44 per cent of LPAs that have responded so far do take some account of the choice of grocery retailers when reviewing planning applications, but the LPAs also indicate that the planning system is not necessarily pro-competitive either, as 42 per cent of respondents felt the planning system could reduce the choice of grocery retailers in an area.

Planning in Scotland, Northern Ireland and Wales

24. The discussion above relates primarily to England. Substantially similar arrangements apply in Scotland (contained in Scottish Planning Policy SPP8, August 2006), Northern Ireland (contained in PPS5, 1996 with an updated draft published July 2006) and Wales (contained in Ministerial Interim Planning Policy Statement (MIPPS) 02/2005). However, some of the key differences we have identified to date are set out below.
25. In Scotland, while there is a sequential approach, there is no formal need test. Retail proposals not in accordance with a development plan may be acceptable provided it

¹¹Facilitating competition was also an objective set out in PPG6, which included in the Government's objectives for planning:

- to focus development, especially retail development, in locations where the proximity of businesses facilitates competition from which all consumers are able to benefit and maximizes the opportunity to use means of transport other than the car; and
- to maintain an efficient, competitive and innovative retail sector.

is demonstrated that they would help to meet quantitative and qualitative deficiencies identified in the development plan.

26. In Northern Ireland, the existing guidance is relatively general. Draft guidance has been prepared, however, which is substantially similar to PPS6 in England and contains a need test.¹² An impact assessment has to be performed for stores larger than 1,000 sq metres (compared with 2,500 sq metres in England).
27. In Wales, a need test is required for off-centre development. The guidance states that large new regional centres (with more than 50,000 sq metres of gross floor space) will not be required in Wales at present.¹³
28. We plan to look further at differences in the planning regimes in England, Scotland, Northern Ireland and Wales and would welcome further submissions on this issue, particularly on why the regimes are different and what the practical effect of the differences has been (see also paragraph 53).

Impact of the planning system on competition in grocery retailing

29. As discussed in paragraph 3, the planning system does not have as its primary objective the aim of influencing competition in grocery retailing. However, it may impact on competition in grocery retailing, primarily through creating barriers to entry or expansion, in two ways. First, the direct impact on competition of the planning system's considerations and policies (discussed in paragraphs 10 to 28), and second, use of the planning system by grocery retailers as a means of gaining a competitive advantage.

¹²Draft Planning Policy Statement 5, Retailing, Town Centres & Commercial Leisure Developments, available on www.drdni.gov.uk/DRDwww_FOISearch/details.asp?docid=2955.

¹³Ministerial Interim Planning Policy Statement—Planning for Retailing and Town Centres (MIPPS-02/2005).

Planning considerations

30. In this section we consider whether the sequential approach creates barriers to entry or expansion. We also consider the various planning considerations that require any new retail development to be matched with a corresponding demand for such retail space. We then consider whether the overall duration and complexity of the planning system creates a barrier to entry.

Sequential approach

31. The sequential approach potentially creates a barrier to entry as its requirement to develop in town centres may prevent the opening of new stores of a scale capable of competing with existing stores. Asda said that the planning regime essentially sought to achieve its objective of promoting town centre vitality and viability by leaving the amount of retail space in town centres unregulated while regulating the location and amount of any retail space allowed outside town centres. For an outside town centre development (of any size) to be allowed each of the need test, sequential test and retail impact assessment must be passed. As a result, the location and size (capacity) of firms in the grocery retail market is substantially regulated. Asda further told us that the restriction on developments outside the town centre was not compensated for by the unregulated state of town centres.
32. The extent of any barrier to entry will depend, in part, on the flexibility of grocery retailers' format requirements. For example, a policy by a grocery retailer of only developing stores above a certain size could mean that it is less able to develop town centre locations even where such a store may represent an effective competitor to an existing retail outlet.
33. A number of grocery retailers, however, told us that they had changed their strategy in response to the requirements of the sequential approach by increasing their focus

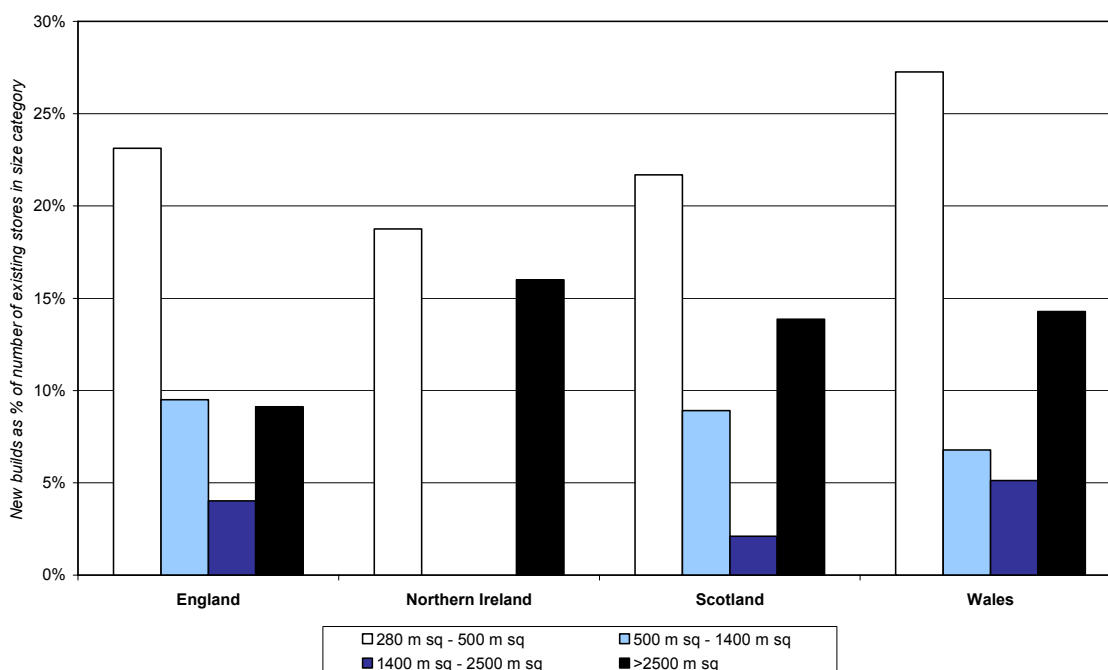
on town centre and edge-of-centre sites. For example, Tesco told us that it had increased the range and variety of store formats to gain access to a greater number of potential sites. Sainsbury's told us that 'since the 1996 change to retail policy in PPG6, retailers prepared to accept the policy focus of retailing on town centre and edge-of-town centre sites of an appropriate scale have not been unduly constrained by the planning system'.

34. We asked the grocery retailers to provide us with information about their new build stores and analysed the more extensive responses we received.¹⁴ Figure 1 shows that in the period June 2001 to September 2006, in aggregate the grocery retailers that we analysed have increased their build of smaller stores (280 to 500 sq metres) by a greater amount, as a proportion of the existing number of stores of that size, than larger stores. This appears to be consistent with a greater focus on stores being built on smaller, more centrally located sites.

¹⁴In this context we mean the grocery retailers that have provided us with detailed information about their store builds, which are generally the larger competitors: Aldi, Asda, Co-op Anglia, Co-op Chelmsford, Co-op East of England, Co-op Heart of England, Co-op Leeds, Co-op Lincolnshire, Co-op Main, Co-op Midcounties, Co-op Plymouth & South West, Co-op Scottish Midland, Co-op Southern, M&S, Morrisons, Sainsbury's, Somerfield, Tesco and Waitrose. Data from the same companies was used in Figures 2 and 3.

FIGURE 1

Newly built stores as a proportion of stores, by size, 2001 to 2006, by country



Source: CC analysis of grocery retailers' data.

Note: Calculation is number of stores in each GIA¹⁵ (gross internal area) size category built between June 2001 and Sept 2006 as a percentage of existing stores in that size category at Sept 2006.

35. The extent to which grocery retailers have reacted to the sequential approach by building new stores on smaller, town centre locations appears to differ between retailers (see Figure 2). For example, while Tesco and Sainsbury's show substantial new build in the relative number of smaller stores, Asda shows minimal new build in this store format (Asda told us that in total it had two grocery stores [✂] with net sales areas less than 1,400 sq metres).¹⁶

FIGURE 2

Newly-built stores as a proportion of stores, by size, 2001 to 2006 by retailer

[✂]

Source: CC analysis of grocery retailers' data.

Note: [✂].

¹⁵For this series of charts GIA was used rather than net sales area. For a given store GIA is larger than net sales area.

¹⁶Asda told us that it had built [✂] of these stores in town centres, however.

36. Any conclusions on the extent to which the sequential approach creates a barrier to entry depends on the extent to which we consider whether stores in the 280 to 500 sq metre bracket, for example, are in a separate product market from larger stores. Our current view is that there is an asymmetric constraint between larger and smaller stores (see working paper on market definition), but we do not have a view at the moment on where this product market boundary might lie. We will be looking further at this issue, and its consequences for our assessment of the impact of the sequential approach, in the period leading up to our provisional findings.

Matching new retail investment with demand

37. The various requirements in the planning system that seek to match new retail investment in off-centre locations with demand, such as the requirement to demonstrate need (see paragraphs 12 to 14 and 24 to 28), may represent a barrier to entry. This is because a new grocery retailer cannot simply open a store in an off-centre location and compete with existing grocery retailers.
38. The Barker Report stated that:
- It is not the role of local planning authorities to turn down development where they consider there to be a lack of market demand or need for the proposal. Investors who are risking their capital and whose business it is to assess likely customer demand are likely to be better placed than local authorities to determine the nature and scale of demand.¹⁷
39. Asda told us that the requirement to demonstrate need should be abolished because it acts to restrict entry and impedes competition beyond that necessary to support a town centre first policy. Asda believed that the planning regime (and in particular the need test) (a) acts to restrict entry in absolute terms and to impede the normal

¹⁷Barker report, op cit, paragraph 1.31.

process of competition; (b) results in incumbents in local markets with restricted competition being able to reinforce their position of strength; and (c) acts to restrict entry and therefore competition beyond that necessary to promote the policy objective of 'town centres first'.

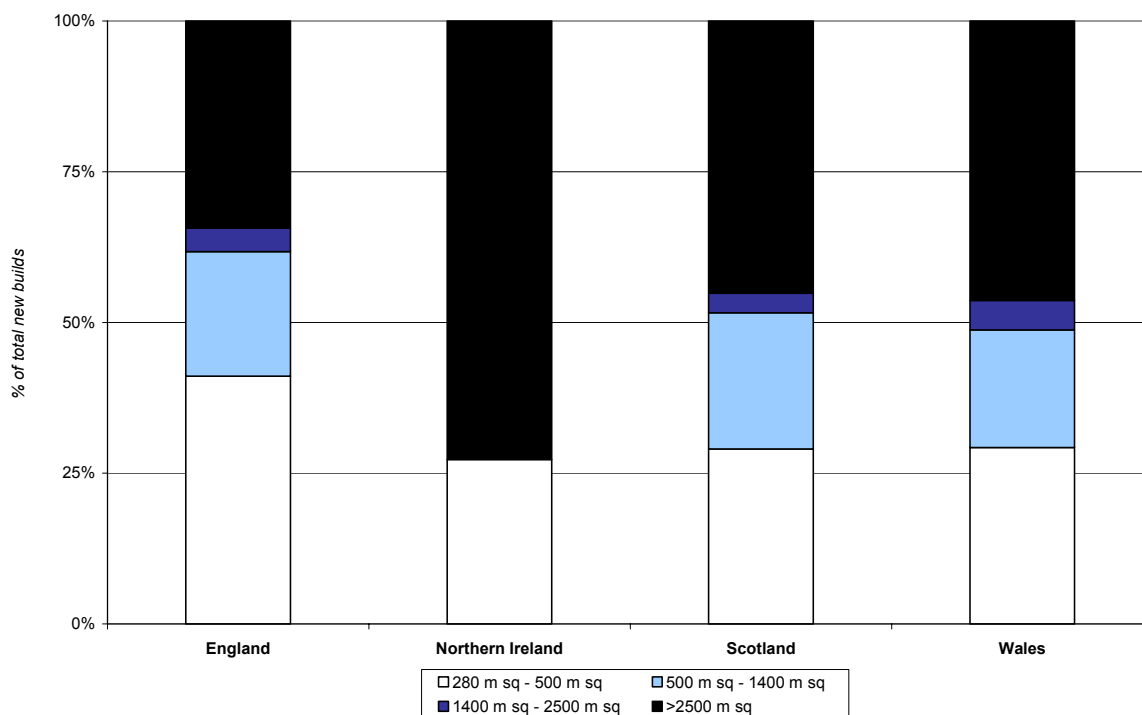
40. Sainsbury's told us that in practice the need test operates in a haphazard manner and protects existing retailers from new competition in a catchment.
41. The Department for Communities and Local Government, however, stated that PPS6 allowed some flexibility in the interpretation of the need test. If an applicant proposed a development on an edge-of-centre location, or out-of-centre location, the applicant had demonstrated successfully that there was no adverse impact on the centre, that accessibility criteria had been satisfactorily considered and other considerations had been addressed, the decision-maker might allow the application even though there might be a marginal case of need.
42. Figure 1, in paragraph 34, showed that in the period June 2001 to September 2006 more small stores (between 280 and 500 sq metres) were built, as a proportion of existing stores of that size, than was the case for larger stores. This may be seen as consistent with the operation of the need test, because stores of this size would be more suitable for satisfying a small incremental need requirement than a larger store.
43. Figure 3, in paragraph 43, shows the proportion of stores by size built in England, Scotland, Northern Ireland and Wales between June 2001 and September 2006. While the proportion of larger stores (over 2,500 sq metres) built in Scotland, which does not have a formal need test, is larger than in England, it is slightly less than in

Wales, which does have a need test.¹⁸ This suggests that factors other than the need test are also important in determining the size of new stores and that the presence of a formal need test may not be decisive.

44. In any event, as with our consideration of the impact of the sequential approach, any conclusion on the extent to which the need test represents a barrier to entry will be closely related to our conclusions regarding the appropriate product market, and in particular, the competitive constraints between stores of differing sizes.

FIGURE 3

**Stores built by size as a proportion of the total stores built
2001 to 2006**



Source: CC analysis of grocery retailers' data.

Note: Calculation is number of stores in each GIA size category built between June 2001 and September 2006 as a percentage of total stores built between June 2001 and September 2006.

Duration and complexity of the planning process

45. The duration and complexity of the planning process could, in theory, hinder competition by preventing some grocery retailers, particularly smaller grocery

¹⁸The sample size in Northern Ireland is too small to be significant.

retailers, from submitting applications. Smaller grocery retailers might feel that the resources required, or the time involved in supporting the application, make the risks too great for it to proceed with an application.

46. Grocery retailers generally regard the planning system as slow and complex. We received criticisms from some grocery retailers that LPAs:
- sometimes have too few people who are too busy to deal with applications (Sainsbury's, Waitrose, Morrisons) or under-resourced ([REDACTED]); and
 - sometimes do not have people of the right calibre (Sainsbury's, Morrisons) or enough experience ([REDACTED]) to deal with large applications, or a general lack of in-house expertise (Sainsbury's, Morrisons) and resources ([REDACTED]).
47. Factors that may contribute to delays in planning decisions include the time required to negotiate section 106 agreements¹⁹ and compulsory purchase order processes (Sainsbury's).
48. Waitrose told us that although PPS6 was certainly clearer in its aims and policy intentions than the former PPG6, on certain aspects of policy there was room for interpretation or indeed for misinterpretation.
49. However, Tesco submitted that the adverse effects of the planning regime on retail development should not be overstated. It told us that operators, including many of its competitors, were able to work within the planning regime and did build new stores. For small stores the regime was relatively unrestrictive, and for large stores the cost of planning was not the most material factor in any investment appraisal.

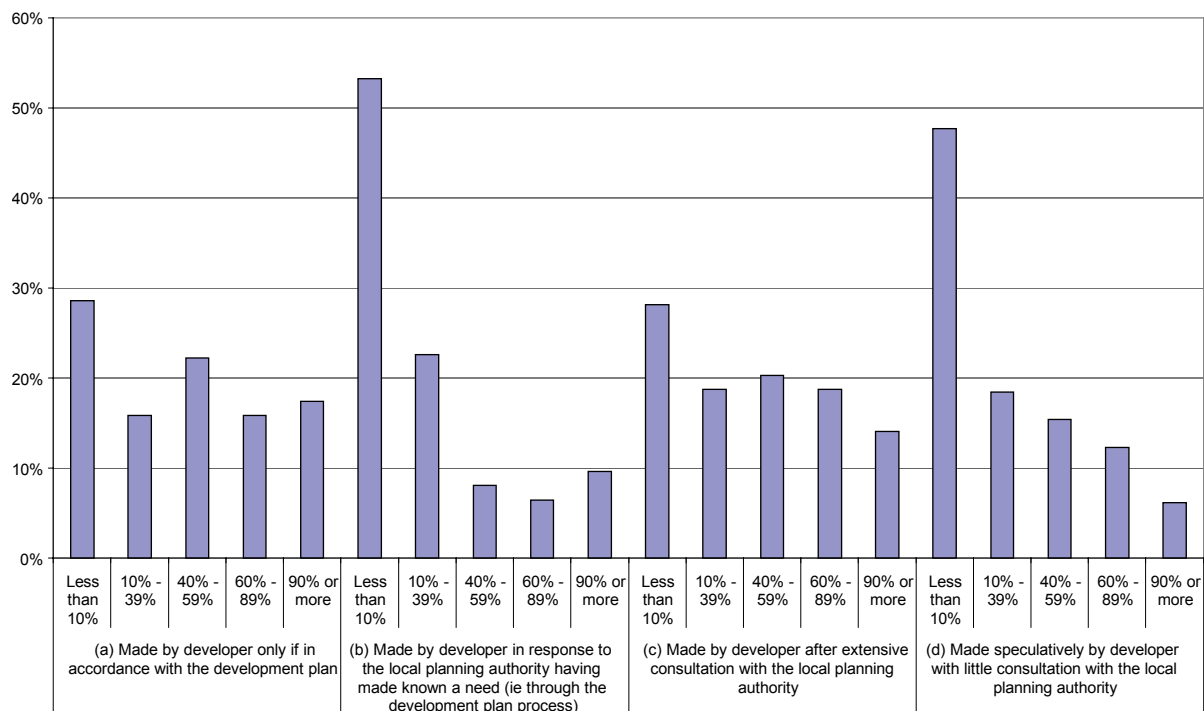
¹⁹In certain circumstances, it may be necessary for applicants to enter into agreements or undertakings with an LPA ('planning obligations') in order for planning permission to be granted. Planning obligations (or 'section 106 agreements' made under section 106 of the TCPA 1990) may restrict development or use of the land; require operations or activities to be carried out in, on, under or over the land; require the land to be used in any specified way; or require payments to be made to the authority either in a single sum or periodically.

50. The Department of Communities and Local Government told us that the performance of LPAs in approving planning applications was improving, and that 59 per cent of major retail planning applications were dealt with within 91 days (13 weeks). Planning data submitted by grocery retailers shows that in the period since 2000 it has taken an average of 334 days (median 182 days) to obtain planning approval.²⁰ Further work is planned to analyse changes over time.
51. Our LPA questionnaire indicates that, in a significant proportion of cases:
- Planning applications are not made in accordance with the local development plan. (Figure 4a shows that 29 per cent of LPAs believe that less than one-tenth of applications are made in accordance with the development plan.)
 - There is limited consultation between the developer and the LPA prior to the application being made. (Figure 4c shows that 28 per cent of LPAs believe less than one-tenth of applications are made after extensive discussions, but Figure 4d shows that there is usually some consultation between the developer and the LPA.)
 - The majority of applications are not made in response to the LPA having made known a need (see Figure 4b).
52. These factors may result in the processing of planning applications being slower than otherwise would be the case and suggests that at least some of the delays in the approval process may be a 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.

²⁰A number of retailers pointed out that the planning data submitted by the retailers related to all applications and not just applications for stores, and included a mixture of full/outline and reserve matters applications which could distort the analysis. The difference between the average and median figures also suggest that a proportion of approvals take significantly longer.

FIGURE 4

Planning applications for grocery retail developments—LPA consultation and compliance with local development plans



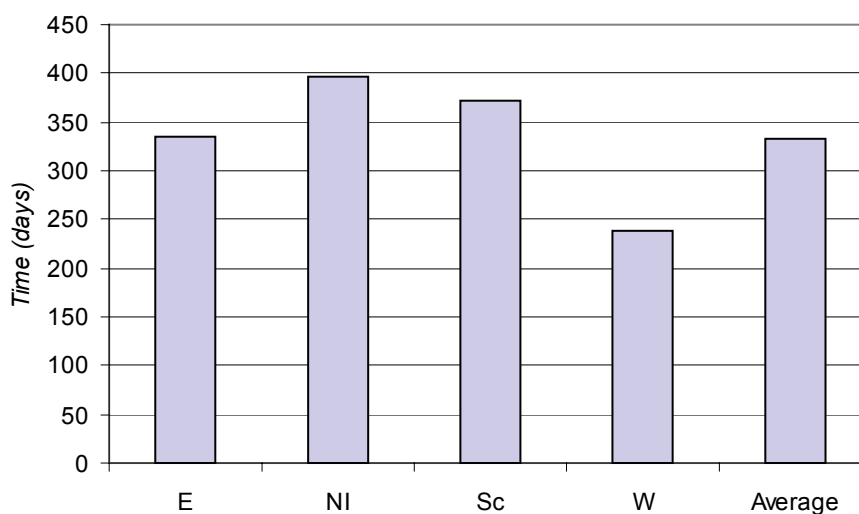
Sample size 65

Source: LPA questionnaire (interim results).

53. A review of the time required to achieve planning approval for grocery retail developments shows significant variation between England, Scotland, Northern Ireland and Wales. Figure 5 shows that planning approval is achieved significantly more quickly in Wales than in any of the other three home nations. Going forward, we intend to further look at reasons for these apparent differences between jurisdictions in the time required to obtain planning approval. We would welcome further evidence in relation to this.

FIGURE 5

Average time to achieve planning approval by region



Source: CC analysis of grocery retailers' data.

Use of the planning system to gain a competitive advantage

54. This section considers ways that grocery retailers might use the planning system to gain a competitive advantage, including:

- objecting to competitors' planning applications;
- the use of section 106 agreements;
- submitting applications for store extensions in response to competitors' applications for a new store;
- the threat of appeal against LPA decisions; and
- influencing of LPAs, including in the preparation of the development plan.

Objecting to competitors' planning applications

55. The frequency of planning objections since 2000 by a number of grocery retailers is shown in Figure 6. With the exception of Somerfield, grocery retailers have objected in total to some 9 per cent of all planning applications since 2000. With the inclusion of Somerfield, this increases significantly to [] per cent. With the exception of

Somerfield, objecting to competitors' planning applications appears to be on a relatively small scale.

FIGURE 6

Objections to competitors' planning applications by grocery retailer, 2000 to 2006²¹

[✂]

Source: CC analysis of grocery retailers' data.

56. In response to our questionnaire, around half of LPAs indicated that they were aware, or had reason to believe, that grocery retailers objected to the planning applications of their competitors, while half indicated that they did not believe that this occurred.

Section 106 agreements

57. It has been put to us that grocery retailers may use section 106 agreements as a means of obtaining planning approval that would not otherwise be granted. For example, [✂] told us that:

Tesco has offered significant planning gain in order to tip the balance in favour of consents. For example in Hanley near Stoke on Trent, Tesco was granted consent for a new Extra store, principally on the strength of its offer to build a new link road—despite the lack of sufficient need for a further store in the area. This may be a sensible planning decision but Tesco is largely alone in its ability to offer planning benefits of this scale and nature.

²¹Success was assessed based on the outcome of the planning application so that (a) withdrawn/called in means objector won; (b) granted with conditions means objector lost. In some cases there could be more than one competitor objecting to a planning application, in which case the same criteria for success are applied to both objectors. The information submitted suggests, however, that there are only a few cases where there has been more than one company objecting to a competitor application. Also the analysis does not take account of whether other factors besides an objection may have caused an application to be rejected.

58. The proportion of planning permissions with an associated section 106 agreement ranges between 22 and 45 per cent for the four largest grocer retailers. Within this range, [X] and [X] have a similar proportion of planning permissions with section 106 agreements, while [X] has a somewhat lower and [X] a somewhat greater proportion.²² Going forward, we will assess the extent to which the value and number of these agreements varies by retailer and by type of application.²³

FIGURE 7

Number of section 106 agreements since 2000 as a proportion of total planning applications

[X]

Source: CC analysis of grocery retailers' data.

Applications for store extensions

59. Where additional 'need' for grocery retailing may have been identified, incumbent grocery retailers may be able to impede entry by proposing extensions to their existing stores that will address this need, preventing new entry by a competitor taking place. The application could be made to use up need before a competitor application has been made or in response to a competitor planning application.
60. Asda believed that the existing planning regime created opportunities for incumbents in local markets to frustrate entry by competitors through applications for extensions. While extensions may be built to satisfy customer demand, Asda believed that applications to frustrate competitor entry were also a feature of the market and that incumbents had the ability to do this because it was generally easier to gain permission for extensions than for new (competitive) sites:

²²The Somerfield and M&S figures are again distorted by the lower total number of applications.

²³As in footnote 20, we recognize that the planning data submitted by the retailers related to all types of applications and not just applications for stores, including a mixture of full/outline and reserve matters applications and that some of the applications would not generally require a section 106 agreement.

- ‘this can lead to gaming the regime by pre-emptively absorbing incremental need capacity through extensions which has the effect of blocking new entrants’; and
- ‘furthermore it is very low cost for incumbents to submit applications (e.g. because the complexity and cost of supporting analysis is lower). Having submitted an application, the incumbent would have a role as a party at any appeal, in the event that the competitor’s application was called in. This provides an additional incentive for incumbents to apply for permission to build extensions.’

61. Sainsbury’s has submitted many planning applications for extensions in response to a competitor new build or extension. It told us that such applications were based on ‘an entirely sensible and pragmatic commercial decision to invest to enhance the trading offer and attraction of the store to be able to compete effectively against the new entrant’. Waitrose told us that in 2005 it had submitted planning applications to extend two stores [✂]. In both cases Waitrose told us that it had been encouraged by the planning authorities.

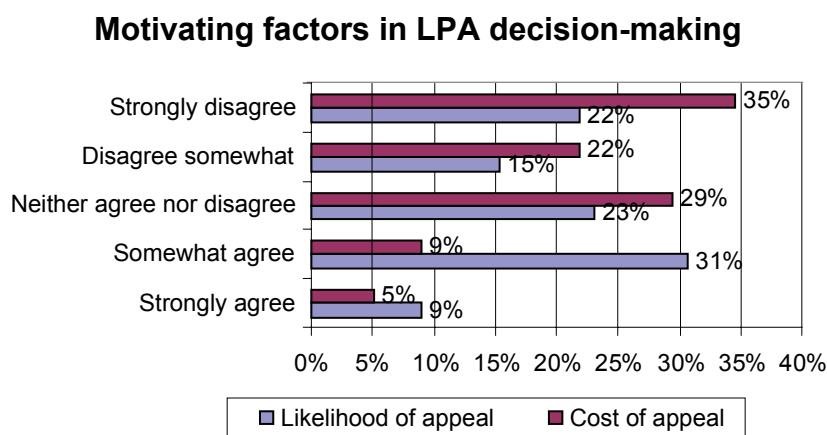
62. Morrisons, however, believed that the timescales involved in preparing and submitting an application were such that it was not realistic to submit an application in response to a competitor application and the more likely reaction would be a letter of objection or representation. Tesco pointed out that the time taken to decide to undertake a development requiring planning permission, and then to put together a planning application for the store, was too long to allow for a rapid response to its competitors’ plans. Tesco also told us that the most common reason for extensions to its existing stores was to increase its non-food offer. M&S told us that it had never submitted a planning application for an extension to an existing store in response to a competitor new build.

63. One-third of the LPAs that responded to the questionnaire were aware, or had reason to believe, that competitors submitted competing planning applications in response to a planning application made by a competitor.
64. Further work is planned to examine the timing of applications for extensions in relation to planning applications made by competitors and the outcome of competitors' planning applications.

Appeals and costs of appeals

65. A number of parties have submitted that LPA decisions are influenced by the threat or potential cost of an appeal. Around 40 per cent of LPAs that responded to the questionnaire have indicated that the likelihood of an appeal was taken into account in making a planning decision, but only 14 per cent indicated that the possible cost of an appeal was a motivating factor in decision-making (Figure 8).

FIGURE 8



Sample size 78

Source: LPA questionnaire (interim results).

Approach of the grocery retailers to local Government

66. A concern raised with us has been that the larger grocery retailers are able to lobby local government in a way that smaller competitors or potential new entrants to an

area are unable to match. It seems that this lobbying activity could take place in two areas:

- lobbying with regard to specific planning applications; and
- influencing the preparation of development plans such that it favours a retailer.

67. Friends of the Earth²⁴ have suggested that strong-arm tactics are used by supermarkets at the local authority level to drive supermarket expansion. However, the analysis of the interim results of the LPA questionnaire, and particularly the LPAs' comments regarding the planning system and how they apply the rules, suggest that the LPAs contain knowledgeable and strong individuals that have balanced successfully the various requirements of PPS6 and other regional variations of the legislation with the requirements for grocery retailing in their area.

68. We asked the grocery retailers to provide details of their approach to lobbying local government with regard to planning issues, together with any internal policy/guidelines they have in relation to such contacts. All the retailers appear to interact with local government on specific projects:

- Sainsbury's retains political lobbying consultants to advise specifically on planning projects. Its property development teams also liaise closely with LPA officers but adhere to each Council's guidelines on how their elected members can be briefed and lobbied.
- Morrisons has 'on a handful of occasions ... used PR companies to advise on local politics, but this has stopped short of direct lobbying. It has also written direct to members of planning committees'.

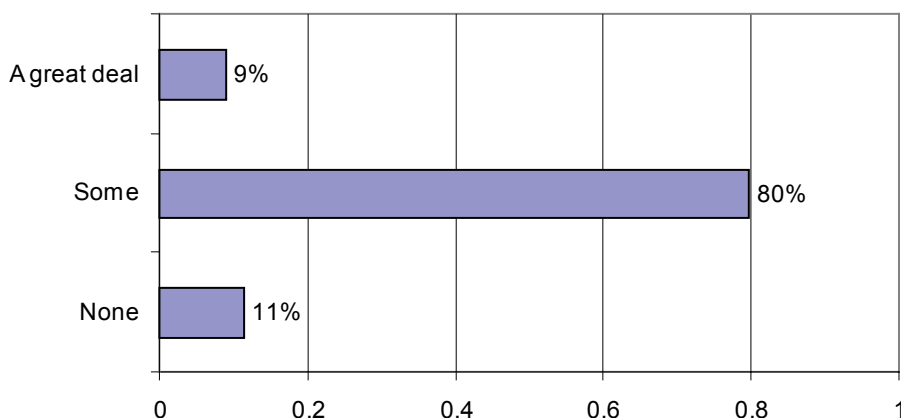
²⁴See Friends of the Earth briefing '*Calling the shots. How supermarkets get their way in planning decisions*' www.foe.co.uk/resource/briefings/calling_the_shots.pdf.

- Many of the grocery retailers (Asda, Tesco and Waitrose) discuss applications with LPAs in advance of submission to help prevent a situation where they may need to appeal.
- Tesco told us that it interacts with local government with regard to planning issues in two areas: (a) the formulation of development plans, and (b) when they are trying to progress a particular application through the planning control regime, which entails making the application, negotiating over section 106 and section 278 (transport) planning obligations and providing many other supporting documents to the LPA's satisfaction. It emphasized that its approach is to abide by all relevant rules, guidelines and best practices and also emphasized that local authority actions are governed by the Nolan rules as well as their own tailored codes of conduct.

69. The majority of LPAs invite comment from retailers in the formation of the local development plan. A typical comment was 'like all stakeholders they [grocery retailers] have been given the opportunity to comment at the various stages of the emerging LDF Core Strategy'. A number of LPAs have said that retailers use consultants or agents to make representations on their behalf.

FIGURE 9

To what extent (if any) do grocery retailers have an involvement in the development of the development plan?



Sample size 79

Source: LPA questionnaire (interim results).

70. We have not seen any evidence to suggest that lobbying during the preparation of the development plan favours large retailers over smaller retailers if the retailer is already in the area and is therefore considered a stakeholder. It is unclear if an incumbent has an advantage over a competitor that is not present in an area, although we would expect larger retailers that are not present in an area of interest to them to be represented through agents.

Variations between the planning systems in England, Scotland, Northern Ireland and Wales

71. Analysis of national variations in the planning system have been discussed at various points in the analysis above. Grocery retailers also provided us with their views more generally on differences in the planning systems in England, Scotland, Northern Ireland and Wales:

- Tesco told us that it found the planning system more pragmatic and positive with fewer call-ins in Wales and Scotland, and Morrisons told us that it found the planning system easier in Wales and Scotland compared with England and Northern Ireland. Waitrose believed the Welsh system was less prescriptive with regard to retail proposals and was not as detailed as the policy criteria set out in PPS6, and Somerfield told us that it found the Welsh system easier to deal with.
- Asda told us that although there was no separate 'need test' in Scotland, there remained some uncertainty as to whether capacity deficiency had standing as a standalone criterion and how it fitted in as part of a retail impact assessment.
- M&S told us that the planning system in Northern Ireland worked the most slowly. Tesco stated that it was not necessarily harder ultimately to obtain the necessary consent but the decision-making process was longer and more centralized.
- Waitrose, however, told us that there was no consistency between local authorities in the method of assessing retail applications, irrespective of the geographic location and the store type. It believed that this was due to a lack of

resource, lack of understanding and, potentially, the misinterpretation of national policy.

72. A further point raised with us regarding the planning system is the impact of the off-licence system in Northern Ireland. We understand that the limited number of off-licences available in Northern Ireland may have the effect of constraining entry into grocery retailing, particularly for smaller stores. We would welcome further submissions in relation to this matter.

73. This feedback is broadly consistent with our analysis of the time taken to obtain planning permission in each country (see paragraph 53). We intend to look further at the planning system to identify reasons for the speedier processing of applications for grocery retailing developments in Wales compared with England and Scotland.

Interim analysis of Local Planning Authority questionnaire

1. A questionnaire was sent to all English, Welsh and Scottish LPAs in order to understand, from the view of the LPA, how the planning process works at a local level in relation to grocery retail development and how planning decisions are made. The questionnaire was in two parts:
 - Part 1 was a web-based questionnaire which asked for information about the planning process and the factors considered by the LPA when assessing grocery planning applications.
 - Part 2 was a spreadsheet for the LPA to complete providing specific details of each grocery planning application considered by the LPA since 2000.

2. Advice was obtained on the content of the questionnaire from an LPA and comment on it was received from the grocery retailers. The interim results contained in this annex show the responses to the web-based questionnaire from 80 LPAs (with a regional split of 70 from England, 8 from Wales and 2 from Scotland and from a cross-section of rural and urban areas). All of these 80 responses are reported in this annex, with no differentiation between the regional responses. Approximately 60 per cent of those responding to Part 1 of the questionnaire also returned Part 2.

3. The number of responses to both parts of the questionnaire is continuing to increase and a full analysis of responses to both parts of the questionnaire will be provided in due course.

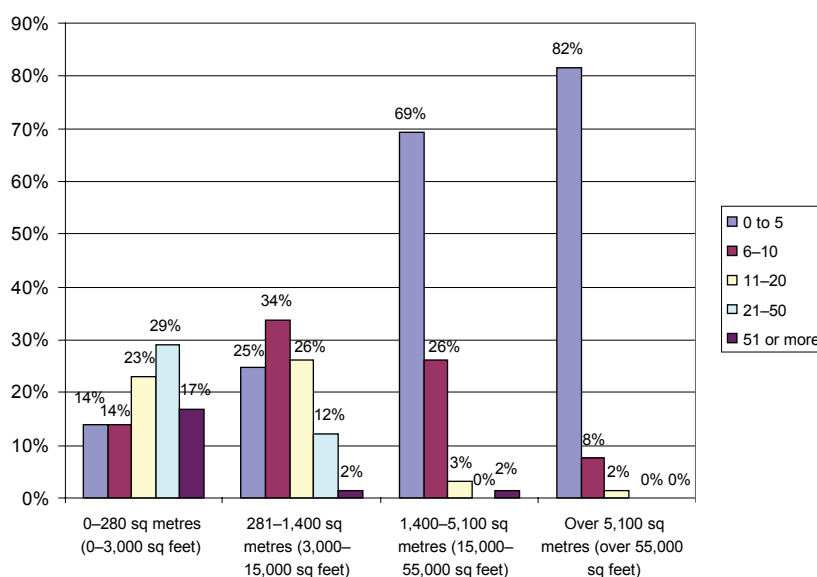
Number of stores

4. The chart below shows the number of grocery stores that are in each LPA by size band. It shows that most LPAs have only a small number of larger stores in their area, with the majority having less than five stores of 1,400 to 5,100 and over

5,100 sq metres. This means that the LPA is likely to see few major planning applications for grocery stores.

- The majority of LPAs have not formally identified the amount of space required for grocery retailing in future. (40 per cent have done this.) A similar proportion (around 43 per cent) have done a survey to identify the number of suitable sites for retailing but these are not always the same authorities.

Number of grocery stores by size in the LPA area



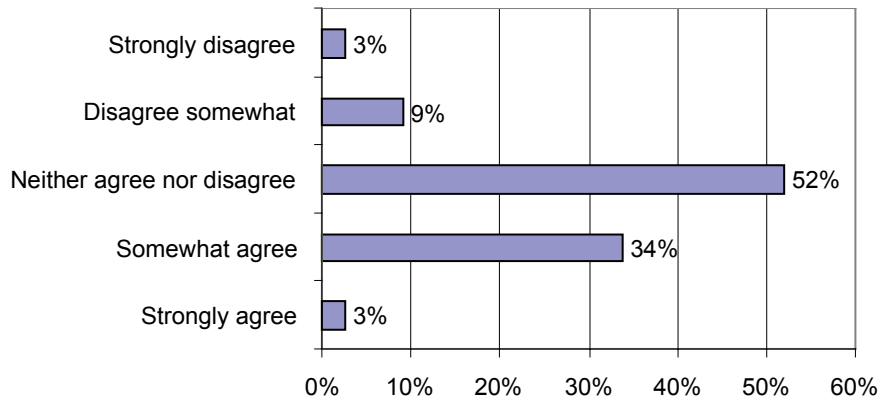
Sample size 65

Benefits of grocery retailers

- Three questions were asked to identify whether LPAs felt there were positive benefits to having large grocery retailers in their area. These suggest that on balance LPAs are generally positive.

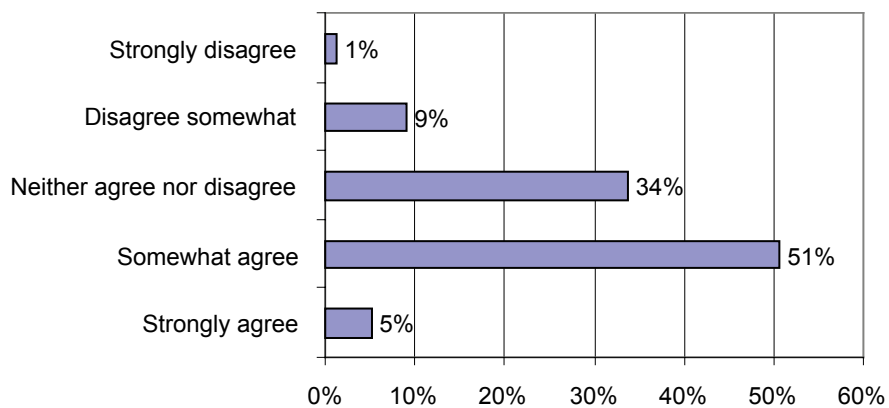
Planning authorities may or may not consider that developments by the 4 largest grocery retailers (ie Tesco, Asda, Sainsbury and Morrisons) benefit their area compared with smaller retailers. To what extent do you agree or disagree that developments by these large grocery retailers

(a) bring benefits to your residents



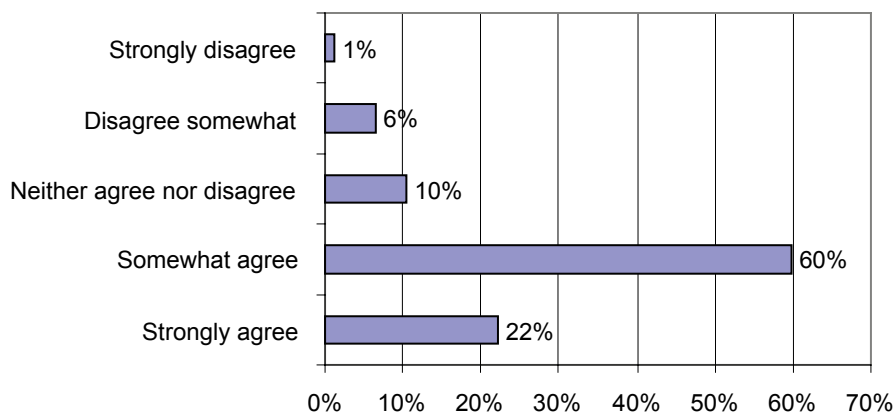
Sample size 77

(b) make an area more attractive to other businesses



Sample size 77

(c) can be important to anchor a new development or regeneration scheme



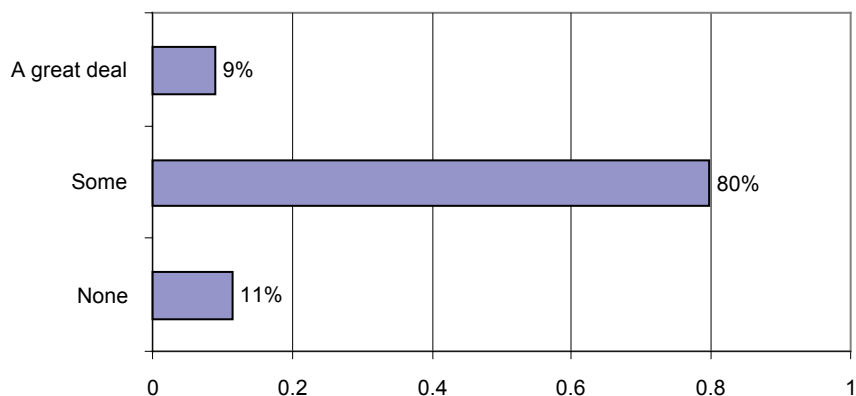
Sample size 77

Involvement of retailers in the preparation of the development plan

7. The majority of local authorities invite comment from retailers at all points in the formation of the local development plan. A typical comment was 'Like all

stakeholders they have been given the opportunity to comment at the various stages of the emerging LDF Core Strategy'. This is seen to be a natural part of the process of plan development.

To what extent (if any) do grocery retailers have an involvement in the development of the development plan?



Sample size 79

Comments made included:

- In the old plan they were involved particularly at the Inquiry stage. In the LDF system they will be involved at all key stages.
- All stages including strategy, policies and site specifics.
- Like all stakeholders they have been given the opportunity to comment at the various stages of the emerging LDF Core Strategy.
- Consultation stage.
- Expect involvement at all stages of LDF document preparation.
- At the different stages of consultation—emerging policy options, preferred policy options, Proposals Map etc.
- They can make representations during all stages involving consultation.
- They were consulted throughout the Development Plan process.
- Substantial comments submitted in response to consultative draft structure plan and local plans.

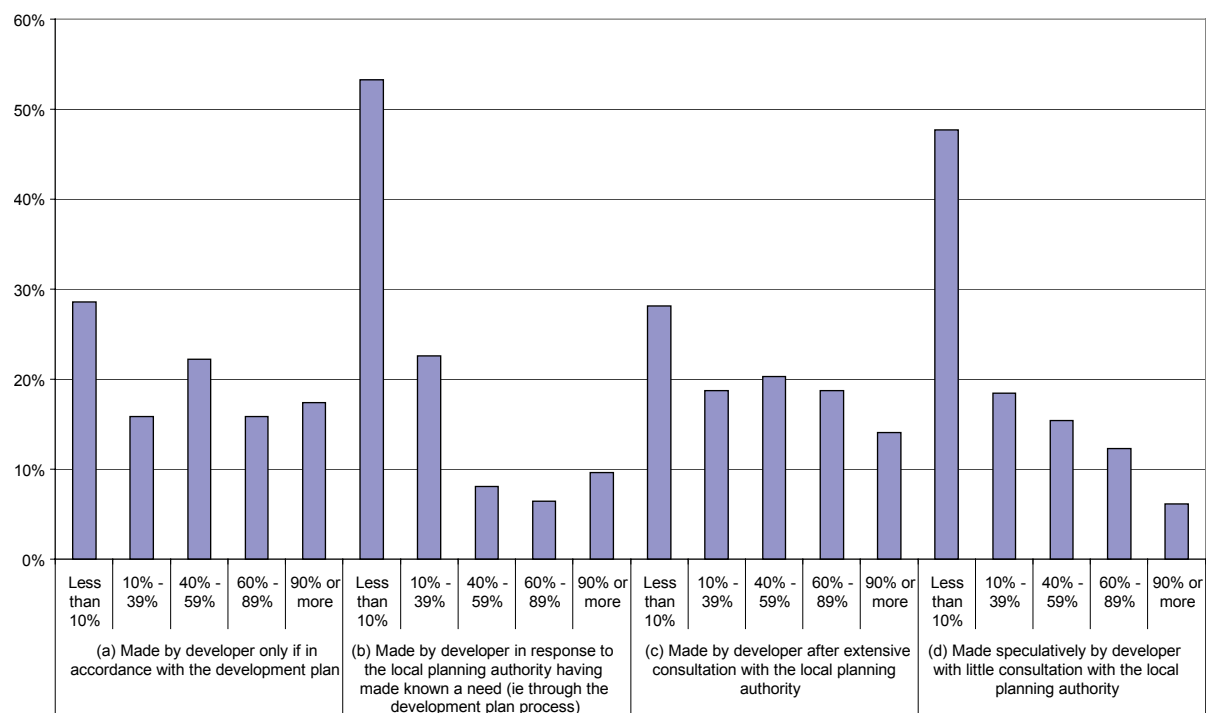
- If they have elected to be on our database they have opportunities to comments at all stages and can promote their sites at any time. They are encouraged to do this however at the start of the process.
- Generally, the main grocery retailers provide representations (usually through planning consultants) on draft policies at all stages in the consultation process.
- Consultation open to all who wish to contribute.
- All stages of the plan making process.
- Public consultation on development plan proposals.
- Several made representations at draft stage and presented evidence at the public Inquiry 2003-04.
- Retailer's planning agents are on the consultation database and so informed of all preparation stages.
- Retailers are able to comment at each stage of the UDP adoption/consultation process—the current UDP has been on deposit for comment several times & has been through Public Inquiry.
- New LDF Process invites interested parties to contribute at ALL stages.
- In respect of the Core Strategy preparation, we are aware that some of the larger grocery retailers are being represented by agents in the consultation process.
- Making representations on Local Plan—will probably have greater involvement through LDF process.
- During the consideration of issues and options at the early stage of plan preparation and during all other statutory consultation stages.
- Retail study as part of Structure Plan set context for Local Plan. Retailers responded at deposit and revised deposit stages.
- Issues and options, Draft Plan (2 stages for UDP Review).
- In the preparation and background studies and consultation stages as documents emerge.

Planning applications from retailers and the development plan

8. Planning authorities were asked what proportion of planning applications were made in accordance with the development plan. The results suggest:

- Planning applications are not made in accordance with the local development plan. ((a) below shows that 29 per cent of LPAs believe that less than one-tenth of applications are made in accordance with the development plan.)
- There is limited consultation between the developer and the LPA prior to the application being made. ((c) shows that 28 per cent of LPAs believe less than one-tenth of applications are made after extensive discussions, but d shows that there is usually some consultation between the developer and the LPA.)
- The majority of applications are not made in response to the LPA having made known a need (see (b) below).

What are the proportions of planning applications for a grocery retail development?

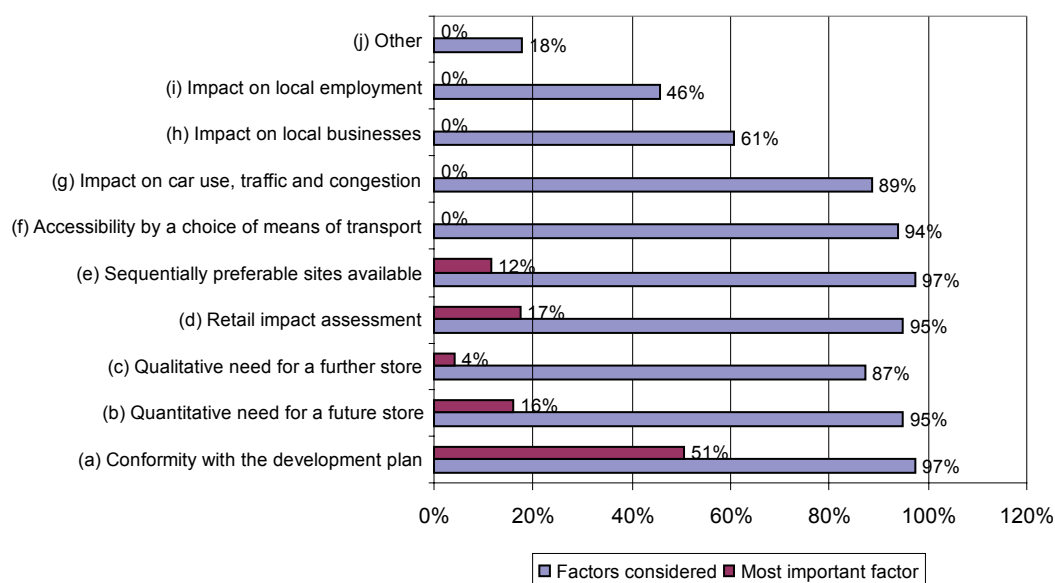


Sample size 65

Key factors in determining applications

9. Most of the criteria listed are considered by the LPA (a number of the city authorities also mentioned regeneration potential as an important factor), but when asked to focus on the most important the planning authority focus on the main criteria outlined in PPS6 (see paragraph 9 in main paper) and particularly on conformity with the development plan.

What are currently the key factors for your Authority in determining planning applications for grocery stores?



Sample size 79 all criteria, 69 most important

10. Where the authority had mentioned other criteria, these included:
- Economic and physical Regeneration.
 - Design, drainage, residential amenity, archaeology, provision of community facilities, parking, crime and security, visual impact, waste management.
 - Quality of design and positive contribution to creating a sense of place are becoming increasingly important, extending choice, competition and value for local consumers, and overall environmental impacts (e.g. noise, air quality, smell, energy consumption/carbon emissions, effects of construction).
 - Environmental/design/parking considerations.

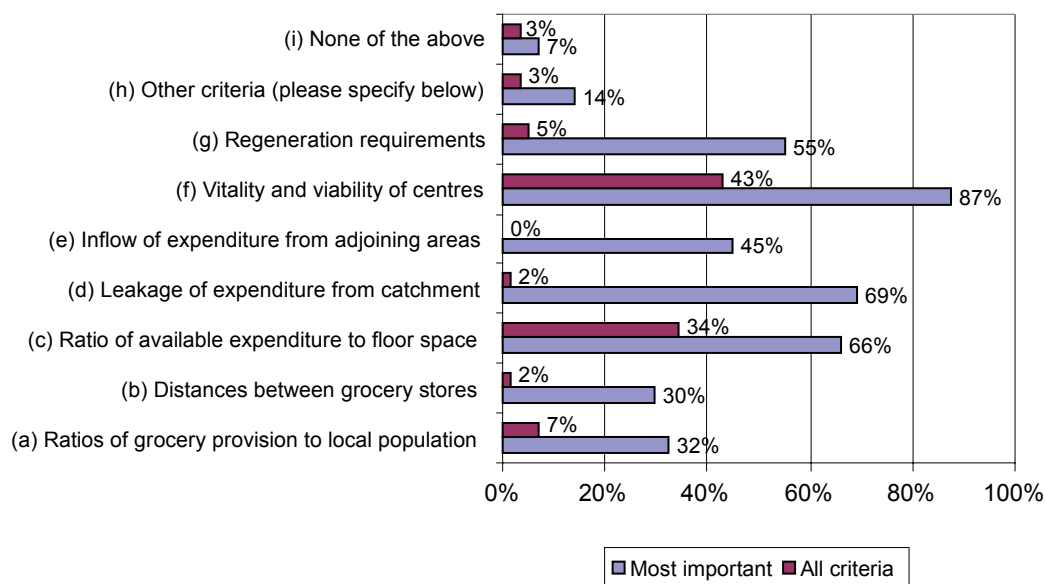
- Most important factor is conformity with development plan, although this covers also *(d)*, *(e)*, *(f)* and *(g)*.
- Impact on local businesses and employment is considered in the sense that allocated employment sites would be protected from retail development. The effect on residential amenity, floor space and the proportion of comparison goods are also considered. The development plan does use *(b)* to *(j)* above to guide planning decisions.
- It is difficult to commit to the above as each application for a 'grocery store' will be assessed on its individual merits against the development plan. Therefore the weight other factors from *(b)* to *(j)* may or may not add to the determination of the planning application will depend very much on the individual merits of the proposal.
- Character of area, impact on amenities, sustainability appraisal.
- Effect on regeneration (both negative and positive—negative is where a store may draw activity away from a regeneration area).
- Although the impact on individual businesses is not taken into account, the cumulative impact on businesses, where it affects the overall viability and vitality of the town centre, is a relevant consideration. *(b)*, *(c)*, *(d)* and *(e)* above are not material planning considerations for most town centre developments where the development plan supports retail development.
- *(i)* is a consideration but overall the other factors have greater weight in decision-making given the key factor of *(d)*.

Criteria used to assess need

11. Despite most LPAs not having formally assessed the need for future grocery stores, most responded to the request for identifying the main indicators used to assess need. A range of criteria are considered, but when asked to identify the most

important the LPAs focus on the vitality of the centre and the quantitative assessment of need.

What are the main indicators used by your Authority to assess the need for additional grocery stores in the development plan?



Sample size 71 all criteria, 58 most important

12. Where the LPA had mentioned other criteria, these included:

- Retail Study and update (2003 and 2005) which determined need by comparing forecast spending with distribution of grocery outlets in different parts of the city.
- A quantitative assessment of capacity to support additional floorspace was undertaken. This identified that further allocations would not be necessary.
- Proximity to high walk-in catchment populations (high-density residential or working populations, especially in areas of low car ownership), location within areas of planned population growth, proximity to major public transport routes and nodes.
- Use existing and projected population estimates and expenditure per head data, calculate current levels of market share, apply constant or changed levels of market share and trade inflow, to assess the available expenditure on both convenience and comparison goods. Compare forecast levels of available expenditure with existing turnover estimates based on national turnover and

translate this into floorspace requirements through the application of average turnover floorspace ratios.

- Sustainability—transport and traffic impacts of existing and proposed food retailing.
- Cumulative impact, impact on attractiveness of centre, amenity, accessibility.
- Retail capacity (i.e. difference between floorspace turnover and expenditure) is key indicator. Current SP indicates oversupply of convenience retail floorspace, therefore the local plan does not identify any requirement for grocery shopping.
- Location of areas of major housing growth.
- Our current Local Plan was to 2006 and the LDF has yet to tackle this issue, so this question cannot be answered.
- There is mostly no distinction between forms of retail provision in planning policies, other than some separation between convenience and comparison goods. Policies aim to concentrate retail units in existing centres unless they are for bulky non-food items. A sequential approach is adopted whereby out-of-centre schemes are permitted if there is nowhere else, it wouldn't harm existing centres there is a need, and other factors relating to impact, transport etc. The one policy specifically on food and drink only relates to restaurants and takeaways.
- Sphere of influence of stores.
- Detailed retail study carried out by consultants including surveys of household expenditure.
- Town Centre, District Centre then Local Centre hierarchy. Reducing the need to travel by ensuring grocery stores are well distributed.
- Town Centre Health Checks Assessment of market demand Convenience goods retail capacity assessment.
- Our Retail and Town Centre Uses Study 2004.
- Qualitative deficiencies in existing provision.

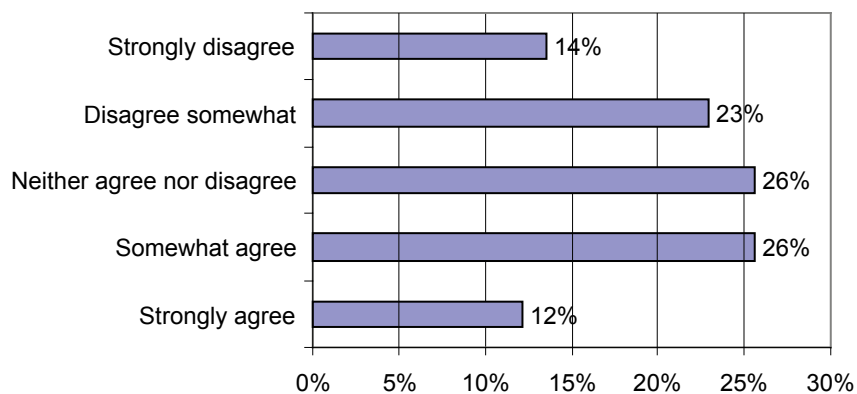
- Identified local need and capacity within the borough through a comprehensive Retail Capacity Study.
- Current retail study (2006) identifies no additional requirement up to 2016.

Retail assessments

13. A number of questions were asked to identify how retail assessments submitted with a planning application were assessed. Opinions were mixed on whether an LPA would commission a retail assessment, and on whether an LPA had adequate resources to commission a retail assessment that would add to that provided by the retailer. Most LPAs agreed that they would use a consultant to review a submitted retail assessment, however.

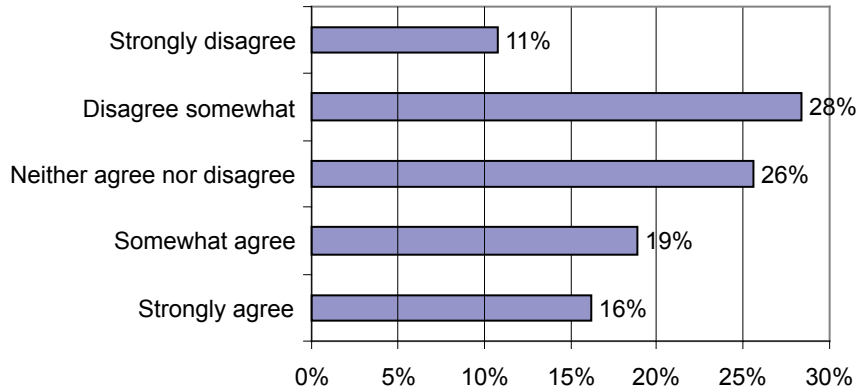
Planning authorities may or may not commission retail assessments when a grocery retailer (or property developer acting on the retailer's behalf) has done this already. To what extent do you agree or disagree with the following statements?

- (a) *We commission further retail assessments when a grocery retailer has done this already*



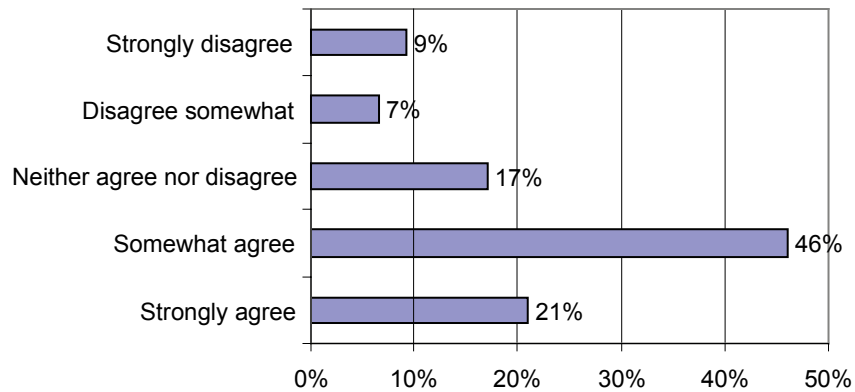
Sample size 74

(b) *The LPA has insufficient resources to commission a retail assessment that will add to that provided by the retailer*



Sample size 74

(c) *We instruct consultants to review the submitted retail assessment rather than commissioning our own*

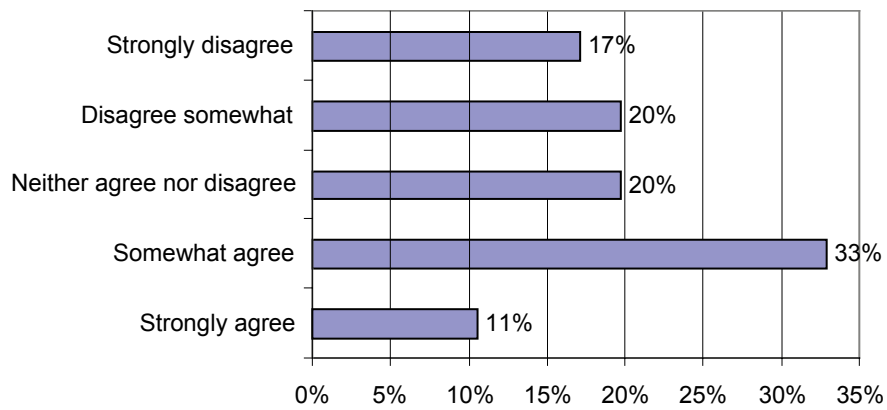


Sample size 76

The importance of competition in assessing applications

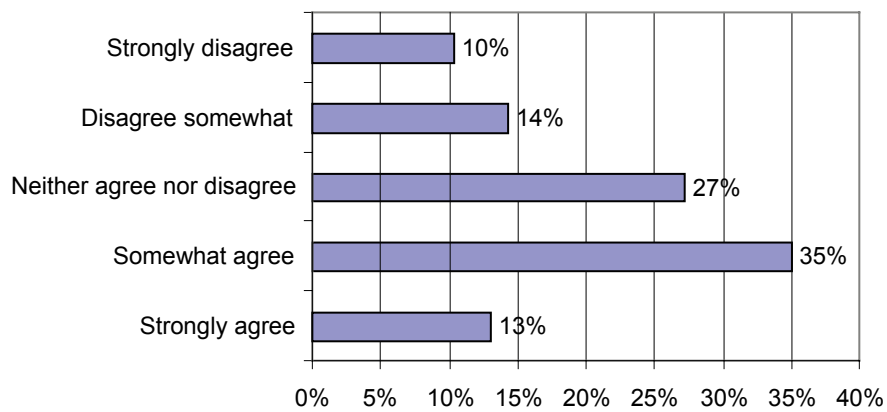
14. Three questions were asked around whether competition is taken account of by the LPA in determining planning applications. The answers suggest that many LPAs do take account of competition when assessing planning applications and would favour taking it more into account.

When reviewing planning applications we generally consider the choice of grocery retailers available



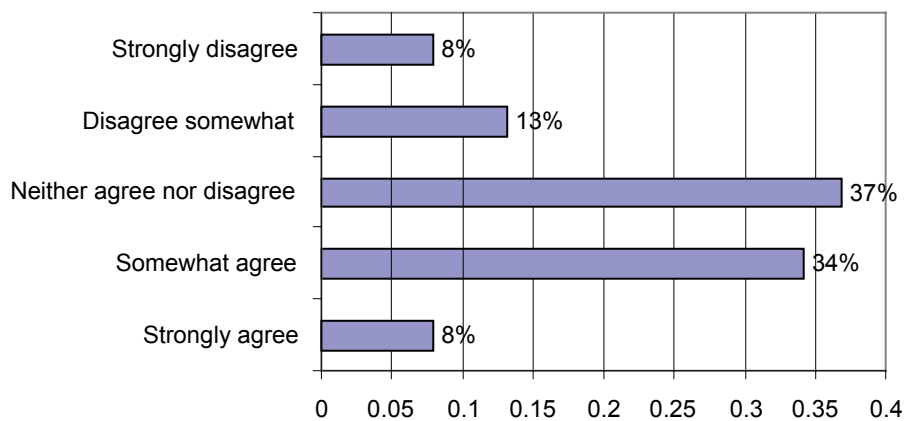
Sample size 76

When reviewing planning applications we should consider the choice of grocery retailers available



Sample size 77

The planning system can reduce the choice of grocery retailers in an area

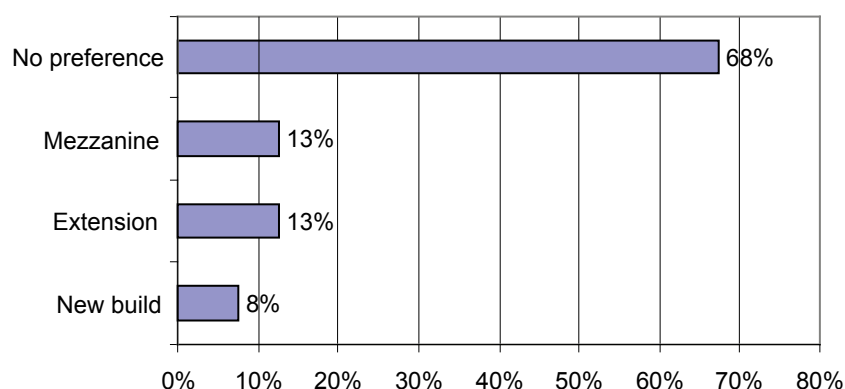


Sample size 76

Extensions and mezzanines

15. A number of questions were asked about extensions and mezzanines to identify whether the way the planning system was being interpreted by the LPAs gave incumbents a competitive advantage (if extensions and mezzanines were preferred over new build this would give the incumbent an advantaged position).
16. The first question concerned whether LPAs had any preference for space to be added as new build, extensions or mezzanine floors. Around two-thirds said that they had no preference. Of the rest, most favoured either an extension or mezzanine compared with new build. Most comments made suggested that each application is treated on its merits, however, unless there are space issues.

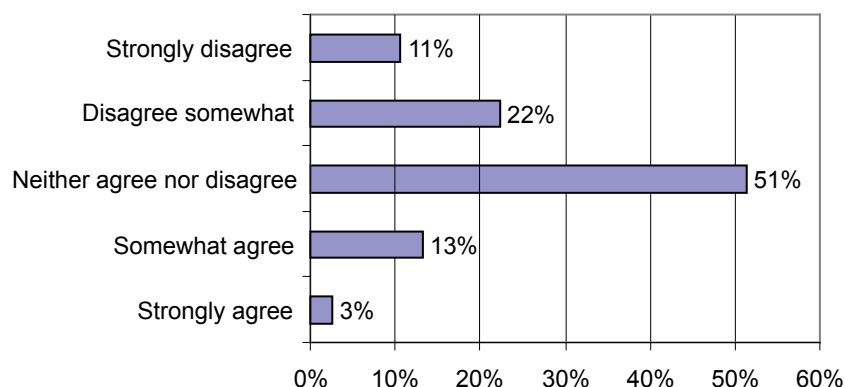
If there were a like for like situation what would be the preferred choice of your LPA for the addition of new grocery space—as new build, an extension or as a mezzanine?



Sample size 80

17. The second question asked the LPAs whether they accepted a different space utilization being used for extensions compared with a new-build store. Most responses were neutral. Of the other responses, more suggested that LPAs would tend not to accept a different utilization.

We will accept a different turnover/floorspace ratio being used for an extension or mezzanine floor compared to a new build store



Sample size 76

Comments made included:

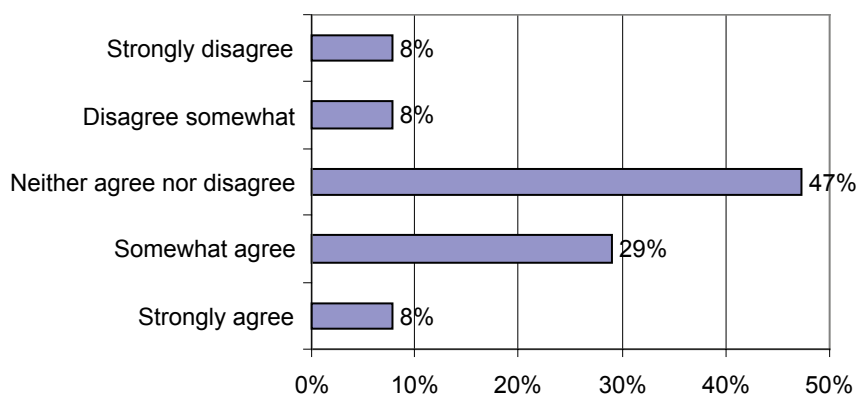
- Depends on individual circumstances of site and development.
- No preference between extension and mezzanine—whether either of these should be favoured over new build will depend on local circumstances (eg traffic congestion or the identification of food deserts etc).
- Depends on specific circumstances—all could have merits.
- Would depend on the location of the scheme; a rebuild might be preferable if the former building were in poor condition making little contribution to the townscape. Elsewhere a mezzanine might be preferred because it might not alter the external appearance greatly.
- Depends on individual circumstances. There is no preference stated in the development plan.
- New build offers opportunity to fill gaps in provision. Others consolidate existing pattern of provision.
- In a densely populated borough such as ours where the preference is for residential development mezzanine extensions will use the least land which would be available for other uses. There are no areas of the Borough which are deficient in grocery shops.
- Given commitments in the pipeline the choice would be mezzanine followed by extension all are controlled by condition on existing stores anyway.

- Cannot generalize about this. Well located stores are better extended, whether by mezzanine or by extension makes little difference. Where a store is badly located, it is preferable to remedy this with a better located new store in a more sustainable location.
- Development plan is generally supportive of extensions, dependent on size, however.
- Overall policy support is for in-centre development but criteria-based policy applies to out-of-centre which can allow either new build or extension. One current new-build situation, mezzanines are just a particular form of extension.
- Likely to result in least impact as scope for extension will be limited.
- In line with planning policy the Council seeks to provide new floorspace in town centres first. As a planned new town new build is appropriate on greenfield sites designated for development in the adopted Local Plan. However, in some older town centres with a conservation area and listed buildings an extension or mezzanine may be more in keeping with the centre.
- This would depend on the circumstances of the particular site/area.
- It takes less land.
- It will depend on the individual merits of the proposal and how it conforms with the planning policies within the development plan, e.g. the principle of development in the proposed location, design, impact on amenity, highway impact etc.
- Build on existing successful stores/centres. Could also include rebuild on existing sites.
- Depends on location of store and policies which apply.
- Some of the existing floorspace is dated and new build would bring qualitative benefits and hopefully new operators.
- Extension or mezzanine because they tend to be to improve the quality of the shopping experience by widening aisles etc rather than their purpose to improve market share for that retailer.

- To redress imbalance of existing location of stores.
- So few such applications that specific circumstances will apply.
- Each case should be considered on its merits to produce a development which is most likely to support the overall viability and vitality of the town centre in which it is located.
- It depends on individual circumstances measured against the factors considered important.
- Intensifies use of existing building thereby consuming less development land. However, only appropriate where in accordance with the UDP Review, other Government guidance and any other material considerations.

18. The LPAs were asked whether they would consider asking a grocery retailer to extend a store when a sequentially less preferable option was being considered elsewhere. The majority were either neutral or said they would.

We may encourage a grocery retailer to extend a store when we believe a sequentially less favourable option is being considered elsewhere (either by the same or another retailer)



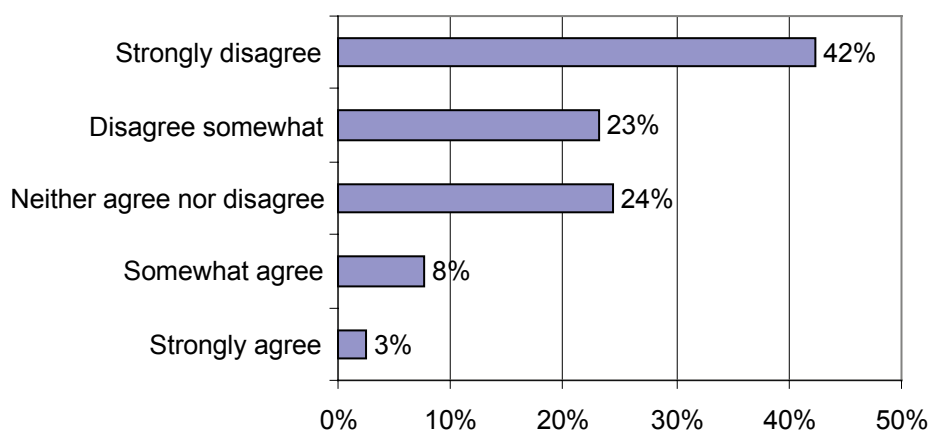
Sample size 76

19. Overall these responses tend to suggest that an incumbent may have some advantage but not an overwhelming one.

Section 106 agreements

20. A question was asked to determine whether LPAs viewed section 106 agreements as meaning that planning approvals may be given to grocery retailers that could deliver higher-value section 106 agreements. There is general agreement that section 106 agreements do not have this effect.

Some planning authorities may consider that planning obligations affect the determination of planning applications in particular ways. To what extent do you agree or disagree that planning obligations cause Local Authorities to grant planning permission to those retailers who can deliver planning obligations of higher value than others



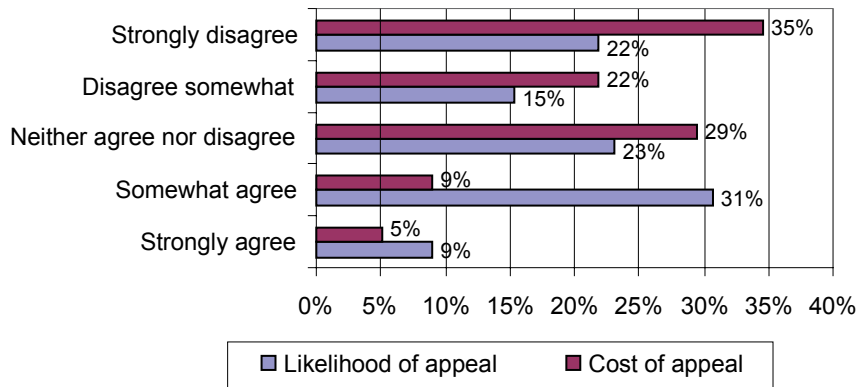
Sample size 78

Appeals and costs of appeals

21. The LPAs were asked whether they considered the likelihood of an appeal and the cost of an appeal when considering a planning application. The majority of respondents agreed or strongly agreed that the likelihood of an appeal was considered. Most disagreed, however, that the possible cost of an appeal is considered.

To what extent do you agree or disagree that the possibility or cost of an appeal may affect your planning authority's consideration of a planning application

- (a) *When deciding whether or not to give planning permission for a grocery store we consider the likelihood of an appeal*
- (b) *When deciding whether or not to give planning permission for a grocery store we consider the likely cost to the Authority of an appeal*

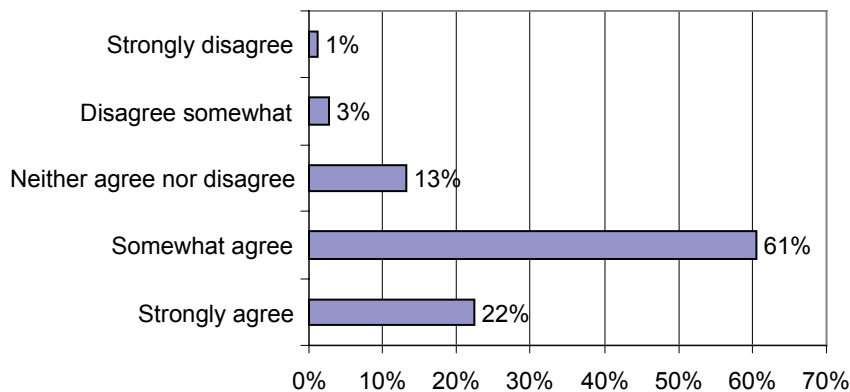


Sample size 78

Interpretation of planning policy

22. A number of grocery retailers have told us that the interpretation of planning policy varied at a local level. LPAs disagreed on this point, however, with most agreeing that PPS6 provided them with a clear framework for assessing planning applications.

PPS6 gives a clear framework for an LPA to assess planning applications



Sample size 76

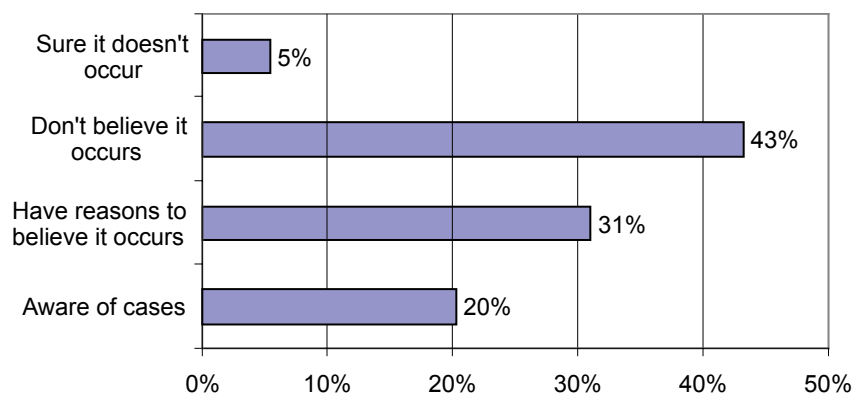
Practices by grocery retailers

23. To identify ways that a grocery retailer may work within the planning system to gain advantage over competitors, we asked a number of questions which are detailed below. Half of the LPAs that responded were aware, or had reason to believe, that competitors objected to other planning applications. A third answered similarly when asked whether competitors submitted competing planning applications in response to a planning application made by a competitor. A third also said that it was aware, or

had reason to believe, that competitors held sites that had planning permission but delayed building on the site. Finally the LPAs were asked whether compulsory purchase powers were used to acquire a competitor site. This was necessary to identify whether a retailer could block a competitor's site assembly. The vast majority were sure, or did not believe, that this occurred. This potentially means that it could be possible for a competitor to block a competitor's site assembly.

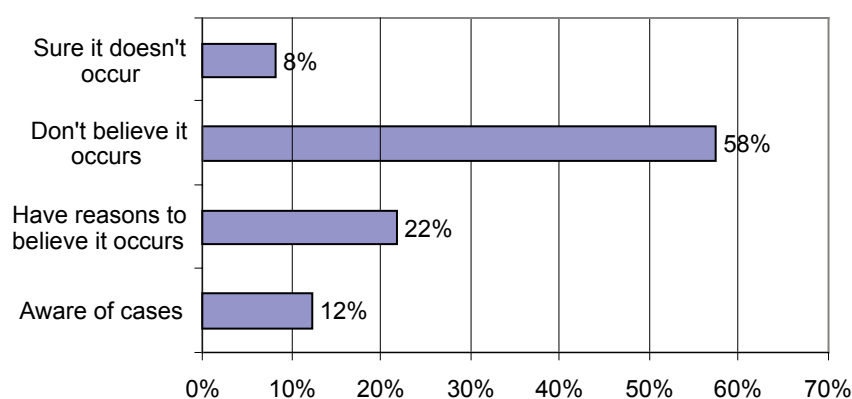
To what extent, if at all, are you aware of any of the following activities by any grocery retailer, or on its behalf, within your Planning Authority area?

(a) Objecting to a planning application, either by a competitor or by others on the competitor's behalf, when the retailer is not trying to develop the same plot itself



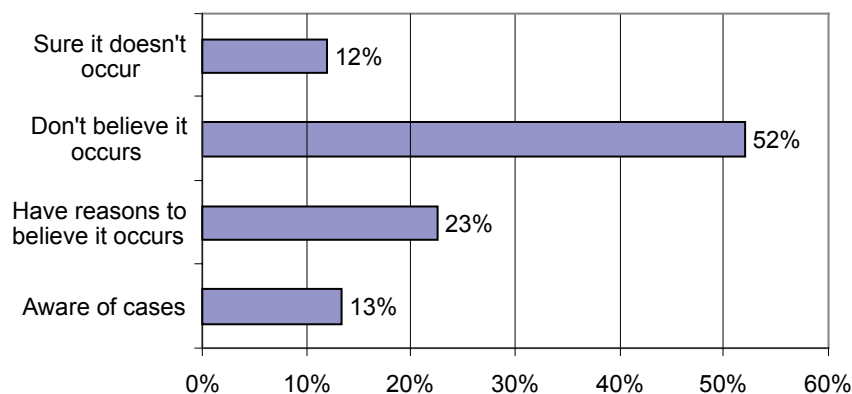
Sample size 74

(b) Submitting a planning application (new build, mezzanine or extension) for a site that may meet the sequential test better in response to a planning application made by a competitor



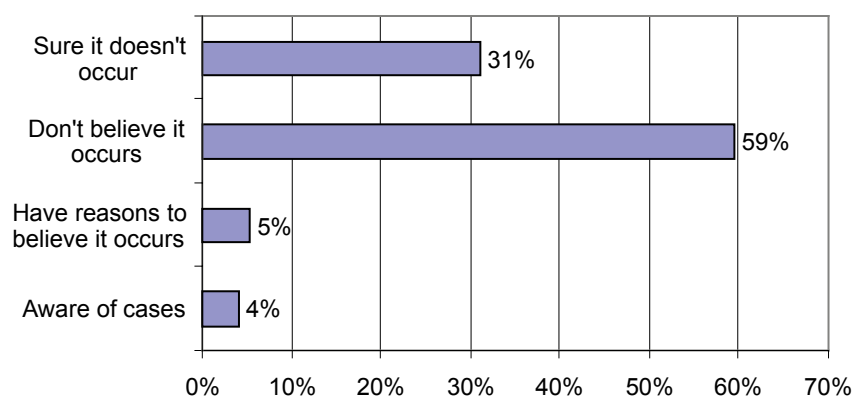
Sample size 73

(c) *Obtaining planning permission for a plot and then not building or not building for substantially longer than you had expected*



Sample size 75

(d) *Requesting a local authority to use its compulsory purchase powers to purchase plots of land owned by another grocery retailer*



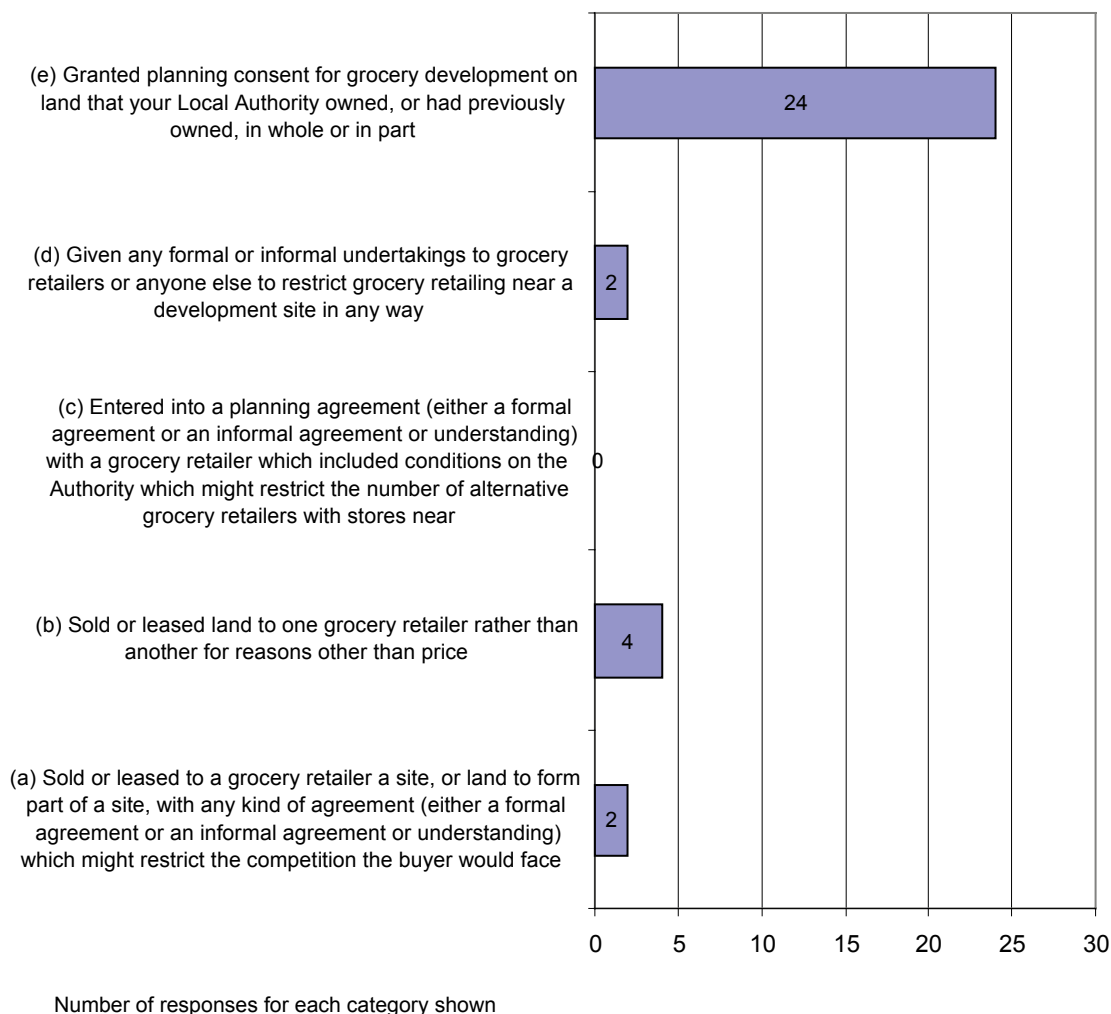
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Actions by local authorities

24. The LPAs were asked whether they were aware of any actions by their local authorities that may have had an impact on competition. The responses are summarized below. The main response concerns that granting of planning consent for grocery development on land owned, or previously owned, by the local authority. However, this is often a necessary part of site assembly for a grocery retailer.

25. The background to some of the other responses will be followed up.

We are interested in any actions by local authorities that may inadvertently or otherwise restrict the number of different grocery retailers who have stores in a locality. Has your local authority, since 2000 (please select any that apply):



Overall views

26. The LPAs were asked

Finally, are there any aspects of the planning system or related legal requirements that may facilitate or hinder competition between grocery retailers?

The responses were.

- Planning intervenes in market forces. Therefore there is bound to be some restriction on competition. However, a free-for-all would kill many town and city centres. PPS6, notwithstanding its faults, is a good compromise.

- The advice set out in PPS6 should provide a platform to provide a more sustainable approach to the provision of new and the maintenance of existing sites for retailing especially within urban areas. This could assist reinforcing existing grocery facilities with local neighbourhood centres to secure more sustainable transport movements and the nurturing of local businesses.
- Inevitably, the sequential approach reduces the likelihood of development in locations that do not conform to it, and so reduces the number of sites available. It is, however, important to maximize consumer choice and competition within these constraints.
- If there is no identified quantitative need, then the planning system will indirectly as a consequence favour existing as against new retailers. Where there is need or where an appropriate scale of provision is proposed entirely in line with the Development Plan within recognized centres, there is no hindering and competition is facilitated.
- The importance within PPS6 of the requirement for retailers to demonstrate a quantitative need. Where no quantitative need exists in an area, it is difficult for retailers to gain planning consent in that area and so the status quo remains.
- The lack of a variety in existing centres which area available/allocated—in [✂] our replacement plan indicates a need in two centres for sizeable schemes. There may be needs in other centres for more limited provision but where there aren't the sites. Greater willingness to use CPO may be an issue.
- The 'sequential approach' is a positive factor for promoting competitiveness and innovation in the grocery sector, as it seeks to focus rival companies in close proximity in or on the edge of town centres. These are the locations which are most accessible to the largest number of people in all sections of the community. However, it is precisely these locations which engender the greatest opposition from local businesses. Such locations also have to contend with many difficulties in terms of traffic generation, difficult site assembly, conservation interests etc.

Consequently, by default, many large food stores gravitate to more peripheral locations which are only accessible to car users, are subject to less competitive pressure, and offer less choice to consumers.

- Large operators simply have resources to acquire the best sites, and present a case for their proposal.
- Our principal concern relates to the increasing homogenization of our town centres. The Planning system does not let LPAs consider ownership when determining an application. This allows for the gradual spread of major retailers at the expense of smaller chains or independents—thereby reducing choice and diminishing the interest of our centres.
- Planning system is capable of being abused and has been by Tesco in this district to restrict competition from competitors.
- The principal hindrance to competition is the behaviour of the major players in acquiring interests in any available site. To tackle this by over-allocating would result in over-provision of floor space, particularly in unsustainable locations away from town centres, would be environmentally damaging and be a major blow to town centre viability. Such a course of action would in my view be wholly reprehensible.
- Leasing arrangements may affect competition. Policies relating to size of units may prevent some sites being used by major grocery retailers or make some sites more attractive to some retailers than others. However, changed formats have made this less successful of late in retaining sites suitable for operators outside the big 4 or 6.
- The need test may inadvertently restrict competition in local areas. However, a blanket removal of this test must not result in a growth of out-of-town comparison goods stores, the other PPS6 test, ie town centre first, and sequential test must be maintained and strengthened.

- Smaller and independent grocery retailers are less likely to be able to afford:
 - (a) the best sites; (b) section 106 contributions.
- Do not believe that it is basically the planning system that hinders competition. Competition between retailers is not currently a material consideration and if it was made one I think it would be very difficult to see how this would work!
- The expansion of 'Superstore' Mezzanines has resulted in greater retail activity at existing sites to the detriment of smaller supermarkets run, for example, by the Co-op and other traditional high-street or edge-of-high-street grocers (eg Somerfield).
- Plan-led identification of sites can help facilitate competition. However, a real issue is the fact that grocery retailer's sales (and profits) are increasingly driven not by their grocery offer but by their non-food (or comparison goods) offer and unless their stores are located in town and neighbourhood centres, such a development can pose a real threat to the vitality and viability of centres and high streets.
- There may be circumstances but would need to be subject of much further research having regard to other objectives also of the planning system.
- It is not a function of the planning system to regulate competition between retailers.
- I found some of these questions leading or simplistic. For example, the value of planning obligations is of course a relevant consideration when deciding a planning application, but that is because the planning obligations, if correctly used, are necessary in order to meet important planning objectives for a site or a locality. It should not be inferred from this that they are inducements to grant a planning permission for a harmful development. Also, it would be reasonable to take some account of a likely appeal outcome, if an LPA was contemplating a refusal which may not be fully supported by national or local planning policy and may therefore not be straightforward to defend. This does not mean that planning

decisions are driven by appeal considerations, and each individual case will be different. Large retailers may, in certain circumstances, offer more significant regeneration benefits than others, but again it depends on the specific circumstances, including the location of the site, the amount of retail headroom, the range of existing retailers present in the town centre, the scope for integrating the development into the retail core area and so on. These cannot easily be reduced down to rules which can be generally applied. For these reasons, I consider your survey is likely to produce unreliable results which could lead to misleading or simplistic conclusions. I have considered not responding but I note that you have powers to require a response. I would be grateful if you would note these reservations.

- Our Town Centres tend to be dominated by one major anchor store. It is difficult to introduce competition when need is already met—would help for PPS3 to make clear that competition within a centre is a legitimate need and therefore the larger operators would need to accept and facilitate others into the centre (whether high end or deep discounters).
- Para 1.7 of Planning Policy Statement 6: Planning for Town Centres by ODPM 2005 states 'It is not the role of the planning system to restrict competition, preserve existing commercial interests or to prevent innovation'.