

Mid Devon Local Plan Review: Examination

Hearing Statement: Matter Policy 27, Issue 4

This statement has been prepared by CBRE and should be read in conjunction with the representations¹ made by GL Hearn and the retail evidence² prepared by CBRE on behalf of Friends Life Ltd (c/o Aviva Investors Global Services Ltd) (herein FLL). It seeks to complement and expand on those representations as necessary to assist the Inspector in determining the extent to which the Local Plan meets the appropriate tests of legal compliance and soundness.

4. HAS THE ANALYSIS OF THE POTENTIAL IMPACTS OF THE RETAIL ELEMENT (2 AND 3 ABOVE) OF THE PROPOSAL PROPERLY FULFILLED THE DUTY TO CO-OPERATE?

4.1. A Statement of Common Ground (SoCG) for Issues 2, 3, 4 and 8 has been prepared between Mid Devon District Council (MDDC) and Friends Life Ltd (FLL) (August 2017) which sets out the matters of agreement in respect of retail matters. This hearing statement expands upon that SoCG where necessary and relevant to Issue 4.

Background

4.2. There are three key issues:

- The basis on which the duty to cooperate is engaged
- The extent to which a significant impact arises
- The extent to which duty to cooperate is discharged in the event that the duty is engaged

4.3. We address these issues below.

Basis on which the duty to cooperate is engaged

4.4. Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended) provides that the duty the duty to cooperate is engaged in relation to certain specified activities, including the preparation of development plan documents, so far as they relate to a 'strategic matter'.

4.5. Section 33A also indicates that, in single tier authorities, a strategic matter is (emphasis added):

Sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection

¹ Representations To Mid Devon District Council's Consultation On Its Proposed Submission Local Plan (February 2015) on Behalf Of The Eden Westwood Partnership (April 2015); and Representations To The Mid Devon Local Plan Review Proposed Submission (Incorporating Proposed Modifications) January 2017 on Behalf Of Friends Life Limited (C/O Aviva Investors Global Services Limited) (February 2017);

² Town Centre Uses Statement: Proposed Tourism and Leisure Led Mixed Use Development at Eden Westwood (April 2015) prepared by CBRE; Town Centre Uses Statement [Draft] and Supplementary Addendum (August 2016 and September 2016) prepared by CBRE

with infrastructure that is strategic and has or would have a significant impact on at least two planning areas.

- 4.6. It follows, therefore, that the potential impacts of the retail element of the development sought by the draft allocation of land at Junction 27 would only constitute a 'strategic matter' for the purposes of the duty to cooperate if a significant impact on at least two planning areas was likely to arise.

Extent to which a significant impact arises

- 4.7. The Planning Practice Guidance advises that when considering impact in the plan-making process, issues of adverse impact should not arise if the Local Plan is based on meeting the assessed need for town centre uses in accordance with the sequential approach.
- 4.8. It follows, therefore, that if there is a demonstrable need for the development sought in the draft allocation and it satisfies the sequential test, a significant adverse impact should not arise. That is the case here and, therefore, the duty to cooperate is not engaged.
- 4.9. In any case, analysis by CBRE for Friends Life concludes that no significant impact will arise. That analysis is set out in:

- Town Centre Uses Statement for Local Plan Proposed Submission Consultation (section 5 and appendices E and F), CBRE for Friends Life Ltd, 27 April 2015
- Town Centre Uses Statement (updated) (sections 8, 9 and 10), CBRE for Friends Life Ltd, 3 August 2016
- Town Centre Uses Statement (updated) – supplementary, CBRE for Friends Life Ltd, 6 September 2016

- 4.10. That conclusion was reached on the basis of an assessment of the key considerations are as set out in the Planning Practice Guidance, namely:

- Whether there would be an impact on existing, committed and planned public and private investment, or on the role of centres (paragraph 014, reference ID 2b-014-20140306)
- Whether there would be an impact on the vitality and viability of existing town centres (paragraph 017, reference ID: 2b-017-20140306)

- 4.11. It follows, therefore, that the duty to cooperate is not engaged by reference to the potential impacts of the retail element of the proposed allocation.

Extent to which duty to cooperate is discharged in the event that the duty is engaged

- 4.12. If any party was to conclude that the duty to cooperate is engaged, the duty has clearly been discharged, as demonstrated in the Duty to Cooperate Statement prepared by MDDC and dated March 2017, most notably in the section headed 'Economy, Retail and Leisure' and in Appendix A of that document, which provides a non-exhaustive list of meetings with duty to cooperate partners, one of which was attended by MDDC's retail planning consultant, Lichfields (then known as NLP).

- 4.13. We are mindful that Taunton Deane Borough Council (in representations dated 13 February 2017) express concern that potential impacts on Wellington were not considered. The reason for that is simple: the level of expenditure that it secures is very low, reflecting its relatively small comparison goods offer, particularly in the clothes and shoes sector. It is, therefore, highly unlikely that there will be any trade diversion from Wellington. We also note that the Borough Council expresses concern about impact on Taunton, but stops short of suggesting that any impact will be significant, that being the test for the duty to cooperate to be engaged.
- 4.14. Similarly, Exeter City Council has expressed some concern (in representations dated 13 February 2017) about potential impact, but 'does not consider that the proposed allocation is likely to have a significant adverse impact on Exeter City Centre' and that it is 'unlikely that the proposed allocation will have a significant adverse impact on investment to redevelop the Bus and Coach Station site in Exeter'.
- 4.15. Finally, Rocke Associates/Planning Potential, acting for Hermes, has expressed concern that the assumed level of trade attracted to the proposed outlet shopping village at junction 27 has been underestimated (paragraphs 5.5 to 5.14 of Planning Potential's assessment). If that is the case, trade diversion will be even more widely dispersed than CBRE's analysis suggests, and impact on individual centres will be even lower. CBRE's analysis is intended to be a 'worst case'.
- 4.16. Planning Potential also express concern that likely trade draw from the Clarks Village and Atlantic Village has been underestimated. Again, CBRE took that approach on the basis they wanted to model a 'worst case' impact on town centres, as opposed to on existing outlet shopping villages. CBRE recognise Planning Potential's concern (at paragraph 5.26 of their assessment) that a high level of trade diversion the Clarks Village might, given its proximity, have an impact on Street town centre, but the Clarks Village and Street town centre are not one and the same. Some linked trips are likely, but Street town centre is first and foremost local service centre providing for the day to day needs of the local community. It will continue to perform that role.
- 4.17. Finally, Planning Potential express concern that no allowance has been made for floorspace efficiencies (paragraph 5.29), but such efficiencies can only arise where new floorspace is not coming forward. A hypothetical allowance for floorspace efficiencies should not stop new floorspace coming forward for which a clear qualitative need has been identified.

Conclusions on whether the analysis of the potential impacts of the retail element of the proposal properly fulfilled the duty to co-operate

- 4.18. There is a clear regional need for the proposal and that the sequential test has been satisfied. As a result, the issue of impact should not arise and the duty to cooperate is not engaged so far as it relates to retail.
- 4.19. Notwithstanding any assessment of need or the application of the sequential test, analysis of potential impact undertaken for Friends Life Ltd demonstrates that no significant adverse impacts arise. As a result, the duty to cooperate is not engaged so far as it relates to retail.
- 4.20. Finally, if the duty to cooperate is engaged, that duty has been discharged, as explained in the Duty to Cooperate Statement prepared by MDDC.