

PINS Ref	APP/C1570/W/19/3241526
Site	Homebase, Elizabeth Way, Saffron Walden
Appellant	Charterhouse Property Group Ltd
Council	Uttlesford District Council
Rule 6 Party	HHGL Ltd (t/a Homebase)

OPENING SUBMISSIONS OF THE RULE 6 PARTY

1. This appeal seeks to procure the closure and demolition of one of Saffron Walden's most successful and most popular retail stores.

2. Standing back from the evidence prepared for this public inquiry, that is the stark outcome that the Appellant is asking the inspector to support. The Appellant is inviting the inspector to agree:
 - (1) that the use of the Site to provide a DIY and home improvement store should cease after 31 years;
 - (2) that Homebase should lose one of its most profitable stores in the whole of UK & Ireland (24th out of 163) at a time of unprecedented challenge for the UK economy;
 - (3) that Homebase's strong desire to continue trading at the Site should not prevail;
 - (4) that the views of over 4,700 local people who use the store regularly and who have formally objected to this appeal should not prevail;
 - (5) that the 19 members of staff employed at the Homebase should be allowed to lose their jobs;
 - (6) that the people of Saffron Walden should travel a significant distance outside the town to find a substitute for the Homebase, after its closure, given that there is no adequate substitute in or around Saffron Walden itself; and
 - (7) that this expenditure should be driven out of Saffron Walden even though the town's current retention of expenditure on comparison goods is already very poor.

3. The Appellant's case is that these harsh outcomes would be justified by the provision of a 68-bed care homes in place of the store. However, as the Council has explained in evidence, there is a *surplus* of care home provision in the District. The inspector is therefore being asked to approve the closure and demolition of a successful, long-established and popular business to make way for a development that is not even needed.
4. An up-to-date development plan, prepared in accordance with the NPPF, would never support such an outcome. The Appellant makes much of the absence of such an up-to-date plan in the District, and the Council's recent withdrawal of an emerging Local Plan intended to fill that gap. However, even in these circumstances, there is no policy vacuum. Paragraph 121(a) of the NPPF is intended to deal with *precisely* the circumstances in this appeal. It states:

“121. Local planning authorities should also take a positive approach to applications for alternative uses of land which is currently developed but not allocate for a specific purpose in plans, where this would help to meet identified development needs. In particular, they should support proposals to:

- a) use retail and employment land for homes in areas of high housing demand, *provided this would not undermine key economic sectors or sites* or the vitality and viability of town centres, and would be compatible with other policies in this Framework;

5. In their written evidence, the Appellant's witnesses either completely ignore para. 121(a) of the NPPF or dismiss it summarily based on an obvious misinterpretation of what para. 121(a) actually states. However, national policy cannot be wished away. If, having heard the evidence at this inquiry, the inspector agrees that the Homebase store is a “key” retail site in Saffron Walden, and/or that retail is a “key” economic sector for the town, the Secretary of State's policy is that the appeal should be dismissed.

6. Homebase will demonstrate that these national policy tests are met. In particular, it will be shown that:
- (1) The Saffron Walden Homebase is one of only four stores that dominate the market for home improvement goods in the entire area covered by the Uttlesford Retail Study Update 2018. Of these four stores, the Homebase in Safford Walden is the only one located within the District.
 - (2) Well over half of the expenditure on DIY, hardware and garden items within this wider study that is retained in Saffron Walden is accounted for by the Homebase (12.6%, relative to 19% of expenditure retained by Saffron Walden).
 - (3) Within the Saffron Walden 'home' Zone of the retail study area (Zone 1A), almost 54% of the available expenditure on DIY, hardware and garden items is accounted for by the Homebase. No other store or outlet selling home improvement goods in Saffron Walden comes remotely close to this.
7. These statistics speak for themselves. On any view, the Saffron Walden Homebase is a "key" retail site (and, in particular, a "key" site for home improvement retail), whether that is considered in the context of the 'home' retail study area, the wider retail study area, or the District as a whole. That being so, it would be contrary to the NPPF to grant planning permission for the demolition of the store.
8. The Appellant suggests that the demolition of the store is justified because the gap left by the departure of Homebase would be filled by the new B&M store and the new premises of the builders' merchant, Ridgeons. This is not correct:
- (1) B&M and Homebase are vastly different. B&M, perhaps best described as a modern-day Woolworths, is a variety store selling a broad range of heavily discounted food and non-food goods. The food and confectionery ranges take precedence at the Saffron Walden store. Only one of the twenty or so aisles in the store is used to sell home improvement goods. The Appellant points to an external area selling garden goods, but these are overwhelmingly bulky items (e.g. sheds, fencing and garden furniture); B&M does not offer the wide range of plants and smaller garden/outdoor accessories sold by Homebase (and has never indicated an intention to do so).

(2) Ridgeons and Homebase are also very different. Ridgeons is a builders' merchant in B8 use (storage) focused on trade customers. There are no restrictions on members of the public entering the premises, but those who do will not find a typical retail environment: the premises includes a number of concessions offering specialist services to tradespeople, such as tool and plant hire, and there is a large open office dealing with their orders. Members of the public wanting to use the premises at a time when most people carry out home improvement tasks – Saturday afternoons, Sundays or bank holidays – would be disappointed as the Ridgeons is closed at those times. Its opening hours are much more restricted than those of the Homebase because it targets tradespeople, not ordinary consumers.

9. If the new B&M and Ridgeons stores were, as claimed, possible viable substitutes for the Homebase store, there should be some evidence at this point that they have taken at least some trade away from the Homebase since they opened. There is no such evidence, precisely because they are serving vastly different markets.
10. Nor is it an answer to say that, even if B&M and Ridgeons would be poor substitutes for the Homebase, there are a number of independent retailers in the town centre who could fill the gap. As will be demonstrated, none of these small, boutique retailers comes close to offering the wide range of home improvement products offered by Homebase at competitive prices for a broad demographic. Certainly, none of these stores has the status of Homebase as a key store for retail, and in particular a key store for home improvement retail, in Saffron Walden and the wider District.
11. We return, therefore, to the rhetorical question: what would the closure and demolition of the Homebase really achieve? At best, it would make a modest contribution to the Council's overall 5-year land supply, but not providing a type of housing that the Council currently needs. It would bring some employment opportunities, both temporarily during the construction of the care home and permanently when the care home is operational. However, these same economic benefits could be achieved on many other sites in the District.

12. As will be shown, there is no viable, available site in the town centre or elsewhere around Saffron Walden that could accommodate the Homebase store. The current site is the most sequentially preferable site for the store, in accordance with national policy. The Appellant makes very heavy weather of its own presentation of the retail study data, suggesting that there is currently an ‘over-provision’ of out-of-centre retail space in Saffron Walden such that the Homebase should be allowed to close. There is no policy basis whatsoever for this self-serving approach. The policy position is not that an existing, thriving store needs to show that there is a general unmet “need” for *additional* retail space to justify its own ongoing existence. This is wrong on two fronts:

(1) First, planning policy in England has long done away with any assessment of ‘need’ when it comes to appraising individual retail proposals. It would be an unlawful misdirection of policy to reintroduce it.

(2) Secondly and more fundamentally, this appeal is not concerned with appraising a retail proposal: the policy focus in this case is not on requiring Homebase to justify its own existence in Saffron Walden, but on whether *the Appellant* has demonstrated that *its proposal* for a care home should be allowed despite its clear conflict with para. 121(a) of the NPPF. Rather than tackling this central policy head-on, however, the Appellant seeks to shift attention away from para. 121(a) by subjecting the *existing* Homebase to an *ex post facto* generic need assessment that has no basis in policy. This approach is over-complicated and would lead the decision-maker to err in law: the protection afforded by para. 121(a) to key retail sites is simply not conditional on any such *ex post facto* assessment of generic need. To consider such an assessment would be to take account of an irrelevant consideration, or to put an unlawful gloss on policy, both errors of law.

13. At this inquiry, Homebase will demonstrate that on a straightforward application of the test imposed by para. 121(a) of the NPPF, stripped of any unlawful varnish the Appellant seeks to put on it, the appeal should be dismissed. The closure and demolition of the Homebase would exacerbate Saffron Walden’s already very poor

retention rate for local expenditure on comparison goods, forcing local consumers to make unsustainable trips out of Saffron Walden to find a substitute store in other towns. At a time of national crisis for the retail sector, a store that is hugely valued by the local community, and which has remained remarkably resilient to recent and ongoing economic pressures, would be lost to make way for a development that is not needed. In social and economic terms, the proposal is the antithesis of sustainable development.

14. Given that the appeal seeks (unusually) the closure and demolition of an existing business, this is a rare case in which the Appellant's proposal engages the right of Homebase, as the current tenant of the Site, to the peaceful enjoyment of its business under Article 1 of the First Protocol to the European Convention on Human Rights ("**A1P1**"). This means that any interference with Homebase's right in the form of a planning permission for an alternative use, facilitating the termination of its business, needs to be justified and proportionate to be lawful. For the reasons given above, it will be Homebase's case that these tests are not met. The dismissal of the appeal is therefore required by law.

GWION LEWIS

Landmark Chambers

London

20 July 2020