

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)

CLOSING SUBMISSIONS OF THE RULE 6 PARTY

1. The UK Government could not be clearer in the NPPF. Retail land should not be used for housing, even in areas of high housing demand, if this would undermine “*key economic sectors or sites*”. In cross-examination at this inquiry, the Appellant’s retail witness, Mr Jonathan Best, accepted that the Site is **the** key site for DIY retail in both Saffron Walden specifically and the relevant retail study area (Zone 1(a)). This is, therefore, an open-and-shut case. The appeal must be dismissed as to allow it would be a breach of the NPPF, *on the Appellant’s own evidence*.

2. Whilst the NPPF is policy, not law, any departure from policy must be properly justified. There is no justification for not determining this appeal in accordance with the NPPF. Certainly, no such justification has been offered by the Appellant, who still appears to be in denial that paragraph 121 of the NPPF is fatal to its case.

Paragraph 121, NPPF

3. To recap, it is common ground between all the parties that, for the purposes of para. 121 of the NPPF, the Site is:
 - (1) “*retail... land*”;
 - (2) “*not allocated for a specific purpose*” in any plan; and
 - (3) in an area of “*high housing demand*”.

4. The dispute between the Appellant and Homebase in their written evidence related to the application of the caveat in para. 121: *“provided this would not undermine key economic sectors or sites”*. In his oral evidence in chief, Mr Best said (my note):

“The word ‘undermine’ has been deliberately chosen to set a high bar. We’re not just talking about a medium effect on a key site; it has to be significant.”

5. In cross-examination, it was suggested to Mr Best that it was difficult to conceive of a more “significant effect” on a key retail site than to allow the successful store built on it to be demolished and its retail use converted to residential. Mr Best was unable to resolve the difficulty.
6. Indeed, not only did Mr Best accept in cross-examination that the Site is the “key site” for DIY retail in Saffron Walden and Zone 1(a), he also accepted *in examination-in-chief* that retail is a *“key economic sector in the District generally and also for Saffron Walden specifically”*. If so, it is again impossible to understand how allowing the key site for DIY retail in Saffron Walden and the relevant study area to be lost to a residential use would avoid ‘undermining’ retail as a “key economic sector”. Mr Best’s only answer to this point was to suggest that because the NPPF expresses a *“policy preference for the role of town centre, not out-of-centre, for retail”* (his words), the “key economic sector” should be considered to be “town centre retail”, not “retail” generally. There is no basis for reading and applying the reference to “key economic sector” in paragraph 121 in this way. As Mr Best ultimately accepted in cross-examination, there is no suggestion in the NPPF that retail can only be a “key economic sector” *insofar as it is town centre retail*; that is applying an unlawful gloss to the policy.
7. The policy is simple: it is a question of fact, in each case, whether a sector is a “key economic sector” or not. On Mr Best’s own evidence, retail (not just “town centre retail”) *is* a “key economic sector” in Saffron Walden specifically, and the District generally. Having initially interpreted the policy correctly, and accepted that retail is a key economic sector, it was not credible for him then to try to back-track by

claiming that the question of whether a sector is a “key economic sector” is somehow subject to a locational constraint. The NPPF is laden with footnotes making connections between different paragraphs in the document: if the meaning of the words “key economic sector” was intended to be qualified by other policies in the NPPF, the document would have said so. It did not. There was no basis for Mr Best’s over-complicated approach.

8. Although Homebase maintains that the proposal would undermine retail as a “key economic sector” in the town and wider District, the case that Homebase is a key retail site (the alternative limb of the policy) is even more compelling. In his opening submissions, the Appellant’s advocate suggested that the Site could not be a “key retail site” for the purposes of para. 121 of the NPPF as the Site is not allocated for retail in the development plan. This argument is completely circular, as Mr Best accepted in cross-examination: paragraph 121 is only engaged in the first place if a site is *“not allocated for a specific purpose in plans”*. All “key” retail sites for the purpose of para. 121 are therefore *necessarily* without an allocated use. Mr Best sought to salvage the point by suggesting that a “key” retail site should at least be safeguarded for retail, even if not allocated for retail. This was, again, to read words into para. 121 that are simply not there: there is no suggestion in the paragraph, or elsewhere in the NPPF, that only sites safeguarded for retail may qualify as “key” retail sites.

9. Saffron Walden is *“the largest town in the District serving an extensive rural hinterland with the widest range of shops and facilities”*. Although this is a statement in the now withdrawn emerging Local Plan [CD E1, page 116, para. 6.3], Mr Best accepted in cross-examination that it is a statement of objective fact. He also accepted the following as statements of fact, also drawn from the emerging Local Plan (emphasis added):

“6.5 The Saffron Walden and Great Dunmow food superstores capture nearly all the main food-shopping spend in the District. Saffron Walden attracts a significant proportion of expenditure on comparison goods albeit for lower order

goods. This offer is however under pressure from larger centres especially Cambridge and Chelmsford. Great Dunmow has a much smaller comparison retail offer that only extends locally.

[...]

6.9. Outside the District key centres like Cambridge, Chelmsford and Harlow and the smaller centres of Braintree, Haverhill and Bishop's Stortford provide a much wider range of shops, services and recreational opportunities and there is a loss of expenditure to these nearby centres."

10. Further detail on these matters was provided in the Savills Retail Capacity Studies, as updated in 2018 [CD F4]. In relation to comparison goods expenditure, the 2018 Retail Study Update confirms that a very large proportion of comparison goods expenditure generated within the Uttlesford District study area leaks to settlements outside the District:

"4.116 The schedule demonstrates that Cambridge is by far the most important centre within and beyond the Study Area boundary for these types of expenditure, attracting about 30.8% of expenditure over the four zones. Bishop's Stortford accounts for some 6% of sales, Harlow 6.1% and Chelmsford 16.2%. Saffron Walden draws approximately 9.7% of comparison expenditure from the Study Area."

11. As regards the category of 'DIY, Decorating, Gardening Equipment' specifically:

"4.137 Although there is still 61.4% of this type of expenditure leaking from the Study Area, Saffron Walden attracts a total of 19% of expenditure from the Study Area, closely followed by Haverhill on 18% and Braintree on 16.2%."

12. Having been taken to these data, Mr Best accepted in cross-examination that, although a substantial majority of comparison expenditure leaks outside the District

Study Area to other places, Saffron Walden performs better than any other settlement in the District, topping the list by retaining 19% of comparison expenditure in this DIY category. Mr Best did not dispute Savills' assessment in the 2018 Retail Study Update that "[t]he retail warehouses dominate this type of expenditure... both within and beyond the Study Area accounting for 72% of expenditure" (para. 4.138, emphasis added). Indeed:

- (1) "Within Zone 1a Saffron Walden attracts 80.24% of potential [DIY, Decorating, Gardening Equipment] sales, followed by Bishop's Stortford on 7.48%, Cambridge on 4.98% and Haverhill on 4.53%" (para. 4.140).
- (2) "Predictably the stores closest to Zone 1 have increased attractiveness to the residents of that area, with the Homebase in Saffron Walden accounting for 53.82% of expenditure. Other stores in Saffron Walden attract a further 24.83% of this expenditure from Zone 1. The Homebase in Bishop's Stortford accounts for 5.07% of sales from this Zone." (para. 4.141)

13. The statistic underlined in the second citation is striking. When Mr Best was taken to this statistic in cross-examination, the inquiry had its standout moment (my note):

"Counsel: This is a standout statistic, isn't it? Homebase is unquestionably the leading and dominant DIY store in Zone 1(a) by a considerable margin, isn't it?"

Mr Best: Yes.

Counsel: It's the "key" DIY store in Saffron Walden, and more generally, Zone 1(a), isn't it?"

Mr Best: Yes.

14. The appeal was definitively lost at that point.

15. No other policy in the NPPF, reading the document as a whole, is as pertinent to this appeal proposal as paragraph 121. The paragraph could have been written for this

case. Accordingly, its application in this case is an overriding “material consideration” that warrants the dismissal of the appeal in accordance with s. 38(6) of the Planning and Compulsory Purchase Act 2004. The need to have regard to such other “material considerations” is self-evident in this case given the age of the extant Local Plan and the recent withdrawal of its emerging successor. The NPPF provides the up-to-date policy framework that the District is currently without, ensuring that there is no policy vacuum.

16. Whilst paragraph 121 is the policy most directly relevant to this proposal, paragraph 80 of the NPPF also points inexorably towards the dismissal of this appeal. Planning decisions “*should help create the conditions in which businesses can invest, expand and adapt*” (para. 80). In cross-examination, Mr Best was unable to explain how allowing this appeal, and thereby permitting the demolition of the leading DIY store in the District, would “*help to create the conditions*” for the store to thrive.

17. If it were suggested that *maintaining* Homebase’s presence on the Site would fail to “*create the conditions*” for *town centre* retail businesses to thrive, this should be rejected. As the Appellant’s previous agent said on its behalf in a letter to the Council as recently as 25 May 2018 in support of a s. 73 application relating to Homebase (Appendix E to Mr Gareth Roberts’ proof, internal page 3):

“... the Homebase has been trading a wide range of non-food bulky goods for many years, at the same time as Saffron Walden town centre has been identified as ‘exhibiting good economic health’ within the Uttlesford Retail Capacity Study (July 2016). This demonstrates the point that the range of goods retailed by Homebase and as covered by the proposed condition, do not directly compete with the town centre offer, and the proposed application, submitted to update the situation, would not impede continued vitality and viability of the centre.”

18. This was the Appellant’s view only two years ago; it would not be credible to suggest that the Appellant had a different view today.

19. In summary, the NPPF requires the dismissal of the appeal.

Substitutes for Homebase

20. Presumably in an attempt to diminish the significance of the Site as a “key” retail site, the Appellant suggested that the Ridgeons and B&M stores in Saffron Walden would be adequate substitutes for Homebase, were Homebase forced to leave the town.

21. The substantial differences between these retailers are obvious simply by visiting the stores. The written evidence serves only to confirm these obvious differences. In particular, the household survey carried out to inform the 2018 Retail Study Update found that the Ridgeons store in Saffron Walden only captures 1.04% of the Zone 1(a) expenditure on DIY and decorating goods, as compared to the 53.8% captured by the town’s Homebase store. Mr Best asserted that these survey results might have “*underestimated*” the results for Ridgeons, but he had no evidence to substantiate that assertion. That is not surprising. The result for Ridgeons simply reflects the fact that it is a household survey of where ordinary consumers actually shop. It confirms – as one would expect – that very few ordinary consumers would think of shopping for DIY and decorating goods at Ridgeons given that it overwhelmingly servicing tradespeople, not ordinary consumers.

22. The household survey data might have pre-dated the opening of the revamped Ridgeons, but as Mr Best accepted when questioned, there is no evidence that Ridgeons has increased its sales to the public since the new store opened. Nor is there evidence that Homebase has suffered a loss of trade since the new Ridgeons opened. That is because the new Ridgeons continues to be heavily focused on trade customers. A statement that Ridgeons prepared in support of its planning application for the new store explained that it needed to replace its existing buildings to meet new environmental standards and to secure cost efficiencies (Mr Gareth Roberts’ Appendix D)); the new store is not an attempt to pivot away from trade customers towards ordinary consumers.

23. There was an unfortunate suggestion during Mr Best's re-examination that the results of the 2016 household survey should be approached with caution given that more women than men participated in the survey. It was suggested (without any evidence) that the female respondents would not have provided a representative picture of DIY and homeware shopping habits given that men are more likely to visit a DIY and homeware store. Such gender-based stereotyping on behalf of the Appellant is not only outmoded, it is factually wrong. As explained during the inquiry, Homebase's main target customer is a woman in her 30s/40s. The staff at the Saffron Walden Homebase are overwhelmingly female. It is hoped that this regrettable line of argument will not resurface in the Appellant's closing submissions.
24. B&M would fare no better than Ridgeons as a replacement for Homebase. There must be some truth to the description of B&M as a "*modern-day Woolworths*" as the advocates for the Council and Homebase both used that phrase in their opening submissions, entirely independently of each other. B&M is a discount store. Shoppers visit B&M in search for a bargain and B&M delivers the goods. It is immediately obvious on entering the store that its retail proposition is markedly different from Homebase: the shopper is met on arrival by an avalanche of confectionery and other food and drink promotions that extend over several aisles. Shoppers must navigate those food and drink aisles first to gain access to other aisles. In those other aisles, only a single aisle (out of twenty) is focused on DIY and decorating goods. In this single aisle, the DIY goods are much more limited in range and, in general, of a lower quality than the goods sold at Homebase, in accordance with the lower prices that would be expected at a discount store. This is not a criticism of B&M; it is simply a matter of fact that B&M and Homebase are targeting very different markets.
25. Mr Best sought to challenge this obvious fact by providing a table, based on online research by a colleague, suggesting that B&M (and other stores in Saffron Walden) offered a similar range of product categories to those offered at Homebase (see Appendix JPB29). However, even if this table is taken at face value, it tells us nothing about the quality and range of products of that category sold by each store. For

example, B&M gets a tick in the box for “Paint” even though the range and quality of paints it offers does not come close to that offered by Homebase. This table should therefore be treated with considerable caution, even before taking account of the multiple errors which Mr Best admitted it contains (for example, the suggestions that B&M sells “Kitchen sinks”, “Bathrooms”, “Plumbing”, “Radiators”, “Underfloor heating” and “Carpets” when it does not, as Mr Best confirmed after being asked to check these curious entries during the inquiry).

26. Mr Best made much of the fact that the external area selling garden products at B&M is larger (“*about twice the size*”) than the external garden centre at Homebase, even if one also takes account of the second external area used in front of the Homebase to sell plants. Homebase does not dispute that the yard area at B&M is larger, but that is because it *needs* to be larger to store the very bulky items that are predominantly sold there. As is confirmed in the briefing note that B&M issued for landlords, describing its business (see ID7), B&M has a “*bulky goods bias*”. The external yard at B&M is occupied primarily by inexpensive sheds, fencing, and large items of garden furniture. There is a limited selection of what B&M calls “planters” – i.e. large troughs for plants – but the selection of plants is very basic and limited, far more limited than the selection at Homebase. A keen home gardener, wanting a wide selection of quality plants, would be very unlikely to find their needs met at B&M. In fairness, B&M is not even targeting keen home gardeners; its selection of primarily bulky garden goods shows that it is targeting those who simply want quick and easy ways of improving the appearance of their external areas by purchasing inexpensive ‘statement’ pieces. Again, the retail offer is markedly different from Homebase, as confirmed by experienced market researcher Mintel *not regarding* B&M as a “DIY specialist” (see Appendix JPB21).

27. The significant differences between B&M and Homebase have enabled both to co-operate without difficulty in recent years. As Mr Roberts explained in his oral evidence, Homebase has transferred some of its own units to B&M and the two retailers co-exist happily in some retail parks in the UK. They are able to do so because they do not perceive themselves as being in competition with each other. It

is inconceivable that Homebase would have co-operated with B&M as much as it has done – in many cases, facilitating its increasing presence in the UK – if it thought that B&M was serving the same consumer market.

28. As for Mr Best’s suggestion that trade catalogue retailer Screwfix could come to the rescue in the absence of Homebase, this was even more unrealistic. The advertisement produced by Screwfix seeking more retail space, included at Appendix JPB22, sums up its retail proposition. Screwfix operates very basic, no-frills premises in B8 storage (not A1 retail) use, primarily again for the benefit of tradespeople. The strapline on the company’s website is “The UK’s Number 1 Trade Catalogue”. As Mr Roberts explained in his rebuttal evidence, there are currently 3 Screwfix stores in the study area for the Savills Retail Capacity Study: in Haverhill (opened in 2014); in Bishop’s Stortford (opened in 2015); and in Cambridge (opening year unknown to Homebase). The two Screwfix stores in Haverhill and Bishop’s Stortford would definitely have been open when the NEMS household survey [CD F4, Appendix 6] was completed in April 2016. However, in the answers given to the survey, not a single respondent identified either of the Screwfix stores as somewhere where they shopped for DIY goods. This was entirely to be expected given that Screwfix focuses (like Ridgeons) on trade customers.

29. Mr Best claimed by reference to Appendix JPB22 that Screwfix is interested in opening premises in Saffron Walden, but when an obvious opportunity to do so arose on a 650 sqm retail plot on the Knights Retail Park (a plot firmly within its preferred range of sizes for new premises), it showed no interest. The Council allowed a gym to use the plot instead following an unsuccessful marketing exercise for the retail use.

30. It follows that none of the suggested substitutes for the Homebase, if it were demolished, would be realistic alternatives. Homebase has been successful in Saffron Walden precisely because its retail proposition is substantially different from the trade and/or discount retailers found elsewhere in the town. These other retailers

would not, and could not, be adequate substitutes for Homebase in the event of its departure from the Site.

Quantitative need

31. In the period between the pre-inquiry hearing and the opening of the inquiry, the two main parties agreed a Retail Statement of Common Ground (“**Retail SoCG**”) in which they accepted that the Savills studies contained several errors. In a table within paragraph 6 of the Retail SoCG, the parties sought to disaggregate the *total* additional retail need into two figures: the need for additional *in-centre* retail floorspace, and the need for additional *out-of-centre* retail floorspace. This exercise enabled the Appellant to argue that there is currently an “over-provision” of *out-of-centre* retail floorspace such that the Homebase, an out-of-centre site, could be sacrificed.

32. However, as Mr Best accepted in cross-examination, there is nothing in national planning policy or guidance that supports this approach of attempting to disaggregate the additional retail need in this way. Rather, there is just the additional retail need (see NPPF, para. 85(d)) which national policy *then* subjects to the sequential test. In other words, the identification of the need is logically prior to the question of where that need is to be met on a sequential approach (NPPF, para. 86); the two considerations are not blurred, as was done in paragraph 6 of the Retail SoCG.

33. When this was put to Mr Best in cross-examination, he accepted that policy did not blur these considerations. In light of that answer, he then agreed that it was only the final column in the table at paragraph 6 of the Retail SoCG giving the figure for total additional need that really mattered. This was a significant concession because the Saffron Walden Homebase is some 1,267 sqm (gross) (see 2018 Retail Study Update

at para. 4.52). This would be well within the total additional retail need figure of some 1,600 sqm identified in the table. Contrary to Mr Best's written evidence, therefore, and on a proper reading and application of national policy, the analysis in the Retail SoCG *would* support the 're-provision' of the Homebase, *if it were necessary to consider that*.

34. However, the more fundamental question to ask is why this issue of 'quantitative need' for retail should arise in this appeal at all. This appeal is not concerned with a retail proposal. The Homebase store in Saffron Walden already has a long-standing planning permission for an A1 retail use. Mr Best was asked in cross-examination if there was any policy or guidance to the effect that if a residential use is proposed on retail land, it is necessary to reappraise whether there is a *general*, additional need for retail land at that point, even though the retail use already has planning permission and is long-established. Mr Best confirmed that he was not aware of any such policy or guidance. There is no such policy or guidance because, in this scenario, it would be wrong in principle to require an already *consented* retail use to justify its own existence. To repeat: in this scenario, the proposal that needs to be justified is the proposal for a residential use, not a retail use that already exists.

35. In any event, in England (unlike Wales), there is no test of retail 'need' when making decisions in individual cases about a proposed retail use. Even if it were accepted for the sake of argument that the present appeal is *indirectly* about assessing the merits of a retail use on the Site, paragraphs 86 and 89 of the NPPF are very clear that the retail tests to be applied in England are the sequential test and the retail impact test. There is no "need" test: "need" is a consideration at the plan-making, not decision-taking, stage.

36. Where does this leave the Appellant's retail case? Drawing all these strands together, by inviting the inspector to consider the general quantitative need for additional retail land in Saffron Walden, and then use that to justify allowing the current use of the Site for retail to end, the Appellant is asking the inspector to take an approach entirely unsupported by policy. It is worse than that. In effect, the

Appellant is asking the inspector to reintroduce a ‘need’ test when appraising a retail use at the decision-making stage – a test that was abandoned in national planning policy for England several years ago. The Appellant’s submissions on quantitative need, if accepted, would lead the inspector into clear legal error.

Article 1 of the First Protocol ECHR

37. Given that the appeal seeks (unusually) the closure and demolition of an existing business, Homebase maintains that 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 business 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. The written and oral evidence given at this inquiry has not provided any such justification. A decision that its “key” retail site in Saffron Walden can and should be sacrificed to make way for a care home that, on the Council’s evidence, is not even needed in the District, would be a disproportionate and therefore unlawful interference with Homebase’s right under A1P1 ECHR. A fair balance between private and public interests would not be struck. The appeal must be dismissed to avoid such a breach.

Conclusion

38. For all these reasons, Homebase respectfully invites the inspector to dismiss this appeal.

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30 July 2020