

3 February 2017

Planning Policy
Dartford Borough Council
Civic Centre
Home Gardens
Dartford
DA1 1DR

Sent by Email

**WILLIAMS.
GALLAGHER.**
town planning
solutions

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Dear Sir / Madam

**Dartford Development Policies Plan: Proposed Modifications (December 2016)
Representation on behalf of CCP III Dartford 1 S.À.R.L. (C/o Ellandi LLP)**

Williams Gallagher Town Planning Solutions Ltd (Williams Gallagher) is instructed by CCP III Dartford 1 S.À.R.L. (C/o Ellandi LLP), owners of the Priory Shopping Centre in Dartford Town Centre, to review and comment on the Proposed Modifications to the Dartford Development Management Plan (2016).

By way of introduction, Williams Gallagher is owned and managed by Matthew Williams and Heather Gallagher who previously advised Ellandi LLP (Ellandi) through Savills (UK) Ltd (Savills). Whilst employed by Savills, we represented Ellandi at the Development Policies Plan Examination Hearing in respect of Matter 8 (Dartford Town Centre and Shopping) on 18 October 2016 and submitted further information to the Inspector (at his request) in relation to Policy DP15 on 19 October 2016 (enclosed for ease of reference). Dartford Borough Council (DBC) subsequently responded to this additional information during October 2016 (Dartford Development Policies Plan Matters Arising from Examination Hearings - Comments by Dartford Council on Savills' Further Submission on Policy DP15).

It is understood that this latest consultation is being held in respect of a series of Proposed Modifications to the emerging Plan which seek to address potential soundness concerns raised during the Examination Hearings in relation to the effectiveness / clarity of some policies, and for certain other policies, arising from the need for national policy compliance. The consultation gives those who made representations in early 2016 the opportunity to comment on the modifications now proposed.

In view of the comments we have made throughout the consultation process, we are broadly content with the modifications that have been made to the Plan which relate to town centres and retailing in the Borough. We are however disappointed to find that the Council has chosen not to amend the wording of Policy DP15 2b (Dartford Town Centre and its Primary Frontage) which requires Applicants to demonstrate that a shop has been shown not to be feasible for A1 / A2 use after sufficient effective marketing (12 months) and is vacant. This is despite the Inspector's letter dated 28 November 2016 which clearly states that he:

"remain[s] concerned that the marketing requirement in respect of certain retail policies may have the effect of preventing under-utilised or empty space from being used efficiently, and lead to long term vacancy. This is at odds with the themes in the National Planning Policy Framework of flexibility and supporting the business sector" (Para 5).

We note the comments made by Dartford Council which respond to the additional material we submitted to the Inspector, however find these to be overly dismissive.

Ellandi is a well-established community shopping centre specialist who has considerable experience in repositioning shopping centres such that they are commercially viable and contribute to the vitality

and viability of the town centres that these shopping centres serve. It has also owned the Priory Shopping Centre since April 2015 – since this time, Ellandi's asset managers have worked closely with local and national commercial agents to secure good quality tenants for the Priory Centre which has led to an excellent understanding of the local retail market. It has also undertaken significant improvements to the centre to attract new tenants including a refreshed branding strategy and associated signage and worked closely with Dartford Borough Council to provide commercial intelligence in the preparation of a robust town centre masterplan.

It is with this experience and understanding in mind that we wish to re-emphasise our concerns that Draft Policy DP15, and specifically the requirement to market the unit for 12 months, will lead to long term voids where A1 and / or A2 occupiers cannot be found. Indeed, this clause could lead to vacancies beyond the 12 month stipulated period as once it has passed, permission will still be required to change of the use of the unit in question with Heads of Terms to be signed once permission has been achieved. It is also Ellandi's experience and understanding that leads us to conclude that town centres such as Dartford can benefit significantly from a mix of uses within Primary Shopping Frontages, not least because they help generate additional footfall and encourage increased dwell time.

Whilst we acknowledge that Para 23 of the NPPF states that in drawing up local plans, local planning authorities should define the extent of town centres and primary shopping areas, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations, the NPPF (which should be read in full) is also clear that:

- local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century (Para 20);
- investment in business should not be over-burdened by the combined requirements of planning policy expectations - planning policies should recognise and seek to address potential barriers to investment (Para 21);
- local planning authorities should set out a clear economic vision and strategy for their area which positively and proactively encourages sustainable economic growth (Para 21);
- policies should be flexible enough to accommodate needs not anticipated in the plan and to allow a rapid response to changes in economic circumstances (Para 21).

In this case, we find the marketing criteria contained within Policy DP15 to be entirely inconsistent with the NPPF emphasis on building a strong, competitive economy, not least because it will place a significant burden on town centre investors and their ability to bring forward complementary non-retail uses and respond to market demand, even where it can be demonstrated that these uses will serve to enhance the vitality and viability of Dartford Town Centre.

In addition to the above, we note that the Council has referred to several local plans which have adopted post-NPPF policies which contain a similar requirement for units to be marketed for a period of 12 months or more (namely Epsom & Ewell, Hackney, Harrow, Hammersmith & Fulham, Barking & Dagenham, Enfield, Barnet, and Brent). The Council goes on to contend that these are more relevant than the *"more remote and less economically buoyant examples provided by Savills"*. For ease of reference, we provided examples from Cornwall, North Somerset and Southampton.

In response to DBC's comments, we wish to make the following observations:

- In respect of Epsom and Ewell, the only post-NPPF document that appears to have been adopted post-NPPF is the Development Management Policies Document (DMPD) (2015). Policy DM28: Existing Retail Centres (Outside of Epsom Town Centre) deals with retail frontages and whilst this sets a threshold for non-retail uses in the Primary Shopping Frontage (at least 66% to be given over to Class A1 Uses), there does not appear to be a requirement within this

policy to market units within the Primary Shopping Frontage for 12 months or more. A marketing clause only applies to isolated shops and small groups of shops which serve local needs under Policy DM31. Moreover, the only comparable centre to Dartford within Epsom and Ewell is Epsom itself. Firstly this centre is considered to be far more viable than Dartford (see comments below). Secondly, the policies that apply to units in the Primary Shopping Frontage in this location were adopted pre-NPPF through an Area Action Plan – even then, they do not include a requirement to market units prior to a change of use occurring.

- We would also query the relevance of the development management policies adopted by the following authorities referred to by DBC:
 - Barking and Dagenham – Policy BE1 of the Barking and Dagenham Borough Wide Development Policies document does include a marketing clause, however the Policy was adopted prior to the publication of the NPPF in March 2011;
 - Hammersmith and Fulham – the Development Management Plan (adopted July 2013) for Hammersmith and Fulham only applies a marketing clause to key local centres, neighbourhood parades and satellite parades (Policy DMC4) – it does not apply to Hammersmith, Fulham and Shepherd’s Bush town centres which are covered by Policy DMC2.
 - Brent – the supporting text to Policy DMP2 (Paras 3.5 and 3.6) of the Brent Development Management Policy document (adopted November 2016) does refer to a need to market units, however, this only applies to proposals for residential development in peripheral locations in the secondary frontage. This has now clearly been superseded by the amendments to Permitted Development rights in 2015 which actively seeks to deliver residential conversion of retail units in secondary frontages.
- A number of plans referred to by DBC cover town centres which it regards as comparable to Dartford Town Centre – a centre which the Council's own evidence base concludes suffers from above average vacancy rates and a general lack of demand from national comparison goods retailers (largely due to Bluewater). Conversely, a number of plans and policies referred to by DBC cover inner London centres such as Dalston, Hackney Central, Hammersmith and Fulham – all of which are located in Zone 2 and have significantly different trading characteristics to Dartford. The examples also include centres such as Epsom and Enfield – both of which have strong retailer representation¹ and can be regarded as more vital and viable than Dartford – as a result, a marketing clause applied to these centres is far less likely to undermine their economic recovery and lead to prolonged vacancies.
- Whilst the examples provided by DBC may be closer to Dartford than the examples we have provided, this does not mean they are any more comparable. Very little explanation is given as to why DBC consider these to be more relevant other than their relative proximity to London.
- Our examples of more flexible policies in the Primary Shopping Frontage included those adopted by Southampton City Council. Southampton City Centre is currently ranked 19th in the 2015-16 Venuescore assessment of top performing venues. As a major metropolitan city and top performing centre, Southampton cannot be regarded as a “more remote and less economically buoyant centre” than Dartford. Indeed, the examples we provide acknowledge the changing role of town centres and the positive contribution that a mix of uses can make to declining centres which have been consistently undermined by out of centre development and structural shifts in the retail market.

¹ Epsom Town Centre is anchored by a number of national retailers including House of Fraser, Jones the Boot Maker, Lakeland, Next, M&S and Waitrose. The Palace Exchange in Enfield also provides a strong comparison goods offer and is anchored by M&S, River Island, H&M, Pearsons Department Store, Topshop and Waitrose.

As we have previously asserted, we note that there is likely to be a significant growth in expenditure in Dartford over the coming years. Without an ability to respond to this in a flexible manner, this expenditure will only be diverted to Bluewater (and other out of centre locations / higher order centres / purpose built facilities) which provide a one stop shop for shopping, eating and leisure. Perversely, most of these out of centre / purpose built facilities have no restrictions on the types of uses that can be provided and can thus respond quickly to shifting consumer demand and further structural changes in the retail and leisure industry.

It is with the above in mind that we find DBC's reasons for dismissing our representations to be unconvincing and Policy DP15 (2b) unsound. This could be easily rectified through the removal of the onerous marketing criteria – something which we respectfully request that the Inspector considers as a recommendation in his final report.

We trust that the above comments are of assistance and look forward to confirmation that they are received and are receiving your attention.

Yours sincerely

Heather Gallagher
Director
Williams Gallagher
Town Planning Solutions Ltd

Dear Lynette

I write further to the Hearing on Matter 8 yesterday, during which Mr Nunn agreed it would be helpful to see a number of practical examples where Local Authorities have recently adopted a more flexible approach to changes of use within the traditional Primary Shopping Frontage in their respective Town Centres.

He will note that none of the examples we provide below include a strict marketing clause similar to that proposed by Dartford Council (Policy DP15 2b)) – as I outlined yesterday, this clause is considered to be particularly onerous and is likely to lead to prolonged vacancies as well as stifling creativity and innovation in a Town Centre which is faced with numerous challenges.

Clause DP15 2a) is also restrictive in our view, as it would not allow for small areas of non-A1 / A2 retail to form where this can demonstrably contribute to the vitality and viability of the Town Centre (clustering is not always inappropriate where it can be effectively managed) – the policies referred to below would allow for this whilst allowing the Council to restrict development which is harmful to the Town Centre.

The examples we provide below acknowledge the changing role of town centres and the positive contribution that a mix of uses can make to declining centres which have been consistently undermined by out of centre development and structural shifts in the retail market.

They are also in line with the PPG (Para Paragraph: 003 Reference ID: 2b-003-20140306) which clearly states that *“where a town centre is in decline [...] strategies should seek to manage decline positively to encourage economic activity and achieve an appropriate mix of uses commensurate with a realistic future for that town centre”*.

We note the Council’s comments yesterday that there is likely to be a significant growth in expenditure in Dartford over the coming years.

Without an ability to respond to this in a flexible manner, this expenditure will only be diverted to Bluewater (and other out of centre locations / higher order centres / purpose built facilities) which provide a one stop shop for shopping, eating and leisure. Perversely, most of these out of centre / purpose built facilities have no restrictions on the types of uses that can be provided and can thus respond quickly to shifting consumer demand and further structural changes in the retail and leisure industry.

This would not be the case in Dartford owing to the onerous restrictions placed on it within the Primary Shopping Frontage – the reality is that town centres such as Dartford need to adapt in order to survive – Policy DP15 does not allow for this to happen.

The following three examples will hopefully be of assistance – they are of relevance to us as they have been adopted in areas where Ellandi own and manage shopping centres.

Example 1 – Cornwall Local Plan

This covers a number of Town Centres including Truro and St Austell. The Plan is not yet adopted, however the Inspector (Simon Emerson) has issued his report. Within this he refers to Policy 4 (3) which deals with changes of use in the Primary Frontages (Para 91). He notes that the submitted Plan did not set out any clear policy for the primary shopping areas and primary retail frontages or differentiate between them to reflect their different function. Major Modification 31 (as advocated by the Inspector) introduces appropriate policy wording. Mr Emerson also amended the published change to make clear that a change of use of a retail unit in a primary frontage may be acceptable even though the unit is not vacant and has not been marketed for retail. He considered that other factors listed in the proposed policy should normally be sufficient to assess the suitability of any such proposals.

Modified Policy 4 (3) reads as follows:

3) *Within the primary retail frontages identified on the proposals map, the change of use of ground floor Class A1 shop premises to Class A2, A3, A4 and A5 will only be permitted where the proposed use would not undermine the retail function of the town centre and maintain and enhance its vitality and viability. The determination of each application will have regard to the following factors:*

- i) the location and prominence of the premises;*
- ii) the size and width of the premises;*
- iii) the number and distribution of other existing and committed non-A1 uses within the defined primary retail frontage (including any premises subject to current Permitted Development changes of use);*
- iv) the nature and character of the proposed use; and*
- v) the design of the shop-front.*

The above considerations will normally be sufficient to assess applications for a change of use. Premises do not have to be vacant or marketed for a change of use to be acceptable. Nevertheless, the length of any vacancy of the premises and evidence of unsuccessful marketing for the current permitted use may be evidence of a lack of demand and changing retail patterns. (Emphasis added).

Whilst this emerging policy does refer to marketing, it is regarded as useful additional evidence that can be used to demonstrate that a particular unit is no longer viable for its permitted use – it does not form part of the criteria to demonstrate that a proposed change of use is acceptable.

The Inspector's Report and Schedule of Major Modifications are attached.

Example 2 – North Somerset Development Management Policies

This Plan was adopted by Full Council on 19 July 2016 and is therefore fully up to date. Policy DM64 deals with Primary Shopping Frontages and states as follows:

Within the primary shopping frontages defined on the Policies Map proposals for A1 uses will be supported. Proposals which allow for flexible use, support a modern approach to shopping for example by use of displays, integrated internet shopping or improved collection points will be supported where these can be integrated into the existing pattern of shopping. Proposals for a change of use at ground floor level from A1 will only be permitted if the following criteria can be met:

- the proposal is for an A Class use; and*
- the proposal would make a positive contribution to the viability, vitality and diversity of the primary shopping area; and*
- would not result in a loss of footfall but ideally create additional footfall; and*
- would extend the range of activities available to shoppers and other users so as to enhance the experience of visiting the centre; and*
- would not fragment any part of the shopping frontage by creating or contributing to a significant break in the active frontage or result in a use which creates an inactive daytime use; and*
- would not result in the loss of a large retail unit and/or a shop located in a key location which would be harmful to the shopping function of the primary shopping area; and*
- be compatible with the retail frontage in that it includes a shopfront with a display function and would be immediately accessible from the street.*

A copy of the Development Management Policies Local Plan is attached.

Example 3 – Southampton City Centre Action Plan

The City Centre Action Plan was adopted at a Full Council meeting on 18 March 2015. Policy AP 5 deals with exiting retail areas stating as follows:

The Council will safeguard retail uses at ground floor level within the following city centre shopping frontages:

Primary Retail Frontages

Proposals for new development or a change of use at ground floor level for A1 use will be supported.

Proposals for non A1 use at ground floor will be supported if:

- (i) the use falls within Class A2, A3, A4 or A5; and*
- (ii) it would not result in three or more adjoining units in non-A1 use; and*
- (iii) an active frontage appropriate to a shopping area is included; and*
- (iv) it would not be detrimental to those living or working nearby, for example by causing undue noise, odour and disturbance.*

[...]

The adopted Plan is attached to this email.

I trust that the above and the attached documents will be of interest.

Should Mr Nunn or the Council require any further information, please do not hesitate to contact me or my colleague Matthew (copied).

Kind regards

Heather

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If you wish to see copies of the other Local Authority examples as mentioned above, please contact us on 01322 343213