

Name of Applicant Type of Certificate	Proposal	Map/Plan Policy	Plan Date
Chase Commercial Ltd., c/o Mr Simon Hawley, 'B'	Demolition of existing building and development of bulky goods retail units (Use Class A1) with associated parking and infrastructure. 2 SHERWOOD ROAD BROMSGROVE WORCESTERSHIRE B60 3DU	Employment	12/0300 DK 17.07.2012

RECOMMENDATION:

Subject to the satisfactory views of:

- (i) Worcestershire Highways
- (ii) The Environment Agency
- (iii) Worcestershire Regulatory Services (Lighting Engineer)

(a) MINDED to APPROVE FULL PLANNING PERMISSION

(b) That **DELEGATED POWERS** be granted to the Head of Planning and Regeneration to determine the full planning application following:

- (i) The receipt of a suitable and satisfactory legal mechanism in relation to improvement measures to public transport infrastructure
- (ii) The application being referred to the Secretary of State (National Planning Casework Unit) under the provisions of the Town and Country Planning (Consultation) (England) Direction 2009

Consultations

WH Consulted 24.04.2012. No response to date.

ENG Consulted 24.04.2012. Response received: 18.05.2012.

The site is partially within fluvial flood zones 2 & 3. The site is also partially at risk of both shallow and deep surface water flooding. There are no historically known issues of any significance at the site.

The application states that the watercourse will be enhanced and reconfigured, that petrol interceptors will be installed and that SuDS will be implemented to prevent flooding from 1:100 +20% Climate Change, which I am happy to see. I would, however, like to see the pre and post development outputs from the WinDes model to verify that the buildings will not flood and that the proposed SuDS are

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	sufficient.		
	The FRA advises that maintenance and inspections of the watercourse throughout the life of the development should be carried out, along with implementing evacuation strategies and monitoring river levels. I would like to ensure these are carried out. I also support the idea of demarcating those car parking spaces at risk of flooding, and the use of bollards to prevent vehicles being washed away. I would prefer to see the drainage from the West car park to soakaway rather than to the brook, if this is possible and the ground is not contaminated. I would also like to ensure any gullies discharging to the brook have sediment traps in place, and are regularly maintained. Other than the above comments, no objection to the application.		
EA	Consulted 24.04.2012. Response received: The application includes a proposal to divert part of the watercourse (classified 'Main River') within the site. Whilst the applicant has submitted a Flood Risk Assessment (FRA) to assess existing flood risk, insufficient information has been submitted with the planning application to confirm that there would be no adverse impacts on flood risk as a result of the proposed channel diversion. The detailed design of the channel diversion (including cross sections, dimensions and a method statement for the proposed works) would be considered by us under the Flood Defence Consent requirements (for temporary and permanent works to the 'Main River'). However, the applicant should provide some reassurance at the planning application stage to confirm that the design of the new section of channel would have no adverse impacts on flood risk or to biodiversity, and that opportunities for betterment have been considered, in line with the National Planning Policy Framework and its associated Technical Guidance. At this time insufficient information has been submitted with the planning application to allow us to comment fully on the proposed development. Once the applicant has submitted additional information to provide reassurance on the above aspect of the proposal, we will be able to comment fully on the application and recommend conditions where appropriate.		
EDO	Consulted 24.04.2012. No response received.		
LP	Consulted 24.04.2012. Response received 11.05.2012. Following a call-in by the Secretary of State, the site was granted planning permission for a non-food retail warehouse of 3,716 sq. m. with a condition limiting the range of goods that can be sold		

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	(10/0115, renewal of B/2005/0293). Permission to vary the range of goods to meet the requirements of potential occupant (Homebase) was given in 11/0387. This application is to increase the floorspace from 3,716sq.m. + 660sq.m external areas to 4,128sq.m. + 929sq.m external areas, section 2 Ensuring the vitality of town centres of the NPPF, Practice guidance on need, impact and the sequential approach of PPS4 and Policy S21 of the Bromsgrove District Local Plan, which I consider is in conformity with the NPPF and hence due weight could be attached to it, are therefore relevant. As the site is at an out-of-centre location and the development is over 2,500 sqm, the applicant has submitted a sequential test and an impact test to comply with requirements of paragraphs 24 and 26 of the NPPF and S21. Comments from the Town Centre team and Economic Development team or external retail consultant will be relevant in checking whether the information and assumptions included/ applied are valid and up to date. Assuming the figures are valid and given that there is £29.1m of residual spending to support new comparison shops after deduction from commitments in 2015 (Retail Capacity Analysis, Nov 2010) in the town centre, I consider the increase of comparison floorspace as acceptable. Paragraph 109 of the NPPF states that “the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing <u>net gains</u> in biodiversity where possible”. It carries on to say that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by encouraging biodiversity to be incorporated in and around developments (para 118). Comments from the Tree Officer and the Worcestershire Wildlife Trust are therefore relevant when determining whether the development contributes to enhancement of the natural and local environment and provide net gains in biodiversity. The views of the Highways Engineer and Drainage Engineer will be of relevance in relation to the highways, water management and sustainability issues.		
Retail Consultant	Consulted 24.04.2012. Response received: 16.05.2012. I have now had the opportunity to review the above planning application. As you are aware, I previously provided detailed comments on an earlier proposal (11/0387) which allowed the variation of a planning permission limiting the range of goods allowed to be sold from a retail warehouse development previously permitted, and for which the planning permission had subsequently been renewed. My comments below are submitted against that background and, as ever, focus on retail planning issues in circumstances where you are best placed to comment on the general planning issues surrounding the proposal.		

There are numerous aspects of the submitted material that I do not agree with. However, I do not propose to present a detailed point by point critique here. Rather, I have sought to focus on the key points to assist in your determination of the application.

Given the extant planning permission for retail warehouse development on this site, and the recent (2011) consideration of key aspects of retail policy in relation to the positive determination of 11/0387, it is the case that consideration of the current proposal should focus on changes that have subsequently taken place, either in policy, the nature of the proposal, or other material considerations. If there have been no such changes of consequence then it follows that the scheme should remain acceptable in retail terms.

The key change from a policy perspective is obviously the publication of the NPPF. Given that the application was submitted in April, and the Planning Support Statement was approved by its authors and issued on 3 April, it is curious that the NPPF (which was adopted in March) is not mentioned. This notwithstanding, other than the way some of the submitted analysis is cast, this oversight does not make a great deal of difference. From a retail perspective the emphasis of the NPPF is largely consistent with the predecessor policy in PPS4, and the key tests (sequential approach and impact) remain.

In terms of the sequential test the approach taken – which is to reflect on sites previously examined and identify any new ones – is reasonable. If a sequentially preferable site had emerged since the grant of 11/0387, capable of accommodating either of the proposed units or both together, then this would represent a change in material circumstances such that the current scheme may well be viewed in a different light. However, the additional sites now examined can all in my view be discounted, because they are unsuitable and / or unavailable. I am unaware of any changes in circumstances in relation to the sites previously examined in relation to 11/0387. On that basis the proposal remains in my view compliant with the provisions of the sequential test.

Turning to the nature of the proposal, the scheme has now become larger than that assessed under 11/0387. However, in relative terms and having regard to the specific nature of the proposal, the difference is not particularly significant. The building is now proposed to be 412 sqm larger, and the outside sales area 269 sq m larger, than previously considered. However, the increase in the building size is achieved through the inclusion of a mezzanine, and this plus the outside sales area would be expected to trade less efficiently than the main retail area. This has the effect of diluting the effect of the new space from a retail perspective.

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	The impact associated with the original planning permission (as extended), and then with the variation of condition, was found to be acceptable. The question should then be whether the marginal effect of this additional floorspace is such that the scheme would now in NPPF terms give rise to “significant adverse impact”. I do not consider that it would, given the scale and type of floorspace, as well as the nature of the occupiers identified. The Planning Support Statement proposes (paragraph 7.2) a condition to limit the range of goods should planning permission be granted. This appears to be almost identical to that provided by 11/0387, other than some small differences which are either immaterial or do not make sense. In the event that planning permission is granted I would therefore recommend applying the condition as set out in 11/0387. I would also recommend a condition that prevents the subdivision of the space other than in accordance with the approved plans, unless otherwise agreed in writing by the Council. This would prevent subdivision into a larger number of units, which might be considered differently in sequential and impact terms, but allow the agreement of minor reconfiguration of space for operational purposes.		
WRS (Contaminated Land)	Consulted 24.04.2012. Response received: 12.06.2012. No objection subject to conditions.		
WRS (Lighting)	Consulted 24.04.2012. No response received.		
WWT	Consulted 24.04.2012. No response received.		
Tree Officer	Consulted 24.04.2012. Response received: 17.05.2012. I would like to see the stumps of trees on the banking of the stream in the Northern end of the site retained and allowed to re-coppice in conjunction with any additional landscape tree planting as this is characteristic of the nature of the stream line habitat. The proposed management regime for the Alder and Willow on the banking of the Northern section of the stream line is highlighted on the Landscape Plan as to be Coppiced every 3-5 years. I feel these tree should not be Coppiced any more frequently than every 5 years so would prefer this proposed timing for re-coppice is altered to between every 5 -7 years in frequency. There will be a number of trees lost but most to be removed are of low prominence and quality. There is however a good proposed amount varied and suitable tree planting within the landscaping plan to mitigate the lost of these trees.		

Therefore I have no objection to the proposed development under the following conditions.

1. All existing trees highlighted for retention should be afforded full protection in accordance with BS5837:2005 Recommendations.
2. The existing coppiced Willow and Alder stumps on the banking of the Northern section of the stream are retained and the proposed re-coppicing management regime for these species of trees in this area is changed to between every 5-7 year in frequency.
3. Details of the planting specification, the after care and replacement policy should be provided for the Councils consideration and agreement.

Publicity: Neighbour notification: 12 letters sent 24.04.2012, Expired 15.05.2012.
5 additional letters sent 27.04.2012, expired 18.05.2012.
Site Notice posted: 27.04.2012, Expired 18.05.2012.
Press Notice posted: 04.05.2012. Expired 25.05.2012.

No responses received.

The site and its surroundings

The application site relates to a 1.72 ha site on the south eastern quadrant of the junction of Stoke Road and Sherwood Road, Aston Fields. The site is currently occupied by the vacant Barpro building, which is understood have been unused since 2003. The Spadesbourne Brook divides the site with land to the west being used as parking with a vehicular access over the stream. Industrial units of relatively small scale are sited opposite the site and set back from the road behind frontage parking areas.

Proposal

The proposal relates to the demolition of the existing Barpro building and the development of bulky goods retail units (Use Class A1) with associated parking and infrastructure. The application relates to the development of two retail units providing 4128sqm of retail floorspace with an external sales area of some 929sqm. The larger unit to the south (to serve Homebase) would have a floorspace of 3,291sqm. The smaller unit (to serve Pets at Home) amounts to 837sqm. There is a service yard proposed to the SW of the retail units. The proposed access to the units would be from Sherwood Road with limited changes from that already approved in B/2010/0115. The car parking is located in two areas of the site immediately to the north of the proposed units (57 spaces) and across the brook to the NW of the site (108 spaces). The previous approval amounted to a single retail unit in the centre of

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the site and the current one relates to two units with a different position for the external sales area, maneuvering and service areas.

The application is supported by a Retail Impact Assessment, Flood Risk Assessment, Sequential Assessment, Supporting Statement, Arboricultural Survey, Transport Statement and Design and Access Statement. There is also a Phase 3 Environmental Investigation and Risk Assessment, an Ecological Assessment and Arboricultural Assessment. The Statements are available on Public Access and Members are encouraged to read these documents.

Relevant planning history

B/2011/0387 Variation of Condition 3 attached to application 10/0115 to broaden the range of goods sold. Granted 09.09.2011.

B/2010/0115 Retail Warehouse (bulky goods) with associated parking and infrastructure. Ext time for B/2005/0293. Granted 28.10.2010.

B/2005/0293 Retail Warehouse (Bulky goods) with associated parking and infrastructure. Refused: Call in Inquiry: Allowed 10.02.2007.

B/1991/0223 Development of site as a Business Park to include Class B1, B2 and B8 uses and associated access works, car parking and landscaping. Granted 21.12.1991.

Relevant policies

WMRSS	UR3, PA6, PA13.
WCSP	SD2, SD6, D26, CTC1, T1.
BDLP	DS13, E4, E10, S20, TR8, TR11.
Draft CS2	CP15
Draft Town Centre AAP	TC8, TC13.
NPPF	Paragraphs 23 - 27

Brief Outline of Planning History

Members should note that there is a long and complex planning history on this site. The main application which is of relevance is B/2005/0293. The site had been used for manufacturing purposes before 2005. On 5th December 2005, the planning committee resolved to approve the application for a change of use to a retail warehouse, subject to referral to the Secretary of State and the completion of a satisfactory planning obligation by way of legal agreement or unilateral undertaking. The application was 'called in' by the Government Office for the West Midlands on behalf of the Secretary of State in March 2006. Following a public inquiry in November 2006, an Inspector recommended that the Secretary of State refuse planning permission for the development. However, the Secretary the Secretary of State overruled the Inspector and granted planning permission in March 2007.

The permission was also subject to a legal agreement securing payment for resurfacing on Sherwood Road, a contribution to a signals upgrade on the A38/Stoke Road/Charford Road junction and bus shelter improvements. Planning permission was granted in 2010 (B/2010/0115) for an extension of time of application B/2005/0293. In 2011, condition 3 attached to this permission was slightly varied to broaden the range of goods sold (B/2011/0387).

Assessment of Current Proposal

On Tuesday 27 March 2012, the Government released the National Planning Policy Framework (NPPF). The NPPF makes it clear that its policies apply immediately. From the 27 March onwards the National Planning Policy Guidance Notes and Planning Policy Statements cease to exist, including all relevant circulars and guidance (a list of which is contained in Annexe 3 to the NPPF). Planning applications must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The Development Plan currently consists of Local and Regional planning policy documents. The NPPF is also a significant material consideration in planning decisions. The Development Plan will continue to include all the saved Policies of the Bromsgrove District Local Plan. Due weight will be given to these policies according to their *degree of consistency* with the framework set out in the NPPF (the closer the Policies in the Plan to the policies in the Framework, the greater the weight that may be given). Weight may be given to emerging policies in some circumstances.

In terms of the proposal, policy S21 of the BDLP is most relevant. I consider that this policy is broadly consistent with paragraphs 23 – 27 of the NPPF, *Ensuring Town Centre Vitality*. The principles outlined here also reflect the national guidance of PPS4 which has been replaced by the NPPF. However the PPS4 Practice Guidance has not been replaced and remains relevant.

Fallback position

The applicant has planning permission for the construction of a bulky goods retail warehouse under application B/2010/0115 which is an extension of time for permission B/2005/0293. The permission allowed for a 3,716sqm retail warehouse unit with an external bulk sales area of 929 sq m, with parking for 200 vehicles. This decision was issued on 28.10.2010 and is capable of implementation and represents a compelling fallback position. This is significant since applications of this type in an out of centre location would usually not be considered favourably.

The current proposal relates to a floorspace of 4128sqm of retail floorspace with an external sales area of some 929sqm.

The main issues in the determination of this application are:

- (i) The planning history of the site and the principle of non-employment retail development
- (ii) Availability of sequentially preferable sites

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(iii)	Retail Impact of the proposal		
(iv)	Highway Implications		
(v)	Flood Risk and other Technical Issues		

(i) Principle

Members should note that the application was received in advance of the publication of the NPPF and the supporting documents make numerous references to PPS4 (Planning for Sustainable Economic Growth) and PPG13 (Transport) which have since been replaced by the NPPF. These should not form part of the determination process and weight is duly attached to relevant development plan policies and the NPPF.

In accordance with policy S21 and the NPPF, retail development in an out of centre location would not be acceptable in principle. The exception on this site in relation to this site is that there is an extant planning permission capable of implementation as outlined above.

In terms of the loss of employment land, policy E10 seeks to resist the loss of such land to retail and recreational uses. However paragraph 22 of the NPPF makes it clear that planning policies should avoid long term protection of sites allocated for employment use. Therefore, policy E10 is accorded limited weight. Additionally, the site has an extant planning permission for retail development.

The proposal relates to a floorspace of 4128sqm in two retail units with an external sales area of some 929sqm. The critical issue is the difference between this and the fallback position. The internal floorspace approved in B/2010/0115 was 3716sqm (consistent with B/2005/0293). The plans refer to a 'Bulk Store' while your Officer referred to an 'External Bulk Sales Area' in B/2010/0115. In the Inquiry Report on B/2005/0293, (paragraphs 3.1 and 9.14), the Inspector refers to the area as an external bulk store sales area of some 929sqm. On that basis, it must be accepted that the external sales area with permission and that being considered in this application are equivalent. Therefore, the additional retail floorspace proposed is 412sqm. This is 11% above the existing approved floorspace. There is a mezzanine included in the larger unit.

(ii) Sequential Test

There is a sequential test accompanying the application, in accordance with the requirement of paragraph 24 of the NPPF. The purpose of the sequential test is to reconsider all of the sites discounted during the same exercise in application B/2011/0387 and to examine if any further sites have become available. Four additional sites have been considered – (1) Dolphin Centre School Drive; (2). Birmingham Rd. Retail Park; (3). Mill Lane (These sites are outlined in the Town Centre AAP as TC12, TC14 and TC16) and (4) the former Halfords Store 137 Birmingham Road.

The Sequential Test concludes that none of the sites previously considered have since become available or are suitable for the proposed use. In terms of the new sites, whilst (1) and (2) are considered to be of sufficient size, they have either been identified for an alternative use in the Town Centre Area Action Plan or are not available in the short term.

The views of the Retail Consultant are noted and the approach taken (to re-examine sites previously considered and identify new ones) is acceptable. No sequentially preferable sites have emerged. Members should note that whilst this is a correct factual representation, the reality is that it is highly unlikely that some of the larger and more suitable sites in the Town Centre would become available without ownership/preferred land use or other constraints. The Sequential Analysis has been carried out from the perspective of the developer and is, therefore, not an entirely independent objective analysis. Notwithstanding that, the policy approach as outlined in the NPPF has been complied with and the weaknesses of the approach (as outlined above) are more an issue for the government and their advisors than the applicant. In the case of this proposal, the fallback position also carries significant weight in any event.

(iii) Impact Assessment

In accordance with the requirements of paragraph 26 of the NPPF, an impact assessment is a requirement for all out of centre retail proposals above 2500sqm where no local threshold has been set. Paragraph 5.17 of the Supporting Retail Statement outlines the position in terms of the level of predicted turnover (Retail Capacity Update 2010) for a constant continuing market share and a 5% uplift. This estimates that there is a expenditure capacity of £29.1million in 2015 or 4860sqm in terms of floorspace. This takes existing retail commitments into account. The views of Strategic Planning and the Retail Consultant are noted. It is not considered that the additional floorspace of 412sqm would have any significant impact on these capacity figures. It is also noted that the external sales area, entrance lobby and mezzanine are unlikely to function as effectively in terms of retail sales capacity as the remainder of the floorspace. Therefore, it would be difficult to draw the conclusion that the additional floorspace would have any greater impact on the town centre than the scheme already approved in B/2010/0115.

In terms of the range of goods to be sold, the applicant has made a suggestion of these in paragraph 6.1 of the Planning Supporting Statement. In the interests of clarity, the condition applied in terms of the range of goods will be that applied under B/2011/0387. The condition stated that the range of goods to be sold was restricted to:

DIY, home improvement and garden goods; furniture; carpets and floor coverings; camping, boating and caravanning goods; electrical goods and gas appliances; car accessories; kitchens, bathrooms and associated accessories; homewares; soft furnishings; pets and pet products including animal foods, cages and animal accessories. Goods falling outside this range may be sold only where they form a minor and ancillary part of the proposed store's operation.

(iv) Highway Implications

The application is accompanied by a Transport Statement and Travel Plan (dated Feb 2012). It is concluded that the proposed development would not have any significant impact on the operation of the highway network and an outline travel plan is provided in Section 5. This entails both suggestions to enhance the public transport infrastructure on the site and the appointment of a Travel Coordinator by the operator. Members should note that there was a Legal Agreement attached to B/2010/0115 to provide road improvements. This has been varied at the request of WH to provide £20,000 to upgrade the existing 2 bus stops on Sherwood Road immediately outside the development site to "gold standard" facilities. The final views of WH are awaited.

(v) Flood Risk and other Technical Issues

The application is accompanied by a Flood Risk Assessment and part of the site (where the car park is proposed) is in an area of flood risk. The views of the Environment Agency are noted above. Additional information is required from the applicant to resolve any flood risk issues which may arise from the diversion of the watercourse.

The application is also accompanied by an Ecological Assessment which examines the potential for protected species and assessed the potential of any habitats on the site. It concludes that the majority of the site is of low ecological value with no rare or endangered species identified. The hedgerow outside the SW boundary and the Sugar Brook are identified as potential habitats. In the case of the brook, this has been undermanaged and is of relatively low value. The existing Barpro building is unlikely to provide any potential for bats but a precautionary approach during the demolition process is recommended. Water voles use the brook as a corridor.

It is noted that local residents have complained about the loss of trees, particularly on the northern end of the site and some of these are identified for retention on plan Ref: 5050-A-02 of the Arboricultural Assessment. However, there is a detailed landscaping plan provided to the satisfaction of the Tree Officer and this would provide some valuable screening of the site from the perspective of the A38.

Members should note that plan Ref: P109-2058-D-ASL refers to lighting infrastructure for the site and detailed information is provided in terms of the proposed position of columns and lux levels proposed. There are 26 columns proposed with an average height of 7m. Although the site is large and mainly surrounded by commercial uses, the lighting would be visible from the A38 and there are residential properties on the south side of Stoke Road, the closest of which is approximately 25m away. The views of Worcestershire Regulatory Services are awaited in respect of the acceptability or otherwise of the proposed lighting.

Conclusion

The application amounts to retail development outside the town centre contrary to the general principles of policy S21 of the BDLP and the NPPF. However, the site has planning permission under B/2010/0115 for a similar retail scheme which is capable of implementation. Whilst the floorspace of the current proposal is marginally larger, the impact of the proposal on town centre has been duly considered and is not significant. Furthermore, there are no sequentially preferable sites in or on the edge of the town centre to accommodate the proposal. I am thus minded to grant planning permission.

Referral to the Secretary of State

Members are advised that resolving to approve the application would depart from the development plan, and in particular would be contrary to the 'town centre first' approach set out in various development plan policies. It is noted that the Town and Country Planning (Consultation) (England) Direction 2009 directs that, where the Council does not propose to refuse planning permission for certain categories of development, it should consult the Secretary of State. One such category (as listed at paragraph 5.(1)) includes retail development which:

- (a) is to be carried out on land which is edge-of-centre, out-of-centre or out-of-town; and
- (b) Is not in accordance with one or more provisions of the development plan in force in relation to the area in which the development is to be carried out; and
- (c) consists of or includes the provision of a building or buildings where the floor space to be created by the development is:
 - (i) 5,000 square metres or more; or
 - (ii) extensions or new development of 2,500 square metres or more which, when aggregated with existing floor space, would exceed 5,000 square metres.

The proposed development would a) be in an out-of-centre location; b) constitute a departure from the development plan; and c) would exceed 2,500 sq m. Para. 5(2) explains that the 'existing floor space' referred to should include 'retail, leisure or office floor space situated within a 1 kilometre radius of any part of the same type of use', and is either in existence, substantially completed, committed or planned. The application site is within 1 km of the existing Morrisons and approved Aldi store (09/0729). Officers are therefore of the view that, if Members are minded to grant planning permission, the decision should be referred to the Secretary of State.

RECOMMENDATION:

Subject to the satisfactory views of:

- (iv) Worcestershire Highways
- (v) The Environment Agency
- (vi) Worcestershire Regulatory Services (Lighting Engineer)

(a) **MINDED to APPROVE FULL PLANNING PERMISSION**

(b) That **DELEGATED POWERS** be granted to the Head of Planning and Regeneration to determine the full planning application following:

- (iii) The receipt of a suitable and satisfactory legal mechanism in relation to improvement measures to public transport infrastructure
- (iv) The application being referred to the Secretary of State (National Planning Casework Unit) under the provisions of the Town and Country Planning (Consultation) (England) Direction 2009.