

# Planning Inspectorate Reference:

APP/A2335/V/09/2095002

Retail I/R/R/01

June 2009.

Rebuttal evidence by Tim. Hamilton-Cox on behalf of It's Our City vis a vis the retail evidence of White Young Green on behalf of Lancaster City Council.

Disclaimer. The rebuttal is confined to what are seen as the main issues, and lack of comment on other issues does not imply agreement or that other points will not be raised during cross-examination.

Paragraph numbers refer to WYG's proof of evidence for ease of reference.

2.03 Two of the three variables on which the LRS (CD101) is based - the population data and per capita expenditures - have been significantly amended for WYG's May 2009 proof of evidence analysis. Therefore the tables in the LRS derived from this data are, strictly speaking, no longer valid. This is aside from the sample sizes being considerably less than 100 in zones 3 to 6 inclusive where WYG itself stated

'It is significant to note that it is widely accepted that for a robust survey to be undertaken, a target of 0.38% of surveys to population should be attained, in addition, the rate of reliability is further enhanced by having minimum sample sizes (usually a minimum of 100).' (CD101, para. 6.04)

2.05 After the LRS was published in 2006, the next report from WYG for LCC was in 2007 - an audit of Centros' 2007 retail impact assessment (I-R12) - of which WYG was highly critical, and which contributed to the withdrawal of Centros' main application. This event is missed from WYG's account.

2.06 Since WYG has changed the data employed in its 2009 analysis, its September 2008 conclusions are no longer valid.

3.34 The scheme fails to guarantee the 'strong links' and WYG fails to describe the proposed 'measures to avoid an unbalanced pattern of retailing in the city'

3.36 As the inspector pointed out in his 'REPORT ON THE EXAMINATION INTO THE LANCASTER CORE STRATEGY DEVELOPMENT PLAN DOCUMENT' (May 2008), it is not for the Core Strategy to identify individual sites.

'7.82 Policies ER4 & ER5 aim to promote regeneration by establishing spatial roles for the district's shopping centres, with a hierarchy of city, town and local centres, and focus retail need on regenerating and reinforcing the vitality and viability of existing centres. This strategy will be implemented through land allocations and policies in subsequent

DPDs and by determining planning applications for retail development. Detailed matters, such as the definition of town centre boundaries and primary retail frontages, sites for new retail development and policies for the management/development of town centres will be set out in subsequent DPDs.'

3.38 Therefore the Core Strategy cannot provide 'unequivocal support' for an extension specifically on to the Canal Corridor North site. And, again, the proviso is not guaranteed, nor a possibility in the plural because of the spatial relations of CCN relative to the existing city centre.

4.02 There is a subtle error here which is repeated in 4.05 and therefore unlikely to be accidental given WYG's credentials. PPS6 3.9 uses the phrase 'development plan document strategy'. This has a much less clear-cut meaning than 'development plan strategy document' which is how WYG wrongly renders the extract from PPS6 3.9 and which is clearly meant to refer to the Core Strategy. It is evident that the two phrases have different meanings. The development plan is the combination of the RSS and the LDF, of which the Core Strategy is a part. It is therefore a matter of dispute whether the scheme is in accordance with an overall development plan strategy.

The Core Strategy can identify the need for a planned extension of the city centre retail offer. It cannot say that this edge-of-centre location has been allocated for retail development and therefore as the site has not been allocated in a LADPD for A1 uses it is not in accordance with the development plan strategy. Therefore an evidence-based approach is required to justify this proposal.

Even if the argument is maintained that a need assessment is not required, the applicant/WYG has to address the issue of need as it helps to inform (a) the assessment of the economic consequences of this proposed development and (b) the consideration of what is an appropriate scale of new retail development in the context of the role and function of this centre.

4.25 The LRS defined zones 1,2,3,6 as the primary catchment area. There is no justification given for why the primary catchment should be expanded.

4.30 Population growth rates are predicated on an expanding economy and housing stock and with the associated inward migration. There is no guarantee that the population will increase in this manner when statistics show that there has been no net increase in natural population but that increases have been solely as a result of migration. The LCC Annual Monitoring Report (I-R31) states that:

'3.2.1 The District continues to have the largest population in Lancashire with the Registrar General's mid year population estimate for Lancaster District recorded at 143,500 people, an increase of 0.3% from last year. As in previous year's [sic] the increase in population over the last twelve months is due entirely to net migration. Net migration figures recorded an additional 600 people as moving into the District. By contrast the natural population declined by 100 people.'

- 4.43 The 2006 figure has been reduced by 6% compared to the data in the updates from MapInfo for expenditure in each zone. The effect of this is to increase the difference between the 2006 and the subsequent years' figures in order to pump up the incremental (and theoretical) volume of expenditure available for new floorspace. The correct figure for 2006 comparison goods expenditure based on the new data is £478.5m, reducing the 'available' extra spend by £25.8m. See Table 2 in WYG's appendix KN04 for the two sets of data for '2006'. It is likely that the lower set of data includes the reduction to allow for SFT expenditure. If so, that allowance appears not to be continued into subsequent years given the jump between 2006 and 2007. The failure to allow for increasing rates of SFT expenditure to the end of the study period is a separate but obviously related difficulty. Experian retail planner briefing note 5.1 (table 5.1, I-R 5) shows non-store comparison goods expenditure rising to 14.4% of total comparison expenditure by 2013.
- 4.43 MapInfo 2009 (I-R 4) does not provide forecasts beyond 2016. WYG is extrapolating to 2018 using the same percentage increase of 4.35% per annum for per capita comparison expenditure. It is in excess of the rate of increase assumed in the LRS of 3.8%, described by WYG as the 'ultra-long-term' rate.
- 4.43 It is clear that the perceived need for additional floorspace is partially justified by population and expenditure per head forecasts which increase disproportionately in the period after 2014, beyond the 5-year horizon for needs assessments identified by PPS6.
- 4.43 The unstated assumption is that existing floorspace is trading at 100% capacity at the start of the study period. But with the recession creating substantial voids – evidence the increasing vacancy rate (I-R 30) – this assumption should be explained.
- 4.44 The catchment of zones 1-6 has quietly evolved to the 'primary catchment area' being zones 1-6.
- 4.45 We need to bear in mind WYG's caveats from the LRS:

'7.18 However, if an excess of comparison expenditure manifests itself within the defined catchment area, this does not translate directly into a requirement for additional floorspace. It will also be necessary to take account of:

- existing development proposals;
- expected changes in shopping patterns (including E-commerce);
- the current capacity and efficiency of retail floorspace within established Centres; and
- future changes in business productivity and current development commitments....

7.20 However, it must be stressed that, although capacity assessments are based on factual data, the conclusions must only be treated as a guide/indicator rather than providing unchallengeable evidence. This caveat reflects the complexity of the modelling exercise and the dependence upon a high number of assumptions, which consequently can be interpreted in a number of different ways. We should note that this study informs the process of retail capacity in the study area and

do not preclude the need for individual development proposals to demonstrate need as advised under PPS6 (2005).'

- 4.46 The data in Table 2 overstates current market share by using the '2006' data which has been reduced by between 5.3% and 5.5% across the six zones. Or, as previously stated, this is the reduction to take account of SFT which seems not to have been applied in subsequent years. If the 'true' Mapinfo expenditure for 2006 is applied the market shares are lower. The market share of the primary catchment drops below 50%, demonstrating that the primary catchment, according to WYG's own definition, is no such thing when expanded to include zones 4 and 5. But this is not the only way that market share has been inflated: as the small print to Table 4 in appendix KN04 confirms, the definition of Lancaster city centre has been quietly expanded to include expenditure at 'edge-of-centre and out-of-centre facilities: the LRS would suggest that this re-definition, not mentioned in the main text here, includes B&Q on Aldcliffe Rd. and the Bulk Rd retail park. (There may, though, be no allowance for the comparison expenditure in Sainsbury's, for example, since this was not identified in the LRS.) Thus market shares are 'adapted' from the LRS. Nowhere is the derivation of the newly quantified 'retained expenditure' demonstrated: at least the appendices to WYG's LRS provided transparency as to how figures were derived. There is no such transparency provided in this re-run and WYG should produce the tables equivalent to appendices 1-53 in the LRS so that we can see where its figures come from.
- 4.46 How the market share of 65% is distributed across the six zones is nowhere demonstrated. Should we assume that the one-third increase in market share from under 49% (taking the wider redefinition of the city centre and the true 2006 data) to 65% is evenly distributed across the six zones? Thus for example, the market share of zone 1 becomes a 90% retention of all comparison goods' expenditure. This lack of detail is completely unsatisfactory in itself.
- But it conceals a second problem of WYG's analysis: that the combined city centre comparison goods offer can be, or is intended to be, a centre which can (never mind should) offer the full range of comparison goods. WYG needs to explain the range of goods which is intended to be sold in Centros' scheme. "Predominately clothing and footwear" said David Lewis, Centros' associate director in response to my question at a consultation meeting. Andrew Dobson refers several times to the 'higher order' offer which is considered to be missing from Lancaster's shopping experience. This is not meant to include a higher order of, say, diy goods. Look at the list of companies alleged to have floorspace requirements in Lancaster to see the balance of the scheme's intended offer. Clothing and footwear accounts for a quarter (25.5% in the LRS; between 24.9% and 25.9% in each of the six zones) of comparison goods expenditure. If we add in the other 'non-bulky goods' in their totality, the LRS says this accounts for 62% of comparison goods expenditure. Electricals, diy, furniture and carpets – the 'bulky goods' – account for the other 38% but do not generally have the sales densities to get anywhere near to justifying the zone A rents to which Mr. Lewis

was aspiring in January 2008 (I-R 26). This is before treating with the particular car parking requirements of bulky goods emporia. Thus the additional floorspace is intended for a section of the comparison goods market which does not include bulky goods. A 65% market share is impossible without a substantial proportionate increase in space for bulky goods, and the shoppers prepared to travel long distances for them. There is no indication as to how the space in the city centre is to be allocated but the zone A rent expectations of Centros clearly rule out the majority of bulky goods.

Thus there is no breakdown either of how the 65% market share would be achieved across either the six zones or the different categories of comparison goods.

The LRS looked at a far more reasonable increase in comparison goods market share – from 27.9% to 30% of the survey area.

- 4.50 As Centros points out (CD16, appendix F: gap analysis), Marks and Spencer and BHS are both department stores. The city centre is not 'lacking' 'high quality multiples': it is lacking some – 5 of the top 20 multiple (comparison goods) chains according to the LRS.
- 4.50 Actually what WYG (I-R 10) wrote of Centros' projected 67.4% market share was:

'2.24....However, given the extent of the primary catchment together with the strength of competing provision it is considered that this level of retention is at the upper end of what could be achieved.'

- 4.51 Without explanation, the rate of floorspace productivity increase is reduced to 1% from 1.5% in the LRS and subsequent analysis where indeed Experian (I-R 5) says that a rate of 2.2% per annum is reasonable over the trade cycle. Moreover, this lower rate of productivity increase is only applied to the (expanded definition of) Lancaster city centre. Other facilities in the district simply somehow freeze in time in order that WYG can try to manufacture sufficient 'surplus capacity' to justify the additional floorspace. Thus there is no additional investment envisaged to buttress the vitality and viability of either the existing city centre nor in Morecambe, even though the RSS advocates investment where it will support regeneration.
- 4.51 Looking at the data behind table 4.3, the 2006 turnover of the existing city centre of £258.8m (table 4, appendix KN04) appears not to include 10% of inflow expenditure from outside the study area: table A, appendix KN04 gives a study area expenditure in Lancaster city centre of £245.6m. The difference is only 5.1%. This discrepancy needs to be explained as it leads to an understatement of the 2006 base year turnover for the city centre which is then used to exaggerate surplus capacity in future years.
- 4.51 Commitments 'from PCA' since 2006, summarised in table 4.3 (derived from table 7, appendix KN04) provide neither the full picture, nor consistency in the figure work, compared to WYG's previous analysis of Centros (I-R 10, table 2.1) and the up-to-date list of commitments provided by LCC (I-R 29). For example the £15.82m turnover of Frontierland has gone completely 'awol' and the turnover of the

Kingsway development has reduced from £13.97m in 2008 to £8.2m in 2009. There are other pipeline developments that have also been ignored such as Lawson's Quay on Back Caton Rd (up to 1036 sq.m.: the PPS6 statement – I-R 28 - with the planning application makes it clear that this is not necessarily convenience space) and Sainsbury's (Lancaster) extension which includes 841 sq.m. net of comparison goods space according to the list of commitments provided by LCC. The net effect is very considerably to understate the commitments figure in table 4.3. Indeed a complete analysis of commitments would eliminate the 2009 'surplus expenditure' figure on the bottom row of table 4.3 altogether.

- 4.51 Table 4.3 only recognises increasing, productivity-driven, turnover of the floorspace in Lancaster city centre: what about the comparison retail facilities in the rest of the district? Are they simply supposed to atrophy?
- 4.53 The data on department store turnover in table 6, appendix KN04 manages to be inconsistent with Centros' data (CD 16), in terms of overstating the gross and net floorspace and understating the sales density, even though this is supposed to be expressed . The sales density for the rest of the comparison floorspace – at £6000/sq.m. - remains unchanged in 2006 prices from 2001 prices, despite five years of productivity increases, thus serving to understate the base turnover of the theoretical scheme. And the floorspace to which this sales density is applied is understated. The net effect is that WYG understates the proposed turnover of the scheme. (£132.2m in Centros' table 6.1 (CD 16) vs. WYG 2009's figure of £126.3m.) The problem is not so much the scale of the difference of this one statistic, as the fact that nearly all the contributing data is contradicted elsewhere. To pause for a moment, it is yet further indication of the error-strewn, even cavalier, approach that WYG has taken to its quantitative assessment in the proof.
- 4.53 The assertion on sales densities only serves to undermine WYG's argument. If sales densities are declining, then this confirms that the city centre is operating at less than 100% capacity and therefore when comparison goods expenditure recovers, existing capacity can take up the slack before 'surplus expenditure' is generated. But the existing average sales density was considerably in excess of £6000 per sq.m. when the LRS reported (and it didn't use accurate net floorspace figures in 2006), and remains so now, even on the extended re-definition of the city centre; if we are to assume that WYG's total turnover for the city centre is correct in either 2006 or 2009. Centros objected to the LRS Lancaster city centre sales density as being too high in 2007. But Centros towed the line in 2008 and used a range of sales densities between £5000 and £6600 to demonstrate a degree of sensitivity analysis in its retail impact assessment. WYG criticised Centros in 2007 for failing to include any sensitivity analysis in its original retail impact assessment. There is not the merest genuflection to that requirement in WYG's 2009 analysis.
- 4.55 Aside from the faults with WYG's model for assessing the trading characteristics of individual outlets, the main multiple convenience stores in Lancaster – Sainsbury's, Somerfield/Co-op, Marks and Spencer – and

the indoor/out door markets, are all much nearer the bus station and/or main bus routes than the site of the proposed scheme.

- 4.55 The outstanding commitments (table 11, appendix KN05) ignore the Sainsbury's Morecambe store (3711 sq.m. net); the expansion of the Sainsbury's Lancaster store (455 sq.m. net); the retail planning permission at Lawson's Quay; and the sale of land by LCC to EH Booth for a supermarket in Scotforth; the Londis store now operating on the corner of Gage St in Lancaster; and the establishment of Lidl (1286 sq.m. net) in Morecambe.
- 4.69 The Modus development in Blackpool, completed in 2008, has just gone into administration, as has the recently completed Grand Arcade in Wigan. The Trinity Walk shopping centre in Wakefield has stopped in mid-construction. (I-R 23,24,25.) This is the real world, as opposed to that depicted by WYG's desktop exercise.
- 5.01 Defining an appropriate scale is dependent on proving need for the retail floorspace proposed. The unpicking of WYG's quantitative model demonstrates that the case is simply not proven.
- 5.01 The officers' report to the planning committee (CD 30) failed to compare, or even quantify, the scale of the existing city centre comparison goods floorspace with that of the proposed scheme.
- 5.05 Table 5.1 provides a completely misleading view of the progress of retail development in the north-west. Schemes in Preston, Northwich and Chester have been gestating for longer than Lancaster. Only Preston has a live planning application which is the subject of objections from neighbouring councils in Blackpool and Blackburn. Crewe has also stalled with Modus going bust. As stated above, the companies behind Grand Arcade in Wigan have gone into administration. Workington is even more irrelevant.
- 6.04 Even with the bridge link in place, the two retail centres could not be described as 'very well connected' because of the geography: a vertex of the triangular Canal Corridor site is in point contact with a corner of the square primary shopping area. The scale and lack of contiguity are precisely what make the development an alternative independent centre rather than an organic extension.
- 6.06 Within Lancaster there are council-owned car parks which are better located with respect to the bus station and the existing city centre than the Canal Corridor. The Wood St. car park is one such, adjacent to the (banal) Somerfield/Co-op store, on which development could work, possibly extending to Damside. The dead frontages offered by the St. Nicholas Arcade multi-storey car park on Church St. and Great John St. provide another opportunity to make good postwar damage inflicted on the townscape. Allied Lancaster has suggested the possibility of reusing an area immediately to the south of the primary shopping area on Common Garden St and southwards to the King St. cinema site (which is mentioned), planning permission for which has not so far been implemented. The frontage on the south side of Church St. between Cheapside and New Street is substantially under-utilised. The market hall in Marketgate centre is costing the council taxpayer over £500,000 per year because the rent paid by the leaseholding city council falls so far short of the amounts paid by the traders for their stalls. This far

exceeds the potential return to the council offered by the development agreement with Centros and so, for straightforward economic reasons, the market hall site is crying out for re-development.

- 6.07 The whole point of the rebuttal is that the proposed scale of the retail development is not appropriate so it is not necessary to identify a site of four hectares. The problem is not with accommodating the applicant's business model; it *is* the business model, as refashioned by WYG.
- 6.08 The critical mass is provided by the existing primary shopping area. The reality of the applicant's business model is that the department store in question, Debenhams, has fashioned its own business model on being the retail anchor and taking a substantial rent-free period from the developer for adding its lustre to the scheme. The developer must then have a substantial acreage of paying tenants to make up the difference. This was confirmed by David Lewis of Centros verbally at a consultation meeting and is evident from the Debenhams annual report (to 31<sup>st</sup> August 2008, p.15) which states that it makes a 56% return on capital employed in new stores.

'Return on capital employed for new stores opened in 2008 is expected to be 56 per cent (defined as first year store EBITDA as a percentage of net capital investment including working capital).'

- 6.08 As the response in 6.06 demonstrates, there is the scope to introduce larger format units within or closer to the existing city centre. But a combination of smaller-scale developments does not fit with this applicant's business model. These locations are sequentially advantageous given closer proximity to the principal bus routes and to the existing city centre.

7.02 Contrast:

'Without adequate pedestrian linkage the development could be somewhat isolated from the primary shopping area and could trade independently of the rest of the centre.'

7.07 With:

'Whilst I do not accept that without the link the development would operate as a free-standing destination...'

- 8.03 The MHE index can be compared with that from Javelin using its 'Venuescore' rankings. (See SLDC town centre health check, table 2.7; I-R 37). This shows that Carlisle, Preston and Lancaster have all fallen down the rankings, and the former two have fallen further relative to their starting positions, between 2007 and 2009. All three, and Kendal which held its position, increased their venue scores over the period to confirm that 'decline' on this measure was relative and not absolute. Barrow's low score – placing it well outside the country's top 200 shopping destinations - indicates that the presence of a Debenhams store does not a high ranking make.

- 8.10 Data on yields (SLDC town centre health check, table 2.9; I-R 36) shows that Lancaster's average yield in mid-2008 was comparable (5.5%) with both Preston and Carlisle.
- 9.02 The inspector did not, and would not, make an assessment of the retail impact on the city centre and on the wider catchment of the scale and form of the applicant's development. The issue for the inspector was one of principle, not of the particular. This statement is therefore utterly misleading.
- 9.08 WYG's quantitative model requires a very considerable increase in the number of shoppers (increase in market share) and all of their comparison goods expenditure simply to justify the scale of the applicant's scheme. As Allied (Lancaster) makes clear in its proof, the effect is to squeeze out any further investment in retail development because all (and more) potential growth is soaked up by the scheme.
- 9.09 There is indeed no suggestion that 'any' future investment in the regeneration of Morecambe would be adversely affected by the proposed development. But specifically further retail investment is squeezed by the scale of the applicant's scheme. And the Core Strategy attempts to direct 'nearly all' new comparison goods floorspace into Lancaster.
- 9.12 WYG uses trade diversion figures from Centros' 2008 retail impact assessment (CD 16) when that business case (and Centros' assumptions on trade diversion from, say, Preston and Manchester are utterly unrealistic in their scale: see for example CD 16, appendix G, table 8 'scenario 3') has been through two re-modelling exercises by WYG. There is simply no validity to hauling out Centros' data at this stage.
- 9.15 The transfer of the centre of retailing gravity – the transfer of the major multiples to the applicant's scheme - is precisely what concerns Allied (Lancaster) and what the Development Agreement between Centros and the city council does nothing to control. The Agreement says that:
- '16.3 The Developer may in accordance with the principles of good estate management and with the prior consent of the Council (which shall not be unreasonably withheld or delayed) vary the Letting Strategy to reflect the changing market'
- 9.15 Primark bought the lease of the former Littlewoods store in Marketgate in 2005 and then sub-let it to New Look. Presumably this was economically more attractive at the time to Primark.
- 9.18 Given the absence of the applicant and the stalling of retail development across the country, WYG fails to provide the evidence that the scheme is still 'deliverable'.
- 9.19 The Lease Alternative A agreed between Centros and LCC defines permitted uses as below:
- "Permitted Use" (1) During the First Initial Period use as a good quality multi let retail led mixed use development predominantly for uses within Class A1 of the Use Classes Order but also (if required by the Tenant) as

ancillary or complementary to such uses for uses within Classes A2 A3 A4 A5 B1(a) C1 C3 D1 and/or D2 of the Use Classes Order with car parking shop mobility servicing and ancillary facilities PROVIDED that:

(b) no more than two units within the Premises shall be used at any one time for Class A5 use (as aforesaid) and no more than one unit within the Premises shall be used at any one time for Class A4 use (as aforesaid)'

Suffice to say that there is no discussion of the implications of the possibilities of A4 and A5 use anywhere.

9.21 Evolution is desirable. A scale of retail development which, in its own right, is less than 10% shy of the scale of a 'sub-regional centre' as defined in PPS6, represents a revolution.

10.11 As part of his evidence to the public inquiry into the football stadium and associated retail development at Kirkby, Mr. Nutter of WYG quoted with approval this approach to testing a 'need' assessment (I-R 32, p.51).

'vii) Make an allowance for under-trading or over-trading in the base year; and

viii) Develop alternatives scenarios for calculating growth in residual expenditure based on:

- Increases or decreases in the projected retention level;
- Increases or decreases in the geographical size of the catchment area, if this is justified as part of a strategy to raise the role and function of the centre as part of the development plan process; and
- Sensitivity testing of key assumptions in relation to expenditure growth rates, rates of floorspace efficiency change, rates in growth in SFT and so on.'

Needless to say, there has been no such sensitivity analysis presented here.

10.15 Nowhere does the RSS (CD 61) say that the 'majority' of comparison retailing should be focused in the 26 centres referred to. Rather, these centres should be the primary, but not exclusive, foci for future growth. Paragraph 6.22 of the explanatory text to policy W5 states that:

'The network of centres identified in Policy W5 will be the primary focus for future growth and development, although they are not the only centres that should receive development through to 2021. The policy does not preclude the investment of resources in other centres, particularly, where this will assist in regeneration of the centre and the wider area.' [My emphasis.]