



Nathaniel Lichfield and Partners

Planning Design Economics

Development Management Consultation  
Planning Directorate  
Scottish Government  
2H, Victoria Quay  
Edinburgh  
EH6 6QQ

Generator Studios  
Trafalgar Street  
Newcastle upon Tyne NE1 2LA

T 0191 261 5685  
F 0191 261 9180

  
www.nlppanning.com

Date: 2 April 2008  
Our ref: JW/DGg  
Your ref:

Dear Sir/Madam

**MODERNISING THE PLANNING SYSTEM: DEVELOPMENT MANAGEMENT CONSULTATION CONTROL OF INCREASE IN GROSS FLOORSPACE – MEZZANINE FLOORS**

On behalf of our client, Marks and Spencer Plc (Marks and Spencer), we are pleased to provide our views in relation to the above consultation document, which has recently been published. Marks and Spencer are a leading national retailer, with an extensive portfolio of retail stores across the country. Their comments relate, in particular, to the proposals to control increases in the floorspace of buildings used for retail purposes.

**Background**

On the basis of our review of the Development Management consultation document, the draft secondary legislation would introduce controls which will require mezzanines and other internal increases in floorspace, within buildings used for the retail sale of goods, to gain planning permission. More specifically, their implementation would mean that any internal increase in the floorspace provided within a building used for retail purposes, which is over 200 sqm, or would total more than 200 sqm when taken together with other previous increases, would require planning permission. This is with the exception of increases of less than 10 sqm floorspace, which would not require permission, regardless of the scale of any such previous increases.

**Question 44** enquires as to whether respondents support the proposal to have different approaches depending on whether other increases in the internal floorspace have taken place. In response to this question, Marks and Spencer have significant concerns regarding two issues, relating to:

- the proposed requirement to take into account previous increases in internal floorspace (e.g. mezzanine floors) when considering proposals for further increases against the 200 sqm threshold; and
- the absence of any provision within the proposed new legislation which relates to the ability to complete the installation of mezzanines, which have already been started prior to it being introduced, but which have not yet been completed at that time.

Each of these issues is considered below.



## Cumulative Increases in Floorspace

Under the terms of the proposed new legislation, where the increase in the floorspace provided within a building used for retail purposes is over 200 sqm, or would total more than 200 sqm when taken together with other previous internal increases, planning permission would be required.

In response to Question 44, Marks and Spencer **object** to any new legislation which would take into account additional floorspace which has been already provided internally within buildings used for retail purposes. This is on the basis that such controls would:

- pre-judge the extent to which any internal floorspace previously provided could have been justified in the context of national and local planning policy current at that time;
- be difficult to monitor and enforce, given the difficulties in assessing the quantum of floorspace which has already been provided within retail buildings without the benefit of planning permission, prior to the legislation being introduced; and
- give rise to uncertainty for developers and retail operators, given the difficulties in quantifying all internal floorspace increases which may have been implemented since buildings were originally constructed, when assessing whether further new floorspace can be provided. This could be particularly problematic in circumstances where historic records are limited or do not exist.

In the context of the above, it is considered that the proposed approach is unreasonable and unworkable, and would create unnecessary difficulties, both for local authorities, and for developers, landlords and operators. Instead, it is considered that the most appropriate approach would be to adopt that taken in England, where any increases in internal floorspace/mezzanine floors are considered separately against the 200 sqm threshold, without regard to previous increases in internal floorspace.

## Completion of Mezzanines Already Commenced

From reviewing the consultation document, there does not appear to be any provision within the proposed new legislation which would specifically allow the completion of mezzanines, which have already been started prior to it being introduced, but which have not yet been installed/completed. Marks and Spencer wish to **object** to the absence of such a provision, on the basis of the uncertainty that this will result in.

It is considered that it would be unreasonable to expect developers and retailers to postpone or abandon currently planned works to introduce new mezzanine floors, in case of the event that there is insufficient time to complete them before the new legislation is introduced. Furthermore, it would be undesirable for the new legislation to result in mezzanine floors which are only part-complete, and cannot serve any useful purpose, particularly given the financial implications for those involved.

The omission of such a provision would also be inconsistent with the provisions of Part 4 of Section 151 of the Town and Country Planning (Scotland) Act 1997, which relates to Certificates of Lawfulness of Proposed Use or Development, and states that:



*“There shall be an irrefutable presumption as to the lawfulness of any use or operations for which a certificate is in force under this section unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness”.*

This establishes the principle that operations can be completed, even where new legislation has been brought in which would otherwise affect their lawfulness, where those operations have been commenced before this legislation being brought into force. To omit any provision to this effect within the act, with specific reference to mezzanine floors and other internal floorspace increases, would be fundamentally in conflict with this principle or, at minimum, give rise to considerable ambiguity in terms of the implications of the new legislation.

### **Summary of Amendments Proposed**

In the context of the above, Marks and Spencer would request that the following amendments be made to the proposed new legislation which relates to internal increases in floorspace within buildings used for retail purposes:

- any increases in internal floorspace/mezzanine floors should be considered separately against the 200 sqm threshold, without regard to previous increases in internal floorspace; and
- provision should be made within the legislation, which makes clear that internal floorspace increases/mezzanines, which have already been commenced, can be completed after the legislation is brought into force, irrespective of whether a Certificate of Lawfulness has been obtained.

The above amendments would bring the legislation into line with that already brought into force in England, and help to ensure that it is clear, reasonable and enforceable.

We trust that all of the above is clear and will be taken into account in finalising this legislation. Should you have any queries, however, please do not hesitate to contact either myself or my colleague Jonathan Wallace.

Yours faithfully

**DANIEL GREGG**  
**Senior Planner**

Cc      A MacGregor      Marks and Spencer  
         J Handy        Marks and Spencer  
         C Smith         Marks and Spencer  
         M Elliot         Marks and Spencer