

OUR REF CMW/GSLE/UNI/0080/00060

YOUR REF

maclay murray & spens LLP

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

11 April 2008

Dear Sirs

**Development Management Consultation
Mezzanine Floor Development**

We refer to our Craig Whelton's telephone conversation with Liam Bullingham in which Mr Bullingham confirmed that, notwithstanding the 2 April deadline for consultation responses, you would be willing to accept a further consultation response provided it was received no later than Friday 11 April.

This consultation response focuses on the proposals contained in section 14 of the Development Management Consultation Paper to introduce controls on the increase in internal floor spaces of buildings used for the retail sale of goods. In particular, our response focuses on question 45 and whether the controls proposed should apply to town centre retailing.

Question 45 – “Do you consider that 200 square metres is an appropriate level to help achieve the objectives of helping protect town centres?”

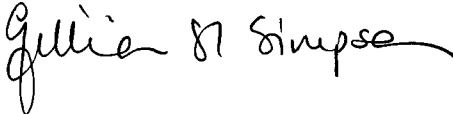
It is a well established planning principle (see SPP 8 Town Centres and Retailing) that the planning system should seek to promote and protect retailing in town centres. Indeed, paragraph 14.3 of the Consultation paper makes it clear that the driver for the proposed controls on mezzanine floor development is concern surrounding the use of mezzanine floors in out of town retailing locations and the impact on town centre retailing. However, the proposed controls would apply to all retail uses irrespective of whether they are in the town centre or in an out of town location. The universal application of controls on both town centre and out of town retailing will not help achieve the objective of protecting town centres.

The designation of town centres for planning purposes is the responsibility of the local planning authority and is done through the development plan process. As such, we recognise that it is not possible within the context of secondary legislation to provide a direct exemption for town centres. However, it is a well established principle of the planning regime that planning authorities can dis-apply secondary legislation if it is considered appropriate. In particular, regulation 4 of the General Permitted Development (Scotland) Order 1992 (“GDPO”) allows planning authorities to dis-apply the application of that Order. The purpose of the GDPO is to allow more minor development to proceed without having to apply for planning permission whilst Article 4 directions enable planning authorities to ensure permitted development rights are not exercised in inappropriate locations (e.g. conservation areas). Regulation 4 of the GDPO ensures flexibility within the statutory planning regime.

As currently proposed, the controls on retail mezzanine development will apply equally to both town centre and out of town developments. Requiring town centre retailers to apply for planning permission for mezzanine floors in the same manner as out of town retailers will increase the burden on them, contrary to the aims of this consultation and SPP 8. Indeed, the introduction of the control on mezzanine retail development may well prove counter productive. We would suggest that the regulations controlling retail mezzanine development include provision to allow planning authorities to dis-apply those controls in town centres if considered expedient. As noted above, this would give planning authorities powers similar to those already available and widely used by them under regulation 4 of the GDPO.

We should be grateful if you would acknowledge receipt of this consultation response and should you have any queries please contact Gillian Simpson or Craig Whelton of our Edinburgh office.

Yours faithfully

A handwritten signature in black ink that reads "Gillian Simpson". The signature is written in a cursive, flowing style.

For Maclay Murray & Spens LLP