

Judicial Communications Office

Friday 1 October 2010

JUDGE QUASHES MINISTERIAL PLANNING STATEMENTS

Summary of Judgment

Mr Justice Treacy, sitting today in the High Court, quashed two statements made by the former Minister of the Environment, Sammy Wilson, on the basis that they represented a substantive change in planning policy upon which there had been no consultation.

The application for judicial review arose in the context of the application for planning permission for a retail development at Sprucefield. The applicant, the landlord of the Rushmere Shopping Centre in Craigavon, was suspicious that the statements were made shortly before the (aborted) public inquiry into the Sprucefield application was due to be heard and asserted that the statements appear designed to increase the weight to be given to the economic benefit of the proposed development.

Mr Wilson claimed that the statements he made to the Assembly on 11 May and 16 June 2009 did not represent new planning policy and were merely offering clarification and guidance within an existing and well established policy framework: they were at most a “refinement” of weight to be given to economic considerations by planners.

Mr Justice Treacy said that the substantive content of planning policy, provided it is lawful, is a matter for the appropriate authorities and not the Court. He emphasised that the Court is not concerned with the merits of any planning policy. The Minister was entitled in principle to introduce policy requiring particular weight to be given, for example, to economic considerations in the determination of planning applications provided it was done lawfully. If the statements represented a substantive change in planning policy the Minister was required to consult.

Mr Justice Treacy said he did not accept that the statements were “mere guidance”. He said they went beyond mere advice or information aimed at resolving a difficulty:

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“They were plainly intended, particularly in the case of the economic statement, to bring about a material change in the way planning applications were determined and to influence the outcome. Otherwise there would have been no point in making the statements. It was plainly envisaged that [planning] applications that would have been determined one way before the statements were made would (or might), on the same facts, now be determined differently in light of the new policy”.

Mr Justice Treacy concluded that the Minister misdirected himself in considering that the statements did not represent a change in planning policy. He also concluded that the Minister, in consequence of that misdirection, acted unlawfully by failing to consult. Mr Justice Treacy therefore quashed the statements.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

ENDS

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