

Judicial Communications Office

Tuesday 21 June 2011

COURT

Summary of Judgment

The Court of Appeal today dismissed an appeal against a decision by Mr Justice Weatherup to refuse judicial review of a decision of the Planning Service granting Vico Kent Limited outline planning permission for a food store at Edenderry, Portadown.

In 2005 Vico Kent Limited applied for outline planning permission for a food store and related development on the site of an old gas works in Portadown. On 21 December 2007 the Strategic Projects Team of the Planning Service prepared a report which recommended approval of the application. The report noted that the retail impact assessment indicated that the proposal had the potential to cause harm to the town centres of Portadown, Lurgan and Craigavon. Despite that conclusion the application was considered acceptable because the site was a development opportunity site suitable for retailing, was within the draft town centre boundary, there was a qualitative need for additional retail floor space within the recommended town centre boundaries and the proposal would assist physical regeneration.

On 31 December 2007 the Planning Appeals Commission (PAC) sent a report on the draft Craigavon Town Centre Boundaries and Retail Designations Plan 2010 ("the 2010 Plan") to the Planning Service. The PAC said that keeping the site within the town centre boundary would lead to a wide dispersal of the retailing function away from the core of Portadown and weaken its attractiveness. It concluded that the inclusion of the site would not sustain and enhance the vitality and viability of Portadown town centre and accordingly recommended that it should be excluded. The Planning Service reconsidered its recommendation to approve the application in light of the PAC report. It concluded, on balance, that the proposal was still acceptable.

Tesco Stores Limited had already submitted an application for a food superstore to the Planning Service in February 2007. The PAC report of 31 December 2007 had recommended the inclusion of the Tesco site within the Craigavon town centre boundary. This application was approved by the Planning Service on 12 November 2008.

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The Lord Chief Justice, delivering the judgment of the Court, said that the Court was only concerned with the legality of the decision making process. The appellant, Tesco Stores Ltd, submitted that there was insufficient evidence for the conclusion reached by Mr Justice Weatherup in the original judicial review that the Tesco permission, granted a month before the Vico permission, had been taken into account. This submission was grounded on the proposition that there was no note of an internal Development Control Group meeting within the Planning Service or any document to support the fact that it was taken into account. A Planning Service official told the Court that it was not standard practice to minute meetings of that kind. The Lord Chief Justice said there was nothing to suggest that this assertion was inaccurate and concluded that there was no reason to differ from Mr Justice Weatherup's conclusion that he should rely on the assertion given by the Planning Service official.

The Planning Service official told the Court that it did not consider it appropriate to assess the cumulative effects of the Tesco and Vico stores as the Tesco site was located within a town centre and there was therefore no requirement to assess the impact of town centre development upon neighbouring town centres. The Planning Service considered that the Tesco approval would compete with the application by Vico and would serve to reduce its impact on Lurgan and Portadown town centres. The Tesco approval would also help to strengthen the trading position of Craigavon town centre by attracting trade into the centre from the surrounding catchment area thereby reducing any potential loss of trade from central Craigavon to the Vico store.

Tesco Stores Ltd submitted that there were no reasonable grounds for the conclusions reached by the Planning Service on these issues. It submitted that there was no retail impact assessment which would have informed judgments about the degree to which a new store would draw trade away from the town centre and that in the absence of this assessment the conclusions reached by the Planning Service were irrational.

The Lord Chief Justice said that it was relevant to note that the Planning Service had a range of retail impact information available to it in connection with the Portadown area. The judgments which the Planning Service made were informed by this pre-existing detailed retail information. He said there was no express requirement for the Planning Service to conduct a retail impact assessment and no evidence to suggest that the conclusions reached by the Planning Service on the nature of the likely impacts on other town centres were flawed. The Lord Chief Justice concluded that there was no basis for characterising the judgments of the Planning Service as irrational or unreasonable and he rejected these grounds of appeal.

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Tesco Stores Ltd had also submitted that it was irrational to grant permission for a new food superstore outside the town centre boundary. It submitted that it was unreasonable for the Planning Service to rely on the proposition that development of the site could assist in the regeneration of the town centre as the site had been excluded from the Craigavon Town Centre Boundary Plan. The Lord Chief Justice said that the Court did not accept that submission. He said that the recommendation that the site should be excluded from the town centre was not a determination that the development of the site could not in certain circumstances contribute to the regeneration of the town centre. He added that whether a superstore would achieve that end was a matter well within the range of planning judgments available to the Planning Service.

Tesco Stores Ltd also contended that in light of advice given to the Planning Service only those developments located within town centre boundaries should receive favourable consideration in relation to qualitative need. The Lord Chief Justice did not accept that the Planning Service should be so constrained in the exercise of its planning judgment. He said that the Planning Service was entitled to examine the contribution of the proposal to the extension of retail choice and if it considered appropriate to give that substantial weight.

The Court of Appeal concluded that none of the grounds of appeal had been made out and dismissed the appeal.

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

If you have any further enquiries about this or other court related matters please contact:

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