Neutral Citation Number: [2019] EWHC 489 (Admin)

Case No: CO/4343/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/03/2019

Before :

THE HONOURABLE MRS JUSTICE LIEVEN

- -

Between :

Solo Retail Limited	**Claimant**
- and -	
Torridge District Council	**Defendant**
- and -	
TJL UK Limited	**Interested Party**

- -
- -

James Neill (instructed by **Keystone Law Limited**) for the **Claimant**
Raj Sahonte for the **Defendant**
Charles Streeten (instructed by **Gordons LLP**) for the **Interested Party**

Hearing dates: 21 February 2019

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Approved Judgment

Mrs Justice Lieven :

1. This is an application for judicial review of the decision of the Defendant, Torridge District Council ("the Council") to grant planning permission to the Interested Party, TJL UK Limited ("TJL") for a proposed retail unit with associated garden centre at Clovelly Road, Bideford, Devon ("the site"). Permission was granted on 21 September 2018.

2. The Claimant is the owner and operator of a retail unit known as BJ's Value House at Clovelly Road Industrial Estate, Bideford.

3. The application was for 25,000 sq. ft (2323 sqm) of gross retail floor space with an associated 7,500 sq. ft (697 sqm) garden centre. The proposal was for 349 sqm of gross convenience floorspace (15%), the rest being comparison floorspace. Condition 16 of the permission limited the net internal space for convenience goods to 314 sqm. The application named B&M Homestores (B&M) as the proposed occupier, although there was no proposal for a personal condition on the planning permission. B&M is a value retailer which specialises in comparison goods, a proportion of which are bulky. Ancillary to its main offer B&M sell some convenience goods, which are described as "ambient, non-perishable packaged goods". In normal language, this means that they do not sell any fresh or frozen goods.

4. The site is located 2.4km from Bideford town centre with an out of centre shopping centre known as Atlantic Village located to the south of the site.

5. The issues in this case all turn around the Council's approach to retail impact assessment. It is therefore necessary to set out the relevant Local Plan policies and then how retail impact was considered in the planning process.

The Policy Framework

6. The Development Plan for the purposes of s.38(6) of the Planning and Compulsory Purchase Act 2004 is the Torridge Local Plan 1997-2011 ("TDLP"). The relevant policy is HSC19 which covers major retail development. That policy has six criteria, but it is agreed that there is no requirement in the adopted Development Plan for a retail impact assessment for this application, of whatever form.

7. There is also an emerging plan, the North Devon and Torridge Local Plan. The relevant policy is DM20 which states:

> *"On the edge of or outside Town or District Centres, proposals for new shops of more than 250 square metres (gross) retail floor area, or extensions to existing shops which will increase their size by more than 250 square metres (gross) retail floor area, must be accompanied by an impact assessment in accordance with NPPF (paragraph 26) requirements."*

8. The emerging plan had been through its examination before an Inspector and had been found to be sound. The Inspector had during the hearings, and in her report, considered the locally set threshold of 250 sqm and had accepted this as being appropriate in the light of the size of local town centre units. She said at para 159 of her report:

> *"A sequential approach to retail site release is applied through Policy DM20. Within the main town centres, the average retail unit size is assessed to be less than 250 sqm. As a result, the threshold for requiring a retail impact assessment to support proposals for additional retail floorspace on the edge of or outside Town and District Centres is set in Policy DM20 at 250sqm, in accordance with the recommendations of the 2012 Retail and Leisure Study (CE27a and b). I agree that in view of the relatively small scale of existing town centre units, it is appropriate for the NDTLP to set its own threshold at this level instead of the national default standard of 2,500 sqms identified in the NPPF."*

9. It is trite planning law that national policy is a material consideration, and often one that carries a great deal of weight.

10. In this case the relevant national policy is set out in the NPPF. The 2018 NPPF was issued during the course of the Council's consideration of the application and was the NPPF in place at the date of the determination. It is therefore the relevant national policy, even though much of the process of consideration of the application took place under its predecessor the 2012 NPPF. The relevant paragraphs of the 2018 NPPF are paras 89-90, which state:

> *89. When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m2 of gross floorspace). This should include assessment of:*
>
> *a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
>
> *b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).*
>
> *90. Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused.*

11. Paragraph 26 of the 2012 NPPF is in identical terms to para 89 of the 2018 version. Therefore, there was no different approach to be applied before July 2018.

12. As I will explain below the essence of Mr Neill's case is not so much that the NPPF or DM20 has been misinterpreted, but rather that the National Planning Policy Guidance ("the NPPG") has not been applied correctly. The relevant paragraphs of the NPPG are in the section headed "Ensuring the vitality of town centres" and are as follows:

A. *"The purpose of the [impact] test is to ensure that the impact ... of certain out of centre and edge of centre proposals on existing town centres is not significantly adverse" para 013;*

B. *"How should the impact test be used in decision-taking?*

It is for the applicant to demonstrate compliance with the impact test in support of relevant applications. Failure to undertake an impact test could in itself constitute a reason for refusing permission.

The impact test should be undertaken in a proportionate and locally appropriate way, drawing on existing information where possible. Ideally, applicants and local planning authorities should seek to agree the scope, key impacts of assessment, and level of detail required in advance of applications being submitted." (para 015;

C. *"As a guiding principle impact should be assessed on a like-for-like basis in respect of that particular sector (e.g. it may not be appropriate to compare the impact of an out of centre DIY store with small scale town-centre stores as they would normally not compete directly). Retail uses tend to compete with their most comparable competitive facilities. Conditions may be attached to appropriately control the impact of a particular use" [para 016]*

D. *"Is there a checklist for applying the impact test?*

The following steps should be taken in applying the impact test:

- *Establish the state of existing centres and the nature of current shopping patterns (base year)*
- *Determine the appropriate time frame for assessing impact, focusing on impact in the first five years, as this is when most of the impact will occur*
- *Examine the 'no development' scenario (which should not necessarily be based on the assumption that all centres are likely to benefit from expenditure growth in convenience and comparison goods and reflect both changes in the market or role of centres, as well as changes in the environment such as new infrastructure);*
- *Assess the proposal's turnover and trade draw* (drawing on information from comparable schemes, the operator's benchmark turnover of convenience and comparison goods, and carefully considering likely catchments and trade draw)*

- *Consider a range of plausible scenarios in assessing the impact of the proposal on existing centres and facilities (which may require breaking the study area down into a series of zones to gain a finer-grain analysis of anticipated impact)*

- *Set out the likely impact of that proposal clearly, along with any associated assumptions or reasoning, including in respect of quantitative and qualitative issues*

- *Any conclusions should be proportionate: for example, it may be sufficient to give a broad indication of the proportion of the proposal's trade draw likely to be derived from different centres and facilities in the catchment area and the likely consequences to the viability and vitality of existing town centres*

A judgement as to whether the likely adverse impacts are significant can only be reached in light of local circumstances. For example, in areas where there are high levels of vacancy and limited retailer demand, even very modest trade diversion from a new development may lead to a significant adverse impact.

Where evidence shows that there would be no likely significant impact on a town centre from an edge of centre or out of centre proposal, the local planning authority must then consider all other material considerations in determining the application, as it would for any other development." (para 017)

The Planning Process

13. The application was submitted by TJL on 11 December 2017. The application was accompanied by a planning and retail statement, which had as an appendix a document headed "Retail Impact Assessment" ("RIA"). The RIA explained the methodology for retail impact assessments set out in the NPPG. It then proceeded to work through that methodology. The RIA estimated that based on 2017 figures the convenience turnover of the proposal would be £1.46m rising to £1.61m in 2022.

14. Paragraph 1.6 of the RIA said:

> *"Given that the extent of convenience floorspace proposed is limited to just 314 sqm. (net), it is considered de minimus (sic) in the context of retail impact and no specific assessment of convenience good impact has been undertaken. The reality of the impact of the limited level of convenience goods floorspace is that it will be derived from a number of food stores, most notably Asda, Lidl, and Aldi located in very close proximity to the application site."*

15. The RIA concluded:

> *"7.1 In summary, the proposed development is located directly adjacent to a well-established out of centre retail destination and will complement the existing retail offer. The proposals will enhance consumer choice, enabling B&M to meet an identified need which cannot be met by their existing store in Barnstaple.*
>
> *7.2 As set out in this retail assessment, the nature of the application proposal means that it will principally compete with out of centre stores and will not have a significant adverse impact on the vitality and viability of the designated town centres within the PCA. Moreover, the proposals promote a range and choice of retail facilities at a well-established retail destination.*
>
> *7.3 The proposal is therefore considered compliant with paragraph 26 of the NPPF."*

16. A number of objections to the proposal were lodged, including by other retail operators. A number of these operators were represented by the Pegasus Group, who are planning consultants. On 12 March 2018 Pegasus submitted objections from Solo raising concerns about the methodology of the RIA and suggesting that there had been a significant underestimation of the impact of the proposal on Bideford town centre.

17. In April 2018 DPP on behalf of TJL submitted a rebuttal to objections document to the Council. This Rebuttal stated at paras 4.3-4.6:

> *The Impact of the Proposed Convenience Goods Floorspace*
>
> *4.3 Asda claim that the 314sqm of proposed convenience goods floorspace should be accompanied by an assessment of retail impact, however, they go on to concede that the 250 sqm threshold is not yet adopted policy. As such, we maintain such an assessment is not required.*
>
> *4.4 The convenience goods turnover of the proposed store will be £1.47M per annum. As outlined above, shoppers do not visit B&M to conduct a grocery shop, such purchases are ancillary to the main purpose of the visit to the store. B&M's Homestores food range is extremely limited and relates purely to ambient, non-perishable packaged goods. Consequently, the offer competes most directly with that of larger supermarkets rather than 'convenience' stores.*
>
> *4.5 Consequently, the impact of the proposal will be distributed across a number of stores, but most notably Asda, Morrisons and Tesco stores in Bideford. As a consequence of the co-location, we anticipate the greatest trade diversion would be experienced by the Asda store, at £0.74M. Asda is not afforded any planning policy protection and this level of trade diversion when taken as*

> *part of the overall turnover of the store will not threaten the continued trading.*
>
> *4.6 The nature of the offer in the town centre and that of the proposed store means that we do not anticipate the town centre experiencing any convenience goods trade diversion. It is clear, therefore, the convenience goods element of the application proposals will not cause any significant adverse harm to any stores or centres*

The Officer's Report

18. The application was considered and permission granted under delegated powers. The officer's report ("OR") had a section headed "Retail Considerations", as relevant that stated:

> *"…The emerging Local Plan, through Policy DM20: Development Outside Town and District Centres, as enabled by the NPPF, sets a locally determined threshold at 250sqm of new retail floorspace, to trigger the need for an impact assessment. The NPPF sets a threshold at 2,500 sqm, if a locally determined threshold is not otherwise provided. Accordingly, the application is accompanied by a Retail Impact Assessment (RIA) as well as a sequential analysis of alternative sites contained within the Planning Statement.*
>
> *…*
>
> *The RIA considers the level of convenience floorspace proposed to be 'de minimus' at 314 sqm in the context of retail impact, hence no specific assessment of convenience goods impact has been undertaken with reference to the close proximity of Asda, Lidl, and Aldi as well as Morrisons and Tesco elsewhere in Bideford. It is worth noting that none of the referenced supermarkets/ food stores are located within Bideford Town Centre, as defined in both the TDLP and the emerging Local Plan. The Local Planning Authority accepts that this minimal convenience floorspace would divert expenditure from the larger out of centre supermarkets, but to a limited extent, rather than smaller convenience stores within the Town Centre. Concerns have been raised via letters of representation that the RIA should include an assessment of convenience goods, however as this is not a requirement of national planning policy or locally determined in the adopted or emerging Local Plan; the Local Planning authority is satisfied that this is not necessary in this case. The Local Planning Authority accepts the Applicant's position that the greatest trade diversion would be experience by Asda at £0.74 million. Given Asda is not afforded any policy protection and it is agreed that this level of trade diversion would*

> *not threaten its continued trading, there are no concerns in respect of convenience goods impact.*
>
> *The originally submitted RIA was subject to challenge in a number of letters of objection. With the exception of one town centre store (The Original Factory Store), all of these objections were made on behalf of retailers currently operating in Bideford in out of town locations. It should be noted that none of these existing out of town retailers, including Atlantic Village, are afforded any policy protection and, in terms of retail impact, it is only the town centre that should be considered along with an analysis of whether there are any alternative sites in a sequentially more preferable location*
>
> *…*
>
> *Given the above conclusions, and with reference to both the submitted RIA and Rebuttal of Objections, the Local Planning Authority concludes that the retail impact is unlikely to be significantly adverse on Bideford Town Centre. Furthermore, there is no sequentially preferable place for the proposal in or on the edge of Bideford Town Centre. For these reasons, the proposals accord with the retail paragraphs of the NPPF, Policy HSC19 of the TDLP and emerging Policy DM20."*

19. Later in the report under the heading "Vitality and Viability", the OR stated:

> *"The recommendation of the OR was to grant planning permission, the Committee accepted the recommendation."*

The Legal Principles

20. The legal principles in a challenge to a planning decision by a local planning authority are extremely well known and have frequently been re-stated, most recently by Lindblom LJ in *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314 at [41]:

    i) An OR must be read as a whole.

    ii) The court must not apply excessive legalism, and ORs are written for councillors and planning officers not lawyers.

    iii) Reports should not be read with undue vigour, but with reasonable benevolence.

    iv) Those councillors and planning officers will have a high degree of local knowledge.

    v) The functions of planning decision-making have been assigned by Parliament to local planning authorities and not judges.

vi) Matters of planning judgment are for the planning decision makers and not for the courts.

21. The respective roles of the court and the decision maker in the interpretation of planning policy are again well known. The principles are set out by Lord Reed in *Tesco v Dundee CC* [2012] PTSR 983 at [17] to [22]. These principles were then further considered by Lord Carnwath in *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] at [22] to [26].

> *"Law and policy*
>
> *22. The correct approach to the interpretation of a statutory development plan was discussed by this court in Tesco Stores Ltd v Dundee City Council (ASDA Stores Ltd intervening) [2012] PTSR 983. Lord *1877 Reed JSC rejected a submission that the meaning of the development plan was a matter to be determined solely by the planning authority, subject to rationality. He said, at para 18:*
>
> > *"The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others … policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context."*
>
> *He added, however, at para 19, that such statements should not be construed as if they were statutory or contractual provisions:*
>
> > *"Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse: Tesco Stores*

Ltd v Secretary of State for the Environment [1995] 1 WLR 759, 780 per Lord Hoffmann).”

23. In the present appeal these statements were rightly taken as the starting point for consideration of the issues in the case. It was also common ground that policies in the Framework should be approached in the same way as those in a development plan. However, some concerns were expressed by the experienced counsel before us about the over-legalisation of the planning process, as illustrated by the proliferation of case law on paragraph 49 itself: see paras 27 et seq below. This is particularly unfortunate for what was intended as a simplification of national policy guidance, designed for the lay reader. Some further comment from this court may therefore be appropriate.

*24. In the first place, it is important that the role of the court is not overstated. Lord Reed JSC's application of the principles in the particular case (para 18) needs to be read in the context of the relatively specific policy there under consideration. Policy 45 of the local plan provided that new retail developments outside locations already identified in the plan would only be acceptable in accordance with five defined criteria, one of which depended on the absence of any “suitable site” within or linked to the existing centres (para 5). The short point was the meaning of the word “suitable” (para 13): suitable for the development proposed by the *1878 applicant, or for meeting the retail deficiencies in the area? It was that question which Lord Reed JSC identified as one of textual interpretation, “logically prior” to the exercise of planning judgment (para 21). As he recognised (para 19), some policies in the development plan may be expressed in much broader terms, and may not require, nor lend themselves to, the same level of legal analysis.*

25. It must be remembered that, whether in a development plan or in a non-statutory statement such as the NPPF, these are statements of policy, not statutory texts, and must be read in that light. Even where there are disputes over interpretation, they may well not be determinative of the outcome. (As will appear, the present can be seen as such a case.) Furthermore, the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly. With the support and guidance of the planning inspectorate, they have primary responsibility for resolving disputes between planning authorities, developers and others, over the practical application of the policies, national or local. As I observed in the Court of Appeal (Wychavon District Council v Secretary of State for Communities and Local Government [2009] PTSR 19 , para 43) their position is in some ways analogous to that of expert

> *tribunals, in respect of which the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence: see AH (Sudan) v Secretary of State for the Home Department (United Nations High Comr for Refugees intervening) [2008] AC 678 , para 30, per Baroness Hale of Richmond.*
>
> *26. Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies, as in the Tesco case. In that exercise the specialist judges of the Planning Court have an important role. However, the judges are entitled to look to applicants, seeking to rely on matters of planning policy in applications to quash planning decisions (at local or appellate level), to distinguish clearly between issues of interpretation of policy, appropriate for judicial analysis, and issues of judgment in the application of that policy; and not to elide the two. "*

22. Lindblom LJ in Samuel Smith Old Brewery (Tadcaster) v North Yorkshire CC [2018] EWCA Civ 889 said however that none of *"...those familiar principles detracts from the need for the court to intervene where a planning decision has been made by a local planning authority on the basis of a misunderstanding and misapplication of national planning policy."*

The Grounds

23. Three grounds of challenge were advanced before me:

    i) That the Council misinterpreted emerging Plan policy DM 20 and NPPF para 89.

    ii) That the decision that there would be no convenience goods impact or that it would be de minimis was *Wednesbury* unreasonable.

    iii) That the failure to apply a condition effectively mirroring the convenience goods sold in B&M should have been imposed.

24. Mr Neill on behalf of the Claimant argues that no RIA was carried out in respect of the convenience element of the proposal, and that there was a policy and legal requirement for a "full" RIA or a "specific assessment" of the convenience element. He accepts that there was an RIA for the comparison element of the proposal, but he says that the OR misdirected itself as to the policy requirements for a "full" RIA in respect of the convenience goods element.

25. He points to the section of OR (unfortunately with no paragraph numbers) where it refers to objectors arguing that there should be an assessment of convenience goods and the OR then says, *"...however as this is not a requirement of national planning policy or locally determined in the adopted or emerging Local Plan: The Local Planning Authority is satisfied that this is not necessary in this case."* Mr Neill argues that this is

an error of law on the basis of misinterpretation of policy within the principle in [18] of Lord Reed's judgment in *Tesco v Dundee*. His argument is that DM20 sets out a local threshold of 250 sqm for an impact assessment. Although this is emerging not adopted policy, it is a material consideration which carries significant weight given the stage the emerging policy had reached. The 250sqm threshold was established after a Local Plan Examination and was based on the particular local circumstances in the town centres covered, including Bideford. He therefore says that there was a requirement in DM20 for an impact assessment in respect of the convenience goods element of the proposal, as this exceeded 250 sqm. This then leads to a requirement in the NPPF para 89 where it refers to locally set thresholds.

26. Mr Neill goes on to argue that when DM20 and NPPF para 89 refer to "impact assessment" they necessarily require a quantitative economic analysis as was done in this case for the comparison goods element. He says that an impact assessment within DM20 and the NPPF must mean one that accords with the guidance in the NPPG, in particular paragraph 017 of the relevant section, as set out above.

27. On the second ground, Mr Neill argues that the decision not to require a "full" impact assessment on the convenience goods, and that the convenience goods element was *de minimis*, was *Wednesbury* irrational in the light of the locally set threshold of 250 sqm in DM20. He points to the Local Plan Inspector's report and her finding that the threshold was sound given the "relatively small scale of existing town centre units".

28. On the third ground, Mr Neill argues that given the reliance the OR placed on the nature of the trading at B&M, and the fact that their business model did not include fresh or frozen goods, a condition should have been attached to ensure that any other occupier also did not sell these products and effectively followed the same convenience retail model as B&M. He relies on policy HSC19 of the Adopted Plan, which has a series of standard tests on the sequential test, and ensuring the protection of vitality and viability.

Conclusions

29. Essentially for the reasons advanced by Mr Sahonte for the Council, and Mr Streeten for the Interested Party, I do not think the Council erred in law.

30. Mr Neill's first ground rests on being able to establish that it was a requirement of the policy that there should be a full RIA on the convenience element proposal. In my view this is a classic case which is really challenging a planning judgment about how a policy should be applied to the facts of the case, rather than about the true interpretation of the policy. It therefore falls within [19] of *Tesco v Dundee* and as a matter of planning judgment is one for the decision maker, *Tesco Stores v Secretary of State for the Environment* [1995] 1 WLR 759.

31. DM20 provides that where there is a proposal for an edge or out of centre store of more than 250 sqm then it must be accompanied by an impact assessment. On the facts of this case there is no dispute that the store was more than 250 sqm and an impact assessment was undoubtedly provided.

32. The content of that impact assessment, what it covered and in what level of detail and analysis, was a matter of planning judgment for the Council, subject to *Wednesbury* principles. DM20 does not place any requirement on the form or scope of the impact

assessment, it merely refers back to the NPPF. Equally para 89 of the NPPF (previously 26 of the 2012 NPPF) does not say what an impact assessment should contain. Again, that is self-evidently a matter of judgment for the Council.

33. Therefore, Mr Neill has to fall back under Ground One, on the NPPG and in particular the detailed steps for an impact assessment set out in para 017 referred to above. In my view the NPPG has to be treated with considerable caution when the Court is asked to find that there has been a misinterpretation of planning policy set out therein, under para 18 of *Tesco v Dundee*. As is well known the NPPG is not consulted upon, unlike the NPPF and Development Plan policies. It is subject to no external scrutiny, again unlike the NPPF, let alone a Development Plan. It can, and sometimes does, change without any forewarning. The NPPG is not drafted for or by lawyers, and there is no public system for checking for inconsistencies or tensions between paragraphs. It is intended, as its name suggests, to be guidance not policy and it must therefore be considered by the Courts in that light. It will thus, in my view, rarely be amenable to the type of legal analysis by the Courts which the Supreme Court in *Tesco v Dundee* applied to the Development Policy there in issue.

34. These points are illustrated the paragraphs of the NPPG that are most relevant in this case. Paragraph 015 says that "the impact test should be undertaken in a proportionate and locally appropriate way…" However, paragraph 017 says "The following steps should be taken in applying the impact test…". Taken at face value these words would seem to suggest that the following elements are mandatory where there is a policy requirement for any form of impact test. However, in my view that cannot be the case. There is a judgement for the LPA as to what level of scrutiny of possible impact is appropriate in the particular circumstances of the proposal, taking into account the need to be proportionate. Paragraph 017 therefore cannot and should not be interpreted and applied in an overly legalistic way as if it was setting out mandatory requirements.

35. Applying that analysis to the present case, it was in my view perfectly reasonable and lawful for the LPA not to require a "full" or economically analytical (if that is the appropriate terminology for an RIA) RIA. The convenience element was but a small part of the proposal. It was in a location close to other out of centre stores and therefore it was reasonable to assume that a large proportion of the impact of the convenience element would fall on those other stores, based on the "like for like" approach. This is as true of the potential impact on the Claimant's store, which is itself out of centre and thus has no policy protection, as of the Asda and other larger out of centre supermarkets which are referred to. The OR considered the circumstances Bideford town centre and how it was trading as part of the overall judgement on the effect of the proposal.

36. To the degree that Mr Neill is arguing that the OR in the sentence and RIA "is not a requirement of [local policy]" is wrong as a matter of fact, because of the level of the 250sqm threshold; this is in my view an example of the type of over legalistic analysis which is has frequently been deprecated by the Courts, including by Lord Carnwath in *Hopkins Homes*. It is entirely clear the officer knew the threshold, but did not think that a "full" RIA on convenience impact was justified on the facts of the case.

37. The second ground is that the Council's view that no full RIA was required and that the convenience impact was de minimis was *Wednesbury* irrational. In my view this is plainly wrong. A decision on this type of issue is not just one which is given to the LPA, but further is very much a matter for their expertise and local knowledge. The threshold

set of 250 sqm in DM20 was one that applied to a number of towns, but also in many different circumstances. Where the convenience part of the proposal was plainly secondary or ancillary to the comparison offer, and where there were competing out of centre stores in close proximity, there is nothing unreasonable about finding that a full RIA is not required.

38. The third ground is again entirely a matter of planning judgment. It is normal for retail impact to be assessed with at least some reference to the nature of the proposed occupier (if known) and of other existing operators, even though none of the conditions are personal and therefore the identity of both proposed and existing occupiers can change. Sometimes the very specific range of goods raises such obvious impact issues that it may be appropriate to control them very closely by condition. In other cases that may be judged not to be necessary. That is a matter of planning judgment for the LPA. There is no error of law in the Council here not imposing a condition which required the new store to only sell goods exactly matching B&M's current range. Indeed, on the facts it would have been extremely difficult to justify such a condition meeting the "necessity" test for conditions.

39. For these reasons I dismiss the application.