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# Two Retail Tales

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# Overview



1. R (Asda Stores Limited) v Leeds City Council
2. Co-Op Group v West Lancashire Borough Council & Aldi Stores Limited



# 1. Asda v Leeds

- Challenge to decision of Leeds City Council to grant PP for retail development on edge of centre site in Leeds
- Asda owned adjacent site and challenged decision primarily on the basis that Leeds misinterpreted NPPF para 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.”*

- Asda claimed that NPPF 90 and “should be refused” creates a presumption in favour of refusal / means a “standard balance” shouldn’t apply
- High Court and Court of Appeal both rejected this
- So what does “should be refused” or “won’t be supported” or similar mean?

[35] *“When called upon – as often it is nowadays – to interpret a policy of the NPPF, the court should not have to engage in a painstaking construction of the relevant text. It will seek to draw from the words used the **true, practical meaning and effect of the policy in its context**. Bearing in mind that the purpose of planning policy is to achieve “reasonably predictable decision-making, consistent with the aims of the policy-maker”, it will look for an interpretation that is “straightforward, without undue or elaborate exposition”*”



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*[36] ... “The words “should be refused” have a clear meaning, which requires no elaboration by the court. They do not mean “must be refused”. The policy is not imperative. It does not dictate a refusal of planning permission whenever the development proposed is likely to have a “significant adverse impact” on the “vitality or viability” of a town centre”*

*[41] “Whenever a decision-maker finds there is likely to be a “significant adverse impact” on the “vitality and viability” of the town centre, this will count as a negative factor with the force of government policy behind it. It will go against the proposal as a material consideration”*

## 2. Co-Op v West Lancs

- Challenge to the decision of West Lancs BC to grant PP for an Aldi Store in the Green Belt in West Lancs.
- Claimant (Co-Op) argued that the officer's report misinterpreted NPPF Green Belt policy in a number of ways. Holgate J rejected the challenge on all grounds.

- OR had recited the policy but in the body of the report when officer engaged with the policy, had misstated it in a number of ways including stating that :
    - Openness = absence of visible development
    - Referring to the test as being “on balance” and the need to “outweigh” only
    - No reference to “substantial harm” being applied to harm to openness
- = a number of arguably incorrect statements in the OR



But the decision survived – two takeaways:

- 1) An officer report does not have to set out a policy test accurately every time
- 2) An officer does not have to expressly apply a policy test as it is set out (let alone apply any suggested or ‘mandated’ weighting), so long as there is no contraindication to suggest policy not properly applied

- Another strand of challenge took aim at the officer's reliance upon unsecured benefits that would accrue from the office part of the scheme being occupied by a local employer.
- This also failed

## Takeaway on benefits:

Can take into account the fact that a proposal to provide a building would facilitate or assist in the fulfilment of the expansion plans of a local employer (or indeed any benefit) without there being any legal mechanism to ensure the delivery of that outcome. It becomes a matter as to what weight to give to that factor, subject to challenge on the grounds of irrationality only.

# Thank you for listening!

# Any Questions?

