

Case Name: *Tesco Stores Ltd, R (On the Application Of) v Allerdale Borough Council* [2022] EWHC 2827 (Admin) (08 November 2022)

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Commentary: This was a claim against the grant of planning permission by Allerdale Borough Council ("the Council") to Lidl Great Britain Limited ("the Interested Party"), for a discount food store development on the proposed site ("the Development"), which was north of Tesco's own superstore.

The claim was dismissed by Fordham J and Tesco were refused permission to appeal.

The claim was brought on the grounds that the Officer's Report, and subsequent oral submissions by the Officer, to the Planning Committee contained material misdirection on local plan policies, namely Policy SA49 in Allerdale Local Plan Part 1 2014 ("LP1") and Policy S30 in Allerdale Local Plan Part 2 2020 ("LP2").

The Defendant and the Interested Party argued that:

1. There was no material misdirection as to either or both Policy SA49 and Policy S30; and
2. Even if there had been a material misdirection, it is highly likely that the outcome would have been the same (i.e. "not substantially different"), therefore no remedy would be appropriate.

Fordham J held that there was no material misdirection on either of the policies, therefore the claim failed.

The key takeaways from the judgement are that:

1. When interpreting policy, the "ordinary and natural meaning" should be given to the language, without reading-in restrictive words ([24]);
2. Even if there has been a misreading of policy by an Officer, this will not automatically amount to the Officer's Report being "materially misleading"; the way in which the policy has been applied to a proposal, and the subsequent advice given by the Officer, has to be considered ([44]).

However, Fordham J went on to suggest that, had he found that the report was "materially misleading" on local plan policies, he would have concluded that there is a high likelihood that the outcome would have been substantially different, contrary to the Defendant's and the Interested Party's second argument.

Fordham J referred to the case of *R (Advearse) v Dorset Council* [2020] EWHC 807 (Admin), and concluded that in *Advearse*, the Court had found that, despite the Officer's

Report being materially misleading there was a high likelihood that the outcome would not have been substantially different, because there were clear apparent public benefits to the development. However, in the current case, he held that he would not have had this “high degree of confidence” in concluding the same at [45].

Case summary prepared by Chatura Saravanan