

Planning Committee Report

London Thames Gateway Development Corporation

Application to the High Court for a Judicial Review of the planning permission for the Tesco scheme at Bromley by Bow, Tower Hamlets, E3

1 Purpose of Report

- 1.1 This report concerns the outcome of the hearing to decide whether permission should be given to Trad Scaffolding to bring judicial review proceedings in the High Court challenging the grant of planning permission for the Tesco redevelopment proposals at Bromley by Bow. Mr Justice Cranston refused permission and ordered Trad to pay the Corporation's costs, the amount of such costs to be assessed by the Court by a separate procedure if not agreed between the parties.
- 1.2 The Committee is recommended to note the report.

2 Background

- 2.1 As members may recall, the Planning Committee on 26th May 2010 resolved to give delegated authority to the Planning Development Manager to grant conditional planning permission for the "Tesco development", subject to referral to the GLA and completion of a S106 agreement. The Committee considered the main report, an addendum report, representations from objectors and advice from Nigel Hewitson, the Committee's legal advisor. The planning permission was subsequently issued on 21st July 2010 following completion of a s106 agreement.
- 2.2 The development comprises various plots which fall within two main phases. The first being the construction of a new superstore, plus 954 sq metres of flexible retail space, an Idea Store to shell and core, and associated infrastructure works including works to an existing subway, access roads, landscaping and parking spaces. The second phase provides 454 residential units, a further 1086 sq metres of flexible retail space, 1547 sq metres of other commercial uses, an hotel, a two form entry primary school, a park, a petrol station and associated infrastructure.
- 2.3 In order to facilitate the comprehensive development of the area the Development Corporation had also resolved to make a Compulsory Purchase Order (CPO) in respect of several sites within the Tesco application area and lands to the north. One of the sites is currently occupied by Trad Scaffolding. The CPO Inquiry ran from 20th to 29th July

and 28th to 30th September. A decision by the Secretary of State is expected by 14th April.

- 2.4 Trad applied to the High Court on 28th September for permission to seek a judicial review of the planning permission. Trad submitted two grounds of challenge.
- 2.5 Ground 1 claimed that the Committee had not properly evaluated the likelihood of all component parts of the scheme being delivered and therefore the balance between achieving comprehensive development against non compliance/breaches of policy had not been assessed as it should have been.
- 2.6 Ground 2 claimed that the potential removal of Trad from the site and associated job losses, including whether a site for them to relocate to was available, had also not been properly assessed. Consequently the Committee had made incorrect assumptions as to the likelihood of the whole development coming forward and the benefits that would result including net job gains. This being further elaborated in Ground 1.
- 2.7 Judicial review is a two stage process: a claimant must first be given the permission of the Court. Only if such permission is given does the case proceed to a substantive hearing. Permission, which will normally only be given if the Court is satisfied that the claimant has an arguable case, is normally decided by a judge having reviewed the papers. Unusually permission in this case was ordered to be considered at an oral hearing which occurred on 10th February 2011 with judgement being given on the 11th February. The transcript of the judgement is attached as Appendix 1.

3 Analysis

- 3.1 The key points in the judge's assessment and conclusions relating to the conduct of the Committee and the considerations that led to its decision and why these were correct and proper are set out below. This also should be seen in the context of the Judge identifying that the Corporation is tasked with the responsibility of securing regeneration in its area.

Ground 1

- 3.2 The "balance" applied by the Committee with regard to the likely delivery of Phase 2 and overall regeneration benefits when set against relevant planning policies is key to its decision to grant permission. The Committee could not be expected to guarantee that the development would come forward in its entirety. It had to weigh a range of factors in the balance and then come to a view as to the likelihood of the development coming forward. In relation to this, the Committee was under no illusions as to the challenges that existed in securing the development of all the elements proposed in the scheme, notwithstanding the clauses in the S106 and a separate undertaking between Tesco and the Corporation. These were

clearly set out within various paragraphs of the report along with references to the policy framework requiring comprehensive development.

- 3.3 The Committee exercised its discretionary powers lawfully and discharged its duties. It is for it to weigh the balance as to the realistic prospect of the development being delivered and, as a matter of law, development only has to be acceptable and not “best use”.

Ground 2

- 3.4 With regard to job losses it was essential for the Committee to assess the likelihood of the job numbers associated with both phases of the scheme occurring and the implications of job losses from Trad should the company not relocate. Whilst the loss of jobs is a material consideration, the matter of relocation is not. The Committee was fully aware of job losses, being informed by various statements in the Committee reports plus further clarification by Nigel Hewitson on both job losses and the issue of relocation. Consequently the Committee was in no doubt as to what was a material consideration.

4. **Conclusion**

- 4.1 The judge comprehensively supported the Corporation’s position and awarded the Corporation its costs - including the costs of the permission hearing, which would normally not be awarded because the Court seeks to discourage such hearings except in exceptional circumstances. If not agreed between the parties, the amount of costs payable will be assessed by the Court.
- 4.2 This is an important decision for two reasons. Firstly, it clearly confirms that the Committee’s decision was wholly appropriate within the policy framework and material considerations within which it should operate in coming to a decision. Secondly, it supports the Corporation’s work in helping to deliver regeneration in this part of the lower Lea Valley.

5. **Recommendation**

- 5.1 That the Committee **NOTE** this report.

Neutral Citation Number: [2011] EWHC 314 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

Royal Courts of Justice

Strand

London WC2A 2LL

FRIDAY, 11th FEBRUARY 2011

B e f o r e:

MR JUSTICE CRANSTON

Between:

THE QUEEN ON THE APPLICATION OF TRAD SCAFFOLDING CO LTD

Claimant

V

LONDON THAMES GATEWAY DEVELOPMENT CORPORATION

Defendant

MR J STEEL QC & MR A GOODMAN appeared on behalf of the **Claimant**

MR T CORNER QC & MR P STINCHCOMBE appeared on behalf of the **Defendant**

J U D G M E N T

(as approved by the court)

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SMITH BERNAL WORDWAVE

MR JUSTICE CRANSTON:

Permission to Apply for Judicial Review

1. This is an application for permission to apply for judicial review. It was ordered for an oral hearing by Silber J. An initial oral hearing reflects the traditional practice of an application for permission for judicial review being considered in front of the Divisional Court. Under current procedures, CPR 54 PD para. 8.4, permission is typically decided on the papers. If refused the claimant can request reconsideration at an oral hearing; CPR rule 54.12(3)-(5) permission is discretionary, but as the norm the threshold for granting it is arguability; in other words the case must have a realistic prospect of success. That includes a realistic prospect of, for example, a remedy being granted as a matter of discretion.

2. However, there is a spectrum on either side of the norm of arguability. Exceptionally, permission may be granted irrespective of arguability because of public concern about a matter or because it is patently a substantive matter of principle which deserves an airing. On the other side of the norm on the spectrum is enhanced arguability. In *Mass Energy v the Birmingham City Council* [1994] Env.LR 298 the Court of Appeal considered permission to apply for judicial review at a full inter partes, hearing where detailed arguments were advanced, and held that the application would be determined on the basis of whether it was "likely to succeed." In *R v the London Docklands Development Corporation ex parte Frost* [1997] 73 P & CR 199, at page 203 Keene J suggested that the *Mass Energy* approach was appropriate where this court was satisfied that it had heard as much argument, and had dealt with the manner in as much

depth, as was normally appropriate at a substantive hearing.

3. In my view where on the spectrum permission will fall to be determined will turn on a consideration of all the circumstances. One difference from the Mass Energy situation is that, in cases like the present, only one judge will have scrutinised the issues. Clearly central to any consideration will be the depth of the argument by the parties and the consideration given by the judge. In this case comprehensive documentation was placed before me. Skeleton arguments were available before the hearing. The hearing itself was a little over 3 hours, it having been marked for half a day. I was addressed by counsel eminent in the field. In all the circumstances, it seems to me that we are well along the spectrum from the norm of arguability. However attractive it might be, though, in my judgment it would be better not to try to encapsulate that position on the spectrum in any particular phrase or description lest subsequent argument be about its meaning rather than focused on the principle itself.

The Planning Permission and its Background

4. The claimant seeks to quash a planning permission granted in July last year to Tesco Stores Limited ("Tesco") for the development of a 4.6 hectare site opposite the Bromley by Bow Underground Station, east of the A12, north of the railway line and west of the River Lea navigation. The planning permission for the development permits the construction of a Tesco Superstore, other retail development, a library, a primary school, a hotel, public open space and infrastructure improvements.

5. The claimant, Trad Scaffolding Company Limited ("Trad"), operates its business on a large part of the site for which planning permission has been granted. The defendant, the London Thames Gateway Development Corporation ("the Development Corporation") is an urban development corporation under the Local Government Planning and Land Act of 1980 and entrusted under section 136 of that Act with securing the regeneration of its area. It is the local planning authority for the purposes of the categories of development set out in the London Thames Gateway Development Corporation Planning Functions Order 2005.

6. Trad is a leading scaffolding company in London, with contracts including the Shard at London Bridge and the Heron Tower. It is a family company, which has successfully operated in London for more than 40 years from the present site in Bromley by Bow. It provides employment for some 300 persons. In November 2007, Trad had applied for planning permission for the development of its site. That was refused on the basis that the development of sites on their current holdings in the area would prejudice implementation of the broad strategy of the plan, to seek regeneration of that part of the Lower Lea Valley through a mixed use development. Trad does not oppose redevelopment of the site, but for the reasons I will explain is opposed to the present grant of planning permission.

7. Through a separate process from the planning application, the subject of this claim, the Development Corporation is seeking to acquire Trad's site by compulsory purchase order, so as to transfer it to Tesco. The compulsory purchase order, with the title the London Thames Gateway Development Corporation Bromley by Bow South compulsory purchase order South was made on 2 March 2010.

8. On the same date Tesco entered a deed of indemnity with the Development Corporation whereby Tesco was obliged to sell back the land should development not have occurred within a three year period after the land was transferred to it under the compulsory purchase order. There was a public inquiry in relation to the compulsory purchase order in September of last year. The decision by the Secretary of State in relation to

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that order is awaited. In spite of a concerted search by Trad and the Development Corporation, there is still no suitable site available to which Trad's operation could relocate in the event of the order being confirmed.

9. The development contemplated by the planning permission falls into parts and is to proceed by phases. The superstore, along with some smaller retail units, comprises block A. Blocks C and D will also contain retail and food outlets. The library, the so-called Idea Store, is proposed to be constructed to shell and core in block C. Block B is the land on which the school is to be built, adjacent to the River Lea navigation. Block E is the land on which the hotel is proposed. Blocks G to K are proposed to comprise commercial, retail and residential development.

10. Under the section 106 agreement, of which more later, the implementation of the planning permission provides that the development is divided effectively into two phases. Phase one comprises the building of the supermarket and 11 commercial units shell and core; the construction of the Idea Store to shell and core; the remediation of the land where the proposed primary school is to be located; and the remediation of the open space land. The second phase comprises the remainder of the development, in other words the housing, the hotel, the remaining retail and commercial development, the actual construction of the school and its playing fields and the fitting up of the Idea Store.

11. The Planning Officer's report ("the Officer's report") on the development which went to the planning committee of the Development Corporation in May 2010 set out the details of the proposal. It noted at paragraph 1.8 that the London plan and the accompanying Lower Lea Valley opportunity area planning framework, the London Borough of Tower Hamlets interim planning guidance, which included the core strategy and the development plan document, the Leaside area action plan and Bromley by Bow land use and design brief:

"promote comprehensive regeneration of the site to provide a mix of uses that are capable of being designated as a town centre."

12. That paragraph continued that the draft replacement London plan and the Borough's local development framework consolidated that approach by establishing the potential of the site to be designated as a "district centre" if an appropriate type and scale of development was delivered.

13. Various concerns about the development were outlined in the Officer's report, such as the lack of detail to accompany proposals for significant residential led mixed use development blocks. Paragraph 1.15 noted that while the absence of any residential development above the superstore did not deliver the maximum number of new housing units that the site could accommodate, the application would still make a significant contribution to meeting the housing targets and needs expected on the site, would deliver a range of planning benefits and would facilitate the regeneration of surrounding sites. It was considered overall to comply with relevant policies. That paragraph also noted that the creation of a district centre would enable additional housing to be provided at higher densities, given the ability to access a range of services within walking distance. In the application it was noted that the developer cited the challenges associated with development viability, scheme design and project delivery. Those three factors also justified the approach.

14. Paragraph 1.16 of the Officer's report considered that on the basis that the section 106 heads of terms identified were secured, it was considered that the application provided the maximum reasonable amount of affordable housing, given the overall planning and regeneration benefits of the scheme. The redevelopment of the site to create a district centre, it was said at paragraph 1.22, delivered planning and development benefits

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which were considered to outweigh concerns raised on the consultation.

15. The notion of delivering "a comprehensive" development on the site in paragraph 1.8, to which I have referred, was echoed in other parts of the Officer's report. There was reference to the Leaside area action plan at paragraph 8.4.1, and to the part of that which recognised the need for redevelopment of the area to be managed "in a comprehensive way". The Bromley by Bow land use and design brief, said paragraph 8.4.4, would build on the Mayor of London's Lower Lea Valley opportunity area planning framework and the Tower Hamlets Borough's interim planning guidance to provide a framework for "the comprehensive physical and economic transformation of the Hancock Road, 3 Mills Lane and Imperial Street area of Bromley by Bow." The application site, it was noted, comprised the southern half of the overall area covered by the Bromley by Bow land use and design brief. That brief, noted at paragraph 8.4.6, emphasised the need for a comprehensive approach based on the consolidation of the existing land ownerships to achieve the development potential of the site. The brief identified an opportunity to redevelop the site in two phases, the second phase involving the northern part of the area.

16. Responding to the specific comments raised by land owners about the uncertainty over the Development Corporation's ability to deliver the scheme, the Officer's report referred to the compulsory purchase order and the compulsory purchase order deed of indemnity. As to the land owners' concerns as to uncertainty in delivering comprehensive development and regeneration objectives, the report cited again the compulsory purchase order and indemnity and identified other matters such as the demand for school places locally (paragraph 9.22) and the creation of the district centre, enabling existing housing to be provided at higher densities (paragraph 9.21).

17. However, the report conceded at paragraph 9.150, that the funding required to fit out and operate the Idea Store was "unidentified and being investigated." The Borough anticipated in relation to the school that a combination of Council, Department of Education and section 106 funding would be used to deliver that. To reflect the fact that the development appraisal showed that current scheme's viability would not support the payment of the discounted standard charge towards residential development, paragraph 9.151 recommended that the section 106 heads of terms included a clause that required a reappraisal of scheme on completion of phase 1.

18. As far as the employment implications of the development were concerned, the Officer's report noted at paragraph 9.22 that redevelopment would result in the loss of employment currently generated on the site. The proposed development was expected to generate in the order of an additional 412 full time equivalent jobs. The superstore was expected to create 229 more jobs than the existing store, and the hotel, retail and commercial units were expected to generate a further 183 jobs. Paragraph 9.22 continued that the Idea Store and primary school would generate further jobs: "The loss of the site's existing employment generating potential is compensated by the intensification of use and jobs creation on the site in accordance with overall strategic and site-specific planning objectives."

19. There was an Addendum Planning Committee report by the Planning Development Manager to update the planning committee on certain matters. The Development Corporation had received 17 letters from employees at Trad expressing concern at the loss of jobs and what was said to be a lack of effort to help relocate the existing business. The addendum report said at paragraph 3.1 that the objections made to the loss of existing employment were material to the consideration of the planning application.

20. The loss of existing employment was considered to be outweighed by the wider

planning and regeneration benefits, including its job creation of the proposed development. Paragraph 3.2 read as follows:

"The objections to the Compulsory Purchase Order and in particular the Corporation's alleged failure to identify alternative premises is not material to the consideration of the planning application. Any issues relating to relocation or otherwise of existing businesses should the CPO be confirmed following the public inquiry... are ultimately questions of compensation..."

21. The addendum report also recommended heads of terms for the section 106 agreement. The transfer of the primary school land and the open space land should occur within 12 months of the superstore opening. The Idea Store should be funded by the applicant to shell and core and made available to the Borough on a new 125-year lease at a peppercorn rent. The latter part of phase two should not commence until the primary school land had been transferred. Further, there should be:

"25. Satisfactory provisions to demonstrate that there is a realistic prospect of delivering the whole of the development within a reasonable time frame."

22. At the meeting of the planning committee on 26 May Mr Hayden Smith of Trad spoke against the application. He explained that whilst he was not opposed to the principle of regeneration for the area, the reason for his concern included the lack of discussion with and assistance to Trad regarding relocation to another site; the possible loss of 300 jobs; the failure of the proposal to comply with the planning policy for the area, in particular to provide the housing levels required; the adverse impact upon local shopping centres of the superstore; the design of the development; that aspects other than the superstore fell within the outline aspects of the development; and whether comprehensive development would be delivered.

23. On behalf of Tesco Mr Kissman supported the application, said that 200 new jobs would be created and that Tesco had successfully implemented 26 regeneration partnership schemes in the United Kingdom. In reply to a question about the outline application aspect, and what assurance there was that that part of the scheme would be built, Mr Kissman replied that the Development Corporation had imposed strict conditions to ensure that the development would happen and added that it was in Tesco's best interests for the whole development to work and ensure that there was a viable district centre. Mr Kissman added that Tesco had had discussions with Trad.

24. In response to the concerns ways raised, Mr Hewitson from Norton Rose, who advises the Development Corporation on planning matters, told the committee that they must separate in their minds issues which were material to the grant of planning permission and those which went to the compensation to be paid under compulsory purchase. He explained that there were issues which might be raised in relation to the compulsory purchase order, and which might also be material to the determination of the planning permission. He gave the example of job losses at Trad, which he advised the committee were a consideration that the committee should properly take into account. By contrast, he said that the specific complaint of the Development Corporation's alleged failure to assist Trad in finding alternative premises was not material to the determination of the planning application, because ultimately it would be a matter of compensation. He added that it was very much in the Development Corporation's and Tesco's interests to assist Trad in relocating, since compensation for total extinguishment of the business would likely to be considerably higher than that payable for a mere relocation to alternate premises.

25. In accordance with a recommendation of the planning officers, the committee resolved

to give delegated authority to the Development Corporation's planning development manager to grant planning permission, subject to the conditions recommended to be attached to the permission, and the completion of the section 108 agreement, securing the heads of terms set out in the addendum report. On 21 July 2010 the ultimate decision to approve the application was made by the planning development manager under these delegated powers.

26. The notice of decision of that date set out the proposal approved and the planning conditions. Under the heading "justification for granting consent/reasons for approval" that the principle of redeveloping the site to provide a new district centre was consistent with adopted and emerging regional and local planning policy. It continued that whilst concern had been expressed about the impact of the superstore on the vitality and viability of existing and future town centres, the impacts were not considered sufficient to outweigh the wider planning benefits of the scheme and the long term regeneration of the area. The decision notice also explained that while the proposed housing density was low or at the lower end of the density guidelines, the absence of housing development above the store was compensated by the overall planning benefits of the scheme and the recognition that the creation of a district centre would help facilitate the delivery of requisite additional housing in the area. The decision notice also said that the section 106 agreement would deliver the social and community facilities and accessibility and town scape improvements required to create a district centre.

27. That same day, 21 July, the Development Corporation entered into a deed with Tesco and Transport for London, pursuant to section 106 of the Town and Country Planning Act 1990. In schedule one of that agreement, "works in kind and land transfers", the developer acknowledges that the works in kind had been provided in lieu of the non-residential tariff. The works in kind are defined as the construction of the Idea Store to shell and core, and the preparing of the open space land and the primary school land so that it is ready for development. Under paragraph 7.1 of the schedule the superstore cannot open until the Idea Store has been constructed in accordance with the agreed specification. Moreover, within 12 months of the store's opening the school and park sites must be cleared, decontaminated and parcelled up and offered to the Development Corporation or its nominee for £1. Paragraph 12.2 of the schedule provides that within 12 months of the opening of the superstore the developer shall have cleared, levelled and hoarded the residential land so that it is ready for development.

28. Ground One. Likelihood of Development

29. In his clear and cogent submissions on behalf of the claimant, Mr Steel QC contended that the Development Corporation had failed properly to assess the likelihood of the development being delivered, in particular the second phase. He painted an admittedly bleak picture, alluding to clause 12.2 of the schedule of the section 106 agreement, of the superstore being completed but there being no town scape and effectively all of phase two standing undeveloped, surrounded by hoarding. In his submission, the prospects for phase two of the development were patently lower than those for phase one. Neither in the section 106 agreement, nor in the conditions, nor anywhere, was there a commitment by the applicant or any other developer to carry out phase two. There were many impediments to the delivery of comprehensive development in what the Development Corporation had accepted was a complex scheme.

30. Yet, continued Mr Steel QC, the policy framework relevant to deciding whether to grant planning permission for the redevelopment stressed the need for any development

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to deliver comprehensive redevelopment on both the site for which permission was granted, and thereafter the site to the north of this development. The Officer's report contained repeated references to requiring a comprehensive development and that any scheme should not result in piecemeal development but rather should, in terms of the policy, deliver a scheme across all the site, and indeed the northern site as well. The previous ministerial decision relating to Trad's planning application, which had been refused because it would constitute piecemeal development, was a highly material consideration in any decision affecting this development.

31. The Development Corporation accepted that the development did not meet a number of policy objectives, such as in relation to housing, but on-compliance of the scheme with policy was considered justified by its regeneration benefits. Thus, Mr Steel QC contended, in deciding whether to grant planning permission the Development Corporation needed to evaluate not just whether the proposal if delivered would constitute comprehensive development, but also the degree of likelihood that the development, including those parts said to justify non-compliance with policy, would in fact be delivered. That involved assessing the likelihood of different elements being delivered and then weighing those likelihoods against the aspects that were non-compliant with policy.

32. Yet the Development Corporation failed to assess these likelihoods which were crucial in determining the balance. The constant refrain in the Officer's report was that the development as a whole would be delivered in consequence of the grant of permission. The decision notice did not contain any recognition that the grant of planning permission would not of itself bring about all the elements of the development. Indeed the phraseology in the reasons for approval were that the entirety of the development, including the district centre, would occur. Since it was of central importance to the decision that the shortcomings of the scheme were outweighed by the regeneration benefit, submitted Mr Steel QC, the degree of likelihood that the development would be completed was a matter of considerable importance, which needed to be understood and weighed.

33. The reality, in Mr Steel QC's submission, was that funding for the Ideas Store and the school were unclear. The heads of agreement considered by the committee had increased the chances but did not measure the likelihood of that occurring. A great deal stood in the way of the deliverability of housing. Notwithstanding the significance of the section 106 contributions, a mechanism for a potential reappraisal at a later stage had to be introduced as described in paragraph 9.51. The timing of phase two, essential to the landscape and district centre, was never stated, and there was no indication of these aspects ever coming forward. Yet the definite reality was that without an alternative site the Trad jobs were to be lost. The possibility of the Development Corporation buy back would do nothing about that. As against the certainty of job losses was a failure to calibrate the likelihood of the development, especially phase two, occurring, its timing and its viability.

34. There is no doubt that there are a number of question marks over this development. There is the funding problem with the Idea Store and the school, quite apart from phase two, the retail, commercial and residential aspects. Provisions such as those in the paragraphs 7.1 and 12.2 of the schedule to the section 106 agreement do not guarantee delivery of all of the development proposed in the application, albeit that they increase the likelihood of its happening, however, in my view, it is not the case that the planning committee could only reasonably agree to grant planning permission for this development if it was satisfied that all its elements were certain to be delivered. There is nothing in its statutory mandate to compel it to achieve at one swoop the

comprehensive regeneration on any particular site, irrespective of potential impediments and constraints upon it. The Development Corporation must exercise its discretionary powers lawfully, taking into account all relevant considerations. Its statutory objective is to secure the regeneration of its area through its various powers and discretions. The weighing of the planning balance is a matter for it.

35. Moreover, it is clear to me that the planning committee of the Development Corporation were fully appraised of the uncertainties over this development. There is nothing in the documents which significantly detracts from that. The Planning Committee was fully aware of concerns about completion which those, such as Trad, had raised. Thus, the Officer's report never suggested that all of the development would necessarily take place. Although there are a number of passages which refer to comprehensive development, in my view the committee could in no way be misled into thinking that the totality of the proposed development was guaranteed to take place, or even that it was highly likely. The Officer's report specifically drew attention to the fact that not all of the development would necessarily take place, such as in paragraph 9.150, to which I referred earlier in the judgment, which set out the funding position in relation to the Idea Store and the school.

36. The addendum report contemplated that there would be a section 106 agreement to deal with the delivery of the development. The heads of terms, as I have outlined, clearly contemplate that not all elements of the development would necessarily be delivered. In no way can the Planning Committee have been under any illusion that various aspects of the proposed development were guaranteed to come forward. That was highlighted by the points specifically raised by the landowner objectors in writing, and also by the oral submissions before the committee in particular by those from Mr Hayden Smith of Trad. Thus the Committee had full regard to the issue as to whether all the development would be delivered and it cannot be thought that it assumed that all elements would be. Notwithstanding that, in the exercise of its powers and discretions it resolved to grant permission. It obviously considered that with the section 106 agreement in place following the heads of terms set out in the addendum report there was a realistic prospect of development taking place in accordance with its policies.

37. In my view the planning committee was perfectly entitled in the circumstances to resolve to grant permission as a matter of law. The committee was having to decide whether the proposed development was acceptable, not whether it was the best possible use of the site; first Secretary of State and West End Green (Properties) Limited v Sainsbury's Supermarkets Limited [2007] EWCA Civ 1083; [2008] JPL 973; at [33] to [38]. It is a fundamental principle of planning law that it is up to a planning authority to give whatever weight to a material consideration it thinks fit, or to give it no weight at all. It is a corollary that matters of planning judgment are within the exclusive province of the planning authority: Tesco Stores Limited v Secretary of State for the Environment [1995] 1 WLR 759, 780 F - H. In my view the committee could not consequently be required to undertake an express review of the likelihood of each aspect of the development taking place. What it had to do, and did do, was to be aware of and take into account, the lack of certainty in the development and its various aspects, and weigh to those in the balance. I note that the grant of planning permission does not of itself mean that the development will be undertaken, since Tesco still requires control of the relevant land, and as I mentioned earlier, the Secretary of State has not yet decided whether there is a compelling case in the public interest to confirm the compulsory purchase order.

38. Ground Two. Alternative Sites for Trad

39. In advancing ground two Mr Steel QC's submissions were premised on the inability of Trad's operation to relocate elsewhere because there is no available site, and the consequent loss of up to 300 jobs at the very outset of development. That loss of employment, it is common ground, is a material planning consideration. It is not simply a question of numbers, but also the social and human cost, including the social relations among gangs of scaffolders, who have worked together over the years: *Great Portland Estates PLC v Westminster City Council* [1985] AC 661, 670 E - G.

40. As the Officer's report outlines, there will be a net loss of 71 jobs from the development if Trad's business has to be wound up and phase two is not completed. In the event of Trad not being able to relocate, but phases one and two being successful, there will be a net gain of 112 jobs. If Trad were able to relocate, so the 300 jobs were saved, there would be a net gain of 412 jobs overall. Thus, in Mr Steel QC's submission, it was essential for the planning committee to consider two factors in the balance: the likelihood of the development being completed, and the loss of employment from the development. Whether there was an alternative site for Trad was a material consideration because of the immediate job losses resulting if no alternative site were available, the net gain in employment only occurring if phase two was seen to completion. The availability of a relocation site for Trad was therefore a matter integral to the objective of regenerating the Bromley by Bow area.

41. In fact, submitted Mr Steel QC, the Officer's report advised at paragraph 3.2 that any issues relating to relocation were the ultimately questions of compensation. In the addendum report, whilst the loss of existing employment was advised to be material, the alleged failure to identify alternative premises was said not to be material to the consideration of the planning application.

42. At the meeting Mr Hewitson advised that the alleged failure to assist Trad in finding alternative premises was not material to the determination of the planning application because ultimately it was a matter for compensation. That advice, in Mr Steel QC's contention, was clearly wrong, so the committee fell into error: it was highly material to the decision of the Committee and should not have been written off as an issue which fell solely on the level of compensation payable through the compulsory purchase process. The loss to Trad of the site without a relocation alternative would involve a potentially significant loss of jobs and that had a direct bearing on regeneration and on the planning policy.

43. It is clear that the planning committee was aware of the potential job losses at Trad. In the Officer's report the net position in terms of employment was sketched. Paragraph 9.22, which I referred to earlier set against the gains in employment the "loss of the site's existing employment generating potential." In other words, there was no assumption in this balancing of factors that Trad would find a site elsewhere, and that the employment currently provided on the site would continue. Similarly, in the addendum report it is said in the last sentence of paragraph 3.1 that the loss of existing employment, ie because of Trad not being able to continue, was outweighed by the wider planning and regeneration benefits, including job creation on the proposed development.

44. At the meeting of the planning committee itself on 26 May the issue of job losses was at the forefront, with Mr Hayden Smith from Trad addressing the committee about that issue. As he explained, in promoting the compulsory purchase order neither the Development Corporation nor Tesco had offered his company any assistance in finding alternative premises. At that point, Mr Hewitson was called upon to advise on the

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matter. It is important to recall the precise terms of the advice, namely that the alleged failure to assist Trad in finding alternative premises was not a material consideration but that the job losses which would result from the failure of Trad to find alternative premises, here.

45. In my view, after that advice, even if the Officer's report and the addendum report were less clear, the committee could have been in no doubt that the loss of employment should Trad fail to relocate was to be taken into account as a material consideration in making the planning decision. As I have already held in relation to ground one, the committee did take into account the fact that not all of the development would necessarily take place, and therefore had clearly understood that not all of the jobs potentially created by the development would necessarily be provided.

46. In all those circumstances, applying the enhanced arguability threshold mentioned at the outset of the judgment, **I refuse permission.**