

# Death knell for foodstore competition test



Mark Underwood is a Partner at the London office of Drivers Jonas specialising in retail planning.

**Tesco has succeeded in its bid to overturn the Competition Commission's recommendation to introduce a competition test into applications for food stores. Mark Underwood explains.**

The Competition Commission's two year investigation of the grocery market had resulted in a recommendation to introduce a 'fascia test' into the planning process. The test proposed that new food stores would be referred to the Competition Commission if the proposal would result in 60 per cent of the grocery floorspace in a local area being occupied by a single grocery retailer, and where there are two, or less, different supermarkets in the area.

Tesco had appealed to the Competition Appeal Tribunal (CAT) against the introduction of this test. CAT have ruled in favour of Tesco stating that the Commission did not fully take into account the negative aspects of this proposed test.

Tesco's case was based around the principle of customer choice. They claimed that even if a Tesco scheme was rejected by a Competition Test, it would not necessarily mean that a rival operator would pick up the plans. This is particularly relevant in today's economic climate and its impact on retail property development in London.

The Government is expected to publish revised PPS6, its policy statement on Planning for Town Centres, within the next few months. The retail policies in this statement will now have to respond to the CAT judgement. In the public consultation version of PPS6 published in July 2008, the Government could not address this issue because of Tesco's legal challenge, and this now clears the way for Government to publish the draft guidance. It is now extremely likely that this judgement will result in the Competition Test being dropped from revised PPS6.



Arguably, the planning system could benefit from the inclusion of formal provisions that promote retail competition and customer choice. Although PPS6 does already recognise that competition is beneficial, the point made by advocates of the competition test is that planning decisions rarely reflect competition and customer choice considerations, and local planning authorities often struggled to assess this concept.

For the food retail development sector in London, the publication of PPS6 in the next few months without either a test of retail 'need' or competition, could result under normal circumstances in an increase in activity due to removal of certain policy barriers. Clearly though, this policy background needs to be set in the context of a difficult period for retailers with consumer expenditure falling but the convenience sector holding up at present albeit with increasing pressures on value, convenience and service.

The competition test was only meant to deal with stores of 1,000 m<sup>2</sup> or more, and in Central London, the proliferation of smaller food stores such as Tesco 'Metro', M&S 'Simply Food' and Sainsbury 'Local' would not have been generally

caught by this proposed test anyway.

The effect of Competition Test outside Central London may have provided an opportunity for retailers to break into areas where they would claim that Tesco or others have a stronghold on the convenience retail market, even if it was difficult to prove retail need or lack of impact. It looks as though this opportunity has disappeared for now.

However, in general terms more innovative forms of food retailing shops tend to be found in London due to the pressure on land resources and value. Flexible and creative designs are prevalent to fit in with mixed use schemes and can be anchored by convenience retailers for important redevelopment projects wholly supported by planning policy on sustainable mixed use development. At the very least, with the removal of another potential barrier to development, investment will not be hampered further.

Time will only tell whether this is a missed opportunity for consumers though but it almost certainly kicks the issue of competition into the long grass until after the next election.