

**SSOBT's Response to Selby District Council's Note to the Inspector on Issues raised at the Examination in Public that took place on 27<sup>th</sup> of February 20133 regarding the Council's Sustainability Appraisal**

**Introduction**

1. On behalf of Samuel Smith Old Brewery Tadcaster ("SSOBT"), its representatives questioned whether the Selby District Council ("SDC") had properly appraised the sustainability of the likely effects of the level housing to be constructed within the District as a result of the Core Strategy.
2. SDC and their consultants confirmed that the likely effect of the policies within Core Strategy was to bring forward a minimum of 450 dwellings through allocations and between 105 and 175 dwelling a year from non allocated sites ("windfalls"). At the examination hearing itself, SDC confirmed orally that SDC considered that it was probable that at least this level of windfalls would come forward. This therefore represents SDC's own view as to what is likely in terms of development planned under the Core Strategy. At the same hearing, SSOBT identified that it was unclear whether what was now being expressly identified in the Core Strategy and what was now acknowledged to be a likely (indeed a probable) effect had been assessed during the Sustainability Appraisal of the Core Strategy.
3. SDC's note to the Inspector prepared subsequently in fact now confirms that no assessment of these specific figures has been carried out, despite these windfalls now being identified as part of the development envisaged in the Core Strategy and the probability that at least that level of windfalls will occur. SDC's note goes on to assert that merely by assessing a strategy to deliver (determine) applications for windfall development, the likely effects of the Core Strategy have been appraised for the purposes of Regulation 12 of the Environmental Assessment of Plans and Programmes Regulations (2004). SSOBT submits that this cannot be right and SDC has failed to comply with its legal obligations in respect of its Sustainability Appraisal.

### **The Quantum of Windfalls**

4. The potential for non-allocated sites (“windfalls”) to be come forward during the course of the Core Strategy has been recognised through the preparation of the Core Strategy. Whilst by their nature it may not be possible to predict precisely the number or location of windfalls that will be delivered as a result of the Core Strategy, SDC is now clearly proposing that delivery of windfalls is part of the strategy and that it is a probable effect.
5. During the course of the EiP of Core Strategy the Council acknowledged that past windfalls rates had been significant and it prepared an assessment of those patterns. SDC also provided a projection of the anticipated number of windfalls likely to come forward (CS/CD67). This provides for a range of between 105 and 170 dwellings per annum coming forward over the life of the Core Strategy.
6. It is therefore clear that, whilst the location of these windfalls is not known, the likely and indeed probable quantum of supply from this source has at least been estimated and consequently the likely and indeed probable consequence that this additional level of development will occur within SDC’s district with the consequential effects of this on the area (including the environmental and sustainably effects). The Inspector has expressed comfort that as a result of this pattern, the actual delivery of new housing in the District is likely to be comfortably above the minimum assessed needs of 450 dwelling per annum. SDC now submit that the provision of windfall delivery at the quantum indicated is probable.

### **Location of Windfalls**

7. It is accepted that the exact location of windfall development cannot be known at the time of plan preparation. It is for this reason that policy CP1A provides a framework within which to guide the development of windfall developments. This framework accords with the general principles set out in CP1. In this case, the Core Strategy provides for a Settlement Hierarchy with which to guide windfalls to preferred locations.
8. In a similar way, the exact location of allocated sites is not known during the preparation of the Core Strategy. The locations will be identified as part of the Site Allocations Local Plan, and the sustainability of those locations appraised during the preparation of that document.

The location of these allocations will also be guided, by the provision of the settlement hierarchy within policy CP1. But this fact does not prevent or relieve SSOBT from complying with its legal duty to carry out a sustainability appraisal of the quantum of delivery of the allocated sites; nor does it prevent such sustainability appraisal being carried out for windfalls.

### **Sustainability of Windfalls as a Source of Supply**

9. There is no acknowledgement within the sustainability work completed by the Council that the actual anticipated level now accepted as probable, or indeed an excessive level of windfall development within the District in conjunction with the allocations, will have its own effects and may lead to unsustainable demands on infrastructure, unsustainable travel patterns and conflicts with the sustainable strategies of neighbouring authorities. Similarly there is no assessment of the effects of the predicted levels, nor where any tipping point may lie and whether the anticipated number of windfalls in the District will breach this level.
10. Whilst windfalls as a source of supply has been acknowledged and accounted for during the preparation of the Core Strategy, the likely quantum of windfalls has only become clear during the examination into the Core Strategy and the completion of specific research on this issue.
11. Windfalls are now acknowledged to form a significant component of potential supply (estimated to be in the order of 105 and 170 dwelling per annum). They have consistently become available in the local area and are likely to continue to provide a reliable source of supply. The likelihood of this source of supply having an effect on the sustainability of the Core Strategy is clear, and the certainty of *what* these effects may be has increased as this further work has been completed and such windfalls are not just likely but probable. The effect of windfalls is no longer an 'unknown' but is now 'likely'.
12. Where the likely number of windfalls is now known and indeed predicted to be likely and probable, the Council is required to appraise the effect of the provision of between 555-620 dwellings each year across the District on the sustainability of the Core Strategy, given that SDCT now accept that this is not just likely but probable. SDC has failed to do this

## Summary

13. It is for the Council, with reference to the relevant evidence available, to appraise the likely effects of policies contained within the Core Strategy and the effects of that Core Strategy for their sustainability.
  
14. The assessment of the likely location (the settlement hierarchy) and the likely quantum (minimum of 450 dwellings per annum) has been completed for sites to be allocated as part of the Core Strategy. This has not been completed for windfalls. The likely location of these windfalls will be guided with reference to the settlement hierarchy. There has been a significant legal failure to appraise the likely effects of the quantum of development now predicted by the Council through its Core Strategy which includes a predicted probable quantum of windfalls.
  
15. Even if the SA of policies CP1 and CP1A may have considered the location of windfalls, it has not done so with any understanding of the likely quantum of these windfalls and the effects of this with regard the Core Strategy. Consequently the Sustainability Appraisal of the Core Strategy has failed to properly address the requirements of the Environmental Assessment of Plans and Programmes Regulations, specifically Regulation 12 (2).