

INSPECTOR'S RULING ON REQUEST FOR SUSPENSION OF EXAMINATION

INTRODUCTION

- 1 The Council has requested that the Selby District Core Strategy (SDCS) examination be suspended to allow further work to be carried out to address acknowledged deficiencies in the plan. Opponents argue that there are substantive reasons (concerning the nature and extent of likely changes to the SDCS) why a suspension would not be appropriate, as well as procedural and other reasons. I address each of these in turn below.

NATURE AND EXTENT OF CHANGES REQUIRED

- 2 The gist of the arguments made by Samuel Smiths Old Brewery (Tadcaster) (SSOBT) and others is that the issues on which further work is required go to the heart of the SDCS and require a complete re-evaluation of the plan following withdrawal. I deal firstly with the two main matters on which there is agreement that the SDCS is unsound, Green Belt and growth at Tadcaster. I then address the overall scale of housing development, where I have identified a significant risk of unsoundness.

Green Belt

- 3 My concern about the SDCS approach to the Green Belt is not that boundary reviews and land releases might be required, for that much is clear from the text at paragraph 4.39 and is supported by Regional Spatial Strategy (RS) policy YH9. Instead, I believe that the plan fails to give guidance about the considerations to be taken into account when deciding whether Green Belt releases can be justified, and fails to mention the important 'exceptional circumstances' test required by PPG2. As I said at the hearings, the over-arching strategy for the District should establish the principles that will govern any Green Belt boundary reviews that are deemed necessary at the Site Allocations DPD (SADPD) stage. In my view such an amendment would not represent a major change in the strategy, but would constitute the elaboration which is necessary to ensure that the SDCS is consistent with national and regional policy and can properly fulfil its strategic role.

Tadcaster growth

- 4 From evidence given at the hearings it is clear that the Council cannot deliver the housing and employment land that it argues is necessary to meet Tadcaster's needs without releasing land from the Green Belt. Given the substantial amount of non-Green Belt land around the perimeter of the town which is suitable for development, the fact that only one site (meeting about a third of the stated need)

is to be released by the landowners is highly unusual. Whilst it might be argued that the Council should have been more cautious in its approach to land deliverability in Tadcaster, the problem appears to stem from the inability and/or unwillingness of local authorities and major stakeholders to engage meaningfully with each other. The SDCS examination is not the appropriate forum for me to explore this long-standing antipathy. However, the land availability situation does seem to me to be an 'exceptional reason' which would justify the request for suspension.

- 5 The Council's response, as set out in its Position Statement, is to say that a review of the Green Belt at Tadcaster is necessary if the settlement is to meet the level of development allocated to it. If this position is sustained (see below), the use of Green Belt land for such purposes would be a significant change in the nature of the land to be identified for development. However, the SDCS does recognise that localised Green Belt reviews may be necessary in locations where there are difficulties in accommodating the scale of growth required; moreover, Tadcaster is identified as a settlement where Green Belt and land availability issues have restricted recent growth. In these circumstances, and because the role of Tadcaster as a local service centre would remain the same, it is at least arguable that such a change to the SDCS would not fundamentally undermine the overall strategy.
- 6 But, notwithstanding the above conclusion, I do have concerns about whether the scale of growth proposed for Tadcaster is fully supported by the evidence. The need to take land out of the Green Belt throws this matter into much sharper focus, for the 'exceptional circumstances' test is unlikely to be met unless there is both (i) a compelling case for the level of growth proposed for Tadcaster, and (ii) it can be shown that land elsewhere (such as at Sherburn-in-Elmet) would be 'significantly less sustainable' (the phrase at paragraph 2.62 of the RS). Thus it is not sufficient to simply say that because there is insufficient land available outside the Green Belt around Tadcaster to meet the identified scale of growth, Green Belt releases are justified. Alternative options, such as accommodating at least part of that growth elsewhere, should be investigated to determine whether the taking of Green Belt land could be obviated or reduced. If, having carried out this exercise, the alternative options are shown to be significantly less sustainable than development at Tadcaster, then the exceptional circumstances test may be met. Of course, other considerations will also have to be taken into account.
- 7 In my view the correct approach would be to establish the principles governing Green Belt boundary reviews and then to apply these to Tadcaster as part of the process of determining the appropriate level of growth for the town. In its Position Statement, the Council seems to have pre-empted this process by stating that the level of growth allocated to Tadcaster should not change. Unless it can provide evidence to substantiate this position, based on proper recognition of the importance of the Green Belt as set out above, it risks a finding of unsoundness.

- 8 It is not possible to predict the outcome of such a reappraisal. Nevertheless, it seems appropriate to consider the consequences of the Council deciding, for Green Belt and/or other reasons, that a lesser amount of development should be directed to Tadcaster than is currently proposed. SSOBT submits that if the balance of the housing requirement could be met at places like Sherburn, this would not alter the basic principles in the SDCS approach, which include protection of the Green Belt and the provision of housing in sustainable locations. Aside from my view that the SDCS does allow for localised Green Belt reviews, I agree with SSOBT's conclusion that a suitable redistribution of part of the housing requirement is unlikely to fundamentally change the overall strategy.

Housing numbers

- 9 When considering the overall quantum of housing development over the plan period, I have to take into account a range of matters including:
- the latest CLG trend-based household projections which suggest a significant increase above the RS target of 440 dwellings per annum for the District;
 - the statement in policy H2 of the RS that a partial review of housing growth should be completed by 2011, coupled with the EIP Panel's finding that there was insufficient evidence to recommend housing figures for the 2021-2026 period;
 - the findings of the latest SHMA and the evidence about how this should be interpreted;
 - the evidence at the hearings about migration levels, commuting patterns and so on.
- 10 Given the strong body of evidence that points to a current level of need significantly above the RS target of 440 dwellings per annum, I reached the conclusion that the Council's case for relying on the RS figure is not sufficiently robust. In the event that a suspension was to be agreed, I asked the Council to reconsider the overall housing target in the light of the most up-to-date evidence. If it intends to rely on a housing requirement which is significantly below one which is derived from the latest evidence, it will need to provide cogent justification for so doing.
- 11 The consequences of this further work for the SDCS are not clear. If the Council decides to stick with the RS target (or thereabouts) then there would be no change to the strategy; however, unless there is compelling evidence to support the RS figure in the face of more up-to-date indicators of need, the authority faces the risk of the SDCS being found unsound. If, on the other hand, the Council decides to increase the overall housing requirement to more closely reflect recent projections, the change could have significant implications for the strategy as a whole. It is not possible to anticipate whether such changes could be assimilated without undermining the principles which govern the scale and distribution of development in the SDCS.

TIMING OF REQUEST FOR SUSPENSION

- 12 The “frontloading” principles on which the Procedure Guidance¹ is predicated depend in part on an Inspector being able to identify early in the examination process that a DPD is likely to be found unsound. Whilst I had some initial concerns in that regard, as should have been apparent from the “Matters and Issues” document, the evidence available at that time was not sufficiently conclusive to cause me to call an exploratory meeting.
- 13 In particular, the complete absence of non-Green Belt land available for development in Tadcaster was not apparent to me until the hearing sessions, when SSOBT and Mr Cunnane stated in terms that, apart from the Mill Lane site, no landowner would be releasing land. Whilst I had flagged up my concern that the Council was relying on sites which the SHLAA indicated “landowners intentions unknown”, I could not reasonably conclude (being unaware at that time of the complexities of the Tadcaster situation) that almost all the potentially available land would fail to come forward during the plan period. It may be that SSOBT knew full well that it would not, but there was no definitive statement to that effect until the hearings.
- 14 Turning to the SDCS approach to the Green Belt, early on the issue was not that land might need to be released (that much is clear from the text), but rather that guidance about the process by which such releases might be justified, and the need to demonstrate exceptional circumstances, was absent. At that time the possibility of sizeable Green Belt releases around Tadcaster appears not to have been envisaged, only arising at the hearings as a result of the land situation. As to housing numbers, it would not have been appropriate for me to conclude, in advance of hearing the evidence, that because the Council was relying upon the RS target (which is part of the development plan), the CS was at risk of being found unsound.
- 15 Consequently the situation that has arisen comes under the ambit of paragraph 9.3 of Procedure Guidance, which recognises that serious concerns may emerge during the hearing sessions (or later). Indeed, the advice in 9.3 that *“the approach of the Inspector would be to table an additional hearing session to review where the examination has got to and discuss concerns arising”* is precisely what happened on Friday 30 September. In these circumstances the arguments that basic issues of unsoundness should have been identified earlier, and that the request for suspension is being made too late in the process, are without merit.

PERIOD OF SUSPENSION

- 16 As those opposing a suspension point out, paragraph 9.23 of the Procedure Guidance states that a suspension longer than 6 months

¹ Local Development Frameworks - Examining Development Plan Documents: Procedure Guidance, The Planning Inspectorate, August 2009

would not be appropriate. The Council's revised timetable suggests that the hearings will resume in April 2012, which is slightly over this 6 month period. However, paragraph 9.24 of the Procedure Guidance indicates that among the matters that the Inspector will have to consider when the examination resumes are (i) the need to undergo further consultation, and (ii) the need for further sustainability appraisal (SA). Paragraph 9.23 primarily addresses the scale and nature of the work required to overcome the perceived shortcomings and the time it will take to do this work.

- 17 The revised timetable demonstrates that the processes of further consultation and SA are included within the suspension period sought, rather than taking place later as contemplated in paragraph 9.24. Indeed, the time allowed in the timetable for the work to be done is less than half the suspension period. Consequently there is a strong case, in my view, that the proposed suspension does not conflict with the intentions of the Procedure Guidance.
- 18 In any event, it should be recognised that the Procedure Guidance is simply a guide to examination procedures, not statute. As paragraph 3 recognises, the fact that the procedural aspects of the examination are not prescribed in legislation affords some flexibility in administering the process to accommodate the needs of those involved. This flexibility has resulted in a number of DPD examinations being suspended for more than 6 months. There is no obvious reason why the SDCS should be treated differently, especially as the period sought is only slightly greater than 6 months. I note the comments of one representor that the timetable is unrealistic, but the Council has amended its original estimate and I see no reason to doubt that it could achieve the revised timetable.
- 19 Finally on this issue, the Procedure Guidance was drafted before the localism agenda of the Coalition Government was in place. The Government's desires to see decisions taken locally and to 'plan for growth' both weigh in favour of a suspension which would allow the local Council to attempt to fix its unsound plan in the shortest time possible.

LEGALITY OF DELEGATION

- 20 I have considered the submissions by SSOBT that the Council's decision to seek a suspension was not lawful on the grounds that the process by which the decision was made was outside the terms of the authority's delegation agreement. The Council undertook what it described as a "belt and braces" approach to this matter, establishing a delegation agreement before the hearings commenced to deal with matters that arise during the proceedings, and subsequently producing a separate authority to seek an adjournment of the examination.
- 21 The officer report on the delegation agreement appears to be couched in general terms (eg paragraph 1.2 *"It is possible that during the course of this hearing the Council may have to decide whether to accept or challenge a proposal of the Inspector on a*

particular issue"). Similarly, recommendation (iii) is similarly wide-ranging ("*the authority to accept or challenge controversial matters will be delegated to.....*"). Moreover, the report recognises the possibility that the examination may have to be deferred pending a further consultation exercise (paragraph 3.2).

- 22 Even if the delegation agreement is found wanting, the Deputy Chief Executive's decision to confirm the decision to seek an adjournment does not appear to contain any obvious flaws. The Council confirmed that the Chief Executive has the authority to delegate such emergency decisions to the Deputy Chief Executive, and no evidence was produced to counter this claim. I conclude, on the evidence before me, that the decision to seek a suspension appears lawful.

CONCLUSIONS

- 23 I have found that the procedural arguments about the timing of the request for a suspension and its duration do not have significant force. I also believe that the Council's programme makes adequate provision for community engagement and consultation.
- 24 Turning to the substantive concerns about the nature and extent of the likely changes to the SDCS, an elaboration of the approach to Green Belt reviews would not represent a significant change to the overall strategy. Similarly it is unlikely that any change brought about by a reappraisal of growth at Tadcaster would go to the heart of the strategy. However, the outcome of the review of housing numbers is uncertain and has potentially more wide-ranging consequences, though it is not possible to speculate what these might be.
- 25 I do not think it would be appropriate to refuse the request for a suspension on the basis that the review of housing numbers could potentially give rise to substantial changes which undermine the strategy as a whole. Nevertheless it is important that the Council is alive to the consequences of this review. If, upon further investigation, it is apparent to the authority that the changes to the SDCS occasioned by the housing numbers review (or any other matter) do go to the heart of the strategy and necessitate a fundamental re-write, it should be prepared to fully re-evaluate and withdraw the plan immediately.
- 26 I have taken into account the Procedure Guidance advice that, as a general principle, suspension goes against the objective of speeding up the plan making process and developing evidence to inform choices made during plan making. But the Guidance also recognises that there may be circumstances where it is appropriate to call a temporary halt to the examination to enable a local planning authority to go away and do more work without going back to the start of the process. Taking the positive and pragmatic approach that I adopted from the outset, and having regard to the matters identified above, I consider that the latter provision should prevail. Accordingly **I agree to the request for a suspension.**

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- 27 It is important to stress that the decision to grant a suspension does not in any way imply that the plan will ultimately be found sound. Furthermore, the Council must keep me fully informed of progress during the suspension. I reserve the right to review the suspension decision if progress is not being made or further suspensions are requested.
- 28 I will set out in a separate note the procedural matters that arise from this decision, including the receipt of outstanding documents and the method of response to the Minor Changes documents.

Martin Pike

Inspector

10 October 2011