

REPLY SUBMISSIONS ON BEHALF OF SAMUEL SMITH OLD BREWERY (TADCASTER) TO SELBY CORE STRATEGY INSPECTOR

Introduction

1. These reply submissions are written on behalf of Samuel Smith Old Brewery (Tadcaster) (“SSOBT”) in response to the legal submissions submitted on behalf of Selby District Council (“the Council”) dated 15th January 2013.
2. They concern the proper interpretation of section 20(7) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”), as amended by the Localism Act 2011 (“the 2011 Act”).
3. These reply submissions should be read in conjunction with the oral submissions made on behalf of SSOBT on the morning of 5th September 2012 and the written submissions made on 15th January 2013. Those submissions are incorporated, but not repeated in this document. This reply document merely deals briefly with the Council’s written submissions, focusing on the three arguments the Council seeks to make in §§10-14 of their written document.
4. The Council’s first contention (§10) is that SSOBT’s position “fails to acknowledge the full force of the word “any” in section 20(7B)(b)”. The Council contend that this word means that section 20(7B)(b) does not have the effect of imposing a condition which has to be satisfied if the Inspector has already decided that the duty to cooperate does not arise. It is said that the word “any” allows for situations where (for whatever reason), the duty to cooperate does not bite.
5. SSOBT submits this argument is misconceived for a number of reasons:
 - (1) SSOBT has already set out its primary position that the object and purpose of these provisions demonstrate why it cannot be right in law that the duty to cooperate does not apply to the Council’s modifications to the Core Strategy that were made after the duty to cooperate came into force, and in an attempt to address a lack of soundness. SSOBT has already reserved its position in that regard.
 - (2) If (contrary to what SSOBT submits is the true position in law) the duty to cooperate is not engaged at all, it is both logical and in accordance with the spirit and purpose of the statutory provisions that the criterion in section 20(7C)(b) is not met. The Inspector cannot sensibly be in a position of considering whether it would be reasonable to conclude that the LPA has complied with “any duty imposed on the authority by section 33A in relation to the document’s preparation”. The word “any” in that context is clearly directed at the range of the

obligations under the duty to cooperate set out in section 33A, all of which have to be observed. The word “any” is to ensure that there must be compliance with the range of obligations in full. It is not intended to cover a situation where the duty to cooperate is found not to be engaged at all. The provision is about requiring the Inspector to consider the extent of compliance with any such duty. The provision cannot be satisfied where the duty to cooperate is not engaged at all. In those circumstances, it is artificial to suggest that (in the language of section 20(7B)), the Inspector could consider that, in all the circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed on the authority under section 33A. If there is in fact no relevant duty that is applicable in principle, it makes a nonsense for the Inspector to consider that the LPA has complied with any such duty: that is a process of deliberation which is predicated on the duty being applicable.

- (3) The distortion of the provision in the Council’s argument is inherent in their contention that “an inspector is only obliged to form a view on whether there has been DTC compliance in cases where the DTC has been found to apply.” That is not what section 20(7B) says. Nor does such an approach give effect to the wording and structure of section 20(7B). The wording of that provision, and the decision-making process it requires of the Inspector, are both predicated on the duty to cooperate being applicable. It is in those circumstances that the Inspector then has to consider, in all the circumstances, whether it is reasonable to conclude that the LPA has complied with its obligations under s.33A.
6. Secondly, the Council claim (§11) that an argument that the duty to cooperate and the main modifications procedure are some kind “reciprocal legislative package” has no substance. This is pure assertion, which is then unsupported by any reasoning or analysis at all. The absence of analysis is because the assertion is unsustainable.
7. It is obvious that the duty to cooperate and the main modifications are part of a “legislative package”. They are both fundamental parts of the Localism Act. They are part of the package of measures to give effect to localism. That localism is introduced into the plan process. Moreover, both are intrinsically linked in the provisions themselves (thus section 20(7B) refers directly to the duty to cooperate).
8. The Council has failed to grapple with that legislative package and its object and purpose. This is a fundamental error. The need to give effect to the object and purpose of the legislation is a key principle of legislative interpretation: see *Padfield* and *Cala Homes* referred to in the previous submissions.
9. The Council are therefore inviting the Inspector to fall into the legal error that occurred in those sorts of case.

10. Thirdly, the Council claim that if SSOBT were correct, then “the negative consequences that attend section 20(7)B and (C) where the DTC did not apply would, mutatis mutandis, attend section 20(7) also.” This submission lacks clarity, as the references to section 20(7)B and (C) are mistaken. The Council presumably intend to refer to section 20(7B) and (7C).
11. Assuming so, the Council then claim that it “cannot be right” that an Inspector will, in those circumstances, be obliged to recommend non-adoption of a plan where the plan preparation process was not subject to the duty to cooperate, even though the plan might otherwise be sound. But this claim is illogical. It fails to recognise the central importance given to the duty to cooperate under the new provisions in the 2004 Act introduced by the Localism Act 2011. There is nothing incorrect, or indeed surprising, with an Inspector being required to recommend non-adoption both in a case where (1) the duty to cooperate was engaged, but there has been a failure to comply with its requirements; and (2) where the the duty to cooperate was not engaged at the time of plan preparation, but the Inspector is now examining it under the new provisions in the 2004 Act which place central importance on the duty to cooperate.
12. In circumstance (1), the Council will have failed to fulfil its duties applicable to the plan preparation process. In circumstance (2), the Council would not have failed in any duty in the plan preparation stage, but the Inspector will still be recommending non-adoption because the plan has not been prepared subject to the duty to cooperate. The Inspector will be obliged to give his reasons for recommending non-adoption. If the Inspector concluded that the plan were otherwise sound, then the reasons will no doubt make it clear that the recommendation is solely because the plan has not been prepared subject to the duty to cooperate. The Council is no longer bound to accept the Inspector’s recommendation, but it will know precisely why the Inspector has made the recommendation he has.
13. Moreover, it must be remembered that the situation which has arisen here is in the strange circumstance where the Inspector has concluded that the duty to cooperate is not engaged, notwithstanding that fundamental modifications have occurred to the plan after the duty to cooperate came into force. SSOBT has already reserved its position about what it respectfully submits is the legal error in that conclusion. But if this strange circumstance is not in error, there is nothing odd or strange in the Inspector being unable to recommend adoption of such a plan at a time when the legislation now attaches central importance to the duty to cooperate.
14. For these and the previous reasons submitted, SSOBT firmly submit that the Inspector does not have power to recommend main modifications if (as the Inspector has found) the duty to cooperate is not engaged.

PETER VILLAGE QC

JAMES STRACHAN

1 February 2013