

INSPECTOR'S RULING ON S20(7B) and S20(7C) of 2004 ACT: ABILITY TO RECOMMEND MAIN MODIFICATIONS

INTRODUCTION

1. This ruling addresses the submissions made by Samuel Smith Old Brewery (Tadcaster) (SSOBT) during the September 2012 hearings that, under section 20(7B) and 20(7C) of the Planning and Compulsory Purchase Act 2004¹, I do not have the power to recommend main modifications to the Selby District Core Strategy as a consequence of my 27 April 2012 ruling that the section 33A duty to cooperate does not apply to this plan.
2. At the September 2012 hearings I asked SSOBT and the Council for written submissions on their interpretation of section 20(7)-(7C) of the 2004 Act by 18 January 2013 and responses to those submissions by 1 February 2013. I have taken all these submissions into account in making this ruling.

SUMMARY OF SUBMISSIONS BY SSOBT

3. SSOBT argues that the greater power in respect of planning decisions (including plan making) granted to local planning authorities by the 2011 Localism Act is intended to be balanced by corresponding new duties, one of which is the duty to cooperate. It is neither the intention of the new provisions, nor logical, that the reduced scope for intervention on examination of a DPD can take place without compliance with the corresponding responsibilities, including the duty to cooperate. Instead, the better interpretation is that the duty to cooperate *does* apply, in which case the Council should either have ensured that its proposed modifications to achieve soundness were arrived at after fulfilling the duty to cooperate, or re-started the whole process to ensure compliance with the duty.
4. However if, contrary to SSOBT's interpretation, the Inspector is correct and the duty to cooperate does *not* apply, then section 20(7) still needs to be interpreted properly. The powers available to the Inspector to recommend adoption of a plan, or modifications which would make it sound, are only available where the Inspector concludes that the criterion in section 20(7B)(b) has been met, namely that the local planning authority has complied with any duty imposed by section 33A in relation to the plan's preparation. In this case because the Inspector found that the duty to cooperate did not apply, he clearly has not concluded that the authority has complied with the duty. In such circumstances, the criterion in section 20(7B)(b) cannot be fulfilled.
5. As to the Council's contention that the word "any" in section 20(7B)(b) allows for situations where the duty to cooperate does not bite, this argument is misconceived. If the duty to cooperate is not

¹ As inserted by section 112(2) of the Localism Act 2011

engaged at all, it is both logical and in accordance with the spirit and purpose of the Act that modifications to achieve soundness (criterion (b) of section 20(7C)) are not permitted. The word "any" is to ensure that compliance is achieved with the full range of obligations under section 33A, and does not cover a situation where the duty is not engaged at all. The Inspector is required to consider the extent of *compliance* with any such duty; if there is no duty, it is a nonsense for the Inspector to deliberate and conclude that the local planning authority has complied. Both the wording of the provision and the decision-making process required of the Inspector are predicated on the duty to cooperate being applicable.

6. The Council claims that it cannot be right that an Inspector would be obliged to recommend non-adoption of a plan which is otherwise sound in circumstances where the plan preparation process was not subject to the duty to cooperate. This is illogical and fails to recognise the central importance given to the duty to cooperate under the Localism Act 2011. There is nothing incorrect or surprising with an Inspector being required to recommend non-adoption both where (1) the duty to cooperate was engaged but not complied with, and (2) where the duty to cooperate was not engaged at the time of plan preparation, but the Inspector is now examining it under the new section 20 provisions which place central importance on the duty to cooperate. This is particularly so where, as in this case, fundamental modifications to the plan have occurred after the duty to cooperate came into force.

SUMMARY OF SUBMISSIONS BY SELBY DC

7. SSOBT's submissions fail to acknowledge the full force of the word "any" in section 20(7B)(b). The reference to "any" duty to cooperate rather than "the" duty to cooperate means that section 20(7B)(b) does not have the effect of imposing a condition which has to be satisfied in circumstances where the Inspector has already decided that the duty does not arise. Both section 20(7)(b)(ii) and 20(7B)(b) refer to "*any* duty imposed on the authority by section 33A". Thus section 20 is articulated in a way which requires that a plan will be tested against the duty to cooperate *if* that duty is applicable.
8. The very fact that section 20(7)(b)(ii) and 20(7B)(b) refer to *any* duty to cooperate makes it plain that there may be cases where there is no such duty. When an Inspector examining a plan is asked to consider whether the local planning authority complied with *any* duty to cooperate, it follows that his first task must be to consider whether there was in fact *any* duty to cooperate.
9. The question then is what consequences would flow from a conclusion that, in the circumstance of the case, there was no duty to cooperate. SSOBT submit that, in this situation, the criterion in section 20(7B)(b) cannot be fulfilled. This is to look at the matter in the wrong way. If the duty to cooperate does not apply, the consequence is not that the criterion in section 20(7B)(b) cannot be fulfilled, but that the criterion is not applicable in the first place. The use of the word "any" allows

for situations in which (for whatever reason) the duty to cooperate does not bite.

10. SSOBT's interpretation produces absurd consequences. Section 20(7)(b)(ii) uses the same wording as section 20(7B)(b). Consequently, an Inspector who found that an authority had a sound plan (section 20(7)(b)(i)) but that the duty to cooperate did not apply (section 20(7)(b)(ii)) would, on SSOBT's analysis, be driven (by section 20(7A)) to recommend non-adoption on the basis that because the criterion in section 20(7)(b)(ii) could not be fulfilled, he could not recommend adoption under section 20(7). Thus a sound plan would be sacrificed on the altar of an inapplicable duty to cooperate.

INSPECTOR'S RULING

11. In my view the crux of this issue is the interpretation of the phrase "any duty imposed under section 33A in relation to the document's preparation." It is pertinent to consider the provisions of section 33A. Subsection (1) states that a local planning authority (inter alia) must cooperate with other specified persons in maximising the effectiveness with which activities in subsection (3) are undertaken. Subsection (3) includes "the preparation of DPDs.....so far as relating to a strategic matter". A 'strategic matter' is defined in subsection (4) as "sustainable development or use of land that has or would have a significant impact on at least two planning areas.....".
12. Thus it seems to me that the section 33A duty only applies to the preparation of plans that relate to a strategic matter. If a plan does not relate to a strategic matter, as might be the case (for example) with a detailed Area Action Plan for a small part of a local planning authority's area which has no material impact outside that authority's area, then it is reasonable to argue that the duty to cooperate does not apply.
13. If this interpretation of section 33A is correct, then the section 20(7)(b)(ii) and 20(7B)(b) references to "any" duty imposed by section 33A must logically allow for circumstances in which such a duty does not apply. As the Council points out, if this were not so the word "the" rather than "any" would have been used. Consequently I agree with the Council that an Inspector is only obliged to form a view on whether there has been compliance with the duty to cooperate in cases where the duty has been found to apply. I do not accept SSOBT's point that the word "any" is intended to relate to the full range of obligations under section 33A – section 33A refers to a single duty to cooperate and sets out the criteria which determine how that duty is to be applied and interpreted.
14. No one disputes that, had the Selby Core Strategy been submitted after 15 November 2011, section 33A would have applied - it is clearly a plan which relates to a strategic matter. But sections 20(7)(b)(ii) and 20(7B)(b) do not qualify or restrict the circumstances under

which the section 33A duty to cooperate does or does not arise. In this case I have already determined that the section 33A duty does not apply (see my ruling dated 27 April 2012).

15. I turn now to SSOBT's argument that, if there is no duty to cooperate, section 20(7B)(b) cannot be fulfilled and the section 20 (7C) provision which allows for modifications necessary to achieve soundness cannot be engaged. I accept the broad point that the greater power granted to local planning authorities by the 2011 Localism Act is accompanied by new duties, one of which is the duty to cooperate. But the Council rightly points to the perverse situation in which, on SSOBT's interpretation, an Inspector who found a plan sound under section 20(7)(b)(i) but also found that the duty to cooperate did not apply (as in the Area Action Plan example I describe above) would have to recommend non-adoption. That does not make sense and cannot be the intention of the Localism Act.
16. In conclusion, I find that the use of the word "any" in sections 20(7)(b)(ii) and 20(7B)(b) of the 2004 Act allows for circumstances in which the provisions of the section 33A duty to cooperate are not engaged. Where the duty to cooperate does not apply, I find that sections 20(7)(b)(ii) and 20(7B)(b) do not prevent an Inspector recommending that a plan be adopted, either as submitted (under section 20(7)(b)(ii)), or with recommended modifications to make it sound (under sections 20(7B)(b) and 20(7C)).
17. **It follows that, in the case of the Selby District Core Strategy, I conclude that I do have the power to recommend main modifications which would make the plan sound.**

Martin Pike

Inspector

26 February 2013