

INSPECTOR'S RULING ON WINDFALL DEVELOPMENT AND SUSTAINABILITY APPRAISAL (SA)

INTRODUCTION

1. This ruling addresses the submissions made by two representors at the examination hearing on 27 February 2013 that the Council has not properly undertaken SA on its proposed modifications to the CS because it has not assessed the reasonable alternative of a higher number of dwellings being provided than originally proposed. This arose because the modified plan quantifies the level of windfall development likely to arise over the plan period and adds it to the housing trajectory, but not to the dwelling target.
2. This was the first time this matter had been raised and I gave the Council time to submit their views in writing. The representors were given the opportunity to respond, again in writing, and the Council was allowed to make final comments. These documents are available on the Core Strategy Examination page of the website.

SUMMARY OF SUBMISSIONS BY SAMUEL SMITH OLD BREWERY (TADCASTER) (SSOBT)

3. The Council explicitly confirms that no assessment of the specific windfall figure has been carried out. Whilst the potential for windfalls to come forward has been recognised throughout the preparation of the CS, the plan is now proposing the delivery of windfalls as part of the strategy. By estimating the probable quantum of supply from windfalls, the Council is required to carry out SA on the consequential environmental and sustainability effects on the area of this additional level of development.
4. It is accepted that the exact location of windfalls cannot be known at the time of plan preparation, but their location will be guided by the framework set out in policy CP1A. That is no different to allocations whose exact location is not known but is guided by policy CP1. The same legal duty to carry out SA of the allocated sites applies to the quantum of windfalls now identified.
5. Windfalls are now acknowledged to form a significant component of the potential supply. There is no acknowledgement within the SA work that the probable level of windfalls in conjunction with the allocations will have its own effects and may lead to unsustainable demands on infrastructure, unsustainable travel patterns etc. There is no assessment of the effects of the predicted levels (555-620 dpa) on the sustainability of the CS, nor where any tipping point may lie and whether the anticipated windfalls would breach this tipping point. Consequently the SA has failed to properly address Regulation 12(2) of the 2004 Environmental Assessment of Plans and Programmes Regulations.

SUMMARY OF SUBMISSIONS BY DLP PLANNING CONSULTANTS

6. The Council's argument that the 450 dwelling requirement is an objective of the CS is not correct, for it is not so defined in the CS or the SA. The objective is to meet the housing needs of the population; the 450 dwellings is a target intended as part of the policy response to meet those needs. The supporting document makes clear that the minimum requirement of 450 is expected to be exceeded by the addition of windfalls, thereby either meeting or exceeding the higher level of housing required by the level of migration in the government's 2008 based household projections (about 550 dpa). By defining a dwelling requirement as an "objective" does not absolve the SA from considering the impact of alternative levels of dwelling provision.
7. The fact that the CS plans for 450 dpa to be exceeded as a result of windfalls means that 450 cannot be the objectively assessed requirement (because the objectively assessed requirement is intended to meet the need in full). The Council's attempt to elevate the policy-derived 450 figure to the status of an objective is simply an attempt to try and remove the figure from a suitable level of scrutiny which should be undertaken in any SA. Decisions made regarding the level of future migration have implications for the area's population and for the population of other areas and the SA should provide a clear explanation as to how these decisions have been reached and what alternatives have been considered and why they have been rejected.
8. In addition, there must be a serious concern that the SA with all its amendments does not provide an adequate or coherent evidence base and it is inappropriate for a member of the public to have to undertake a "paper-chase" to establish how a particular decision - such as the level of housing provision to be provided in the plan - was reached and what alternatives were considered.

SUMMARY OF RESPONSES FROM SELBY DISTRICT COUNCIL

SSOBT assertion that the Council should subject to SA the higher figure of 555 dpa now that there is a specific expectation of windfall delivery.

9. The delivery of windfalls per se has been assessed throughout the SA process, as they have always been part of the expected delivery. Because policies work together the SA summary findings cross-refer to other aspects of the plan. Thus the Council would not appraise the windfall figure itself, but the strategy to deliver housing (or determine planning applications) which the policies comprise (and thus the likely outcomes of the strategy).
10. Whilst the SA Addendum is not explicit in referencing 555 dpa (450 dpa plus the addition of 105 dpa windfalls), the combined effects of the CS *have* been subject to SA because the spatial strategy (policy CP1) directs development which includes both allocations and

windfalls. Policy CP1A then provides the framework for the management of windfall development. The SA cannot be considered deficient as it has correctly considered the likely effects of the anticipated house building in the plan period – it need not specify a specific number.

DLP Planning assertion that 550 dpa should have been specifically assessed as an option in respect of housing numbers.

11. The premise for this submission is the contention that 550 dpa is the objectively assessed housing need and, as such, should be subject to SA. In part this seeks to re-open the debate on the objectively assessed need, which is not a matter for SA/SEA. However, the Council maintains that the robust objectively assessed housing need is 450 dpa. The relevant objective of the CS is to “provide an appropriate and sustainable mix of market, affordable and special needs housing to meet the needs of District residents....”. The figure of 450 is the (objectively assessed) need arrived at to meet this objective, as required by NPPF.
12. For the purposes of SA, 450 dpa must be part of the objective to be assessed. The SA correctly considers the provision of housing to meet the 450 dpa need and the alternative methods of delivering it. The suggestion that, for the purposes of SA, 550 dpa is an alternative quantum of need which must be assessed cannot be correct. The need is established through evidence and then the strategy considers alternative ways of delivering it - SA does not require alternative objectives or alternative need figures to be assessed. Thus 550/555 dpa is not a “reasonable alternative” under Regulation 12(2) of the 2004 Regulations, it is not an alternative at all.
13. The inference that the objectively assessed need effectively rises to 555 dpa as a result of windfalls being quantified is not correct as it confuses need with anticipated delivery. The CS does not plan on windfalls to meet the need. The two elements that make up 555 dpa (450 need +105 windfall) have both been subject to SA individually and cumulatively. Their delivery will be different and it would be wrong to appraise them as a single figure.
14. Whilst it is not necessary for the SA to include quantitative research into the objectively assessed need, the SA work undertaken does include an assessment of the whole evidence base within the round of assessing the whole CS approach.

INSPECTOR’S RULING

SSOBT Submission

15. The main question here is whether the greater clarity about the scale of windfall development in the latest version of the CS, and the

consequences of this for the SA process, should have been specifically addressed in the two SA Addenda.

16. In practice the likely stated yield from windfalls has not significantly changed. The Submitted CS indicates that windfalls have been a significant source of housing land supply in recent years (over 150 windfalls in 2009/10, nearly 50% of the total annual requirement, is given as an example). The 2010 SA considers the policy options for windfall development, refers to past "high levels of windfall" and acknowledges that the CS policies will enable windfalls to continue to come forward. Whilst the latest evidence has given greater certainty to, and quantified more precisely, the likely future yield, the end result is not significantly different to that which appears to have been considered in the SA at the time of CS submission.
17. The 1st SA Addendum states that there is no overall change to the original SA as a result of the increase to 450 dpa. This SA also records that the Council considered changing the figure to a higher one of 465 dpa, and that this wouldn't alter the conclusions either. The 2nd SA Addendum (October 2012) states:
".....the policy wording has been amended slightly to make it clear that the delivery is a minimum of 450 dwellings per year. However, the overall figures presented within the policy remain consistent with those assessed previously in the 2011 SA Addendum and therefore no additional SA work is considered to be required."
The recognition that 450 dpa is a minimum is an implicit acknowledgment that windfalls are additional to the allocations which are required to meet the housing target.
18. In policy terms, windfalls have always been part of the expected delivery. Although minor adjustments have been made during the examination to the policy that aims to manage windfall development (CP1A), the Submission CS acknowledged that an unspecified amount of windfall development would be additional to the housing requirement. The 2nd SA Addendum refers to the small changes to policy CP1A which clarify how windfall development will be managed, concluding that the changes do not alter the findings of the original (2010) SA on this policy. As the plan recognises, the location of windfall development is inherently unpredictable so its effects on infrastructure, travel patterns and so on cannot be assessed in detail or with any precision. Thus the quantification that has emerged during the examination does not change the overall spatial strategy, which establishes principles to direct and control housing development that includes both allocations and windfalls.

DLP Planning Submission

19. The Council is right to say that DLP Planning's case is largely predicated on the argument that 550/555 dpa represents the objectively assessed need for Selby District. If that were to be my conclusion on housing need, then there would be a significant change in the strategy and I accept that further SA work would be required.

If, however, I conclude that 450 dpa is a reasonable figure on which to base the dwelling requirement, this is (broadly) the figure that has been subject to SA throughout the evolution of the CS. In these circumstances I do not accept the suggestion that 550/555 dpa represents an alternative quantum of need which should have been subject to SA. I agree with the Council's reasoning on this matter.

20. As the Council says, the housing need is established through evidence and then the strategy considers alternative ways of delivering it; the SA process does not require alternative objectives or alternative need figures to be assessed. The idea that the objectively assessed need effectively rises to 555 dpa as a result of windfalls being quantified confuses need with anticipated delivery. The CS proposes that allocations will meet the need, and that windfalls are an additional element of delivery which will contribute towards the increase sought by national policy.
21. As to the "paper-chase" argument, this is a separate matter and appears to stem from EU guidance which says, in the context of re-using material from one assessment in carrying out another, "*They will have to ensure that comprehensive assessments of each element of the planning process are not impaired, and that a previous assessment used at a subsequent stage is placed in the context of the current assessment and taken into account in the same way. In order to form an identifiable report, the relevant information must be brought together: it should not be necessary to embark on a paper-chase in order to understand the environmental effects of a proposal*". In this case the 2010 SA which accompanied the Submission CS, the 1st Addendum and the 2nd Addendum are all part of the same body of work; each assessment adopts a common approach and the later documents include frequent cross-references to the former. I do not believe that having to refer to 3 very similar documents to trace the changes to the CS policies represents a paper-chase.

Conclusion

22. My ruling on the adequacy of the SA carried out prior to and during the examination in relation to housing numbers and windfall development is dependent on the conclusion I reach on the objectively assessed housing need. If I find that 550/555 dpa is the appropriate need figure, further SA work is required. Alternatively, if I find that 450 dpa is appropriate, I conclude that the SA work already carried out satisfies the requirements of Regulation 12(2) of the Environmental Assessment of Plans and Programmes Regulations 2004.

Martin Pike

Inspector

10 April 2013