

A SUMMARY OF THE BACKGROUND AND HISTORY OF SAMUEL SMITH OLD BREWERY (TADCASTER)'S ACTION TO IMPLEMENT THE "VISION OF TADCASTER"

1. This statement is prepared by Matthew Baker, a solicitor and Partner of Pinsent Masons LLP of 1 Park Row, Leeds, LS1 5AB, for the purposes of informing the Inspector conducting the Oral Examination of Selby District Council's ("Selby") Core Strategy. A clip of documents is attached to which reference is made in this statement (the "Supporting Documents").
2. In the interests of brevity only copies of the key correspondence and documents are provided, but Mr Baker is happy to provide any further detail or documents if required.
3. Pinsent Masons LLP has acted for Samuel Smith Old Brewery (Tadcaster) ("SSOBT") for many years in progressing its action to implement a scheme of regeneration for Tadcaster Town Centre and to negotiate an agreement with Selby and NYCC for it to go ahead.
4. To put matters in context, it is useful to start in the late 1970"s when SSOBT consulted Lord Esher about how Tadcaster Town Centre might be improved, Lord Esher having recently published a highly regarded report on conservation and traffic proposals for the City of York. As a result of Lord Esher"s recommendations SSOBT gradually carried out extensive conservation work on a high proportion of the buildings in Tadcaster town centre, many of which have since been listed and would otherwise have been demolished.
5. SSOBT then instructed prize-winning London Architects, Campbell Zogolovitch Wilkinson & Gough ("CZWG") to produce a comprehensive regeneration and improvement scheme for Tadcaster town centre embracing Lord Esher's recommendations. It was seen at that time that to reinvigorate the shopping choice in Tadcaster was the key to revitalising the town. The best way to achieve this (at that time Tadcaster had no supermarket) was considered to be the provision of a supermarket. The only available site for a supermarket at the time was on the central island site enclosed by Kirkgate, High Street, Chapel Street and Westgate, most of which was occupied by the town's principal public car park. Selby had designated the north of the site which had comprised the cinema, British Legion Club and a builder"s yard as the supermarket site.
6. The CZWG scheme turned this on its head by introducing the idea of a town green on the north of the site (all of which had been assembled by SSOBT at considerable expense, including the building of a new Club on the former Cooperative store site on 20\24439342.1\MCB 2

Chapel Street which SSOBT acquired for this purpose). When launched by the architects in 1985 CZWG's proposals were called the Vision of Tadcaster (the "Vision"). It included a supermarket and a dedicated supermarket car park occupying the whole of what until then had been a public car park it also included a town green on the site of the old Regal Cinema which would be the setting for the three listed buildings (the second oldest church Sunday School in the U.K., Shann House, the Old Vicarage) with footpaths linking to green spaces through the churchyard and leading down to the riverside walks, partial pedestrianisation of Kirkgate, Chapel Street and Westgate, the creation of a new public car park on Robin Hood Yard, the restoration of many of the listed buildings in the town centre (in particular the restoration of the 15th century former Old Vicarage which had housed in recent years the British Legion Club, to which Selby had given a certificate of immunity from listing but which, now having been restored, is listed Grade II*) and a complementary traffic recirculation scheme. The whole purpose of the scheme, and this remains the case today, was to provide a high quality regeneration of the town centre area to reflect and enhance the town's historic heritage and attractiveness. The vision has always been one deeply rooted in regenerating Tadcaster in a way which properly and sustainably serves the public interest making it an attractive place for people from its hinterland (much of which is in the Leeds or York Council areas) to come in to and shop.

7. After promoting its own alternative supermarket scheme on the central car park (i.e. developing a supermarket in isolation ignoring the rest of the town centre, the supermarket site being the only commercially valuable part of the scheme) and resisting progress with the Vision for a considerable period of time, despite the fact that this was a Vision being promoted by the key stakeholder in the town, Selby eventually recognised the planning merits of what it proposed and it granted planning permission for the Vision, and also entered into an Agreement to sell its freehold ownership of the central car park and Council offices at 43 Kirkgate to SSOBT to enable the comprehensive scheme to go ahead.

8. The previous site history of the central car park was that prior to 1974, when the site was compulsorily purchased by Tadcaster RDC and the buildings demolished to make way for the public car park, it had been owned by SSOBT and John Smith's Brewery who had agreed to co-operate with the CPO in order to provide the town with a public car park on the verbal understanding from Mr Wakefield, the then Chief Executive of Tadcaster RDC, that it was an interim solution (in order to get the land tidied up and in to use) and the land would go back to the breweries if an overall regeneration scheme for the whole of the town centre could be achieved, which was what Selby really wanted. Selby acquired the freehold ownership from Tadcaster RDC as a result of local government reorganisation in 1974.

20\24439342.1\MCB 3

9. The Agreement made between Selby and SSOBT in respect of the Vision provided that if SSOBT did not action the Vision within 5 years, Selby would have the option to buy the site back at the same price indexed to RPI.

10. Before work could begin on the Vision, however, some further private land assembly was needed by SSOBT. North Yorkshire County Council ("NYCC") as the highway authority also had to issue the necessary traffic orders. Regrettably at that stage Tadcaster Town Council and the Chamber of Trade refused to accept the limited pedestrianisation proposals to give effect to the Vision.

11. At about the same time, Page Mills decided to close their business on the other side of the River Wharfe in Tadcaster Town Centre and put their premises up for sale. SSOBT saw this as an important opportunity to adjust the Vision in the interests of the proper organisation of the Town Centre, as it would enable the supermarket and dedicated supermarket car park to be relocated to the other side of the river, thereby avoiding having to deprive shoppers and other visitors to Tadcaster of the existing public car park area in the town centre. SSOBT therefore brought the Page Mills premises to enable this improvement of the Vision to be achieved.

12. The Agreement between Selby and SSOBT contained a provision for varying the terms if both sides agreed which SSOBT sought to invoke to enable the suggested changes to the Vision to take place. Unfortunately, Selby refused to vary the Agreement and to allow for relocation of the supermarket. Instead they exercised their option to buy back the central car park.

13. Selby also refused to grant planning permission for the supermarket on the Page Mills site, though planning permission was later granted on appeal by an Inspector who accepted the planning merits of a supermarket in this location. The site was then developed as a supermarket by Safeway and is now operated by Sainsburys.

14. In the meantime SSOBT attempted to dissuade Selby from insisting on the buy back of the central car park so as to allow a revised Vision to proceed. Selby, however, insisted and issued Court proceedings. Eventually the freehold ownership was transferred back to Selby.

15. SSOBT however has maintained its efforts to progress a regeneration scheme for the Town Centre and to this end CZWG's Vision scheme was adjusted to remove the supermarket development from the car park area and instead to include a new lay-out for the central car park, surfaced with natural stone materials (the "Regeneration Scheme") and including the landscape works round it to link in with the green i.e. the green wedge into the town from the riverside that was central to CZWG's Vision. 20\24439342.1\MCB 4

SSOBT offered to carry out the work at its own expense if Selby would transfer the freehold of the car park to SSOBT to enable this to happen.

16. The Regeneration Scheme again included part-pedestrianisation of Kirkgate and the closure of Chapel Street to through traffic; with St Joseph's Street becoming the alternative „north-south“ through route. Works and land take would be required at either end of St Joseph's Street, but not along it. The required non-highway land was owned by NYCC at the southern end and SSOBT at the north.

17. A number of planning applications were made by SSOBT for the Regeneration Scheme over the years, which Selby refused or failed to determine. It finally received planning consent in 2003. This consent was implemented and this consent is extant, but the major part of it has not been delivered due to NYCC refusing to promote the necessary Traffic Orders for the road closures and re-routeing.

18. In the meantime, Selby also granted themselves planning permission for their own very limited proposals to resurface the car park with concrete pavers.

19. In the light of the extant application for the Regeneration Scheme that SSOBT was proposing, SSOBT issued Judicial Review proceedings in respect of Selby's planning permission for the very limited proposals for the car park area and the planning permission was quashed.

20. Selby then granted themselves planning permission, this time for resurfacing with tarmac. Again, SSOBT issued JR proceedings. The Court gave SSOBT permission to challenge Selby's latest planning permission but adjourned the substantive Hearing, expressing the hope that the parties would reach an agreed settlement.

21. The views expressed by Harrison J in the Order dated 25 January 2005 were consistent with the previous views of the Local Plan Inspector in his Report in May 2002 when he stated:-

".....there have been problems of litigation and differences of approach which clearly need to be resolved in the interests of the town before a comprehensive scheme is agreed and progressed. I hope this will happen next, and exhort the parties to cooperate on preparing an agreed and comprehensive scheme ..." [my emphasis].

22. A copy of an extract from the Inspector's report is contained in the Supporting Documents.

23. Negotiations finally ensued between the parties, leading eventually to the "current" Draft section 106 Agreement / Development Agreement ("Agreement") that remains to this day at an advanced stage of consideration.
20\24439342.1\MCB 5

24. A fair copy of this draft Agreement as negotiated between Pinsent Masons for SSOBT acting through Peter Burns, Head of Selby's Legal Services, was sent to Mr Burns for production to the full Council meeting on 13 December 2005. However the Agreement was not approved for signature.

25. Mr Burns' contract as Head of Legal Services ended in December 2005 and was not renewed. He left Selby's employment just before Christmas 2005.

26. Subsequent events are summarised in Pinsent Masons' letter of 21 June 2006 to the then new Head of Legal Services at Selby, Mr Mike Rice. You will see that notwithstanding numerous attempts by Pinsent Masons on behalf of SSOBT Selby simply did not progress the negotiations nor did they even provide an explanation for their delay.

27. In or around 13 September 2006, Selby sent Pinsent Masons a draft resolution to be tabled at a Full Council meeting on 28 September 2006. The draft resolution set out a detailed summary of the Heads of Terms of the agreement Pinsent Masons had been negotiating with Selby.

28. Following receipt of instructions, I returned the draft resolution to Selby with some minor manuscript amendments. It is fair to say that at that time SSOBT regarded the draft resolution as a positive step forward by Selby as the draft resolution reflected the current draft terms of the Agreement.

29. SSOBT was therefore very surprised to receive a copy of the actual resolution made by Selby on 28 September 2006 as it bore no resemblance to the draft resolution we had been asked to comment on. It lacked detail and the extent of the commitment on the part of Selby in the earlier draft. Again it is important to note that Selby did not provide any explanation for their actions.

30. Returning to highway matters, NYCC, as the local highway authority, worked on options through 2002-2004 and produced alternative traffic management proposals for the Town Centre, which it would be assumed to fund. These included 2 principal elements; firstly, the introduction of a „blanket“ 20 mph speed restriction zone, and secondly the closure of Kirkgate, but not Chapel Street, The same land take requirements at either end of St Joseph"s Street would still apply.

31. SSOBT supported, in principle, the 20 mph zone but objected to the use of „standard“ highway engineering material and design which would be inappropriate within the Conservation Area. SSOBT objected to the alternative re-routing proposals.

32. In discussions between NYCC and SSOBT following the publication of these proposals, SSOBT offered to fund enhancement of the traffic calming measures for 20\24439342.1\MCB 6

the 20 mph zone (the "First Stage"), using natural materials, stone setts etc, where the locations of which would not prejudice the Regeneration Scheme. SSOBT also confirmed that its land and property would not be made available for NYCC's proposed second stage, which involved route closures and various traffic management changes (the "Second Stage"), and proposed that the Regeneration Scheme should be the second stage, or both stages implemented in a single action.

33. NYCC went to Committee in September 2006 with its phased proposals and objector's comments. Besides SSOBT, another objector was the Tadcaster Renaissance Town Team, an initiative funded by Yorkshire Forward, as the Regional Development Agency, which wanted enhancement of the design/quality of the traffic calming measures and the inclusion of the Regeneration Scheme's road arrangements together with all the other benefits associated with SSOBT's regeneration scheme.

32. Also during September 2006 SSOBT became aware that NYCC, in its capacity as highway authority, was proposing to implement a traffic calming scheme that did not compliment SSOBT's preferred traffic scheme for the regeneration plans for the central area as set out in the draft Agreement.

33. Notwithstanding SSOBT's objection to NYCC's proposals, NYCC resolved to implement its 20 mph traffic calming scheme on 18 September 2006.

34. SSOBT challenged the lawfulness of this decision and by a Court Order dated 9 April 2010, NYCC eventually consented to judgment quashing their decision dated 18 September 2006 on all the grounds set out in the Detailed Statement of Grounds. A copy of the Detailed Statement of Grounds and the Consent Order in these proceedings are contained in the Supporting Documents.

35. NYCC then sought to reconsider the various options for traffic management in Tadcaster Town Centre. SSOBT's preferred traffic scheme was referred to as Option C.

36. There were then a series of technical meetings between NYCC highway officers and SSOBT's appointed traffic consultant. There were also several meetings between SSOBT, Selby and Yorkshire Forward.

37. There was a difference of opinion between NYCC and SSOBT regarding the adequacy of St Joseph's Street in the Regeneration Scheme. NYCC wanted it widening to a „standard“ A-road width, whilst SSOBT showed how it would function safely without widening, (as per the original consent), just as occurs on much of Tadcaster's „A“ roads. This functional adequacy was reinforced by the post-consent's agreed principle of a blanket 20 mph zone which would include St Joseph's Street. NYCC's position was that the road needed widening and then physical traffic calming

measures would need to be introduced into it to reduce the speed enabled by the „standard“ width. An impasse ensued despite Selby“s intervention to try and move NYCC“s stance in order that the Regeneration Scheme could be delivered.

38. NYCC“s senior highways officer confirmed by email to SSOBT's Highways Consultant that the Regeneration Scheme was “technically acceptable” providing there was localised widening at the Bowling Club on St Joseph“s Street.

39. In an attempt to move matters forward, SSOBT agreed with NYCC and Selby to pursue the scheme including this localised widening on a „without prejudice“ basis. The widening involves land that is owned by the Bowling Club and the Catholic Church.

40. By way of further background, SSOBT had in effect given the freehold ownership of the 6 acres of Manor Field to Selby as a gesture of good will in 1982 and insisted that the Bowling Club had a 99 year peppercorn lease of their part of this land. SSOBT at that time thought NYCC would carry out intended road widening of St. Joseph Street (which at that time was included in NYCC's plans) and compensate the Bowling Club for the loss of their pavilion and the rebuilding of their re-aligned wall. When SSOBT was told that all land assembly and all enabling works (e.g. replacement walls and buildings) had to be done by SSOBT it hoped that the Bowling Club, having been given the land, would give the required land back in return for the enabling works being undertaken by SSOBT, but this did not prove to be the case.

41. SSOBT was informed by Selby on 1 October 2007 that Selby would reach agreement with the Bowling Club for its strip of land. Accordingly SSOBT met with the Catholic Diocese in Leeds and, believed that it could reach agreement with the Diocese, albeit at considerable cost. This would entail SSOBT funding a new porch to the Church and the double glazing of all its buildings and the rebuilding of its re-aligned wall, but SSOBT did not want to commit to this until the overall town centre regeneration scheme was agreed by all parties.

42. In the meantime a report was presented to NYCC's Selby Area Committee dated 9 June 2008 in which NYCC outlined the various options and in particular the difficulty in implementing SSOBT's preferred Option C given that St Joseph's Street was currently too narrow to accommodate two way traffic. The report highlighted that additional land abutting St Joseph's Street would have to be acquired to implement this option.

43. In April 2009, NYCC“s officers informed SSOBT of a new prospect for funding a scheme in the Town Centre. This was through a Service Centre Transportation Strategy, (“SCTS”) process that had recently been introduced throughout the County. 20\24439342.1\MCB 8

A small amount of money was „ring-fenced“ for each chosen Centre. NYCC prepared a public consultation leaflet which included both the original NYCC scheme and the Regeneration Scheme. Despite several meetings with SSOBT however, concerning the history and nuances of the issues, the leaflet, (the relevant parts of which are included in NYCC's 21 September 2011 Position Statement to the Core Strategy EIP), does not make clear the important differences between NYCC's preferred scheme (Option E(i)) and SSOBT's Regeneration Scheme (Option E(ii)). A summary of these differences by reference to NYCC's Position Statement to Planning Inspector, Selby EIP - Tadcaster Road Improvement Proposals dated 21 September 2011 are as follows:-

43.1 no reference to requiring SSOBT land and property for Option E(i) at the northern end of St Joseph"s Street, requiring CPO procedures;

43.2 the fact that the NYCC scheme, (Option E(i)), would be (as costed) constructed in basic materials, whereas Option E(ii) would included materials sympathetic with the Conservation Area"s environment;

43.3 no reference to the fact of SSOBT funding Option E(ii);

43.4 no reference to the synergy and subsequent deliverability of the comprehensive Town Centre Regeneration Scheme with Option E(ii);

43.5 no reference to the fact that NYCC would not have the funds to deliver either scheme on its own;

43.6 no reference to Robin Hood"s Yard/ Hodgson"s Terrace being laid out as public car parks under Option E(ii);

43.7 no reference to the fact that some of the land requiring purchase in Option E(ii), , is SSOBT land available within the Regeneration Scheme at no cost to NYCC;

43.8 no mention of "potential land take" in the Key of Option E(i), or any shown on its plan, unlike in the Option E(ii) plan.

44. Since NYCC"s consultation process there has been the Government"s comprehensive spending review and the funding for NYCC was reduced further. NYCC now has no plan to improve the Town Centre at all.

45. In November 2010, Selby, without any reference to SSOBT and notwithstanding the fact that their previous 2 attempts to obtain planning consent had been quashed by the High Court, submitted a third planning application for consent to refurbish the Central Area Car Park in isolation.
20\24439342.1\MCB 9

46. SSOBT objected to this application on various planning grounds but also on the basis that the proposed resurfacing of the Central Area car Park was totally at odds with the terms of the draft Agreement (see the letter of objection dated 10 January 2011 from Cunnane Town Planning).

47. Notwithstanding SSOBT's objections Selby granted itself planning consent to refurbish the central area car park on 13 January 2011.

48. This decision is the subject of a High Court challenge by SSOBT. Although Blair J refused to grant SSOBT permission to claim judicial review, this application has been renewed and is listed for hearing in November 2011.

49. Whatever the outcome of these proceedings and the planning permission for the central car park area it will be clear from the facts and matters set out in this statement that SSOBT remain willing and able to progress the negotiations with Selby and NYCC to conclude the Agreement and deliver SSOBT's major regeneration of the Central Area of Tadcaster. Objectively speaking it defies all reasonable logic that Selby and NYCC, as the public stakeholders with the power to unlock the regeneration of the central area of Tadcaster, appear so unwilling and reluctant to work in partnership with SSOBT as a major landowner who is willing commit substantial funds and time to Tadcaster on a scheme that would not produce a commercial return.

50. I understand that the draft version of the Selby Core Strategy makes no mention of SSOBT's scheme which remains extant and is the subject of the history set out above. This omission is inexplicable, particularly in light of the emphasis placed on engagement with key stakeholders that is set out in PPS12 (see in particular paragraphs 4.27-4.28).

Matthew Charles Baker
(Partner)
Pinsent Masons LLP
27 September 2011
Ref : MCB/111093.00153