

SSOBT'S GENERAL OUTLINE OF SUBMISSIONS ON SELBY DISTRICT COUNCIL'S REQUEST FOR SUSPENSION¹

Introduction

1. At 2.00pm on the afternoon of the penultimate day of the two weeks' of scheduled examination hearing sessions, Selby District Council ("the Council") submitted a request to the Inspector that the examination process be suspended for a period of at least six months to enable it to make potential changes relating to the core issues of 'Housing Deliverability' and 'Green Belt'.
2. It will be immediately obvious that these issues are not peripheral or minor. Nor are they issues which fall to be treated in isolation from the remainder of the Core Strategy. They are fundamental issues which go directly to the soundness of the plan.
3. As set out in more detail below, the Council's request on these two particular topics in fact only deals partially and incompletely with a number of the key issues of potential unsoundness which were raised during the examination sessions. Amongst other things, it will be recalled that:
 - a. A number of objectors have raised fundamental issues regarding the approach to Tadcaster and Sherburn -in-Elmet, and the way in which the Council has purported to allocate the same amount of housing and employment growth to these settlements and the evidential basis and approach for doing so - the Inspector will have to report on these issues in due course. But SSOBT (and no doubt those who objected in respect of Sherburn-in-Elmet) remain of the view that the plan is unsound in this regard.
 - b. Objectors (though not SSOBT) have raised fundamental objections to the Council's treatment of the settlements

¹This outline of submissions is intended by way of a note only of some of the points to be made on behalf of SSOBT in response to Selby District Council's belated request to suspend the examination into the draft Core Strategy. It is not intended to be exhaustive.

around Selby itself, and the Council's purported use of the strategic gap designation. So far as SSOBT recall, the Inspector expressly invited the Council to reconsider this in light of the absence of any sustainable justification for what the Council had done being identified at the hearing session. As SSOBT understands it, the Council has subsequently insisted it will be retaining the CS approach but still has not identified any proper policy or evidential basis for this stance. It therefore seems inevitable that the Inspector will find this part of the CS unsound. It is one which again goes to the heart of the Council's approach on delivery of housing and the role of Selby and the surrounding villages which would inevitably affect the approach to places like Tadcaster and Sherburn-in-Elmet.

- c. The Council's response on "Housing Deliverability and Green Belt" fails to reflect what SSOBT recorded as the nature of the fundamental concerns that were identified by the Inspector during the examination process. In relation to Green Belt, for example, basic issues arose as to (a) the propriety of "localised" Green Belt review, given that GB is a strategic designation and there is no policy or indeed logical basis for reviews based on either a part-district, let alone a settlement basis; (b) the need changes (if any such changes were to occur) to be addressed in a CS and not left to subsequent DPD documents, such as a Site Allocations DPD; (c) the need for full SA of GB changes, none having occurred to date. These points are not recognised let alone addressed in the Council's response document. Indeed, the proposal maintains an approach which contains these basic features of unsoundness and conflict with national policy.
- d. The Council has been asked to reconsider the wording of the approach in respect of Tadcaster. However, one of the reasons that that has occurred is a problem which goes to the heart of the CS, namely the lack of engagement with key stakeholders which, in respect of Tadcaster, self-evidently includes SSOBT. Whilst suggested changes to wording in policies like CP11 are awaited, these types of change do not remedy or go to the heart of the problem of the CS that the Council has produced which sets its face against SSOBT as a stakeholder in Tadcaster (a pattern repeated in the

Council's approach to housing and employment where the CS was self-evidently drafted without regard to SSOBT's suggested vision which goes beyond mere town centre regeneration).

4. Therefore the Council's request made only in respect of Housing Deliverability and Green Belt is an inadequate and partial response in any event. But SSOBT submits it is flawed in its own terms, having regard to the function of a CS, the requirements for a CS to be sound, the guidance that applies to late changes.

SSOBT's Objections on Soundness

5. By way of preliminary point, it must be emphasised that SSOBT does not and never has suggested that the unsoundness of the CS means that the only option available to the Council is withdrawal. In accordance with the requirements of the consultation and examination process, SSOBT has dutifully pointed out those specific core areas where the CS is unsound, and it has dutifully and responsibly identified what changes would be necessary to make the plan sound.

6. For example, in the case of housing deliverability for Tadcaster SSOBT has for some time pointed out the lack of available sites for the numbers of houses that the Council was proposing. The arbitrary number selected for Tadcaster equivalent to Sherburn -in - Elmet is itself unsoundly arrived at (eg by reference to AH data which demonstrates a conspicuous lower demand for such housing in Tadcaster v Sherburn -in-Elmet, and by reference to principles of out-commuting where Sherburn is conspicuously better placed to provide sustainable travel patterns).

7. But the Council's self-proclaimed approach in the CS was to set housing numbers having considered constraints. The figure for Tadcaster and the whole thrust of the GB approach in the CS was based on the protection of the existing GB. Rightly so. Given that non GB land is not available for the housing proposed for Tadcaster, a point which was evident from the Council's own SHLAA, SSOBT

has identified that the CS could be made sound by reducing the housing numbers to reflect what is available, and the remainder of the housing "requirement" can be met anyway at places like Sherburn where there is massive amounts of land availability, outside the GB, close to travel links such as the railway station, with very willing developers ready to move forward.

8. The CS can therefore be made sound by such changes because those changes do not alter basic principles in the CS approach, such as the protection of the GB, provision of housing in sustainable locations etc.
9. The Council, however, appear to be rejecting this and are now suggesting a radical rewriting of the principles of the CS. Although there is no evidential basis for the claims now made in their latest papers, they are now asserting (for example) that the number of houses for Tadcaster is some sort of absolute requirement which must be met. There is nothing in any of the evidence base to explain or justify such an assertion. Indeed, we know that the housing number for Tadcaster was not arrived at in this way. It was arrived at on the assumption that there were housing sites available in Tadcaster outside the GB which could provide that number, not on the basis that the number had to be provided at Tadcaster regardless of constraints.
10. Leaving aside the lack of any justification for such claims in the evidence basis, the important point to note is that it is the Council's stance which leads to the crunch that the CS is fundamentally unsound. If it really is the case that the Council wants to revisit issues of housing distribution in the context of the GB, this is an issue which goes to the very heart of the whole CS. It is not a minor change. It is not an alteration to parts of the policy. It is something which is rooted in the very core of the whole strategy. The Council has never previously even suggested this approach as an alternative.
11. Needless to say, such a radical change to the whole strategic planning of the district would be highly controversial. Amongst other things it would affect fundamental issues such as:

- a. What are the correct housing numbers for the District if, as the Council appear to be suggesting, the Council are proposing revisiting the boundaries of the GB?
 - b. Is it appropriate to use the RSS housing numbers as a starting point (absent any up-date) where those numbers themselves were not based upon an assumption that the numbers would lead to erosion of the GB?
 - c. Was the RSS identification of Tadcaster as a Local Service Centre, which the Council now appear to place blind reliance upon, an appropriate designation if it results in erosion of the GB? Was any such anticipated erosion part of the RSS approach to such designation?
 - d. Is it right for Selby to take RSS housing numbers which could lead to GB erosion, particularly in circumstances where there has been no proper cross-boundary assessment, where places like York are not taking the RSS numbers, and the RSS numbers were not arrived at on the basis that they would lead to GB erosion?
 - e. Is the Council's identification of Tadcaster as having to take the same amount of development as Sherburn-in-Elmet even if it means erosion of GB one that properly addresses exceptional circumstances, the position of Sherburn, the position of Selby and the position of the surrounding villages to Selby? Where has this been considered? What are the alternatives?
 - f. All the same basic questions would also apply in respect of employment land.
12. The truth is that if the Council really are proposing to go down this route, then the basic building blocks of the CS based on potential non GB capacity and which assumed no

GB erosion and therefore no assessment of GB erosion have evaporated. These big issues would themselves require proper assessment, starting with a more generic reevaluation of the issues and options. It would involve starting again, nothing less.

13. We say if the Council really are proposing to go down this route (because there is no evidence political appetite for such a radical change of approach), it will be highly contentious. We only now have assertions in the Council's statement which are not tested and are unsupported by the evidence base as to Tadcaster. We do not believe that any of this in fact reflects the democratic will of the Council, let alone the public of the District. We note the strong emphasis given to local decision making, given in the decision of the SS yesterday in relation to Barton farm, Winchester. But the examination simply does not know because these issues have never been raised or contemplated previously as part of this CS process.

The Suspension Request

14. It is worth reminding oneself about some of the basic principles which underpin the examination of a Core Strategy. We rely fully on the legislative requirements but do not repeat them again here. But we turn to non-statutory guidance that has been issued by PINS that is particularly material.
15. *Examining Development Plan Documents : Procedure Guidance (August 2009)*, paragraph 7 reminds us:

"LPAs should rigorously assess the DPD before it is published under Regulation 27 to ensure that it is a plan which they think is sound. The document published should be the document they intend to submit under Regulation 30 to the Inspectorate. The 2004 Act specifically provides that a LPA must not submit the DPD unless it considers the document is ready for examination. Changes after submission by the LPA should be unnecessary and may be disregarded by the Inspector unless there are exceptional reasons that justify them." [Emphasis added]
16. The starting point is that any changes to the CS should be unnecessary, because the whole thrust of the DPD process is that it is front-loaded. The Council should have submitted a CS which it regarded as sound. The Council now accept it is not sound in basic respects regarding both Housing Deliverability and Green Belt. The reasons for

unsoundness in these respects should have been obvious to the Council a long time ago (see eg the SHLAA for Tadcaster). The Council's actions have defied logic for some time now, see eg the unexplained mystifying subsequent allocation in the proposed Site Allocations DPD for Tadcaster's housing requirement which the Council had identified in the SHLAA as not available within the plan period. But the basic premise is that any changes should be disregarded unless there are exceptional reasons that justify them.

17. There are two initial points to make:
 - a. The Council's changes are not minor. They are major. The exceptionality criteria must apply with even greater force in those circumstances.
 - b. The reasons given by the Council are clearly not exceptional at all. Indeed the problems with housing deliverability have been on the face of the documents from Day 1. As you identified at the examination itself, PPS3 makes clear that there was no warrant for the Council to rely upon sites in the SHLAA where landowner's intentions were unknown, particularly in the context of Tadcaster. The Council therefore has proceeded blindly with its approach in the Core Strategy by burying its head in the sand. This is not an exceptional reason for change, and there is no justification for attempting to dress this up as a change prompted by the examination itself.

18. The Procedure Guidance offers further assistance on post-submission changes at paragraphs 5.21 and following:

"Post submission LPA changes to a submitted DPD

5.21 The Inspector will take the published DPD (and if relevant, the addendum submitted with the DPD) to be the final word of the LPA on submission¹⁶.

5.22 The intention is that LPA's will not seek changes after submission because the frontloading process should have considered the full range of options and policy approaches. Therefore, there is a very strong post submission expectation that changes will not be necessary and this is a key premise of delivering the streamlined examination timetable. LPA's should only seek changes after submission in very

exceptional circumstances. The provision for changes after submission is to cater for the unexpected and is not intended to allow the LPA to complete or finalise the preparation of the DPD.

5.23 Such changes should, where appropriate, be subject to the same process of publicity and opportunity to make representations as the DPD. If the change would alter the thrust of a policy, extend the range of development that a policy would apply to, delete a policy or introduce a new policy, two very important considerations need to be borne in mind. First, the change must not undermine, or possibly undermine, the sustainability credentials of the plan. Second, is the change a matter that has been subject to adequate community engagement? If there is a problem with either of these matters the change may, in some instances, be acceptable provided the LPA has taken appropriate steps to demonstrate that the sustainability credentials of the plan are intact or that further adequate community engagement has occurred.

5.24 This process may generate fresh representations. In the interests of fairness, the Inspector will extend the right to appear at the hearings to those who seek an amendment which follows directly from the LPA's proposed post-submission changes.¹⁷

5.25 Where the LPA are proposing such changes, the Inspector will expect the material to be made available without the need for undue delay to the examination timetable. Guidance on the procedures relating to the consideration of suspension of the examination, in limited circumstances, to allow further work by the LPA is provided in Section 9 'Exceptional Procedures' of this guide." [Emphasis added]

19. We repeat the points already made above. Amongst other things:
- a. The Guidance emphasises the exceptional nature of post-submission changes.
 - b. The Guidance explains why they should be exceptional, because the whole process is premised on front-loading, where the policy implications have been considered in advance.
 - c. The exceptional circumstances are ones which involve "unexpected" changes. There can be nothing unexpected about what has occurred here.
 - d. Changes must not undermine the sustainability credentials and must be based on adequate community engagement. Neither principle is satisfied here. That is why the Council are now having to propose new SAs and new consultation altogether, albeit what they are proposing is flawed because it purports to start from a policy standpoint which itself has never been tested, eg that Tadcaster must take housing of 650 houses, even if that means erosion of GB, and the 650 houses forms part of an RSS requirement, even though that

requirement was never based upon potential erosion of the GB.

20. Section 9 deals with exceptional procedures. Again, it has to be an exceptional case. The first part of section 9 is contemplating the situation where basic issues of unsoundness are identified at the outset of the examination process, not at the end. Thus paragraph 9.14 deals with exploratory meetings:

"9.14 An exploratory meeting is an unscheduled element of the indicative examination timetable and where one is held LPAs and other participants will need to recognise that it may introduce an element of delay into the examination programme. The extent to which the exploratory meeting disrupts the examinations programme will be dependent on the outcome of the meeting. Where for example the issues are resolved, the delay should only be a short matter of weeks. However, where an Inspector agrees to a temporary suspension, this may potentially run for several months. However any delay beyond 6 months suggests that the appropriate course of action is withdrawal and re-submission of the DPD once the problems have been resolved."

21. So far as we are aware, nowhere in the Procedural Guide is it contemplated that there might be suspension of an examination for a substantial period of 6 months at the end of the examination process.

22. Suspension and withdrawal are the subject of guidance in paragraphs 9.20 and following:

"Suspension

9.20 It may be possible for the Inspector to delay proceedings where a major change is necessary - suspend the examination - to allow the matter to be addressed but this delay should not be unreasonable. If a large amount of additional work/consultation is required it suggests that the frontloading process has failed. In such circumstances it is unlikely that a finding of soundness can safely be made.

9.21 As a general principle, suspension goes against the wider policy objective of speeding up the plan process and developing evidence to inform choices made during plan making. LPAs may seek to argue that suspending an examination might be a swifter route to achieving the aims of the new plan-making system. However, this represents a short-term view. It is important that LPAs submit sound DPDs, backed up by a comprehensive, up-to-date and robust evidence base. Only in that way can the examination process be speeded up.

9.22 There may be circumstances where it may be effective to call a temporary halt to the examination process to enable the LPA to go away and do more work, without having to go right back to the start of the plan preparation process.

A suspension request may arise through a number of routes includ-

ing:

- holding of an early exploratory meeting by the appointed Inspector (possibly on the back of representations – in practice particularly those of a Government Office);
- concerns about the matters and issues identified by the Inspector at the PHM; or
- the LPA's own post-submission re-appraisal of the document (LPAs are particularly likely to do this where findings of unsoundness emerge from other DPD examinations, which cast some doubt over their own approach where there are similarities).

9.23 If contemplating the suitability of suspending the examination, questions the Inspector will consider are:

i. What is the scale and nature of the work required to overcome the perceived shortcoming of the document?

Is it to:

- (a) commission new evidence, which raises an issue about the basis on which the document has been prepared, or
- (b) to ensure proper consultation has taken place which would rectify a potential procedural unsoundness?

Point (a) would suggest the evidential base for the plan is not sound and the risk of commissioning new evidence is that it may lead to major changes to the submitted document. However, (b) might suggest a consultation exercise could enable the Inspector to proceed without undue delay.

ii. How long will it take to do the work?

Up to 6 months suspension might be acceptable but a period greater than this would not²⁴. A delay of more than 6 months would create a great deal of uncertainty within the examination process for those who have submitted representations at the publication stage. Furthermore a delay of this period should only be necessary if the LPA were proposing major changes to the DPD which had not been adequately frontloaded in which case it should be withdrawn to allow the proper procedures to be followed for a revised version of the DPD.

iii. What will the further work lead to?

If it leads to a substantially revised document to that submitted, it begs the question of what the Inspector is examining and seems therefore to be inappropriate. However, if it provides strengthened evidence which does not lead to major changes, it will not be likely to lead to significant delay.

9.24 There will be particular matters the Inspector will have to consider when the examination resumes:

- If the DPD has been changed, it may have to undergo another consultation period so that interested persons have the opportunity to make representations about the changes;

- A further sustainability appraisal may be necessary to ensure compliance with the requirements of SEA; and

- If a further SA is carried out, it will be necessary to consult upon the SA in order to comply with the SEA Regulations

(Environmental Assessment of Plans and Programmes Regulations 2004²⁵).

24. Where practicable, the Inspector may consider a partial suspension i.e. suspending the examination only in relation to a part of the DPD where further work is needed. This can allow the examination to continue into the remaining elements of the DPD, which will provide less disruption to the examination timetable. However, this will only be appropriate in very limited circumstances e.g. where the matter on which further work is needed is discrete or separate and is unlikely to undermine the soundness of the remainder of the DPD. This approach would necessitate an extra hearing session (s) to be scheduled after the main hearings to consider the further work once completed.

25. View at: http://www.opsi.gov.uk/si/si2004/uksi_20041633_en.pdf

Withdrawal

9.25 If major additional work needs to be carried out on a DPD, it is likely that the submitted DPD was not 'sound' on submission and the LPA should follow the withdrawal route through the GO. Where an LPA is aware that the examination is identifying unsoundness in relation to their DPD, it is inappropriate generally for the LPA to try to short-circuit the system by seeking to rectify a seriously flawed document through suspension (as opposed to withdrawing it and submitting a sound document).

9.26 Where a LPA is reluctant to seek withdrawal the Inspector will advise that the examination will proceed with the risk to the LPA that the document might be found to be unsound. It is in no-one's interest if time and money is spent on a DPD examination which is heading towards a very clear outcome of unsoundness."

23. It will be immediately obvious that simply posing these sorts of questions in the context of what the Council is now proposing demonstrates how and why the proposed suspension is irrational.
24. As to paragraph 9.20, the Council in its own timetable is proposing a suspension which is **at least** 6 months. We do not accept the timetable is realistic anyway if proper consultation is to be conducted. Moreover, that consultation will need to consider alternatives to the starting premise and failure to do so will be flawed. But what is evident is that a large amount of work is being required. The Council are envisaging a further SA and a whole new consultation process. This in its own terms demonstrates the front-loading process has failed.
25. As to paragraph 9.21, this is a paradigm case of a short-term view being proposed which will end up being a long-term waste of time and money. As outlined above, the reality is that the Council are attempting to revisit basic principles of a CS through a suspension process. This is a

classic example of the approach of a Curate towards a bad egg.

26. As to paragraph 9.22, we note that the request for suspension has not occurred at any of the contemplated stages in this paragraph, but right at the very end of the whole process. It is too late.
27. As to paragraph 9.23, the answer to the first question is self-evidently (a) as can be seen from what the Council is contemplating. It is all too apparent that the results from any genuine consultation exercise and SA could inevitably lead to basic changes in the CS and the big issues we have already outlined above.
28. As to the second question, the Council is proposing a timetable of at least six months. But the timetable is unrealistic if genuine formulation of the correct questions and policies and the SA process are to be undertaken. But even if the 6 month period suggested is taken at face value, it can be seen that this really is a case of no proper frontloading leading to potential major changes where withdrawal is the appropriate way forward (if the Council remain resistant to the changes which SSOBT have proposed which would make the CS sound).
29. We are bound to observe that if the Council were to embark upon a process of consultation about a policy of the type they are proposing in the statement, they would be starting upon a legally flawed process both in terms of the European Legislation, and a matter of soundness under the 2004 Act. The starting point is a policy which itself has not been subject to consultation or tested for alternatives.
30. As to the third question, the answer is obvious. Even if the end product of the process the Council is suggesting were to be endorsement of potential incursions into the GB, it is simply absurd to suggest that this would then be rolled forward into subsequent DPDs such as Site Allocations DPDs. What is in fact being suggested are major changes to the strategic planning of the District which undoubtedly expose the fact that the examination is currently looking at

a very different approach and document to that which the Council are now suggesting they are contemplating.

31. As to 9.24, we reiterate again that what the Council is proposing would not meet the relevant legislative requirements. The starting premise (ie Tadcaster must meet the purported "housing requirements" for it) is without any evidential basis and itself would need to be fully examined and considered in terms of alternatives. Likewise, the concept of a GB review around Tadcaster would need to be considered against alternatives such as use of Sherburn, Selby or cross-boundary considerations, in addition to the whole issue of whether such requirements can be justified at all if they are based upon GB incursion never previously contemplated.
32. In this context, there is simply no warrant for the assertion that "the Council considers it imperative that Tadcaster should fulfill its role in the settlement hierarchy as a Local Service centre and meet the development need identified" (Council's position statement para 5.7) given that such statement is without any formal endorsement from the Council, and in any event begs the question of whether such is appropriate if it is at the cost of releasing green belt land in and around Tadcaster.
33. In association with all these points, remain the basic concerns that the Council's approach to Tadcaster simply fails to grapple with engagement with key stakeholders and the alternatives to regeneration which they have proposed.
34. By contrast, everything the Council is proposing in fact clearly points to withdrawal of the CS if they really are proposing to go down the line suggested in the Statement.
35. Finally, in considering the Council's application, it is incumbent on the Inspector to consider the Council's Proposed Approach (section 6 of its submission) and ask whether that indicates that even after the lengthy adjournment they propose will the CS be sound if it is based on such an approach? The answer is no. It is completely unsound to propose a CS which leaves the

review of the GB, whether a localised review or a district wide review, for an allocations DPD. These are strategic matters to be determined at a strategic (district wide) level. We remind ourselves that the Inspector has already commented on the unsoundness of the existing CS (para 4.39) as an approach, and what is now proposed is not materially different. Leaving this to the Allocations DPD is to put the cart before the horse.

36. We therefore submit that the request for suspension is unjustified, unsustainable and irrational. SSOBT considers that to accede to such request would be similarly unlawful. If the Council are not prepared to make the changes to effect soundness of the type contemplated by SSOBT and other objectors, and really are contemplating revisiting basic principles to the strategic planning of the area, the CS will have to be withdrawn in its entirety.

**PETER VILLAGE QC
JAMES STRACHAN**

**4-5 GRAY'S INN SQUARE
LONDON WC1R 5AH**

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