

BATH AND NORTH EAST SOMERSET - CORE STRATEGY EXAMINATION**S110 LOCALISM ACT – DUTY TO CO-OPERATE**

Inspector's response to the submissions on behalf of Robert Hitchens Ltd on the duty to co-operate (written submissions by Mr Crean QC, 9 January 2012, oral submissions of Mr Dove QC at the hearing on 17 January and summarised in subsequent note) and the Council's response (written submissions of Mr Forsdick, 12 January 2012, oral submissions by Mr Forsdick at the hearing on 17 January and summarised in subsequent note 18 January 2012).

I remain of the view that new section 20(5)c of the 2004 Act should not be applied as a legal test to the submitted Core Strategy in this Examination. My reasons adopt the reasons given by the Council.

Section 110 of the Localism Act sets out a general duty to co-operate. This is on-going duty for the local authority to comply with and is not confined to any single Development Plan Document (DPD) or, indeed, its own DPDs. However, the task for an Inspector at Examination is focussed and limited, as set out in new section 20(5)c of the 2004 Act:

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.”

This wording implies a backward look at what has happened in the past. It is not intended as a general review of how the Council is taking forward the duty to co-operate.

The 2004 Act has separate sections (19, 20 and 23) on the *Preparation of development plan documents*, their *Independent Examination* and their *adoption*. It is reasonable to conclude from the structure and requirements of this legislation that a DPD should not be submitted for examination until its preparation is complete.

Drawing on the above distinctions, the preparation of the Bath and North East Somerset Core Strategy was undertaken prior to the commencement of this new requirement. Applying this requirement to the submitted plan would the duty to have been met prior to the legislation coming into effect. There is no indication that the legislation is intended to apply retrospectively in this way.

Section 112 of the Localism Act came into effect on 15 January 2012 and sets out new procedures by which Inspectors may make recommendations for changes to the submitted plan. I do not regard section 112(6) and the reference in S112 (7B)(b) to *any duty imposed on the authority by section 33A* as relevant to the interpretation of that section.

I note the submissions regarding the use of the word *preparation* in relation to European legislation and particularly the Environmental

Assessment of Plans and Programme Regulations 2004/1633. I accept that in the context of SEA, preparation applies up to adoption. However, I am not persuaded that this meaning of *preparation*, which is concerned with a particular statutory regime, has to be applied in the same way to other domestic legislation, particularly where the context clearly suggests otherwise.

Since section 33A came into effect, a number of Examinations will have been concluded. I have not been informed of any where the Inspector has applied Section 33A to the plan under Examination. My conclusion on this matter is, as far as I am aware, consistent with the approach of other Inspectors.

I am not persuaded that Section 20(5)c should be applied to the submitted Core Strategy. I will not therefore be formally concluding on whether this statutory test is met.

Consideration of whether the duty has been met, notwithstanding above ruling

Robert Hitchens Ltd indicated that it will pursue an immediate legal challenge to any ruling by me that Section 20(5)c does not apply to the submitted Core Strategy. The outcome of any such challenge may not be known until after I have completed this Examination. The Council therefore seeks the comfort of my consideration of whether the duty was met if it were subsequently to be found that the requirement did apply.

I would not normally pursue a matter at Examination which I have concluded is not relevant, not least because of the cost to the Council and other parties of the additional work involved and the danger of distraction from the relevant issues. However, given the potential consequences for the Council and the plan of any judgement that my approach is wrong; the specific request from the Council to explore the matter; and the interest of a number of parties in doing so, I agree to consider the matter. The overarching question would be: *Whether, if Section 20(5)c is subsequently found to apply to the submitted plan, the duty to co-operate would in practice, have been met in it preparation.*

Some parties have commented in their existing submissions on whether the duty has been met, but given the view expressed in ID/8 that it was not relevant, some parties may have decided not to comment or curtailed any such comments. I therefore consider that if I am going to address the matter I need to provide the opportunity for further comment and provide the opportunity for a discussion at a hearing. I would expect that the matter can be comfortably heard in a short day.

Once the date for a hearing has been arranged, the deadline for further submissions will be confirmed. The timetable will include a minimum of 2 weeks from confirmation of the dates and at least a week between the submission of final statements and the hearing.

When making any further submissions there is no need to resubmit or repeat the detailed evidence already submitted, but clear cross reference should be made to it where relevant. To minimise the practical effort in arranging for this additional hearing, parties should indicate which few core documents would be needed for the session (which would not preclude reference to others) as I do not intended to bring all the boxes.

Those who are arguing that the duty has not been met must focus on why this is considered to be the case. Section 112 of the Localism Act does not allow an Inspector to make *main modifications* if the duty to co-operate is not met. Accordingly, the consideration of this issue should not encompass the promotion of any alternative strategies.

Over the next few days, the Programme Officer will arrange the hearing date and confirm the timetable.

Simon Emerson
Inspector
23 January 2012