

## **DUTY TO CO-OPERATE**

1. The South Gloucestershire Core Strategy was submitted to the Secretary of State on 31 March 2011 for independent examination.
2. The duty to co-operate as contained in section 110 of the Localism Act 2011 which inserts Section 33A into the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) came into effect on 15 November 2011.
3. Therefore by the time the duty to co-operate came into effect the plan preparation undertaken by South Gloucestershire Council in accordance with the requirements of section 19 of the 2004 Act had already taken place and the examination process under section 20 of the 2004 Act commenced.
4. On 29 June 2011 the inspector held an Exploratory Meeting. Following that Exploratory Meeting the Inspector, in a letter dated 15 August 2011 [PA6], concluded that further work needed to be undertaken by South Gloucestershire Council before he could continue with the examination. In a letter dated 2 September 2011 [SG9] South Gloucestershire indicated it was willing to undertake this work and proposed a timetable for its completion. The inspector suspended the examination for six months to enable this to be carried out.
5. The work undertaken produced the following documents:
  - a. Review of BAE Systems Aviation Options Report for Filton Airfield [PS6];
  - b. Strategic Green Belt Assessment [PS7];
  - c. Supplementary Housing Paper [PS8].
6. This in turn led to the production of the following documents:
  - a. The Schedule of Proposed Post Submission Changes December 2011 [PS1];
  - b. The Core Strategy Proposed Post Submission Changes December 2011 [PS2];
  - c. The Sustainability Appraisal Report incorporating Post-Submission Changes December 2011 [PS3];
  - d. Post Submission changes to the Proposals Map December 2011 [PS4];
  - e. Post Submission Engagement Statement [PS5].

7. Whilst described as “Post Submission Changes” – these documents, which are the output of the extra work required by the inspector, can only in reality be suggestions by the council to the inspector for modifications to the Core Strategy submitted to the Secretary of State for examination on 31 March 2011. This is the case also for other post submissions changes put forward by the council e.g. policy CS14.
8. The duty to co-operate does not apply to these suggested modifications and they do not form part of the plan preparation which is the section 19 stage of the process prior to submission and is described as such in the legislation.
9. There is common sense to this interpretation. It is appropriate for there to be a clear demarcation between when the local authority are seized of the local plan and when the inspector is for the purposes of knowing when the duty to co-operate applies. The only clear demarcation within the process is that between preparing the plan for submission which is completely the responsibility of the local authority and the examination process which is completely the responsibility of the inspector - whilst of course he can, if he thinks it appropriate and has he has done so here, require the local authority to undertake further work so as to inform the examination process he is undertaking. If the duty to co-operate applied post submission there would be a blurring of the clear demarcation between when the authority is responsible for making the core strategy, under section 19, and when the inspector takes over that responsibility under section 20.
10. There is no prejudice to adjoining local authorities with this interpretation. They have been fully consulted in respect of South Gloucestershire Council's proposed post submission changes. In so far as these proposed changes are concerned they can make submissions and representations to the examination. In particular they can do so in respect of strategic matters which affect their areas. Ultimately it is a matter for the inspector as to whether or not he accepts these proposed post submission changes by way of modifications to the Core Strategy. If he does the legislation provides for a process for these to be incorporated into the Core Strategy. However at the examination stage in considering suggested changes to the core strategy whether by the local authority or any other party the inspector is not under a duty to co-operate with adjoining local authorities and it would be wholly impractical for him to be so.
11. Section 112 of the Localism Act 2011 amends section 20(7) of the Planning and Compulsory Purchase Act 2004. This amendment provides that where an inspector:

- a. Does not consider that in all the circumstances that the Submission Core Strategy either:
  - i. Complies with the requirements of section 19 of the 2004 Act (the requirement of local authorities to have regard to various documents and to carry out a sustainability appraisal); and/or
  - ii. Complies with the requirements of section 24 of the 2004 Act (that the core strategy is in general conformity with the Regional Strategy (RPG10)); and/or
  - iii. Is not sound;

But:

- b. does consider that any duty to co-operate has been satisfied (which does not apply in this case); and
- c. has been asked to make recommendations by the local authority (which he has been here);

That:

- d. He must recommend modifications of the document that would make it one:
  - i. That does satisfy the requirements of sections 19 and 24; and
  - ii. Is sound.

12. This thereby provides a mechanism through the examination process for the plan to be further modified. However this is separate to the plan preparation undertaken by the authority up to the point of submission. It is also separate to the duty to co-operate. Any further changes at this stage of the process are solely the responsibility of the inspector.

South Gloucestershire Council  
17<sup>th</sup> April 2012