



**RE: RESIDENTIAL DEVELOPMENT
AT KIBWORTH**

ADVICE

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In this matter I am instructed on behalf of Harborough District Council, who are undertaking an internal scrutiny review of matters which led to the allowing of an appeal in respect of planning permission at a site allocated in the Harborough Local Plan at Kibworth (KBI) together with a full award of costs against the Council. My views have been sought in relation to whether there were any weaknesses in the policies, practices and procedures which led to this outcome; any improvements which could be made to minimise the risk of a similar outcome; any differences of practice elsewhere which might help to inform the Council's review; and, in respect of any advice which was provided, what that advice was and why it was not followed.

I propose to start, because it is most convenient, with the last point first. From my records I provided written advice on four occasions, and attended a meeting of full council in order to explain that advice.

On 11 November 2003 I provided advice to the Council to confirm my view that the Council's preparation of supplementary planning guidance in accordance with their plan Alterations followed an appropriate methodology

which, in terms of the forecast which it provided, justified the release of the land at Kibworth.

On 28 December 2003 I provided further advice in relation to a number of issues which had been raised in respect of that earlier advice. Questions had been raised by the executive. Those questions firstly related to the use of a residual method of calculation looking at the requirements to 2016. I advised that the residual method was preferable, firstly because it was based upon housing targets from the emerging Structure Plan which were unlikely to change, secondly because it was a method endorsed by the Government Office for the East Midlands, and thirdly because when a cross-check was undertaken against the likely future requirements for housing within the Central Leicester policy area, contrasted with sites available to meet supply, there was a demonstrable need to provide housing land over the Structure Plan period. I supported the views expressed by officers that the residual method was appropriate, and that seeking to rely upon an annual average basis would be difficult to defend at an appeal. In the same advice, I then advised that further consultation should occur in relation to the SPG but for a shortened period, and further that I saw no advantage in delaying the production of the SPG any further. It is clear from my advice that around that time a planning application in respect of site KBI was either before the Council or contemplated.

On 9 June 2004, I advised further in respect of issues which had been raised by the County Council with regard to the release of site KB/I. Two matters had been raised in the County Council's Development Control and

Regulatory Board meeting of 13 May 2004. The first related to an allegation of prematurity. I advised that it was difficult if not impossible to contend that the Kibworth application was susceptible to an objection by way of prematurity. The County Council's second argument was in effect an argument predicated on the basis that there was an alternative site to Kibworth. I pointed out in my advice that no such site had been identified, and that, even if one took the view that the Development Plan, namely the Structure Plan and the Local Plan, was pulling in opposite directions, then on the basis that the Local Plan supported the development of Kibworth now that the Supplementary Planning Guidance had identified a shortfall but that the Structure Plan spatial strategy opposed it, then the application would still need to be determined on its merits. I repeated my views as to the absence of alternatives and the inappropriateness of an argument based on prematurity.

I finally advised on 14 November 2004, following my visit to full council in July 2004. I advised that it would be incautious of the Council not to form any view in relation to the Kibworth site but that to suggest that there might be an alternative site or that no allocated sites should be released would be a matter of planning judgement for the Council. In response to being asked whether or not Mr Culpin and I should appear at the Public Inquiry, I advised that it would be inappropriate for either of us to appear: myself because of the fact that my advices were in the public domain, and Mr Culpin because he would clearly be professionally embarrassed.

Lastly, I was asked to advise in relation to the consideration of a duplicate application which was currently before the Council.

I assume for the purpose of advising that, following receipt of all of that advice, members decide to refuse the applications and resist the appeals, and it is in that context that the full award of costs was made, not for procedural but for substantive unreasonableness. Obviously, once I had withdrawn from the case, I had no further contact in its substance. If, however, that is the position, then it would seem to me that the situation which the Council found itself in arose from the members' decision not to follow the advice which they had received from their planning officers and myself in relation to the absence of sensible objection to the release of the Kibworth site on the basis of the supplementary planning guidance which they had published. That is of course entirely their right, and it is a matter which is ultimately controlled through the democratic process.

In my opinion, during the course of my involvement in the matter the Council were well advised by Mr Culpin, whose professional judgement has been ultimately vindicated. Further, the Council prudently took the course of seeking advice from leading counsel in respect of the matter at numerous stages in respect in particular of the issues arising from the production of the SPG and the comments which had been raised by the County Council. Again, it would appear that the advice in respect of those matters which they received from Mr Culpin and myself was ultimately vindicated in the final decision. Whilst no doubt, following my advice of 14 November 2004, others were brought in and I have no doubt undertook an entirely professional

approach to making the best of the case which the Council members had provided them with, but by then the die had been cast.

To deal, therefore, with the first three questions posed, so far as I have direct knowledge of this matter and have been able to refresh my memory from the Advices which I wrote, I do not consider that the District Council acted in a way which was susceptible of any weaknesses. It took a prudent course. The difficulty appears to have been that members, as is their right, chose not to accept the advice that they were given. They are entitled to do that but, of course, in this case as in many others, it has consequences about which they have previously been warned. There is no need to allude to practices elsewhere because taking such a course is, as I have set out, the entitlement of the members. If it is to be controlled at all, it can only be through the democratic process and no other.

In trust that I have dealt with all the matters concerning those instructing me in relation to this case, but needless to say if there are any other matter with which I could assist, I shall be pleased to do so upon the telephone if necessary.

IAN DOVE QC

20 November 2006

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