

Response from Brett Culpin

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Part 1

Response to Cllr Roeber's Questions submitted to Council on the 6th November 2006

The questions can be split between the 2 key stages; Stage 1: Housing SPG and Policy Considerations; Stage 2: Processing the Planning Applications Through to Inquiry

Stage 1– Housing SPG and Policy Considerations.

- c) **Why was Leicestershire County Council (as the Strategic Planning Authority) not consulted at an early stage, or even prior to reading a press release from Harborough District Council stating the Officers intention to propose release?**

The 2003 Housing SPG was first drafted in June 2003. It was approved by the Council Executive for the purpose of a six week public consultation exercise. Leicestershire County Council were one of many 'stakeholders' invited to comment on the draft SPG. At that stage they did not respond.

At the conclusion of the consultation exercise, all comments received were considered by HDC planning officers. Amendments were made, including the decision to recommend the use of the residual method for assessing the remaining housing land requirement. HDC planning officers were persuaded of the need to adopt such an approach to estimating the remaining housing land supply following meetings with officers at GOEM and a meeting with Ian Dove QC on the 22nd October 2003 (Mr Doves views being subsequently confirmed in an Advice Statement submitted to the Council on the 11th November 2003).. Officers felt sufficiently confident in the robustness of the amended SPG to come back to the Council's Executive in December 2003 with a recommendation that the SPG be adopted notwithstanding the fact that the amended SPG now recommended the release of KB/1 in order to respond to an estimated housing deficit within the CLPA over the remaining local plan period to 2006 (i.e., 3 years).

NB It should also be noted that another problem with the supply estimates was also revealed by the consultation responses and amended. This was the approach taken to estimating future housing 'windfalls' based on past rates of release that included both brownfield and greenfield sites. Such an approach was not fully in accordance with government advice set out in PPG3 which required future land supply estimates to only take account of past brownfield windfalls. This change was also suggested by

planning consultants representing the owners of the remaining local plan housing allocations.

At this point in time, Leicestershire County Council was not consulted by officers on the amended SPG or the officer decision to put the recommendation to release KB/1 before the Council's December 2003 Executive.

It was considered that, as strategic planning authority, LCC were aware of the fact that the site was an allocation in the HDLP (which established the acceptability in principle of the release of the allocations) and that the Alterations to the HDLP (upon which LCC had been consulted and were supportive) anticipated the process whereby the allocated sites would be released. The process was the application of government policy called "Plan, monitor, manage". The "Plan" was the HDLP. The mechanism for "monitor" was the SPG. "Manage" was the decision to release allocated land if the monitoring revealed a housing shortfall. It was considered inconceivable, at that time, that there could be a strategic policy objection to a recommendation to release an allocated site where a robust approach to monitoring had revealed a housing shortfall and HDC officers were content that their approach was robust in the light of their discussions with both GOEM and Counsel.

Notwithstanding the above explanation of the approach officers took during the autumn 2003, the suggestion that officers should also have consulted LCC officers at that stage is an important issue to consider. It would have revealed the LCC officer's objection to the release of the Kibworth site and the reasons for that view. It would have done so much earlier than when the LCC view was first revealed to HDC officers in January 2004.

If LCC views had been known at this earlier stage, the opinion initially sought from Mr Dove could have been different – it could have sought to establish the best way forward for HDC to take in the light of the LCC response (as well as seeking Mr Dove's opinion on the approach being taken to estimating housing land supply). In the event, Mr Dove's opinion on the LCC response was sought later in the process towards establishing the formal HDC position.

In the light of the above, and the need to draw out lessons learnt, it might be considered that; where officers feel that consultation responses to proposed drafts of new Council policy require fundamental changes to be made to those draft policy documents, these should be brought to the attention of Members. There should then follow consideration by Members as to whether one further round of consultation should be undertaken, giving all original consultees the chance to respond

again, but in the light of these changes. Presumably, some parameters to this would be required however, to provide clarity on what would constitute a "fundamental" change.

d) Who attended the initial meeting with Ian Dove of No. 5 Chambers and why are there no contemporaneous notes of this meeting?

Brett Culpin Planning Policy Manager and Sarah Hunt, Principal Planning Policy Officer in the Local Plans team attended the initial meeting with Mr Dove on the 22nd October 2003.

There were no contemporaneous notes made of the meeting. Mr Dove's views however on the key issues discussed at the meeting were subsequently confirmed in an Advice Statement submitted to the Council on the 11th November 2003.

Both officers attending the October meeting with Mr Dove were content with the outcome of their discussions and the advice received. At that stage, the level of scrutiny and challenge that their work would be put to was simply not anticipated. Officers felt they were simply recommending to Council the application of the "Plan, monitor, manage" approach in a way which the HDLP and its Alterations compelled them to do.

e) Why was Mr Dove only asked if it was appropriate to release? The question was not 'balanced'.

HDC officers initially sought confirmation from Mr Dove (ref. advice dated 11th November 2003 and 28th December 2003) that the changes to the SPG's approach to estimating housing land supply they were recommending were the 'right' changes. The focus was on being sure that the approach was robust and therefore a secure 'bedrock' for the application of the "Plan, monitor, manage" required under the HDLP and its Alterations. At that time the LCC had not determined its views on the matter.

Subsequent advice sought from Mr Dove in June 2004 sought advice in relation to the LCC view, once it was fully articulated and understood by HDC officers.

In retrospect, was Mr Dove's 'remit' therefore too narrow – being confined to dealing largely with the legitimacy of the officers proposed approach rather than seeking to establish the best way forward for HDC to take in the light of conflicting views?

In the light of the above, and the need to draw out lessons learnt, where officers, or Members, feel that Counsel advice is required, should more careful consideration be given in setting out the instructions to be issued to ensure that the advice is broad enough to meet the Councils requirements?

A further question however might be to consider how a different approach to the procurement of Mr Dove's advice might have actually delivered a different outcome in relation to the decision as to whether or not there was a compelling need to release allocated land for housing.

f) Why did the Officers and Portfolio holder propose that there should be NO public consultation of the SPG proposal to release KB/1 and not GG/2?

At the end of the summer public consultation exercise on the 2003 SPG HDC officers considered all the responses and what amendments to the draft should be made. As explained above, this involved discussions with GOEM and Mr Dove. A final draft SPG was then presented to the Council Executive in December 2003 for approval.

Officers did not consider that there was any credible basis for recommending that GG/2 be released instead of KB/1. The Alterations to the HDLP set out the ranking order of the three remaining allocated sites and, within the CLPA (where the housing shortfall was estimated) the Alterations clearly gave KB/1 the higher ranking of the two sites. The Alterations were a statement of the Council's intention to release KB/1 before GG/2 once a housing shortfall had been estimated. It was not considered appropriate to suggest, by undertaking a public consultation exercise, that there was a choice in the matter.

It is important to note here that, in drawing up the Council's proposed Alterations to the HDLP, the Council had carried out public consultation on the proposed ranking of the three sites and the process the Council would go through to determine at what point the sites would be released (i.e., through the monitoring of housing land supply through an SPG). The soundness of the Council's approach was tested at Public Inquiry (April 2003). The Council's approach was generally endorsed by the Inspector conducting the Inquiry but required some modifications to be made by the Council following a further period of public consultation in the August/September 2003. The Alterations were finally adopted by the Council in February 2004.

The Council's standard approach to SPG's was to undertake public consultation over a 6 week period, consider responses, make appropriate adjustments to the draft SPG and then bring a final SPG for approval by the Council. There was no precedent for subsequent rounds of public consultation on amendments being proposed.

Furthermore, officers were concerned that, in relation to the Housing SPG, having estimated a shortfall that was considered to trigger the need to release an allocated site identified for release in the HDLP, further rounds of public consultation would be perceived by the developers to be prevarication. There was a view held by officers that establishing the Council's resolve to proceed with the release of KB/1 would enable the Council to enter into discussions with the developer to negotiate the overall design, layout, developer contributions etc involving such mechanisms as a site Master Plan drawn up in accordance with Policy HS/3 of the HDLP in such a way as to involve full public consultation. In fact this was set out in the December 3rd 2003 report to the Council Executive (paras. 8.7 and 8.8 refer).

It was considered that delay by the Council in reaching its decision would encourage the developer to pursue planning permission for development through the appeal process potentially making negotiations on these issues more difficult for all concerned.

g) Why was the subsequent consultation proposed to be for a period of four weeks as opposed to the standard six weeks?

It could be said that there was no "standard" consultation period for a second round of public consultation on a Council SPG –this was the first time a second round of consultation was being undertaken on an SPG in the officer's experience.

Officers were keen to conclude the second round of public consultation within 4 weeks in order that a final draft SPG could go back to the Council's Executive and then full Council within the next 'round' of Council meetings.

There was concern that any further delay would have two potential consequences; firstly, the developer reaction referred to above; secondly that we could be in a position of bringing a further revised SPG to the Council at a point in time where fresh housing land supply information might be construed as sufficiently 'imminent' that this would have to be assimilated into the SPG (housing land supply information is routinely 'collected' once a year by HDC Officers during April to give a 'snapshot' of

dwelling completions as at 31st March). Officers were aware that it would require a substantial period of time to undertake a fresh housing supply analysis (the work is not usually completed until June) and this would significantly delay the Council in reaching its decision on the SPG (i.e., 6 week consultation on a July draft SPG incorporating the housing supply figures would take until October to conclude).

In the event of course this is precisely what happened and a further "2004" SPG had to be prepared in the summer 2004 for a further 6 week round of public consultation. In the meantime the developers submitted their 'first' planning application for KB/1 in February 2004.

It should be noted that the Council officers also considered advice from Mr. Dove on the possible implications of further delay in the adoption of the SPG (Mr Dove's advice of the 28th December refers and is attached at **Appendix 1**).

- h) **Having searched Full Council Minutes and asked several Councillors with several years experience, I can find no record of ANY other occasion where Counsel's advice of this nature has been released into the public domain. What was the justification this occasion?**

The Council procured four statements of advice from Mr Dove, (dated 11th November 2003, 28th December 2003, June 2004 and November 2004).

The 11th November statement was referred to at para. 7.3 of the 3rd December report to the Council's Executive but not submitted as part of the report or referred to as a "background paper".

The 28th December Statement, responding to the issues raised by Members at the 3rd December Executive, was submitted to the 14th January 2004 Executive. Along with the Council's letter of Instruction, it was attached to the main report as Appendix A. Appendix B contained the 11th November statement along with correspondence from GOEM relating to consultations that took place before the December 3rd Executive meeting. My understanding is that, on the advice of Mr Dove, both Appendices were submitted as "exempt items" under paragraph 12 of Part 1 of Schedule 12A to the Local Government Act 1972. This is set out in the 14th January Executive report at para. 3.3.

The June 4th Statement was attached as Appendix 3 to the report to full Council submitted on the 14th July 2004 and was not an "exempt item".

Advice dated 14th November 2004 from Mr. Dove in response to Council instructions was not referred to in the Report to full Council on the 24th November. I am not sure whether this was declared 'exempt' or not.

i) **Who was party to that decision?**

I believe that decisions of this nature were taken by SMT on the basis of advice from the Council's solicitor at the time.

Stage 2: Processing the Planning Applications through to Inquiry

- a) **Why was the paperwork needed for the Public Inquiry not submitted in a timely fashion? Examples**
- a) **The Rule 6. Statement wasn't submitted at all.**
 - b) **The unilateral undertaking was not considered/negotiated by our Officer - leading to a real loss in what potentially could be achieved.**

The Rule 6. Statement A Rule 6 Statement for the KB/1 – GG/2 Inquiry was not prepared.

Officers did make mistakes during the process of dealing with the planning applications subject of the appeal and during the process of preparing for the Inquiry. The following information explains some of the issues that officers were trying to resolve.

A pre-inquiry meeting took place on the 21st February 2005. I understand that, at this meeting, the Inquiry Inspector directed that a Statement of Case was required and set the deadline. It was not possible for the Council officers to prepare such a Statement however until the Council had decided how it would have determined the Kibworth and Great Glen applications (i.e., had it retained jurisdiction). That did not happen until the 'indicative' reasons for refusal of the applications were determined at the 24th March 2004, Planning Committee.

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That decision was made on the evening of Maundy Thursday. I understand that, after the Easter break, instructions were confirmed with Mr. Rowberry (planning consultant) to act on the Council's behalf following confirmation by Atkins that, following rejection of its professional advice by planning committee members, they felt unable to further represent the interests of HDC.

By this time it was only a matter of days before the Exchange of Proofs were required and the deadline, I believe, for the Statement of Case was well past. HDC took the view that service of the Statement of Case at this late juncture would be a hollow exercise. It was also the

case that the appellants had attended (and spoken) at the 24th March planning committee meeting and at that point were therefore as well aware of the Council's formal position as the HDC officers.

It might be helpful to be aware that the failure of the Council to produce a Rule 6 Statement was a matter referred to in the appellant's application for costs after the Inquiry. The appellants made it clear that, although the failure did not assist in establishing the cogency of the Council's case against the proposed development, and it was in the appellants view unreasonable of the Council to not produce it, "it would be difficult to identify the additional expenditure arising from that unreasonableness" (ref page 1 of Costs Report of the First Secretary of State attached at **Appendix 2**). The appellants therefore did not apply for costs to be awarded and the costs in this regard were not awarded by the First Secretary of State (ref the conclusions set out in his report (page 7)).

The unilateral undertaking. In January 2005 HDC Officers negotiated fee quotations and selected Atkins to assist in the remaining work of processing the KB/1 and GG/2 planning applications, preparing reports for planning committee to secure an 'indicative' position and representing the Council at the Inquiry. The letter setting out what they were required to quote for is attached at **Appendix 5**. The work included "negotiation of an agreed draft Planning Obligation with the developers for both sites".

Further explanation of the work on the draft Planning Obligations that Atkins would be undertaking was set out in Briefing Notes issued to all Council Members in January 2005 (see **Appendix 3**). This stated that "The consultants will also be negotiating the Heads of Terms of the necessary Planning Agreements and to this end further meetings will be held with the respective Parish Council and Ward Members to discuss this prior to the consultants discussing this with the appellants at the end of February 2005."

Heads of Terms of the intended section 106 Agreement were then submitted to the Council's 23rd March Planning Committee as part of the reports on the two KB/1 applications prepared by Atkins Consultants. The recommendation in the reports was that the Council should resolve that it would have been minded to grant outline planning permission with the conditions as set out in the report and on the basis of the proposed unilateral undertaking.

My understanding is that HDC officers supervising the work in bringing the planning applications to Committee felt that this was all that could realistically be achieved in view of the overall position the Council was taking on the proposals.