

## **RE: CHARNWOOD LOCAL PLAN REVIEW**

### **SECOND NOTE ADVISING**

- 1 I would refer to the Note Advising dated 6<sup>th</sup> February 2023 which was provided to those instructing me immediately prior to the resumption of the examination hearings into the Charnwood Local Plan on 7<sup>th</sup> February 2023, following a consultation with those instructing me on the same day. I have also been provided with a copy of an opinion from Mr Richard Humphries KC upon which I have been asked to provide comment.
- 2 The essence of the note was to provide the legal basis for the simple proposition that the Sustainability Appraisal Addendum was a sufficiently key document to the progress of the examination that it would offend the principles of fairness were the Inspectors not to afford an opportunity for objectors directly affected by its content to make a considered response to its assessment of sites.
- 3 Ordinarily crucial information of this type would be produced at an early stage in the process which would enable representation to be made upon its content at appropriate times and to thereafter inform debate upon any conclusions which rely upon it. Patently the optimum timing would have been for this information to have been contained in the original Sustainability Appraisal, and to therefore inform responses to the Regulation 19 version of the plan, and thereafter parties hearing statements etc.
- 4 Unfortunately, the SAA was only produced shortly before latest stage of the examination hearings. My original Note Advising indicated that the SAA was only uploaded onto the examination website on 2<sup>nd</sup> February 2023. Mr Humphries indicates at paragraph 3 of his Opinion that the document was sent to the Inspectors on 16<sup>th</sup> January and at paragraph 6 that the SAA had been in the public domain for 3 weeks prior to the resumed hearings. Mr Humphries does not note the other salient

date which is that the deadline for hearing statements was the same day – and so none of the hearing statements would have been informed by this raft of new evidence.

- 5 The reference in my previous note at paragraph 1.4 was taken from the News Section of the Examination website which on 2<sup>nd</sup> February expressly indicated that three important evidence documents, including the SAA had been uploaded onto the website. It is not clear whether Mr Humphries is taking issue with that proposition or not, or whether he is drawing a finer distinction between documents being sent to the Inspectors being ‘in the public domain’ whether or not there is a delay in posting those documents onto the website.
- 6 However, even assuming that there is no such distinction and that the documents were in fact uploaded on 16<sup>th</sup> January and that there was a time lag before the “Examination News” was updated – that in no way dilutes the force of my advice. That is to say – that the combination of the importance of this evidence together with the timing of its production means that it would be in breach of the principles of natural justice for the examination to proceed without affording a proper opportunity for those affected to be able to make a considered response to it. Not to do so would in my view leave the plan vulnerable to a challenge under s.113 of the 2004 Act if it were to be thereafter adopted.
- 7 I am strengthened in that view by the fact that I am instructed that the preliminary consideration of its content by those instructing me has revealed that it contains significant errors and unsupportable assertions within it.
8. I do not understand that Mr Humphries, nor the Council (whose views he reports) take issue with the proposition that there needs to be the opportunity for a considered response to be made to the SAA, as well as the other evidence documents produced shortly before the examination. Indeed, in his conclusions at paragraph 9 Mr Humphries appears to conclude (rightly in my view) that the opportunity to make considered written comment upon them is a necessary precursor for a fair and legal process. With respect I concur.

9. Mr Humphries Opinion is silent upon the appropriate course of action that should now be taken, and I have been asked to comment upon this issue specifically. In my view it is important to note that whilst those instructing me are now alive to the content of these documents – and the need to provide a considered and meaningful response to them (following my advice in consultation), that may not be apparent to others, particularly those who are not professionally represented. Accordingly, my view as to the next steps is based upon a ‘fair for all’ approach and not merely addressing prejudice to those promoting the allocation of land at SW Loughborough.
  
10. In my view a minimum period 28 days, and preferably 42 days should be publicised within which written comments upon the new evidence (particularly the SAA) should be invited; that could be properly publicised on the examination website. Thereafter it will be a matter for the Inspectors to assess whether or not further examination hearing sessions are needed to discuss the content of those written comments. However, at the very least, at the end of that period, the opportunity should be afforded to provide supplements to the hearing statements that have already been produced and which could not have had regard to part of the evidence base upon which the Council now rely.
  
11. Were such an opportunity not afforded then it is my view that the Inspectors will have fallen into legal error.
  
12. I advise  
Should anything else arise please do not hesitate to contact me further.

Kings Chambers  
Manchester, Birmingham, Leeds

*Paul G Tucker KC*  
*14<sup>th</sup> February 2023*



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CHAMBERS