

## **OPINION**

### **Introduction**

1. I am asked to provide a brief Opinion relating to the consideration by the Planning Committee of South Cambridgeshire District Council of planning application S/2647/15/OL, submitted by Bloor Homes Eastern. The essential question relates to the legal relevance, or otherwise, of potential aspirations for development at the Papworth Hospital site.

### **Background**

2. In 2015 Bloor Homes Eastern submitted an outline application for up to 215 dwellings, including affordable housing, land reserved for nursery use, open space including strategic landscaping, play areas, sustainable drainage features and associated infrastructure on land to the east of Old Pinewood Way and Ridgeway, Papworth Everard. The Council do not claim that they have five years supply of deliverable housing sites. If permitted, the application site will deliver dwellings which will make a material contribution to housing supply within five years. Following comprehensive assessments, the advice of planning officers is that the proposals will constitute desirable, sustainable development.
3. The application was considered by the Planning Committee on 2 November 2016. Following debate, which included the potential implications of the relocation of Papworth Hospital to an alternative site, it was resolved to approve the application.
4. In May 2017 the Supreme Court gave judgment in the Hopkins Homes case, dealing with the scope of the concept of policies for the supply of housing for the purposes of

paragraph 49 of the NPPF. The judgment affected the approach previously taken (quite properly) by the planning officers in relation to certain of the development plan policies. For this reason, a further report presenting the up-to-date legal position was presented to the Planning Committee on 2<sup>nd</sup> August 2017. Owing to an oral reference to an email relating to Papworth Hospital, the application was deferred.

### **Papworth Hospital**

5. As noted, the site is to be vacated. Debate as to the future use of the site has taken place, especially in the context of the emerging local plan. The preferred use is proposed to be healthcare, with a cascade to B1. Residential development is not to be acceptable, other than “exceptionally for the conversion of any existing buildings of character where it is the most appropriate use of the buildings and would make the most appropriate contribution to enhancing the historic setting of Papworth Hall”. In other words, there is a theoretical possibility in the future that small scale residential use may be acceptable by way of conversion of certain buildings. Accordingly, the site does not offer a substitute, or alternative, to the proposed form of modern estate development at the application site, with its comprehensive supporting benefits and facilities noted above.
6. The email referred to at the Committee has now come to light. It is an email dated 9 July 2017 from a planning officer to a Councillor. It contains the vaguest possible discussion as to how interested parties might react if the NHS were to challenge the preferred policy position in relation to residential development at the site.
7. To be clear – there is no proposal for residential development at the Papworth Hospital site (let alone a planning application), policy might “exceptionally” support some

residential conversion, no-one could possibly suggest at the moment that the site could offer an alternative to the application site, and if residential development were ever to take place, it would be highly unlikely to make any or any meaningful contribution to the five year supply.

### **Questions**

8. The two questions that I am asked are therefore (1) could the circumstances at Papworth Hospital constitute a material consideration for the purposes of the present application on 6 September 2017 and (2) if so, what weight could the Council reasonably give to that matter?

### **Question (1)**

9. This question has very recently been considered by the High Court in the case of Dignity Funerals Limited v. Breckland District Council [2017] EWHC 1492 (Admin). This case applied established earlier authority of the Court of Appeal and the High Court in R (Luton Borough Council) v. Central Bedfordshire Council (2015) 2 P & CR 19 and Derbyshire Dales District Council v. Secretary of State for Communities and Local Government (2010) 1 P & CR 19. Put shortly, the scope for an alternative site being a material consideration for the purposes of another planning application is extremely limited. The circumstances here, as summarised in paragraph 7 above, come nowhere near to meeting the relevant test. The test could only begin to be met where an alternative site is (1) actually proposed as an alternative solution to meeting the relevant need and (2) could sensibly provide an alternative solution to the development proposed in the current application. Neither consideration applies here.

**Question (2)**

10. I am confident that I have correctly answered question (1). If that were not the case, it could only be legally reasonable to give the least possible weight to the Papworth Hospital circumstances.

**Conclusion**

11. The lawful course for the Planning Committee to take is, therefore, to determine the present application on its own merits, without regard to any speculation as to the future of Papworth Hospital.

**C. LOCKHART-MUMMERY QC**

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180 Fleet Street  
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18<sup>th</sup> August 2017

**IN THE MATTER OF:**

**BLOOR HOMES EASTERN**

**PAPWORTH EVERARD**

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**OPINION**

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**Howes Percival LLP**  
**Jay Mehta**

**Our Ref: CLM-**