

Meeting of Woodford Neighbourhood Forum

held in the Large Hall Woodford Community Centre

at 7:30 pm on Monday 16th September 2013

Present:

Mr Stephen Taylor (SJT), Mr Roger Burton (RBU), Mr Paul Rodman (PR), Mr Colin Griffin (CG), Mr P Goodman (PG); Mrs Maxine Wood (MW), Ms Dorothy Chesterman (DC), Ms Jane Sandover (JS), Mr Alan Bramwell (AB), Mr Robin Brammar (RB), Mr Ron Beatham (RBe); Ms Evelyn Frearson (EF).

Welcome:

SJT chaired the meeting and welcomed those present.

Apologies were received from:

Mr Robin Berriman (RBB), Dr David Buszard (DB), and Mrs Helen Buszard (HB).

Minutes from the inaugural meeting on 10th June 2013:

Approved.

Matters Arising:

Special Area Committee meeting

PR attended the meeting and gave a summary of the proceedings. See Appendix 1.

SMBC officers reported that their counsel advised that it was easier to justify exclusion than inclusion of the Woodford Aerodrome site in the Neighbourhood Area. Our local councillors and local MP, Mark Hunter, have all supported the case for inclusion.

Legal advice from counsel on Neighbourhood area

SJT and CG explained that John Barrett (JB) has provided opinion on justification for inclusion of the Woodford Aerodrome site in the Neighbourhood Area. See Appendix 2.

There was debate on the best ways to present the legal opinion from JB.

Agreed actions:

1. SJT and CG to select key points from JB's document.
2. SJT to brief local councillors on the key points.
3. SJT to try and set up a private meeting to brief Iain Roberts on the key points.

Neighbourhood Forum and Grant progress update and actions.

SJT informed the group that the WNF can't open a bank account to hold the grant funds unless it forms a Ltd company. Otherwise, they have to be placed with an incorporated charity or SMBC. If a ltd company is formed then there will be the additional hassle of producing accounts. Once the WNF is approved then there is one month to find a home for the funds and they have to be spent within 12 months or they are returned to source.

Agreed actions:

All to give thought to the best solution and search for any incorporated charities in Woodford that would hold the funds for us.

LAP Report:

SJT reported that Poynton and Adlington are happy to pursue a cooperative approach and discuss

thoughts on generating a single plan for the Woodford Aerodrome site. The pros and cons of a joint approach were discussed.

It was reported that the Poynton bypass project has now achieved two thirds of the necessary funding.

Agreed Actions:

SJT to invite the Poynton group to have a non-voting rep on our forum.

Setting up Working groups:

This item was carried over to a future meeting.

AOB

1. RBU raised communication issues

Another questionnaire and methods of circulation were discussed, including Word Press (RBU to explore).

Next Meetings

Provisionally Mon 21st Oct [Note this may change following recent events]

Evelyn Frearson 18th October 2013

Appendix1: Notes from PR on Area committee meeting

Bramhall and CH Area Com 13th Sept 2013

Notes by CP Rodman

Arrived at meeting at 17.40 due to traffic jam on A6.

Attending, Local councillors except Paul Bellis

Lib Dems L Grice and (S Bosworth who abstained for the vote to keep his powder dry for later meetings on this subject)

Officers present, only Paul Laurence and the democratic services chap taking notes, PL noted that having Emmer Curle (Planning) next to him would have been helpful.

Also was Jennie Daly + 1 (of Harrow Estates)

PL went through his detailed report Agenda item 2 (Page 5 – 20) at a pace,

He laboured the fact to the councillors that these important decisions may be subject to JR which ever decision was made and that they had to have valid reasons for their actions.

It is worth reviewing this document as it sets out PL's case and has some points that don't help our application.

Areas of note

4.3 Mentions that the "*Starting point for determining the NA Application should be a presumption in favour of the geographic area as applied for*"...

This point was skated over by PL but was brought up by B Leck.

Daws hill was given much air time, including his assertion and that of the legal advice SMBC have received concluded that the cases are similar in many ways and that the option of less risk to SMBC is to reject the airfield from the Woodford NF area.

Points 4.5 and 4.7 make this clear. Points 4.11 and 4.12 also back these conclusions.

He also made the point that Daws hill was case law that applies at present (he did not make the point at this stage that a review had been permitted to this ruling)

Answers to Councillors Questions

PL tried to get various points over

SMBC has the full complement of saved policies etc to control development in Stockport and on the "airfield opportunity site" together with national guidance etc, plus the approved SPD, there was no need to add another layer of the Woodford NF Plan.

The NF Plan only has effect at policy level what development is permitted within Woodford. It cannot control planning matters on site and due to time scales. It can take between 12 – 18 months to finalise a NP. This document would have no effect on the detailed imminent application or on the outline / reserved matters. (*I don't know how correct this view is.*)

Basically he was pushing the point that this is a lot of work for no gain.

Other items of note

When the planning application is received it will be subject to **16 weeks** of consideration by SMBC planners who are confident that it will be determined at the end of this period.

I was asked if I wished to comment to PL`s statement.

I made the point that the Daws hill ruling was seen as unsound by the planning profession and a review was due early next year. What would SMBCs` position be if the ruling was overturned?
PL Ans. Assume that SMBC has to apply case law that is in place at time of discussion.

Considered new question

If the NP only affects policy and not detail planning issues even in the later stages of the airfield development as you suggest, what is the problem then, with including the whole airfield in the Woodford NA as this move will have no effect on the development going forward.

PL Ans mumbled something....

Councillors saw my point and agreed with it (if it`s not going to cause an issue why exclude it.)

Brian Bagnall made very sound arguments for including the area and the fact that WCC had been in existence since 1974 acting for the best interests of Woodford residents etc.

Our current campaign was applauded as the most organised ever seen in Stockport.

WCC were not anti development, but for a development that complemented and enhanced the village of Woodford.

Bryan Leck made supporting comments and pointed out PL`s omission of 4.3

Lenny Grice after some clarification of some points was in favour of supporting our position

Vote was taken

All in favour of the formation of the Woodford NF and excluding SEMMM`s corridor but including the airfield in our NFA.

S Bosworth LD Abstained.

Final Note

We won this small battle but the next ones will be tougher

We do need JB`s opinion in my view to counter Daws hill which is a major plank in PL`s argument I think we need to meet Brian Bagnall soon to discuss the next stage (tactics). (Pre Thursday 19th if possible).

Consider concise written submissions to exec meeting (JB input?).

WOODFORD NEIGHBOURHOOD AREA
TOWN AND COUNTRY PLANNING ACT 1990
LOCALISM ACT 2011

A D V I C E

I am asked to advise the Woodford Neighbourhood Forum with regard to the designation by Stockport Metropolitan Borough Council of their proposal for the creation of a Neighbourhood Area under the provisions contained in the Town and Country Planning Act 1990 as amended by the Localism Act 2011.

For the reasons I shall develop in this Advice, I consider that the determination of the area applied for (including the land comprised of the Woodford Aerodrome Opportunity Site) would be lawful.

Statutory Framework

In November 2011 the Coalition Government published the Plain English Guide to the Localism Act. In his Foreword, Greg Clark, the Minister of State for Decentralisation, stated:

“The Localism Act sets out a series of measures with the potential to achieve a substantial and lasting shift in power away from central government and towards local people. They include: new freedoms and flexibilities for local government; new rights and powers for communities and individuals; reform to make the planning system more democratic and more effective, and reform to ensure that decisions about housing are taken locally.

This document summarises each of the main ideas contained in the Act and explains the overall differences that they will make.”

Then dealing with the specific powers that are the subject matter of this Advice, the section dealing with “Neighbourhood Planning” continues:

“Instead of local people being told what to do, the Government thinks that local communities should have genuine opportunities to influence the future of the places where they live. The Act introduces a new right for communities to draw up a neighbourhood plan.

...

Provided a neighbourhood development plan or order is in line with national planning policy, the strategic vision for the wider area set by the Local Authority, and with other legal requirements, local people will be able to vote on it in a referendum. If the plan is approved by a majority of those who vote, then the Local Authority will bring it into force.”

Thus it can be seen that the concept of neighbourhood planning was a central aspect of government policy that sought to enable local decision-making.

Schedule 9 to the Localism Act 2011 inserted a number of provisions in to the Town and Country Planning Act 1990. Section 61G of the amended 1990 Act states:

- “(1) A ‘neighbourhood area’ means an area within the area of a local planning authority in England which has been designated by the authority as a neighbourhood area; but that power to designate is exercisable only where -**
- (a) a relevant body has applied to the authority for an area specified in the application to be designated by the authority as a neighbourhood area, and**
 - (b) the authority are determining the application (but see subsection (5)).**
- (2) A ‘relevant body’ means –**
- (a) a parish council; or**
 - (b) an organisation or body which is, or is capable of being, designated as a neighbourhood forum (on the assumption that, for this purpose, the specified area is designated as a neighbourhood area).**
- (3) A ‘specified area’ –**
- (a) in the case of an application by a parish council, must be one that consists of or includes the whole or any part of the area of the Council, and**
 - (b) in the case of an application by a organisation or body, must not be one that consists of or includes the whole or any part of the area of a parish council.**
- (4) In determining an application the authority must have regard to –**

- (a) the desirability of designating the whole of the area of the parish council as a neighbourhood area, and
 - (b) the desirability of maintaining the existing boundaries of areas already designated as neighbourhood areas.
- (5) If –
- (a) a valid application has been made to the authority,
 - (b) some or all of the specified area has not been designated as a neighbourhood area, and
 - (c) the authority refuse the application because they consider the specified area is not an appropriate area to be designated as a neighbourhood area,
- the authority must exercise their power of designation so as to secure that some or all of the specified area forms part of one or more areas designated (or to be designated) as neighbourhood areas.”
- “(9) If the authority refuse an application, they must give reasons to the applicant for refusing the application.”

Section 61F(5) of the 1990 Act states:

- “A local planning authority may designate an organisation or body as a neighbourhood forum if the authority are satisfied that it meets the following conditions -
- (a) It is established for the express purpose of promoting or improving the social, economic and environmental well-being of an area that consists of or includes the neighbourhood area concerned (whether or not it is also established for the express purpose of promoting the carrying on of trades, professions or other businesses in such an area),
 - (b) Its membership is open to –
 - (i) individuals who live in the neighbourhood area concerned,
 - (ii) Individuals who work there (whether for businesses carried on there or otherwise), and
 - (ii) individuals who are elected members of a county council, district council or London Borough Council any of those area falls within the neighbourhood area concerned,
 - (c) Its membership includes a minimum of 21 individuals, each of whom –
 - (i) lives in the neighbourhood area concerned,
 - (ii) works there (whether for a business carried on there or otherwise), or
 - (iii) is an elected member of the county council, district council or London borough council, any of which of whose area falls within the neighbourhood area concerned,
 - (d) It has a written constitution, and
 - (e) Such other conditions as may be prescribed.”

I do not detect from the correspondence that there is any serious challenge to the designation of the Woodford Neighbourhood Forum being other than compliant with these statutory provisions.

The more controversial aspect relates to the inclusion in the proposed Neighbourhood Area of the former BAe site at Woodford Aerodrome. Consultation by Stockport MBC with DCLG (see Paragraph 4.2 of the Committee Report for 19th September 2013) has been provided in advance of soon to be published guidance. The consultation response establishes three key principles consistent with the legislation and the Government policy behind it:

that LPAs have a broad discretion as to how they determine such applications;

that the council should aim to designate the area as proposed by the local community; and

that no party should prejudge the content of the Neighbourhood Plan that might be subsequently prepared by the local community. [emphasis added]

It should come as no surprise in view of the Government intention behind the introduction to this legislation that the discretion of the LPA should, as a starting point, be that the area proposed in the application should be presumed to be appropriate unless there are compelling reasons that justify the exclusion of all or part of the area applied for. Perhaps equally importantly the concern, often expressed by developers, that a Neighbourhood Forum would be anti-development should carry very little weight.

This is made clear both in the statutory provisions and NPPF that states at Paragraph 184:

“Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the rights types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must in general conform to the strategic policies of the local plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.”

From consideration of the above statutory provisions and policy it is abundantly clear that there is nothing in the application that is before Stockport MBC that requires the LPA to reject any part of the area the subject matter of that application.

The decision upon which the LPA a broad discretion must be exercised having regard to all relevant considerations against the factual circumstances at the time of the decision. However, it is important to emphasise that part of the important considerations to which the LPA must have regard is to the fact that the national policy that led to the enactment of these statutory provisions has, as its starting point, the empowerment of local communities in planning decisions that affect them. Safeguards from unwarranted overzealous control of development are provided in the Act and are also important considerations by the LPA. The Neighbourhood Plan that will be applied to the Neighbourhood Area is incapable of reducing the quantum of development set forward in the statutory development plan prepared at strategic level. Nor can its provisions and policies be inconsistent with NPPF. These are important safeguards, and vitally important material considerations, in determining the application that is before Stockport MBC.

Daws Hill¹ Decision

Stockport MBC anticipate that the developers of the Woodford Aerodrome site would subject any decision to include that site within the Neighbourhood Plan to judicial review. In doing so, the case of *Daws Hill* has been put forward as a precedent that requires the LPA to exclude a strategic development site.

The *Daws Hill* decision is not authority for the proposition that strategic sites should be excluded from neighbourhood development plans. It is a site and factual specific decision in which Supperstone J carefully considered the factual matrix against which Wycombe BC made its decision and found that there was no legal error in their approach on the particular facts of the case.

That case was a challenge by Daws Hill Neighbourhood Forum to the decision of Wycombe District Council to designate Daws Hill Residents Association as a

¹ *R (Daws Hill Neighbourhood Forum) v. Wickham District Council and Others* [2013] EWHC 513 (Admin).

Neighbourhood Forum in a Neighbourhood Area that was smaller than the Residents Association had applied for. In essence, two areas were excluded from the application: the former RAF Daws Hill site and the Handy Cross Sports Centre site.

The decision of the Council in that case followed the Officers' recommendation to exclude both sites from the Neighbourhood Area. The reasons set out in the report were then communicated to the Residents Association and formed the justification for the exclusion. In essence, the reasons given were:

The two relevant sites were key strategic sites with implications with a wider sphere of influence;

Any referendum on the Neighbourhood Plan would need to take place over a wide area;

Planning matters were advancing on the two strategic sites that introduced an element of "timeliness" to the considerations. At the time an outline planning application had been made in respect of the Sports Centre and it was anticipated that a planning application would be received for the former RAF Daws Hill site;

Issues were raised about the expectations on the effectiveness of the Neighbourhood Plan by the local community.

As stated above, Supperstone J arrived at his conclusion on a precise analysis of the factual circumstances and the broad discretion that he considered was given to the Council in the exercise of its judgment. He stated:

"In my judgment Section 61G(5) does give the planning authority a broad discretion when considering whether the specified area is an appropriate area to be designated as a 'Neighbourhood' Area. In exercising that discretion the authority should, in my view, have regard to the particular circumstances existing at the time the decision is made."

It should be noted that Counsel on behalf of Wycombe BC made the point in the course of her submissions (Paragraph 53) that it was not her case that strategic sites could not be the subject of a Neighbourhood Area. She made the case on the specific facts.

The overall conclusion of Supperstone J was:

“Section 61G(5) of the 1990 Act (inserted by the 2011 Act) required the local planning authority in determining an application for a neighbourhood area to consider whether the area proposed is appropriate. The discretion given to the authority is a broad one. The exercise of a discretion turns upon the specific factual and policy matrix that exists in the individual case at the time when the determination is made. In my judgment the Council properly had regard to the specific circumstances that existed at the time when the decision was made to designate a Neighbourhood Area which excluded the RAF Daws Hill site, and the Handy Cross Sports Centre site. None of the grounds of challenge to the decision taken by the Council in this case have been made out.”

It is abundantly clear, therefore, that the Daws Hill case does not set a precedent whereby sites of strategic significance must be excluded from a Neighbourhood Plan. It cannot be used to brow beat the Council into rejecting the proposal put forward by the Forum.

Discussion

The case for the selection of the area is required to be put forward in the application in accordance with the Neighbourhood Planning (General) Regulations 2012. That has been undertaken and the application formulated on that basis. Crucial to the consideration must be the underlying policy objectives that gave rise to the amendment to the Town and Country Planning Act 1990 by the Localism Act 2011. These have been set out above. It is equally important to bear in mind that, notwithstanding the often hysterical response of developers to such applications, any Neighbourhood Plan is required to be in compliance with the strategic policies of the Local Plan made by the LPA and national policy including that contained within NPPF. The safeguards in the Act and policy are important material considerations.

There is in the body of the draft Report to Committee a comparison between the *Daws Hill* case and the Woodford Aerodrome circumstances. All cases will have to be considered on their merits, but it is important to draw a distinction arising from the specific consultation with DCLG that is referred to in the body of the report. There was, as far as one can detect from consideration of the *Daws Hill* case, no such consultation response from the Department for Communities and Local

Government unlike the present case. The advice set forward at Paragraph 4.2 of the draft Report states:

“that Councils should aim to designate the area as proposed by the local community”

does not figure in the *Daws Hill* case. The additional significance also drawn attention to the need for compliance with the strategic policies of the Local Plan and NPPF does not appear to have been addressed in *Daws Hill*.

Essentially there is a presumption in favour of the area proposed to be designated by the local community. This is an important consideration. The counterbalance, reflected in many of the considerations at the tables following Paragraph 4.9 and Paragraph 4.17 of the draft Officers' Report also must be tempered by the recognition that the concerns articulated by the developers and Council officers are adequately addressed by the requirement for compliance with the provisions of the Local Plan and NPPF.

The utility of including the Woodford Aerodrome site within the Neighbourhood Plan has also been brought into question. The development on site could be anticipated to take place over very many years. The degree of control that would be exercised by the Neighbourhood Forum in determining applications in accordance with any Neighbourhood Plan would be exactly the same as the approach that is frequently adopted in emerging development plans prepared under the 1990 Act. It does not amount, individually or cumulatively with other issues, to a justification for its exclusion from the area to be covered by the Neighbourhood plan.

On the contrary, given that the development of the site will impact upon the lives of the Woodford residents and businesses the degree of control that a Neighbourhood Plan would afford should be regarded as a very good example of local engagement with the planning process that the Localism Act 2011 was intended to deliver.

Conclusion

In conclusion I advise as follows:

Under the provisions contained in the Town and Country Planning Act 1990 as amended by the Localism Act 2011 Stockport MBC has a broad discretion in relation to the neighbourhood area designation that is to be selected.

Importantly, following the consultation advice from DCLG, it is obliged to have regard, as a material consideration, to their advice that the Council should aim to designate the area as proposed by the local community having regard to the requirements in statute and policy for any Neighbourhood Plan to be compliant with the strategic policies of the Local Plan and NPPF.

The *Daws Hill* decision is not a precedent for a conclusion that a site that has impact beyond the Neighbourhood Area proposed should be excluded, nor should, necessarily, strategic sites also be excluded.

The *Daws Hill* decision was specific to its factual and policy circumstances.

There is no proper factual or policy justification for the exclusion of the Woodford Aerodrome site put forward by the proposed developers.

The threat of judicial review or any other litigation is not a material consideration in determining whether to exclude Woodford Aerodrome within the Neighbourhood Area.

Stockport MBC can lawfully include the Woodford Aerodrome site within the proposed application and such decision would be justified and defensible in the event of any judicial review/ challenge to that decision.

I believe I have dealt with all the matters raised, but if I can assist further do not hesitate to contact me.

JOHN BARRETT

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WOODFORD NEIGHBOURHOOD AREA

TOWN AND COUNTRY PLANNING ACT 1990

LOCALISM ACT 2011

A D V I C E
