



SSE Briefing Note on Planning Application UTT/18/0460/FUL

Weight to be Attached to ELP Policy SP11

1 Advice from Geoff Gardner

- 1.1 The weight to be attached to the Regulation 19 (Pre-submission) Local Plan (the Emerging Local Plan or 'ELP') is described in the officers' report as "limited" and yet the ELP is also recognised as a material consideration. As such, its content – particularly individual policies at an advanced stage – may be expected to carry something more than "limited" weight.
- 1.2 The Adopted Local Plan ('ALP') has often been cited by officers as 'out-of-date', and it probably is. Thus the ELP cannot be dismissed as having little weight without also conceding that Uttlesford is effectively a 'policy free zone' where almost 'anything goes'.
- 1.3 Paragraph 9.27 of the officers' report states as follows:

*"The Regulation 19 Uttlesford Local Plan is a material consideration. It carries limited weight at the present time due to it being at **an early stage in the plan-making process**. Furthermore, a further period of consultation is due to be undertaken between 16 October and 27 November 2018 on an Addendum of Focussed Change covering three issues, **none specifically related to this proposal**."*
- 1.4 Officers describe the ELP as being at an "early stage in the plan-making process" but work started on the new Local Plan four years ago and an 'Issues and Options' consultation took place in 2015. There was extensive consultation on the Regulation 18 Draft in 2017 and another round of consultation took place on the Regulation 19 Draft this year. The Regulation 19 Plan is the penultimate version in the process, not an "early stage".
- 1.5 The ELP will soon be submitted to the Planning Inspectorate for independent examination and it would already have been submitted were it not for a potential difficulty arising from the examinations into the North Essex Authorities' Local Plans around the delivery of the West of Braintree Garden Community. This has led to the need for a further round of consultation on the ELP, although limited to the 'Addendum of Focussed Changes', none of which affect Stansted Airport.
- 1.6 The Council has made clear that it will not accept representations on the latest draft of the Regulation 19 Local Plan that do not directly arise from new facts related to the Addendum, on the grounds that such representations should have been made during the representation period over the summer. All other matters in the Council's Regulation 19 Local Plan have therefore completed the consultation stage, including the policies relating to climate change and sustainable development principles, and to the policy governing the development of Stansted Airport (SP11).
- 1.7 The Adopted Local Plan ('ALP') dates back to January 2005. It has no specific policies which deal with the future growth of Stansted Airport. Policy S4 merely identifies the boundary within which airport development should be located. Policy ENV10 relates to constraints on other development affected by the Airport. Policies AIR1 - AIR6 deal with internal developments, not the overall scale of the airport, and AIR10 is similar to ENV10, constraining other development around the airport. There are no policies in the ALP covering climate change or carbon emissions, both 'modern' considerations. As such, the ALP is of little help in providing a local planning policy context for the current airport planning application whereas the ELP can help fill this void.
- 1.8 The weight to be attached to ELPs increases as they move through each preparatory stage. Paragraph 48 of the National Planning Policy Framework ('NPPF') states as follows:

“Local planning authorities may give weight to relevant policies in emerging plans according to:

(a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);

(b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given);

and

(c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).”

1.9 It is clear from the above that it is not simply a matter of considering the weight to be attached to the ELP as a whole, but also the weight to be attached to individual policies therein. Thus 48(a) and 48(c) are engaged. As to 48(b), MAG’s unresolved objections cannot be disregarded in the planning balance but need to be weighed in the context of:

- The fact that MAG is almost alone in seeking relaxation of SP11 and there is wide public support either for maintaining or for strengthening the airport development safeguards in Policy SP11;
- The fact that the same MAG objections were made in its 2017 representations on the Regulation 18 Local Plan and did not prevent the airport development safeguards being carried forward into the Regulation 19 Local Plan;
- Just five months ago, UDC Cabinet (unanimously) and UDC Full Council (decisively) supported the reinstatement of the principal airport development safeguards into the ELP, despite officers proposing their removal;
- MAG will have another opportunity to argue for relaxation of SP11 at the examination stage of the ELP. The fact that the determination of MAG’s planning application is scheduled to take place before the examination stage is entirely due to the timing of MAG’s submission of its application.

2. Policy SP11 – Stansted Airport

- 2.1 In May 2018, in preparing the Regulation 19 Draft, officers proposed a number of amendments to the Regulation 18 Draft, one of which involved the deletion of the requirement, set down in Policy SP11, that “Proposals for development [of Stansted Airport] will only be supported where ... ***They are in accordance with the latest permission***”.
- 2.2 On 9 June 2018 UDC Cabinet rejected this proposed change to SP11, and voted in favour of an amendment to reaffirm the principle that growth at the airport be limited to “***the latest permission***”, which is the 35mppa limit set down in the Secretary of State’s decision letter of 8 October 2006 (see officers’ report para 9.34). On 16 June 2018, this was ratified by Full Council. Members took that decision being fully aware that there was a current airport planning application for the cap to be raised to 43mppa which had been submitted in February 2018.
- 2.3 The Planning Committee is now being asked by officers to disregard that definitive and recent Council decision (which is also firmly based on the consultation responses to the Regulation 18 Plan and resulted in the wording of SP11 in the Regulation 19 Plan). That cannot be right. The debate about the cap, and thus any extension of airport capacity, should be a matter for the Public Examination of the ELP, which would consider airport growth alongside other major development proposals (including infrastructure) in the District and not prejudged in response to a single planning application.

3. Consultation responses

- 3.1 In the case of both the Regulation 18 and Regulation 19 Plan consultations, the responses have shown overwhelming support for safeguards against the unfettered expansion of Stansted Airport.
- 3.2 The Regulation 18 consultation (2017) generated **126 comments** on SP11, only two of which proposed that the safeguards against unfettered airport expansion set down in clauses (3) and (4) of SP11 should be relaxed. One of these was from MAG and the other from Fairfield Homes. Statutory consultees were generally neutral on the issue and the remainder of respondents – more than 100 – wanted stricter safeguards against unfettered airport expansion.
- 3.3 The Regulation 19 consultation (2018) generated just 36 comments on SP11, only two of which proposed that the safeguards set down in clauses (3) and (4) of SP11 should be relaxed. Again, one of these from MAG, the other was from a MAG employee. The breakdown of the 34 comments from ‘non-objectors’ was as follows:
- Five from statutory consultees (Essex County Council, East Herts District Council, Natural England, Historic England and the Environment Agency). None of these proposed that the safeguards set down in clauses (3) and (4) of SP11 should be relaxed;
 - Five from business interests (Land Securities, Pigeon Investment, Eclipse, Legal and General and Holiday Extras). None of these proposed that the safeguards set down in clauses (3) and (4) of SP11 should be relaxed;
 - Nine from local Parish and Town Councils (Elsenham, Saffron Walden, Felsted, Stansted Mounfitchet, Birchanger, Henham, Thorley, Ickleton and Takeley). **All** of these argued for **stricter** safeguards against unfettered airport expansion.
 - Fifteen respondents (mostly ordinary members of the public). **All** of these argued for **stricter** safeguards against unfettered airport expansion.
- 3.4 Insofar as MAG’s objections to Policy SP11 is unresolved and having regard to para 48(b) in the NPPF a view has to be taken as to what extent – if any – this challenges the validity of Policy SP11. MAG’s objections to the Regulation 19 Draft are the same as its objections to the Regulation 18 Draft. MAG’s position is very much a minority view and the Council considered MAG’s representations on the Regulation 18 Draft in June before agreeing the Regulation 19 Draft, which reaffirms that proposals for the development of the airport need to be in accordance with the latest (35mppa) permission.
- 3.5 MAG’s objections to SP11 are not capable of being resolved other than through the Public Examination of the ELP. In the meantime, MAG’s outstanding objections to SP11 cannot be accorded the status of a veto on a policy which was so recently endorsed by Full Council. Moreover, two consultations in the past two years have shown overwhelming support for either maintaining or strengthening clauses (3) and (4) in SP11.

4. Examples

- 4.1 Over the course of the past year, East Herts DC has refused numerous planning applications citing that the proposals would be contrary to its ELP. Where such refusals have gone to appeal the inspector has prefaced his decision with the standard caution along the following lines:

“The plan remains one that has not been examined and found sound. For this reason I am unable to accord significant weight to its policies.”

- 4.2 Nevertheless in many cases the inspector’s decision demonstrates that he/she has given important weight to the ELP. The following two examples are from June 2018:

APP/J1915/W/17/3186663 – Appeal dismissed

“The appellant has referred to emerging policy VILL1 [which] allows for development within the identified villages subject to allocation within a Neighbourhood Plan and there being no impact on the openness of the countryside. I therefore conclude that the proposal would harm the character and appearance of the area and be in clear conflict with the development plan policies ENV1, ENV2 and GBC14 as well as emerging policies VILL1, DES1 and DES2.”

APP/J1915/W/17/3190649 – Appeal dismissed

“The appellants have referred to the likelihood of Great Hormead being upgraded to a Category 2 Village in the emerging DP. I afford little weight to the DP due to its emerging status. Notwithstanding this, I note that in the emerging DP Policy VILL2 allows limited infill development in Group 2 Villages subject to certain criteria. Based on the evidence before me I do not consider that the proposal would meet the criteria as it would not be infill development but rather it would represent an extension of ribbon development.”

- 4.3 In deciding how much weight to afford to ELP policies, it is clear that planning inspectors take a pragmatic approach, considering each case on its merits and having regard to the three elements of NPPF paragraph 48 quoted above.

5. Conclusions

- 5.1 The Planning Committee should attach “appropriate” weight to Policy SP11 because the NPPF provides three tests for increasing the degree of weight to be afforded. SP11 satisfies two of these. (The Regulation 19 Plan is the penultimate version and constraining the capacity of the airport is in line with many NPPF as well as other national and international policies on carbon emissions and climate change.)
- 5.2 UDC Cabinet and Council formally adopted the current wording of SP11, which endorsed the maintenance of a 35mppa cap, only five months ago. How can the Planning Committee now overturn or ignore that Council decision?
- 5.3 If permission is refused, or the application is called in for the Secretary of State’s decision (he has written to UDC requiring time to consider a call-in if UDC are minded to approve), then any Inquiry in either case would be held when the ELP is even more advanced.
- 5.4 The application is justified by the Applicant on the basis of ‘need’ which arises from its own estimates of rising throughput, and which gets the projected opening date of Heathrow Third Runway wrong. The DfT (i.e. the Government) has published forecasts which show Stansted throughput will not reach the current cap until 2033 (even later if HR3 is in operation) and give 2026 as the opening year for HR3, not the 2030 year suggested by the Applicant. Which forecast is more credible - the Applicant’s or the Government’s?

*Stop Stansted Expansion
11 November 2018*