

Matter 1
Legal Compliance / Procedural Matters
Personal ID No. 6191745
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Save Filton Airfield



**Statement to the Examination in Public of South
Gloucestershire Council's Proposed Core Strategy**

Matter 1

Legal Compliance / Procedural Matters

Paul D. Lee, Robert Hindle, 23 May 2012, v1.1

Question 1

Is there any evidence to show the Council has not consulted at all relevant stages of the plan preparation process and has failed to comply with the statutory requirements?

Save Filton Airfield (SFA) believes there is considerable evidence to show that the Council had decided in favour of redeveloping Filton Airfield long before completion of the required consultation.

BAe Systems consider the Filton Airfield Position Statement (FAPS) is very constructive and helpful. It takes both parties a long way forward. Both parties will maintain dialogue on responding to the Filton Airfield Position Statement ahead of the close of the consultation.

...

The outcome is to prepare an initial draft concept statement that shows how Filton Airfield can be delivered as a strategic development site in the context of the FAPS. The aim would be to have this available to the inspector for the Core Strategy EiP.

(Letter from SGC to the Planning Inspector, 8 July 2011)

BAE's discussions with SGC confirm the Council's willingness to accept this...

(Letter from Terence O'Rourke, agents for BAE, to the Planning Inspector, 28 July 2011).

We would also suggest that <x of BAE> or <y of BAE> keeps a very close ongoing dialogue with <A of SGC> in the next few months as she will be close to the members and should be able to provide early advice.

(Email from Terence O'Rourke to BAE, 5 August 2011).

South Glos will take a neutral position at this stage.

(Email from SGC to BAE and TOR, 23 September 2011).

You may have already picked this up. At our full Council on Wednesday (19th) a question and motion will be raised by Cllr Ian Scott (Labour) in relation to Filton Airfield. I've attached the information that is in the public domain. <A> and I have been advising <SGC Chief Executive> on framing the necessary responses and please be assured this is all in hand. Can talk a bit more when we meet later today.

(Email from SGC to Terence O'Rourke, 17 October 2011).

With the Council seeming to readily offer implicit support to BAE and their agents, consultation appears to have been nothing more than a tick box exercise, in contradiction of PPS1, PPS12 and the Statement of Community Involvement (SCI).

The Council is legally obliged to have regard to all of these under Section 19 of the Planning and Compulsory Purchase Act 2004. In addition, sections 49 to 52 of the Local Government Act 2000, mandates principles by which the Council and planning authorities must conduct themselves.

Both consultations on Filton Airfield resulted in an overwhelming show of support for retaining the airfield. However, rather than remaining impartial, and actively exploring alternatives as legally required, the Council appears to have ignored the consultation, and continued to target resources towards BAE's redevelopment plans. In so doing, the Council appears to have demonstrated predetermination, neglecting to carry out a proper consultation and evaluation of the alternatives. At no stage did the Council meet with SFA, choosing not to reply to our offers.

SFA has already provided evidence that appears to show the Council provided a steer on the BAE Aviation Options report. More recently, a new Freedom of Information (FOI) release appears to provide evidence that the Council rewrote some of the conclusions of the York Aviation report.

I have re-worked the conclusions in the light of your comments...

...

...we are more than happy to accept suggested wording...

(Email from York Aviation to SGC, 24 November 2011).

The final report, which the Council referred to as "**independent**", contains wording that was written by the Council, not York Aviation.

In summary, there is considerable evidence that SGC decided in favour of BAE's plans long before consultation was complete. Proper process then appears to have been abandoned, with SGC appearing to engage exclusively with BAE rather than remaining impartial.

SFA believes that these non-compliances constitute considerable grounds for Judicial Review.

Question 2

Is the Core Strategy (CS) in general conformity with the National Planning Policy Framework (the Planning Framework) or, if not, is it possible to introduce modifications without detracting from the Council's overall strategy for South Gloucestershire?

SFA believes that, with regard to Filton Airfield, the CS is not in conformity with the Planning Framework. SFA has identified potential breaches of PPS1, PPS12 and PPG13, as well as the National and Regional policies with respect to aviation.

One of the principles of sustainable development is to involve the community in developing the vision for its area. Communities should be asked to offer ideas about what that vision should be, and how it can be achieved. Where there are external constraints that may impact on the vision and future development of the area (for example, those that may arise from planning policies set at the regional or national level) these should be made clear from the outset. Local communities should be given the opportunity to participate fully in the process for drawing up specific plans or policies and to be consulted on proposals for development. Local authorities, through their community strategies and local development documents, and town and parish councils, through parish plans, should play a key role in developing full and active community involvement in their areas.

(PPS1, Paragraph 41)

The ability to demonstrate that the plan is the most appropriate when considered against reasonable alternatives delivers confidence in the strategy. It requires the local planning authority to seek out and evaluate reasonable alternatives promoted by themselves and others to ensure that they bring forward those alternatives which they consider the LPA should evaluate as part of the plan-making process. There is no point in inventing alternatives if they are not realistic. Being able to demonstrate that the plan is the most appropriate having gone through an objective process of assessing alternatives will pay dividends in terms of an easier passage for the plan through the examination process. It will assist in the process of evaluating the claims of those who wish to oppose the strategy.

(PPS12, Section 4, Paragraph 38)

SFA believes that since the Council has failed to take on board and explore the views of the community and since the Council has not sought out and explored alternatives, the CS cannot be considered compliant with the NPPF.

SFA has produced an alternative Vision for the airfield, but the Council appears to have ignored it, just as they ignored our offer of a meeting.

The CS also appears to run against the planning guidance with respect to Aviation.

Local planning authorities will need to consider:

...

2. the role of small airports and airfields in serving business, recreational, training and emergency services needs. As demand for commercial air transport grows, this General Aviation may find access to larger airports increasingly restricted. General Aviation operators will therefore have to look to smaller airfields to provide facilities. In formulating their plan policies and proposals, and in determining planning applications, local authorities should take account of the economic, environmental, and social impacts of general aviation on local and regional economies

(PPG13, Annex B, Paragraph 5)

GA activity may, conceivably, be priced out of Bristol. This in turn, in a doomsday scenario, might discourage regional investment in the area from those multinational corporations that are attracted to business centres with rapid (aviation) transport links to Europe and beyond.

(DFT email, 1 December 2012)

Air travel has increased five-fold over the past 30 years, and demand is projected to be between two and three times current levels by 2030. Some of our major airports are already close to capacity, so failure to allow for increased capacity could have serious economic consequences, both at national and at regional level. That must be balanced by the need to have regard to the environmental consequences of air travel. The Government believes that simply building more and more capacity to meet demand is not a sustainable way forward. Instead, a balanced approach is required which:

...

* minimises the need for airport development in new locations by making best use of existing capacity where possible;

(The Future of Air Transport 2003, Page 9, Executive Summary).

Filton and Gloucester Airports play an important local role in respect of business aviation, We fully support the continuation of these roles. ...

(The Future of Air Transport 2003, page 105, paragraph 10.30).

SFA notes that the Council claims that no comments have been received from the various Government departments.

In line with the requirement at Annex B to PPG 13 the Council has notified the Airports Policy Division, the Department for Transport and the Department of Environment, Food & Rural Affairs at all stages of the Core Strategy's production, including:

....

No comments have been received in response.

("Review of the BAE Systems Aviation Options Report for Filton Airfield" paragraphs 19 & 20, SGC, December 2012)

SFA believes that this is not true. It appears as though the Council received a response from both BIS and DfT.

Further to my previous correspondence, I have now received a response from DfT in addition to the BIS position already provided.

Please see below DfT's policy position:

...

In reaching decisions on any related planning applications, local authorities are required to take account of local and national policies.

(Email from DfT to SGC, 21 November 2012)

SFA believes the Council has not taken account of local and national policies.

Question 3

Plans submitted prior to the introduction of the Localism Act of 15 November 2011 are not subject to the 'duty to cooperate'. Is there any basis for suggesting the Council has not complied with this principle irrespective of whether the test should apply to the South Gloucestershire CS?

The Planning and Compulsory Purchase Act 2004, Section 19 requires Core Strategies to be developed with due regard to the policies and guidance set out by the Secretary of State. This includes PPS12, which contains sections pertinent to cross boundary issues, such as Section 4, paragraph 17.

Many issues critical to spatial planning do not respect local planning authority boundaries. Housing markets and commuting catchments often cover larger areas, which makes planning an individual district in isolation a difficult task, even where the Regional Spatial Strategy gives a strong steer. Critical discussions on infrastructure capacity and planning may be more effectively and efficiently carried out over a larger area than a single local planning authority area. Joint working between local planning authorities can address these issues properly, and also make the best use of scarce skills and capacity in different authorities. The production of one core strategy instead of two or more may save resources. Joint working also resonates with approaches to sub-regional working as set out in the Sub-national review and supports the development and implementation of Multi Area Agreements.

SFA has carried out a Freedom of Information request with Bristol City Council to see what co-operation took place with respect to Filton Airfield. This reveals there appears to have been hardly any.

SFA is staggered by this. Some parts of the aerospace cluster, including the Brabazon Hangar actually reside within the Bristol City Council area, as do many residents who will be affected. SGC Councillors representing areas miles away appear to have more of a say than Councillors representing areas which are adjacent. This cannot be right.

Further Details

Further examples and details can be found in our EiP representation documents, the very latest copies of which can be found at the following locations:

http://www.savefiltonairfield.org/eipdocs/SFA_EIP_LEGALITY.pdf

http://www.savefiltonairfield.org/eipdocs/SFA_EIP_FOI.pdf

http://www.savefiltonairfield.org/eipdocs/SFA_EIP_VISION.pdf

http://www.savefiltonairfield.org/eipdocs/SFA_EIP_SOUND_1.pdf

http://www.savefiltonairfield.org/eipdocs/SFA_EIP_SOUND_2.pdf