

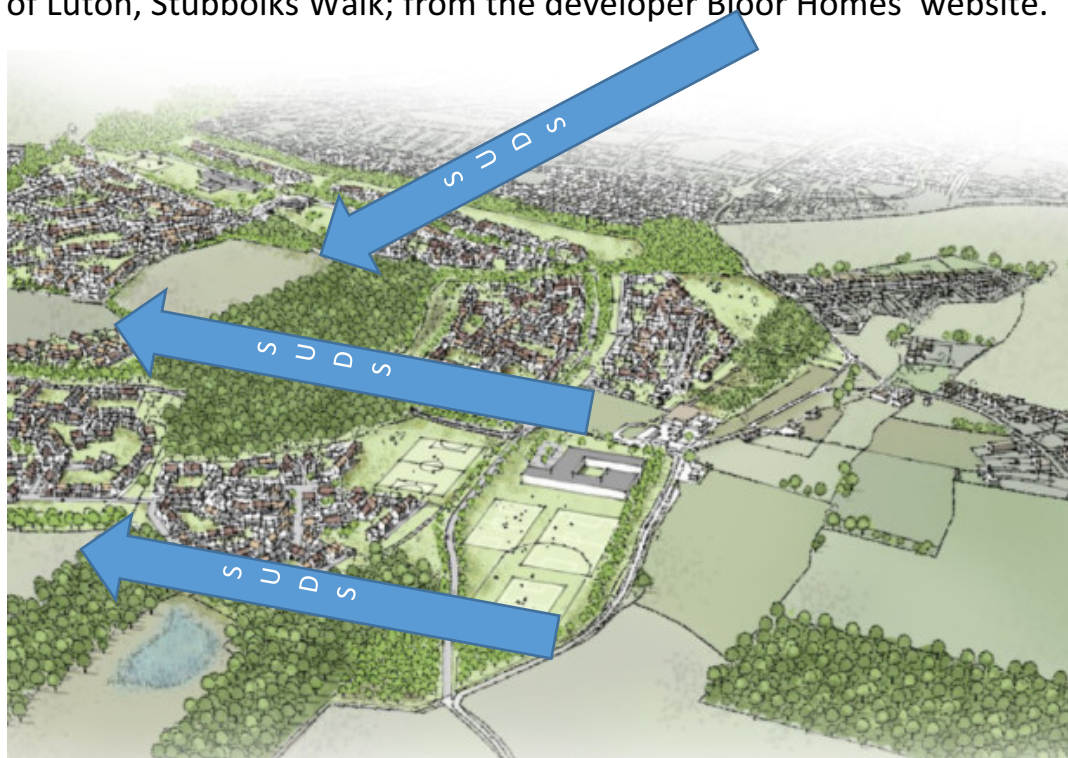
DATE OF STATEMENT	1 November 2017
EXAMINATION	North Hertfordshire Local Plan 2011-2031
MATTER 17	Design (including air quality)
DATE/ SESSION RELEVANT TO STATEMENT	Wednesday 29 November - Afternoon session 2.00pm
FROM	Linda Cottier
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NPPF 99. requires Local Plans to “take account of climate change over the longer term, including factors such as flood risk ... water supply and changes to biodiversity and landscape.”

East of Luton site has clear drainage problems; visibly flooding often, with large 30cm depth pools of water, collecting on entire portions of road during wet periods. Being upon clay, SUDS are the main drainage solution offered by the developer.

See image below; those large lakes are those drainage solutions known as SUDS. They are numerous and proportionately large; indicating the problem’s scale as it stands today.

Fig 1: East of Luton, Stubbolks Walk; from the developer Bloor Homes’ website.



NPPF 99. Rules that “new development should be planned to avoid increased vulnerability to the range of impacts arising from climate change.”

Requiring therefore that account be taken of the longer term climate change effects of prevalent rainfall, plus proneness to sudden torrential downpours.

Trees and agricultural crops are required as mitigating factors to flooding. Removing all simultaneously ensures compliance away from NPPF.

NPPF: “When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure.”

Yet in East of Luton these risks can't be managed by SUDS and certain trees because they aren't allowed this within the safeguarded aerodrome zone of 13km radius to an airport.

The deliverability issue is that East of Luton can't be delivered without SUDS.

There is a clear conflict here, with important Health and Safety implications.

The Floods and Water Management Act 2010 establishes a Sustainable Drainage Systems Approving Body in unitary or county councils must be established and approve drainage systems in new developments and re-developments before construction begins.

A Sustainable Drainage Systems Approving Body WAS NOT consulted in relationship to SUDS and safeguarded civil aerodrome zones. Why?

There are more serious implications arising from the inclusion of SUDS.

London Luton Airport remains in municipal ownership, owned by Luton Borough Council but is managed by the private sector London Luton Airport Operations Limited (LLAOL). London Luton Airport has a Civil Aviation Authority Public Use Aerodrome Licence (Number P835) that allows flights for the public transport of passengers or for flying instruction.

The Town and Country Planning (safeguarded aerodromes, technical sites and military explosives storage areas) Direction 2002 applies to military explosives storage areas in addition to aerodromes and technical sites. It came into effect on 10 February 2003.

(“DfT/ODPM circular 1/2003 - advice to local planning authorities on safeguarding aerodromes and military explosives storage areas.” Issued by the Department for Transport, 4 November 2005).

It lists the local planning authority areas containing civil en-route technical sites for which separate official safeguarding maps have been issued.

It lists Luton Airport in no uncertain terms in “Annex 3” as one of its “Officially Safeguarded Civil Aerodromes”.

SO NHDC has failed to incorporate safeguarded areas into its development plan even though the Directive requires it:

Incorporation of safeguarded areas into development plans

Local plans and unitary development plans should include a policy stating that officially safeguarded areas have been established for a particular airport or technical site, that certain planning applications will be the subject of consultation with the operator of that aerodrome or technical site and that there may be restrictions on the height or detailed design of buildings or on development which might create a bird hazard, as described in this Circular. The outer boundary of safeguarded areas should be indicated on proposals maps accompanying local plans and unitary development plans. A plan should state why an area has been safeguarded and that it is neither the responsibility nor the proposal of the local planning authority.

Under chapter “**Aerodrome safeguarding maps: “Birdstrike” hazard**” the Directive says:

Birdstrikes are one of the major controllable hazards to aviation. Common birds have caused catastrophic accidents to all types of aircraft. Most birdstrikes occur on or near aerodromes but, because birds are very mobile, features far beyond an aerodrome boundary may increase the hazard. **If a man-made development provides feeding, roosting or breeding opportunities, or shelter and security, it may, depending on the siting of the development and the species which it attracts, increase the number of birds visiting or overflying an aerodrome or the number of birds in the airspace used by aircraft.** Gulls and starlings congregate in very large overnight roosts and travel long distances daily, **while waterfowl are large and often fly in close formation.** There is only limited scope for taking action on aerodromes to counter these hazards, and safeguarding may be the only effective means of reducing the risk to aircraft in flight.

It goes on to state the protection measures and responsibilities to consultees as follows:

In order to protect aerodromes against these hazards, **safeguarding maps** include, in addition to the requirements related to the height of buildings and structures, a dotted circle, **with a 13 kilometre radius** in the case of civil aerodromes and an eight mile (about 12.87 kilometre) radius in the case of military aerodromes, centred on the safeguarded aerodrome reference point **to indicate the area within which developments likely to attract birds** require similar consultation. **Local planning authorities are required to consult the relevant consultee before granting planning permission for any development within the relevant radius of an officially safeguarded civil or military aerodrome which is likely to attract birds.** Whether or not a development is likely to attract birds will depend on a number of factors. A local planning authority will need to consider not only the individual potential bird attractant features of a proposed development but also whether the development, when combined with existing land features, will make the safeguarded area, or parts of it, more attractive to birds or create a hazard such as bird flightlines across aircraft flightpaths.

MAJOR FLAW IN PLAN’S SOUNDNESS AND LEGALITY:

There is no mention of any safeguarding map connected to Local Plan Policy SP19 nor consultation with the relevant experts. There should be a map centred on the safeguarded aerodrome reference point (Luton Airport), indicating the area within which developments

surpassing the East of Luton Strategic Site is likely to attract birds and require protection and consultation.

Also:

...in this direction 'consultee' means:

(a) in relation to a safeguarding map certified by the Civil Aviation Authority, the owner or operator of the aerodrome or technical site identified on that map;

The airport remains in municipal ownership, as owned by Luton Borough Council, being only managed by the private sector London Luton Airport Operations Limited (LLAOL).

Therefore the members of the municipality of Luton Borough; i.e. the public; are the consultees too.

Aerodrome Safeguarding Guidance (Aberdeen Airport) states very early on at page 23:

Sustainable Urban Drainage Schemes (SUDS) are increasingly used to attenuate water flows for flood alleviation purposes and to treat contaminated water prior to discharge into watercourses. Government agencies and local planning authorities frequently require SUDS to be incorporated into designs for buildings, housing estates etc. including those near to aerodromes. Unfortunately, some SUDS designs have the potential to attract birds to the local area. Birds, especially large flocking species, can constitute a significant hazard to aircraft.

This information is a guide only and the particular circumstances surrounding individual developments (e.g. the precise location relative to the aerodrome, the numbers, behaviour and location of bird populations in the area, and **the location of other bird attractive features in the local environment**) **will influence the final assessment of the level of risk likely to arise. Specialists in birdstrike prevention and aerodrome safeguarding should be consulted if there is any doubt as to the suitability of a particular technique for inclusion in a SUDS design near an aerodrome. This should allow unsuitable proposals to be identified at an early stage and either replaced with more appropriate designs or allow suitable mitigation methods to be identified that will allow the proposal to proceed with adequate safety margins.**

Has the Plan identified at an early stage these inappropriate design features of SUDS? No.

Has NHDC consulted specialists in birdstrike? No. Have they consulted all the consultees listed? No. Have they consulted the Civil Aviation Authority? No. Have they consulted London Luton Airport Operations Limited? No.

No, no, no, no and no.

Considerations must be made such as; Size of the proposed wetland; Detailed design in terms of bank profiles, water depth, proposed vegetative cover, any further management

plans; Location in relation to aircraft flight paths and similar habitats nearby, and any proposed mitigation measures to control the birdstrike risk that are proposed.

Therefore, the best option is to eliminate ponds and wetlands such as SUDS in designs near aerodromes whenever possible. Where they are essential then early consultation with the aerodrome is highly recommended.

Further guidance on bird hazards associated with water bodies and their mitigation is contained in Civil Aviation Publication CAP772 Birdstrike Risk Management for Aerodromes

East of Luton being only 1km away means it is unlikely that changes to one or more of these factors, will help to reduce the birdstrike risk to an acceptable level if SUDS are present.

The town and country planning (safeguarded aerodromes, technical sites and military explosives storage areas) direction 2002 specifically warns against the creation or modification of areas of water such as reservoirs, lakes, ponds, wetlands and marshes that attract a variety of species of birds such as gulls and waterfowl;

The primary aim is to guard against new or increased hazards caused by development. The most important types of development in this respect are: facilities intended for the handling, compaction, treatment or disposal of household or commercial wastes, which attract a variety of species, including gulls, starlings, lapwings and corvids; the creation or modification of areas of water such as reservoirs, lakes, ponds, wetlands and marshes, which attract gulls and waterfowl; nature reserves and bird sanctuaries; and sewage disposal and treatment plant and outfalls, which can attract gulls and other species. Planting trees and bushes normally creates a bird hazard only when it takes place relatively near to an aerodrome, but a potential starling roost site further away from an aerodrome can create a hazard.

North Herts has already entertained and accepted two planning applications; already running consultations after issuing confusing unclear inconsistent dates for public input * to be dealt with in Matter 1; Legality by Carolyn Cottier) for the two developments comprising SP19 (namely Bloor Homes/ Stubbolks Walk's 1,400 dwellings and Crown Estates' 660 dwellings). Even though the Local Plan has not yet been examined!

They have not requested any technical consultations and make no reference of intention to do so in the Plan.

It is recognised as good practice for applicants to initiate technical consultations before submitting planning applications, and it is open to them to send details of a proposed development direct to a statutory consultee. Local planning authorities which are themselves consulted before a planning application is submitted should encourage the applicant to consult the relevant consultee if this has not already been done. It is likely to be necessary for local planning authorities to ask an applicant for any of the types of development listed in paragraph 8 to show by means of a risk assessment that a proposed development would not be likely to increase the number of birds or the bird hazard risk to aircraft.

NPPF 99. Requires new development should be planned to avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure.

Migrating birds and their current quest for water, like everything else, will be affected by climate change. If there are droughts, they will all flock to East Luton SUDS.

The operators of **safeguarded aerodromes**, technical sites and military explosives storage areas are likely to need to examine specific proposals in respect of matters such as siting, design (including height) and external appearance when local planning authorities consider applications for approval of reserved matters. Although these are not applications for planning permission, and are therefore not covered by the Direction at Annex 1, **local planning authorities should as a matter of good practice consult the relevant consultees in accordance with the colour-coding on the safeguarding maps when they receive such applications, and allow the consultees sufficient time to consider the implications for their operations before taking decisions on them.**

Until this has been done, East of Luton cannot be passed as a Strategic Site. Also...

... where an appeal has been made against a breach of planning control alleged in an enforcement notice, local planning authorities should have regard to the possibility that **the operation of a safeguarded aerodrome**, technical site or military explosives storage area **may be adversely affected by the alleged breach**, even if the aerodrome, technical site or military explosives storage area is not in the immediate locality of the site to which the enforcement notice relates.

They should therefore as a matter of good practice give notice of such appeals in accordance with the requirements for consultation described in the legend on the safeguarding map, whether the appeal is to be determined following written representations or whether a hearing or local inquiry is to be held.

Many consultees from the general public and some councillors raised birdstrike as a legal point during consultation for this Local Plan. We requested relevant expert advice from safety officer be sought by NHDC, but nothing was done. NHDC have therefore failed in making provisions and safeguarding conditions that are legally incumbent upon it, and which consultees have requested numerous. As well as failing to notify the Civil Aviation Authority; again all against advice:

If a local planning authority propose to grant planning permission contrary to advice given on behalf of the consultee for a civil aerodrome or technical site, or not to attach conditions which that consultee has requested, or to attach conditions which the consultee has advised against, it will be necessary for **the relevant safety regulator to assess the planning application and the consultee's advice and to identify any possible solutions**. In such circumstances the local planning authority are therefore required to **notify the Civil Aviation Authority as well as the consultee**. Secretary of State or the National Assembly for Wales to call in the planning application and determine it.

Therefore in conclusion from all this, Plan's "**Policy SP9: Design and sustainability**" needs to include several clauses about Government safeguarded aerodromes, consultation with relevant regulatory bodies, safeguarding maps and birdstrike hazards.

CHANGES TO PLAN:

ADD TO "Design Policy SP9: Design and sustainability a-d" SEVERAL NEW LAYERS OF POLICY HEREAFTER STATING:

e. Require safeguarding maps for safeguarded aerodromes.

f. Require consultation for developments near safeguarded aerodromes.

g. Require adherence to the Town and Country Planning (safeguarded aerodromes, technical sites and military explosives storage areas) Direction 2002 issued by the Department for Transport.

h. Require that officially safeguarded areas have been clearly established for airports or technical sites.

i. Recognise that London Luton Airport is a safeguarded civil aerodrome.

j. Ensure the outer boundaries of safeguarded areas are clearly indicated on proposal maps accompanying local plans and unitary development plans.

k. Require safeguarding maps to be comprised of an accurately scaled dotted circle of 13 kilometre radius, around the central reference point of any safeguarded civil aerodrome site.

l. Ensure that plans within safeguarded areas state why an area has been safeguarded and that it is neither the responsibility nor the proposal of the local planning authority.

m. Require that planning applications be the subject of consultation with aerodrome operators of those of technical sites, ensuring that correct restrictions are placed on development that creates bird hazard or any other safety issue.

n. Be committed to recognising bird strike is a real and commonplace phenomenon worthy of the same scrutiny afforded any other potentially lethal hazard.

o. Enforce safeguarded zones within which developments proposals cannot contain design features, such as SUDS likely to attract birds or other hazards.

p. Be committed to fully recognising its legal liability and take full responsibility for associated penalties in the case of accidents resultant from its failing to follow or enforce, during planning activities, that Government safety advice on birdstrike mitigation measures within safeguarded civil aerodrome zones, of 13 kilometre radius starting from the aerodrome facility's most outer boundary edge.

q. Be committed to enforcing its recognition of civil aerodrome safeguarded map zones and guarantees quality assurance that is fully compliant with UK and EU Law and Regulations.

r. Require the establishment of a Sustainable Drainage Systems Approving Body as per The Floods and Water Management Act 2010. This body must approve drainage systems in new developments and re-developments before construction begins.

s. Require masterplans for significant developments within safeguarded aerodrome zones; showing definitively whether or not all hazardous features such as, but not limited to SuDS, are present.

t. Guarantee not to allow SuDS to be placed within safeguarded zones, and shall take full legal liability for any consequences resultant of any accidental or purposeful breach of this safety regulation by its employees, officers, representatives or affiliates.

u. State to consultees the protection measures and responsibilities pertaining to this safeguarding.

CHANGE PLAN "9 Design Policy D1: Sustainable design":

Planning permission will be granted where development proposals:

ADD: ii. optimise the potential of the site by incorporating Sustainable Drainage Systems (SuDS); except in safeguarded aerodrome zones of 13km radius.

CONCLUSION

Permission for East of Luton's allocation cannot be supported under Policy SP9: Design and sustainability in its current state. It is unsound. It is not legally compliant.

BIBLIOGRAPHY

The Town and Country Planning (safeguarded aerodromes, technical sites and military explosives storage areas) Direction 2002 ("DfT/ODPM circular 1/2003 - Department for Transport, 4 November 2005).

Aerodrome Safeguarding Guidance

https://www.aberdeenaairport.com/media/47178/AIA_Safeguarding_Guidance-FULL.pdf