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| Issue 19   | Airfield Safeguarding  |                          |
| Development plan reference:  | EP13 - Airfield Safeguarding, page 60  | Reporter:<br>Hugh M Begg |
| Body or person(s) submitting a representation raising the issue (including reference number):  |  |                          |
| Flemings of Rosyth (00648)<br>Allan Smith (00649)<br>Barbara Fleming (00854)<br>Susan Fleming (00855)<br>Councillor Michael Barnacle (02633)<br>Scottish Gliding Centre (09134)<br>Rhonda Dick (09196)<br>Dr Peter Symon (09723)<br>Maureen Cuthbertson (10146)<br>John Williams (10210)<br>Ken Miles (10236)  |  |                          |
| Provision of the development plan to which the issue relates:  | Policy EP13, requiring an independent assessment of the impact of development proposals where they may affect the safe operation of airfields. |                          |
| Planning authority's summary of the representation(s):   |  |                          |
| <p><u>Representations seeking removal of Policy EP13</u><br/>Maureen Cuthbertson (10146/1/001 &amp; 10146/3/001): The existing Policy 49 Kinross Area Local Plan 2004 (S4_Doc_199) is not fit for purpose and Policy EP13 contains nothing that would address the issues and ongoing problems that this policy has created for the Council and the planning applications of residents living on the perimeter of Portmoak Airfield and should be withdrawn from the Local Plan. The policy will place a disproportionate burden on one or two residents on the airfield perimeter.</p> <p>The Policy is not in accordance with SPP February 2010 (S4_Doc_076), SPP 1 Development Management Guidelines Page 4 Paragraph 23 (S4_Doc_277) as it places the interests or activities of one person over the interests and activities of another. Policy 49 Kinross Area Local Plan 2004 (S4_Doc_199) is not fair or proportionate and Policy EP13 does nothing to address this. It disadvantages residents on the perimeter of the airfields.</p> <p>Flemings of Rosyth (00648/1/001): There is no provision in the policy which requires aerodrome operators to be checked on compliance with CAP 793 (Core_Doc_123). The policy is unworkable given the past history at Portmoak Airfield. When an airfield is unlicensed there is no vehicle to determine which party is in the right, even after obtaining independent assessments. The policy puts undue power in the hands of aerodrome operators, who have nothing to lose.</p> <p>Susan Fleming (00855/1/001); Barbara Fleming (00854/1/001): The policy is biased towards airfield operators and unfair to existing businesses in the area which wish to expand. The policy does not provide clarity on how the Council will determine planning</p> |  |                          |

applications and independent decisions are formed where the Airfield operator and applicant through an independent assessment have opposing views.

#### Representations seeking amendments to Policy EP13

Ken Miles (10236/1/012): Object to Balado Airfield being included as its validity as an Airfield is questionable.

Scottish Gliding Centre (09134/1/002): New wording for the policy is suggested in order to accord with the principle of protection of public safety and to accord with the Civil Aviation Authority position Civil Aviation Act 1982 Section 16 (5) (S4\_Doc\_197) on the role of airfield operators in assessing the impact of proposed developments.

Allan Smith (00649/1/001): Concerns regarding the fairness and independence of the policy, particularly how a fair and unbiased conclusion is reached when the policy does not contain a procedure for obtaining a truly independent airspace design opinion to be used as an authoritative tool in evidence. The assessment should not be paid for by the airfield or applicant but independently by the Council to avoid any accusations of a biased nature; the policy should be fair and proportionate, as required by SPP (Core\_Doc\_048).

Rhonda Dick (09196/1/001): There is no real material basis for setting up this excessive planning policy. The expert opinion should be commissioned by the body that must make the decision; the Council should bear this cost. The Scottish Gliding Union believes this policy is a total barrier to development at the Causeway and this issue must be addressed. A study of the planning applications will show the previous Policy 49 Kinross Area Local Plan 2004 (S4\_Doc\_199) to have been ineffective. Policy EP13 does not address these existing issues.

See attached appendices with this representation. (Core\_Doc\_124)

Dr Peter Symon (09723/3/001): Respondent's comments relate to Errol Airfield. The policy does not include Errol Airfield. The airfield is permitted to be used five days a week for flights and if the Plan does not envisage the airfield being used for flights during the lifetime of the Plan this should be stated. If an application is made to continue the use of the airfield for flights beyond the current permission then the airfield should be safeguarded.

#### General comments

Councillor Michael Barnacle (02633/1/022): Policy is welcomed. Welcome the requirement for an independent assessment. Note the importance of good neighbourliness but emphasises the need for this to work both ways with airfield operators following good practice and adhering to the conditions of airfield planning approvals.

John Williams (10210/1/001): Support Policy EP13. The Scottish Gliding Centre at Portmoak is well established but there is a risk that inappropriate development around the airfield could threaten its ongoing operation. No potentially threatening development should be approved without a proper impact assessment.

#### **Modifications sought by those submitting representations:**

#### Representations seeking removal of Policy EP13

Maureen Cuthbertson (10146/1/001 & 10146/3/001); Flemings of Rosyth (00648/1/001); Susan Fleming (00855/1/001); Barbara Fleming (00854/1/001): Amend Plan to remove

## Policy EP13.

Representations seeking amendments to Policy EP13

Ken Miles (10236/1/012): Amend Plan to remove Balado Airfield from Policy EP13.

Scottish Gliding Centre (09134/1/002): Amend Plan to revise Policy EP13:

*'Developments will be refused if they are likely to have an adverse impact on the safe operation of aircraft from, or on public safety in the vicinity of, the following airfields:*

- *Perth Airport*
- *Portmoak Airfield*
- *Balado Airfield*
- *Strathallan Airfield*

*Under Section 16(5) of the Civil Aviation Act 1982 the comments of the aerodrome management concerning the effect of certain development proposals must be carefully considered. The Civil Aviation Authority considers that if an aerodrome operator advises that an airfield's established amenity would be affected by a development, that advice may be considered as expert testimony so far as the technical issues are concerned.*

*Applicants for planning consents within the safeguarding zones of these airfields (as defined in the Supplementary Guidance) should consult the airfield operator prior to submitting an application. The applicant may be required to obtain from the airfield operator an assessment of the impact on the safe operation of the existing facility.*

*Note: Supplementary Guidance will define the areas where consultations will take place and further expand the limitations of incompatible activities and navigational obstructions etc.'*

Allan Smith (00649/1/001); Rhonda Dick (09196/1/001): Amend Plan to revise Policy EP13 to remove the requirement for the applicant to provide a report. This should be changed to require the Council to undertake this work. Policy EP13 should be reviewed annually or bi-annually.

Dr Peter Symon (09723/3/001): Amend Plan to include 'Errol Airfield' under the list of airfields in Policy EP13.

### **Summary of responses (including reasons) by planning authority:**

Representations seeking removal of Policy EP13

Maureen Cuthbertson (10146/1/001 & 10146/3/001); Flemings of Rosyth (00648/1/001); Susan Fleming (00855/1/001); Barbara Fleming (00854/1/001): The Policy has been worded to comply with the requirements of Circular 2/2003 (Safeguarding of Aerodromes, Technical Sites and Military Explosives Areas) (S4\_Doc\_803), which require Planning Authorities to set out arrangements by which *'a planning authority, before granting permission for the development of land forming the site of or in the neighbourhood of an aerodrome ... for which a safeguarding map has been furnished to the authority, shall, to the extent specified on such a safeguarding map in relation to particular parts shown thereon, consult the consultee.'*

It simply sets out the requirement for consultation to take place without introducing bias.

The Council prepared Supplementary Guidance on Airfield Safeguarding (Core\_Doc\_070) and, following a period of consultation, the comments received were

considered by the Council. The Reporter may wish to refer to the relevant committee report for further information. Report to Perth & Kinross Council Enterprise and Infrastructure Committee, 7 November 2012: 'Local Development Plan Supplementary Guidance Phase 1' (Core\_Doc\_160).

No modification is proposed to the Plan.

#### Representations seeking amendments to Policy EP13

Ken Miles (10236/1/012): Planning consent was granted in 2011 for Class 11 use including microlight flying at this airfield, which has subsequently been implemented (09/01289/FLM) (S4\_Doc\_693). The airfield is operational and it is therefore appropriate for it to be included in the Plan.

No modification is proposed to the Plan.

Scottish Gliding Centre (09134/1/002): The revised wording relates to the relative weight to be placed on comments from an airfield operator, which is not a matter for the Plan. Allan Smith (00649/1/001); Rhonda Dick (09196/1/001): Amend Plan to revise Policy EP13 to remove the requirement for the applicant to provide a report. This should be changed to require the Council to undertake this work. Policy EP13 should be reviewed annually or bi-annually.

No modification is proposed to the Plan.

Allan Smith (00649/1/001); Rhonda Dick (09196/1/001): Controlling the means by which reports are obtained would be beyond the remit of the Plan. It is appropriate that the onus be placed on the applicant to demonstrate that a proposal is acceptable, including where necessary the submission of an independent assessment prepared by a suitably qualified person. This does not prevent the Council from seeking further expert evidence should they feel it would aid the decision making process. This procedure echoes that for the provision of flood risk assessments, noise assessments and Environmental Impact Assessments, where the onus is placed on the applicant to provide the information in the first instance.

No modification is proposed to the Plan.

Dr Peter Symon (09723/3/001): The airfield at Errol is in operational use however planning permission (S4\_Doc\_804) has been granted for a residential development within the boundaries of the airfield. If this permission is implemented the airfield safeguarding for Errol will no longer apply. The Supplementary Guidance on Airfield Safeguarding (Core\_Doc\_070) carries a note to this effect.

No modification is proposed to the Plan.

#### **Reporter's conclusions:**

##### Preliminary Matter

1. In response to a request for further information the council has confirmed that revised supplementary guidance was approved by the November 2012, which was not referred to in the schedule 4. It has also suggested revisions to the text of Policy EP13 in order to deal with Dundee Airport (the safeguarding zone for which extends into Perth and Kinross) and has clarified what is meant by an unlicensed airfield (which are the airfields

that are intended to be covered by the supplementary guidance). This additional information has been taken into account in reaching conclusions on this issue.

2. Supplementary guidance is the appropriate location for detailed material, allowing the Proposed Plan itself to focus on vision, the spatial strategy, overarching and other key policies, and proposals. This examination of the Proposed Plan makes no comment on the content of the supplementary guidance on airfield safeguarding.

#### Representations seeking removal from the Plan of Policy EP13: Airport Safeguarding

3. The respondents who seek the removal of Policy EP13 do so because previous experience of the application of Policy 49 of the Kinross Area Local Plan 2004 has been demonstrated, in their view to be “not fit for purpose”. It has led, in their view, to development management decisions unfairly weighted against proposed developments in the vicinity of Portmoak Airfield. Whatever, may be the merits of that view it is not a matter which forms part of this examination.

4. Scottish Planning Policy (SPP) confirms that the planning system does not exist to protect the interests of one person or business against the activities of another. However, it is inevitable that, in regulating the use and development of land, the planning system will regularly impose restrictions upon land owners’ ability to develop their land. On occasion, the effects of a particular planning policy may not be felt evenly and it may be perceived that the policy is unfair or unreasonable for that reason. However, provided that the aim behind the imposition of such controls is to further the public interest rather than to prioritise the interests of one party over another, there is nothing unreasonable or unfair in such an approach. In the case of Policy EP13, it is clearly in the public interest to ensure safety in and around airfields. The effect of the policy is not to prevent development within the vicinity of airfields but to ensure that it is demonstrably unlikely to have a detrimental impact upon safety. Development which can be demonstrated not to threaten aircraft safety would comply with the policy and would not be restricted. This is an entirely reasonable approach and there are no grounds for deleting the policy.

#### Representations seeking modifications to Policy EP13: Airport Safeguarding

5. It is perfectly understandable that the Scottish Gliding Centre should be concerned with public safety and that airfield operators should be consulted before a determination is made on a planning application relating to land within an airport safeguarding zone. However, any planning application must be determined by the council as planning authority in accordance with the Planning Acts rather than by reference to other legislation.

6. Rather than list within the policy itself, all of the airfields to which it will apply, the council has suggested listing the two licenced airfields (Perth and Dundee) and referring to the remainder under the category “*Unlicensed airfields, as defined in Supplementary Guidance*”. This would accord with SPP’s expectations for brevity and would be an appropriate modification to the policy text that is set out in the Proposed Plan. With that in mind, it is unnecessary to address the representations which challenge the inclusion or exclusion of specific unlicensed airfields within the text of the policy.

7. As far as the provision of an independent assessment is concerned, it is the responsibility of an applicant for planning permission to provide the planning authority with sufficient supporting evidence for an informed decision to be made. In some cases that may include the submission of material of a technical nature. The council has drawn

attention to the manner in which flood risk assessments, noise assessments and Environmental Impact Assessments are undertaken. Depending on the details of what is proposed, the impact of development nearby on the safe operation of aircraft from unlicensed airfields could be a further example where a similar approach is justified. In these cases the evidence in support of the application will carry more weight if it is provided by way of an independent assessment carried out by a suitably qualified person. The same applies to technical evidence provided by third parties who have concerns about the impacts of the proposed development. Where special expertise is not available “in house” the planning authority is bound to call on its own suitably qualified consultants to assist in the evaluation of the evidence placed before it. Drawing these matters together, there need be no modification in response to these representations.

8. The council has accepted that the policy should make reference to Dundee Airport, as its safeguarding zone extends into Perth and Kinross. A modified note to the policy is proposed, which should provide greater clarity on the legislation and associated materials relevant to airfields and airfield safeguarding. Further clarity will be provided in the supplementary guidance. With that in mind, to assist users of the plan the council may decide that there is merit in clarifying beyond doubt within the guidance exactly what it has in mind in its use the terms *licensed airfield* and *unlicensed airfield* and the word *airport* and distinguishing these from the generic term *aerodrome*.

#### **Reporter’s recommendation:**

##### Policy EP13

1. Delete the text of Policy EP13, and replace it with the following:

*“Policy EP13: Airfield Safeguarding:*

*Planning permission will be refused for developments likely to have an unacceptable impact on the safe operation of aircraft from the following airfields:*

- *Dundee Airport;*
- *Perth Airport; and*
- *Unlicensed airfields, as defined in Supplementary Guidance.*

*Applicants for planning consents within the safeguarding zones of these airfields may be required to provide an independent assessment of the impact on the safe operation of the existing facility, prepared by a suitably qualified person.*

*Note: Licensed airfields are safeguarded in line with CAA document CAP 168 “Licensing of Aerodromes”. Unlicensed airfields are safeguarded in line with CAA document CAP 793 “Safe Operating Practices at Unlicensed Aerodromes”, and Supplementary Guidance will define the areas where consultations will take place and consider prejudicial developments including incompatible activities and navigational obstructions.”*