

SUTHERLAND PROPERTY & LEGAL SERVICES LTD



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July 2021

Dear Inspector Panel

Rule six party - Mr Michael Pearce

Additional evidence in relation to the provision of OACP.

The Inspectors have kindly agreed to accept late evidence being submitted in relation to the case being made on behalf of the rule six party due to the fact that the LPA had failed to respond and/or determine the outstanding planning application for our alternative car parking scheme. The LPA have confirmed in writing that they have an in-principle objection to the provision of OACP within North Somerset. Correspondence received on the 25th of June from the LPA determining officer Mr Neil Underhay (who was also the officer for the airport application prior to its referral to planning committee) sets out the council's position. I would ask the inspectors to note the following from the email provided by Mr Underhay;

- The LPA confirm that the objective underpinning policy DM 30 is to prevent an oversupply of airport parking and reduce reliance on car travel in order to increase sustainable travel options. This is an accepted and appropriate aim. However, the result of this policy is that no OACP can be provided within North Somerset unless it is in association with overnight accommodation. Whilst this may be a relevant consideration in the provision of parking services (as customers would be travelling for their overnight stay prior / after travel from the airport) the requirement arises from the historical development and criticism of DM30 as a policy as per the submitted evidence provided by us following an FOI request to the LPA.
- Further, because the LPA enforcement team consider that parking with overnight accommodation is only acceptable when the customer is actually staying overnight, no airport parking exceeding one overnight stay is considered lawful by the LPA. As a result, it is not possible for any OACP provision to come forward under policy DM30.
- Whilst the officer considers DM30 to have significant weight it is admitted that the council have on several occasions in the last few years had cause to consider whether or not the policy is appropriate. One of the key barriers to the provision of OACP regardless of Green Belt sustainability and inappropriateness of Green Belt development is this ongoing monopoly position.
- I have, in my proof of evidence, set out concerns in relation to the fact that the main parties to the inquiry have failed to adequately assess existing OACP provision with references to unlawful and/or consented sites and objected to references that have dismissed OACP as unlawful. This is not the case. There are many lawful operators of OACPs and I provide a breakdown of 13 known OACPs setting out the detail of the spaces they currently provide, the number of employees that creates work for and the annual turnover for those operations. It is to be noted that this is a significant income to the rural economy of North Somerset and provides employment for a large number of local community members. At no stage has anybody assessed the adverse impact from the continued proposal for expansion into the Green Belt by the airport. All of the assessments for parking need are undermined by the fact

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that both main parties have failed to adequately consider the numbers involved and the impact on the rural economy of OACP being impossible to obtain consent for.

- The inspectors are asked to note that the council consider there will be no reduction in OACPs even if the additional spaces in the application are approved. This is to admit that there will be continued OACP operations regardless of the strategy from the main parties to prevent and cease such operations and the continued enforcement harassment of these operators. In evidence the main parties have considered existing OACP as a nuisance and this attitude must change to recognise those which are lawful operations. Local support for the economic input that OACP provides is significant and no assessment of the loss of these businesses has been included in the main parties submissions on community impact.

- The LPA consideration that BALs car parking demand study is insufficient and/or weak means that the council consider our reliance upon that to be inappropriate. Whilst we have demonstrated in our application that our site is necessary regardless of the increased parking and proposed move to 12mppa, the council considers that BAL has underprovided public transport and also has the option for the MSCP prior to any consideration of surface parking. We agree that BAL has failed to deliver the sustainable parking already approved. That does not however undermine the case for an appropriate park and ride scheme on brownfield land, outside of the Green Belt and closer to the arterial route of the M5.

- Our scheme is inextricably linked with the airport scheme because of the reliance upon assessed parking need and the LPA feel unable to approve our scheme in the absence of parking need (given their position within this appeal is that parking need is not properly demonstrated by the airport).

- Because the ASAS is outdated, unreliable and has not been properly implemented by BAL, the LPA consider that that any OACP provision will be in breach of the underlying sustainable travel purposes by encouraging more passengers to drive. Further because the ASAS is a document created by BAL rather than the council, it is considered by the council that it is not possible for the council to impose the ASAS requirements on any third party operator. Whereas our scheme had significant regard to the ASAS in providing park and ride facilities with sustainable bus services using non fossil fuel provision and the potential contribution (as with the airport) towards the Bristol flyer service (which passes the access to our proposed site) the LPA consider their hands are tied in this regard.

- Accordingly, the consideration of the airports sequential testing is not considered by the council to outweigh, nor meet, nor justify the provision of the OACP. It appears that this is a circular argument where recognition of the preferred sequential status of our site is made but due to the airport ASAS and the way in which the council manages sustainable parking for the airport, OACP provision cannot be approved. It is inconceivable that this is an acceptable policy constraint given the unique position of the airport within the Green Belt and the need to protect the Green Belt from further inappropriate development.

- Finally the rule six party had stated to the council that in order to overcome the principle of DM30 (despite disagreeing with its implications) a proposal for a hotel on the site would overcome the DM30 constraints in principle. The council have failed to respond on this matter. This is unsurprising given that the officer is the same officer that recommended approval of the BAL scheme prior to the committee determining to refuse. The LPA can do nothing other than consider refusal given their position within this appeal process in relation to the airports application and their view that insufficient need has been demonstrated. It would be my submission that if the panel were to consider that the airport parking need justifications are correctly assessed (save for the OACP current provision) then the council's position in relation

to our offsite application has to change. This would mean that our application should be considered acceptable in policy terms as a reasonably available alternative site.

I attach;

- a breakdown of OACP operators known to me to provide relevant details for the purposes of the inquiry. The inspectors are asked to note that I disclose operators by reference to pseudonym given the need for confidentiality in relation to their operations – particularly due to turnover.
- Copies of correspondence from the LPA in relation to our scheme
- Copies of documents provided by the LPA under Freedom of Information Act requests in relation to ongoing management and review of policy DM 30
- Correspondence from the LPA received through Freedom of Information Act demonstrating concerns raised by Local Parish Councillors in relation to the monopoly currently in place for the airport parking provision

The correspondence referred to demonstrates that the council in principle will seek to refuse the scheme. It would be my view that any appeal should be joined to this inquiry given the provision is inextricably linked.

The LPA have failed to respond to several requests for clarification in relation to their views on our scheme and have also failed to disclose, under FOI, documents which we know are available, but which appear not to have been found. As a result, it may be that we need to ask the Inspector to direct the LPA to disclose these documents and I will write again to you as soon as practicable to update you as to whether or not the council are acting cooperatively in this matter.

Should have any questions or queries please do not hesitate to contact me.

Yours faithfully



Amanda Sutherland LLb. (Hons) PG Diploma LPC
PLANNING CONSULTANT
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ENC: Email thread

----- Forwarded message -----

From: **Neil Underhay** <Neil.Underhay@n-somerset.gov.uk>

Date: Fri, 25 Jun 2021 at 16:02

Subject: Planning Application reference number 20/P/1438/FUL - Proposed Park & Ride Car Park at Heathfield Park, Puxton

To: Amanda Sutherland <amanda@sutherlandpls.com>

Cc: James Wigmore <James.Wigmore@n-somerset.gov.uk>, Richard Allard <Richard.Allard@n-somerset.gov.uk>, Roger Willmot <Roger.Willmot@n-somerset.gov.uk>, Cat Lodge <Cat.Lodge@n-somerset.gov.uk>, Simon Bunn <Simon.Bunn@n-somerset.gov.uk>

Dear Ms Sutherland,

Thank you for your email and your contributions at the meeting. I have reflected on the discussions and I have re-read the application documents. I said I would summarise my views within a week of the meeting and I set these out below. These address 'Matters of Principle' and 'Detailed Issues'.

Matters of Principle

I note your observations on the limitations of Policy DM30. The Council will doubtless decide whether this policy is sufficient going forward, but a future review does not undermine the current status of DM30. The transport objectives underpinning DM30: which is to prevent an oversupply of airport parking and reduce reliance on car travel and increase sustainable travel options, are, however, consistent with paragraphs 103, 108 and 110 of the NPPF. I give DM30 significant weight.

In my view, the key principle to be considered for your client's application is its impact on sustainable travel and the Air Surface Access Strategy. There are several aspects to this:

- Whether OACP proves a transport demand for 3,000+ more spaces.
- The reliance on BAL's Parking Demand Study, and whether this demonstrates a need for the quantum of parking in your clients application
- The transfer of passengers to/from Bristol Airport from the proposed Park & Ride Site

During last week's discussion and in your email below, you say you can supply details of 17 of the known 30 operators of current OACPs using PD rights. I would be interested to see the breakdown of these spaces in terms of the numbers at each site, and the length of time and dates when each of these car parks were/are operating. The current planning application does not suggest that spaces at other OACP's will be reduced by the proposed additional spaces in this application.

At the meeting you suggested several times that the current OACP's proves that there is a need for 3,101 additional spaces. I don't agree this proves a demand for 3000 spaces, let alone 3,000 more spaces. The take-up of these spaces may exist simply because they are there, advertised, and competitively priced. If it is too easy for passengers to drive and park, that is exactly what they will do. Since these spaces are not subject to the critical review of a planning application, which will look at need in the round in relation to the ASAS, it does not prove that they are needed to meet a shortfall of airport parking.

That your client's justification for 3,101 more spaces is based on BAL's Car Parking Demand Study/ addendums for the 12 mppa planning application is a weakness of the current application. The

Council refused that application and its recently published transport evidence for impending appeal contends that BAL has not demonstrated a proven case for the level of additional car parking in that application. The Council considers that BAL underestimate the percentage of passengers travelling to/from BA public transport (based on commonly used CAA data), and that they under-provide public transport improvements up to 12 mppa. This exaggerates the level of additional car parking needed for 12 mppa. The Council also disagrees with BAL's argument that most additional car parking in the 12 mppa appeal is needed ahead of 10 mppa being reached, which is also your client's case. The Council further disputes that BAL has proven the claimed 95% occupancy levels in its car parks, and that it disagrees with the contention that there is an over-riding need is for more surface level parking. These matters will be examined at the Inquiry, but unless further information is presented that leads the Council to a different conclusion, or the appeal is allowed, the Council is not going to change its position.

The consideration of the 10 mppa planning application in 2011 acknowledged that OACP was a long ongoing matter for the Council and this was likely to continue, which has proved to be the case. The ASAS approved as part of that application did, for the first time, take significant steps to substantially increase public transport services within key passenger catchment areas. The primary objective of the ASAS is purposely to change passenger travel habits by making it easier to travel to and from BA by bus and coach services and not over-provide car parking. The increase in the percentage of passengers now using these services over the subsequent years (before Covid) shows that this investment works, and the council is committed to ensure this trend continues in the future. OACP's that operate outside the ASAS are only encourage more passengers to drive from source, which is the opposite of the ASAS, and piecemeal OACP's with no critical regard to its impact on the ASAS is more likely to harm sustainable travel than compliment it.

If more people are choosing to drive from source and park at or near to Bristol Airport than was planned for in the 10 mppa planning permission, including transport investment and parking infrastructure in that permission, the reasons for this needs to be understood and then addressed comprehensively through an updated ASAS. As this application is not based on an assessment of its impact on ASAS, there is no proven context for the number of spaces proposed in the application. That the final leg of the journey is proposed by a fleet of electric buses is positive by itself, but this is likely to be a comparatively short part of the overall journey, which would not mitigate the added passenger travel from source.

The harmful impact of piecemeal airport car parking on the ASAS has been a key issue in the outcome of recent planning enforcement appeals at Birds Farm and Coles Garage. It is acknowledged these sites are in the Green Belt, and the merits of those proposals are different in some respects to your client's application. The harm to the Green Belt, by reason of inappropriateness, in those cases contributed heavily to those appeal decisions. However, it is also clear from those decisions that independent proposals for airport parking which do not tie in with the wider Air Surface Access Strategy, are likely to undermine it, and this has been treated by Inspectors' as a significant material consideration against those cases. In my view, the same applies to your clients application.

At the meeting we discussed the option of transport officers setting out S106 contributions towards public transport improvements to mitigate the impacts of the development on the ASAS. Having reflected on this, that would be a potential option if your client's application had justified the level of additional parking in the context of its impact on the ASAS. Since this has not been done however, I do not see how the Council could reasonably justify the scope or sum of planning obligations having regard to Regulation 122(2) of the 'CIL' Regulations 2010.

My view from what I have read and heard so far on the application, is that the application is contrary to Policy DM30 of the North Somerset Sites and Policies Plan and it fails to demonstrate a need for the quantity of additional airport parking that is proposed. Moreover, the proposed development will encourage more passengers to undertake most of their journey to and from Bristol Airport by private vehicle. This is not conducive to sustainable travel and it will undermine the Airport Air Surface Access Strategy. This contrary to Policy CS1 and CS10 of the North Somerset Core Strategy; Policy DM24 of the North Somerset Sites and Policies Plan Part 1: Development Management Policies and at least paragraphs 103 and 108a of the NPPF.

I am happy to give your client time to consider my views and respond, but as matters stand, I cannot support the principle of the application, even allowing for it being an alternative the BAL's additional Green Belt parking proposal in the Green Belt.

In this context, any further time and resource that your clients may decide to put into the separate detailed points discussed last week (summarised below), should be undertaken in the knowledge that I do not feel it will have outweigh an objection to the principle of the proposal. To be clear, I am highly likely to recommend that the application is refused, regardless of whether other issues can be resolved. I nevertheless summarise the status of the other issues as below:

Detailed Issues

Road Access

A stage 1 RSA will be needed to further advance consideration of the Council's current objection to the proposed road junction i to the site. This should also clarify the extent street lighting.

Levels

At the meeting you understood that an updated version of the existing levels survey had been sent to the Council. At time of preparing this email, this has not been received. I am not therefore unable to review site levels and its impact on the flood zone/need or otherwise for a flood risk sequential test. Proposed finished levels are also required to complete an assessment of the landscape impact.

Impact on living conditions of nearby residents

The proposed use is intended to operate 24 hours a day 7 days a week. It would involve a high turnover of vehicles entering and leaving the site, which are then manoeuvred to and from block parking areas. The applicants PDAS (para 7.5) says there will be two arrival peaks at 04.00am and 11.00am, with a lesser distribution at other times. The combination of arrival numbers and times has a clear potential to cause noise disturbance, particularly at night, to nearby residents (at Heathfield Park, Moorland Park and other nearby houses) through the revving and idling of vehicle engines, tyres moving on gravel, remote locking and alarm sounds, opening and closing of car doors / boots, wheeling or luggage to/from the reception building and people noise. The Council's adopted Scoping Report referred to 'sensitive receptors' as "people at home" and "adverse changes to noise and air quality should be assessed". This should be provided.

In terms of air quality, you consider the proposal would take airport bound cars arising off the road further from the airport and to that extent an improvement in air quality would ensue. That may be the case, if this was a straight replacement for BAL proposed additional surface parking in the Green Belt, but the proposal will instead concentrate 000's of vehicle trips at your clients site, and so the issue is not removed but simply diverted to an alternative location. The implication does not assess the impact of this on air-quality, which Richard Allard advised that it should do.

Flood Risk Assessment

We didn't cover this at the meeting, but the Council's Flood Risk Management Team published comments (dated 6 April 2021) advise that insufficient information is provided to date to assess the site-specific flood risk assessment. This will need to be resolved.

Biodiversity

I have emailed Simon Bunn (see below) who currently oversees Ecology, suggesting that a discussion is held between the applicants Ecological Consultant and the Council's Consultant Ecologist to discuss the scope and duration of Bat surveys. If you can reply to me and copy in Simon Bunn providing your client's details, this can be set up.

Archaeology

I have spoken with Cat Lodge and I made Cat aware of the previous planning permission and the resulting landfill that took place from that permission. This has not changed Cat's view that her request for further information is still needed. That a past planning permission, which pre-dates the NPPF, was not accompanied by a similar assessment is noted, but I don't see this is a reason not to request it now, since Cat considers that it is needed to reach to make a reasonable and informed assessment of the potential archaeology affecting the site.

Scope of the ES

The scope of your client's ES appears to be based on comments in the Council's EIA Screening Reply rather than the subsequent adopted ES Scoping Opinion. This is not acceptable for the reasons set out in my email to you dated 21 April. The Council can request further information under Regulation 25 of the EIA Regs. Because this will involve significant extra work, delay and costs to your client, and I do not consider this will address the more fundamental concerns officers have regarding matters of principle, it would be unreasonable not to give your clients the opportunity to consider this. Please raise this with your clients and confirm whether they intend to adhere to the adopted Scoping Opinion and supply the additional information for inclusion in the ES, if requested by the Council.

Please note I am on leave until 6 July, but I will attend to your reply on my return.

Kind regards

Neil

Neil Underhay
Principal Planning Officer
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We are also currently experiencing an unprecedented increase in the number of applications and enquiries being submitted. Unfortunately, this means we will take longer to deal with some requests. While we will try to keep delays to a minimum, we may have to ask for more time and therefore would appreciate your agreement to such requests. We appreciate your patience and cooperation.

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From: Amanda Sutherland <amanda@sutherlandpls.com>

Sent: Monday, June 21, 2021 11:03 AM

To: Neil Underhay <Neil.Underhay@n-somerset.gov.uk>; Jessica Lomax <jessica.roberts@sutherlandpls.com>

Subject: Airport parking - Heathfield

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Dear Neil

Thank you very much for your time on Friday, I felt it was a very useful discussion and has given us a clear route forward in terms of working through the statutory consultees comments and providing the evidence required to demonstrate that this is an excellent site to deliver airport car parking in a sustainable (and future-proofed) manner.

During our meeting, you mentioned policy DM30 of the Sites and Allocations Plan Part 1 a number of times. This policy only allows the creation of airport-related car parking when offered in conjunction with overnight accommodation.

As we discussed, I disagree with policy DM30 and find it to be overly restrictive in failing to consider sustainable OACP operations. I referred you to the paper created by Karen Bartlett in 2016 which was reconsidered by Richard Kent last year and the commitment to review the policy Richard made to the local Parish councils. Of course, I recognise that you can not simply disregard the policy as it forms part of the development plan and is, therefore, a material consideration. To provide you with a planning justification I wish to set out paragraph 12 of the NPPF 2019:

"12. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed."

Paragraph 12 gives you, the decision-maker, the ability to weigh up the planning balance and if material considerations allow it you may deviate from the Local Plan Policy. In this instance, we have a demonstrated need for car parking of this quantum, with Bristol Airport applying for a similar number in the Green Belt. I would note that Bristol Airports Green Belt car parking would also fail DM30 and DM50 so if it is accepted their site is required as per policy then such consideration can also be given to this site. I understand that the LPA recommended approval of the BAL proposal prior to refusal at committee on this basis. You were concerned to ensure we had adequately considered the Policy and I was able to confirm that if you did retain a concern about the site not offering accommodation as per DM30, we would propose a hotel at the site to address this but had hoped to do that as part of our forward plan in 2-4 years given the investment required and the current market following Covid tending more towards the staycation opportunity.

As part of the application, we have advanced an identified need; whilst I appreciate that the LPA position at inquiry is that the BAL proposal has not correctly identified the need in their Parking Demand Study (as updated), we are able to provide details of 17 of the known 30 operators of current OACPs demonstrating in excess of 3000 spaces are currently offered across these sites using GPDO rights. It is clear that we can demonstrate a need over and above the BAL study and in support of the LPA aim to reduce OACP in the Green Belt. We have already discussed as part of our submissions to the BAL inquiry, that the sequential testing for the proposed extension of parking at the airport cannot meet the sequential test requirements as our site is available and deliverable. The site will remove cars from the A roads, villages and towns of North Somerset and also improve air quality in these villages by removing vehicles and using electric buses to transfer passengers to the airport. As such there are clear advantages to an approval at this location.

With regards to the other matters raised in the meeting, you have kindly allowed the sub-consultants to liaise directly with each other so I will respond in due course - once they have come to agreement on their relative areas of expertise.

I look forward to your response and comments with regards to policy DM30 and the principle of the application.

Kind Regards

**Amanda Sutherland LLb(Hons) PG Dip LPC
Planning Solicitor**

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COVID-19 Update - April 2021

Following the Government's latest announcement we have now begun working from the office again. Please note that at this time we are still unable to undertake face to face meetings, this should change in the coming months. Should anyone have any queries please do not hesitate to contact me.

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