

**WOKING STADIUM**

---

**OPINION**

---

1. The Woking Borough Council is a local planning authority and, thus, may be concerned both in the determination of applications for planning permission and the preparation of development plan documents. Such documents play a part in the determination of planning applications as, putting the matter broadly, an application is determined having regard to the development plan, so far as material, and to other material considerations.
2. One such material consideration is Government advice and, in particular, the National Planning Policy Framework (NPPF) (February 2019). In Woking the Site Allocation Development Plan Document (SADPD) is presently travelling through a process that ought to result in it within a reasonable time coming to be formally part of the development plan, as statutorily defined. This process is referred to in the NPPF and is

statutorily controlled (see the Planning and Compulsory Purchase Act 2004).

3. Policy UA44 of the SADPD refers to the Woking Football Club which is contemplated as a mixed use site coming forward during the plan period. There is, however, no indicative housing yield given for the site although other sites in the SADPD do have such indicative yields. However, the Woking Football Club site does not determine or affect the ability of Woking to reach its housing objectives. Further, its existence does not bear on or influence to any significant degree other housing sites.
4. An important part of a local planning authority's functions is the determination of applications for planning permission. Indeed primary and secondary legislation sets out a clear process for such applications which local planning authorities should, at the very least, endeavour to keep. The Government sets targets for the time within which applications should be determined. None of that process or those targets are affected by the fact that a development plan document is being prepared.
5. The preceding fact is of profound importance for it reveals that Parliament did not consider that planning control (i.e. (in this context) the determination of planning applications) halts whilst a plan document was being prepared. Indeed planning control continues just as before, i.e.

applications can be made and have to be determined. Thus, the fact that UA44 is being considered as part of the development plan process is no bar to the concurrent consideration and determination of a planning application in respect of Woking Football Club.

6. It so happens there is such an application and the legislative consequence (described above) is that the application must be considered and determined by the local planning authority in the usual way. If this usual way determines the application prior to the adoption of any new development plan document then such is a mere happenstance; it is absolutely not a disqualifying event.
7. What constitutes a material consideration on an application for planning permission is not defined. This is recognised in the NPPF and at paragraphs 49-50 the Framework deals with an argument that an application may be premature given the promotion of a development plan document. In other words it could be a material consideration on a planning application that such a document was being prepared.
8. As a matter of principle such an argument is bound to be weak for, as we have seen, Parliament expressly did not disable planning applications from being determined (or alter the process in any way) merely because a

development plan document was being prepared. Further, paragraph 49 of the NPPF makes it plain that such an argument is unlikely to succeed other than in limited circumstances where both of two conditions are met. The first of which is the application must undermine the plan making process by predetermining other decisions. However, it is perfectly clear that the Woking Football Club decision does not undermine any other decision. For instance no number in any such decision referable to housing is dependent on the Football Club decision.

9. Paragraph 80 of the NPPF indicates that where permission is refused on grounds of prematurity the authority has to indicate clearly how granting permission would prejudice the outcome of the plan making process. There is no reasoning available here capable of giving such an indication.
  
10. In the context of the Development Plan Document there is, although the inspector is well advanced in his work, still some further work to be done before adoption by the Council. This is likely to involve further consultation. The question arises whether determination of the Woking Football Club application should be deferred pending that consultation.

11. The answer is no, it should not. The determination of the planning application has its own procedure with such consultation as appropriate. Consultation on another issue is not part of the statutory regime and would merely serve to delay. The development plan document consultation would have to be seen as a material consideration and that proposition appears unsustainable.
12. The next question is whether the application should be refused on grounds of prematurity. In the circumstances prematurity has, in the light of the observation in the NPPF and generally, no strength as a determining material consideration on the planning application. The necessary impact is simply not present. In those circumstances the application should not be refused on grounds of prematurity.
13. A refusal of a planning application or a failure to determine a planning application can lead to an appeal with a subsequent hearing or inquiry before an inspector. It will be remembered that such an inspector can award costs on the basis of unreasonable conduct. In considering any application for costs an inspector will pay close regard to the NPPF.

14. Consequently, if either deferral, because of the concurrent plan process, or refusal, on the basis of prematurity, occurs. I consider the Council would be at risk of a costs order for having acted unreasonably.

15. CONCLUSION

Neither deferral on the basis of further SADPD consultation nor a refusal on prematurity grounds is justified.

5<sup>th</sup> March 2020  
QC  
[clerks@4-5.co.uk](mailto:clerks@4-5.co.uk)  
0207 404 5252

**TIMOTHY STRAKER**

4-5 Gray's Inn Square  
WC1R 5AH

**IN THE MATTER OF:**

**WOKING STADIUM**

---

**OPINION**

---