

**CHALGROVE AIRFIELD**

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**OPINION**

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1. I advise, on a pro bono basis, a group of residents who live in some proximity to Chalgrove Airfield. These people wish to prevent the development of that land for housing because of the dramatic effect such a proposal would have on their living conditions. Pursuant to this brief I have kept a close watch on the progress of the South Oxford Local Plan ‘ SOLP ‘ as it passes through its stages towards adoption and the latest event in this regard is a report written by a Senior Officer of South Oxford District Council ‘SODC’ which advises the members to, amongst other things:

“retain Chalgrove Airfield as a proposed allocation in the SOLP”.

2. The purpose of this Opinion is to explain to the Council that, in view of the content of that report, there is now a clear legal barrier in place which restricts that option. The opinion is deliberately written in straightforward language without reference to law, policy or other published guidance except as essential because it is hoped it might be read and taken into account by members of the Strategic Planning Committee who must make an important decision on March 20th.
3. The Opinion invites attention to two concepts: “deliverability” and “necessity”.

4. NPPF 182 provides four tests which proposed development plans must meet in order to be found to be “sound” and therefore acceptable. One of these is that the plan must be “effective” and the NPPF explains this requirement as follows:

“the plan should be deliverable over its period ...”.

5. “Deliverable” has a specific meaning in the NPPF which is defined in the footnote to paragraph 47 therein. No doubt the members of the committee will have their attention drawn to this definition but I paraphrase it in this way:

“To be deliverable there should be nothing to prevent houses being built upon it more or less straightaway”.

6. This is a matter of crucial significance to South Oxford’s local plan, its integrity and its lawfulness. The members of the SODC are being advised by their officers that land at Chalgrove Airfield is “deliverable” and that it may therefore be included in the emerging SOLP as a major strategic allocation which underpins the entire strategy of the development plan. It is, in fact, plain and obvious that the Chalgrove Airfield site is not deliverable.

7. Part of the land at Chalgrove Airfield is currently occupied by a commercial enterprise known as Martin-Baker “MB”. Three attributes of that business are relevant to this discussion:

- (i) it carries out work of national significance and that work has extremely specific locational requirements;

- (ii) the nature of the work is incompatible with a neighbouring residential use because of its propensity to create a statutory nuisance; and
  - (iii) it is extremely profitable.
- 8. It is not possible to deliver the Chalgrove Airfield site without, in the first instance, securing the co-operation of the MB enterprise. Solicitors on behalf of MB have expressed the position of the company in the latest round of representations into the emerging SOLP which are thereafter elucidated in a letter dated 5th December 2017 (these are to be found at App 1 and 2 of the committee report written by Holly Jones). The language with which those representations are expressed is calm and polite but the content is devastating. It is obvious from reading them that the MB enterprise is wholly and utterly opposed to the development of housing at Chalgrove Airfield and that they have sound, rational and highly persuasive reasons for adopting that position.
- 9. The response of officers of SODC, supported by the national agency responsible for promoting this site, is to threaten to use compulsory purchase powers to acquire this site despite the objections carefully and rationally articulated by MB. It is noticeable when reading the correspondence passing between officers of the Council and that agency that the exercise of compulsory purchase powers is seen as nothing more than a pesky formality the worst outcome of which may be a modest delay in the delivery of the Chalgrove Airfield site.
- 10. It is not necessarily so, and this requires an understanding of the second concept referred to above, namely “necessity”.

11. The members of the Strategic Planning Committee will no doubt be advised that the statutory power to make a Compulsory Purchase Order of the Chalgrove Airfield site arises from S226(1)(a) Town and Country Planning Act 1990 and that the approach to the exercise of this power is governed by the seminal judgment of Laws J (as then) in *Chesterfield Properties plc -v- SOSE* [1998] 76 P&CR 117. The exercise of CPO powers depends on the acquiring authority satisfying the decision maker that the use of those powers is “necessary”. This is understood as meaning there is no other way to achieve the public benefit pursued by the exercise of these powers. In other words, CPO is a last resort.
  
12. A further question which must be addressed by any Inspector deciding whether to confirm a CPO is whether the exercise of these powers is “proportionate”. This is especially important in this case in view of the Human Rights aspects of the decision to confirm or reject the proposed CPO.
  
13. On the question of “necessity” it is obvious from reading the Officer’s Report that the CPO would fail. This is because compulsory acquisition is simply one of a series of options being considered by the Council. A further option is to delete the Chalgrove Airfield site completely and allocate other land to meet the strategic objectives pursued by the local plan. The fact that that option has been identified by the Council as a practical course which may be pursued is sufficient to exclude the possibility of a successful CPO. An objector to that CPO would simply have to point to the Report written by Holly Jones and submit that the Council themselves have recognised that CPO is not a last resort but simply a preferred approach. In this country we don’t forcibly expropriate people’s land on the basis of a preference.

14. Thus, it is obvious from Holly Jones' report to the Strategic Planning Committee that a CPO would fail the test of necessity and that such an Order would not therefore be confirmed. This is especially so as there are a number of other sites on the periphery of Oxford being actively pursued as alternatives to Chalgrove Airfield of which land at Grenoble Road is the most obvious.
15. This should all have been explained to the members in Holly Jones' report and it is surprising that none of these matters are mentioned.
16. Furthermore, there is no prospect at all that the test of proportionality will be satisfied in the circumstances of this case. The uncontested evidence is that the MB enterprise fulfils a nationally important function and there is no alternative site to which it may relocate. It will therefore be extinguished. It is highly unlikely that a local need for housing will prevail over a national need for a unique facility of this nature, especially when there are several available alternative sites to which the local housing need may be satisfactorily displaced.
17. Again, it is surprising that these matters have not been explained to the Strategic Planning Committee.
18. Finally, the financial analysis is brief and wholly unconvincing. If the compensation for the MB business is to be assessed on a total extinguishment basis it is difficult to see how the Chalgrove Airfield site could be viably developed. These matters should have been properly investigated and fully explained to members before they are asked to make a decision as important as that which comes before them on March 20<sup>th</sup>.

19. For these reasons, the members of the Strategic Planning Committee are respectfully invited to reject Holly Jones' recommendation and to pursue the other option of finding alternative sites to meet the strategic housing requirements of the local plan over its time horizon.

**Anthony Crean QC**

12 March 2018

