



## 12.0 AIRFIELD SAFEGUARDING - How Planning Can Protect You

### 12.1 Introduction

If you are in the fortunate position of having been granted Planning Permission or have been issued with a Lawful Development Certificate for your airfield, you may very well want to get on with flying. That is, after all, the object of the exercise and if you have been “through the Planning mill” is quite understandable.

If you are particularly wary, you may be concerned that the Council could very well go and grant Planning Permission for a tall building or mast just off the end of the runway which could seriously affect your hard-won rights. On the face of it there is nothing in the Planning system to prevent this.

This is where “Airfield Safeguarding” plays a key role. It is the only formal mechanism to protect an airfield from adverse or prejudicial development. Indeed Airfield Safeguarding may be defined as the protection afforded to an aviation site from potentially adverse or prejudicial developments. The Safeguarding process acknowledges that any airfield relies upon the safe availability of airspace both at the site and around it. This is a protection extended to very few other activities.

The actual nature of protection available will be dependent on both the physical characteristics of the site, its surrounding area and the particular flying activities conducted from the site. It is as relevant at a small farm strip as at a major international airport for in each case, the effects may be the same, even if the scale differs.

Safeguarding for all aviation sites is strongly recommended by the CAA but is not automatically conducted by them. It therefore usually remains the responsibility of the airfield operator. The British Gliding Association has an express policy to promote it and it is positively encouraged by the General Aviation Awareness Council (GAAC).

### 12.2 Background - The Safeguarding Process

Every airfield, whatever the flying activity conducted there and whatever size is an

“aviation site”. This is perhaps the best term to use in connection with Safeguarding because most other words have set legal meanings in both aviation and planning law and it is important to avoid confusion. As an “aviation site”, your airfield should clearly be Safeguarded. This can best happen under the Planning system itself although Safeguarding does occur outside the planning process.

As a procedure, Safeguarding operates as follows: -

- The aviation site operator (you) informs the local planning authority (LPA) of the types of planning applications which might prejudice flying at the site. The LPA records this (usually on an Ordnance Survey map base) and advises you when it receives such applications and provides the necessary detail to you, as consultee, so as to enable you to make informed comments on the proposal. The next step, is for you to assess the proposal and its effect and then, to comment to the LPA on the effects of the proposal, if any. At this stage it would be appropriate to recommend that the LPA either reject the proposal, seek modifications to it, or suggest conditions on any Planning Permission. With this information, the LPA may then determine the planning application.

The legal and technical basis for Safeguarding may be found in both CAA and Department of the Environment / Welsh and Scottish Office publications. The former is guidance to aviation site operators, the latter to LPAs. The relevant CAA publications are CAP 168 “Licensing of Aerodromes” (if you operate a licensed aerodrome) and CAP 428 “Safety standards at unlicensed aerodromes” (if your aviation site is unlicensed). The D o E provide guidance on the subject in Circular 2/92, the Welsh Office in Circular 5/92 and the Scottish Office in Circular 16 / 82.

If you operate a licensed aerodrome then the CAA, in licensing your site, will require that you meet the standards set out in CAP 168 for Obstacle Limitation Surfaces. These standards are used by the CAA in their function as Official Safeguarder of certain important airports and aviation facilities. All other sites are Unofficially Safeguarded. The CAA, however, have the power under a Direction in the above Circulars to ask the Secretary of State to determine an application if the LPA do not wish to follow their advice. Compensation may also be payable.

Many licensed aerodromes, however, are not Officially Safeguarded but have to be





Unofficially Safeguarded and have no formal power of veto or right of intervention. If a proposed obstacle would breach any CAP Obstacle Limitation Surface, then this might have implications for the terms of your Licence and should be discussed with the CAA. Unofficial Safeguarding could thus be of considerable importance to you as the operator.

For all other aviation sites, CAP 428 provides some basic guidance and suggests simplified Obstacle Limitation Surfaces for use in Unofficial Safeguarding. The guidance provided by this document may usefully be viewed as a basis from which to modify and develop your own Unofficial Safeguarding procedure. The nature of your site, the types and level of flying conducted will all be relevant to the criteria of your procedure. If you operate gliders, helicopters, microlights, hang gliders or other aircraft types then this guidance may have to be considerably adapted to suit your more specialised Safeguarding needs.

Having worked out what form of Safeguarding you need and the appropriate criteria, you should then prepare and lodge the procedure with the LPA so that it can take effect. The Department of the Environment in Circular 2 / 92 advocate the establishment of a Safeguarding procedure for all Unofficial sites and their agreement with the LPA. In lodging your procedure it would also be prudent to make reference to all the relevant documents so that the LPA is fully aware of them. The LPA, after all, are unlikely to have CAP 168 or 428 immediately to hand and may need reminding of other government policies.

## 12.3 Safeguarding Procedures

The most common and usually most effective means of Safeguarding is by means of a fully annotated map drawn on a Ordnance Survey base. This can then be readily utilised by the LPA when they log in fresh planning applications and may be recorded on any planning constraints map they may have for their area. It should then be readily accessible for planning staff for day to day reference. For some extremely low usage aviation sites it may be more appropriate to ask for a

simple notification without reference to a map, possibly by reference to the regular lists of applications that the Council produce. For any regularly used aviation site, however, it is more appropriate to use the simplified map method and this is advocated by the CAA. The advantages of this method are that both you and the LPA know what applications are of concern and what areas are important. The map method is also relatively time and cost effective. The disadvantages of the list method are that they assume that you have an understanding of the information provided and that the limited details given are often inadequate to evaluate the relevance or effect of a proposal.

LPAs are obliged to determine nearly all planning applications within eight weeks of receipt. This does not allow an excessive time for consultation and it is reasonable to provide your consultation response to the LPA without undue delay. In most cases it might be reasonable for the LPA to expect your response within 21 days of receiving consultation. If, however, the proposal raises issues which you need to address and consider with the CAA or BGA, for example, then it would be appropriate to advise the LPA of this and to liaise with the CAA or BGA and LPA as speedily as possible. It may help the LPA in such a situation to advise them of the issues which cause problems and what advice or information you are seeking.

Once your Safeguarding procedure is in operation you can expect the LPA to consult you when they receive an application which conflicts with your procedure. Assuming that you give the LPA fully detailed observations on that application the LPA should then consider your comments when they determine that application. In deciding applications the LPA are legally obliged to consider relevant considerations, ignore irrelevant considerations and act as a reasonable decision maker would act in the circumstances. Presuming that the comments you make are relevant to the decision, then they will be what is known as a "material consideration".

You cannot expect the LPA automatically to follow your observations as they will be balancing their planning policies and many material considerations but you can expect them to have regard to your comments



and weigh them up in taking a decision. The importance to be attached to your observations will be dependent upon many factors and will inevitably be different in every case. What matters is that you use the very valuable right to consultation that you have and that the LPA behave reasonably in deciding the proposal.

The LPA should welcome the procedure as it can assist them in making effective and informed decisions with the aviation expertise that you can provide. It is a positive step which can help LPAs to make stronger decisions and can assist them to provide better advice to other applicants, mindful of your procedure. The lodging of a Safeguarding procedure may also serve as a valuable "marker" to future residents of the locality when they make enquiries of the LPA's records about the area. They should be able to appreciate that your aviation site is already legitimately in operation and has important areas for flying activity. These residents should accordingly be able to proceed from a position of knowledge rather than misunderstanding. If any disagreements or objections arise in the future then the Safeguarding procedure may prove an important informative document upon which to refer.

## 12.4 Safeguarding Criteria

As stated above, the criteria for Safeguarding any given site will depend on the characteristics of that site, the nature of the flying conducted at that site and the characteristics of the surrounding area. Although CAP 168 is quite prescriptive of criteria and CAP 428 is well detailed, these standards may be considered as a basis from which to tailor and adapt Safeguarding to your particular needs.

As an airfield operator you will probably already be aware that clear airspace is critical to safe operations and that physical obstructions ("Obstacles") are of paramount concern. You will therefore need to assess the heights of obstacles that could cause problems at any given stage of flight. CAP 168 refers to both Take Off, Climb and Approach slope areas but it may be more appropriate to combine them as CAP 428 does. Although CAP 168 and CAP 428 refer to angled slopes for nearly all Safeguarding zones this may

prove too rigid and complex for unlicensed aviation sites while being difficult for the LPA to administer. In this circumstance a pragmatic decision about the likely height that will be critical in any given area should be made. This should enable relatively practical Safeguarding zones to be designed into the map which will be readily understandable by the LPA. Some Safeguarding maps have used zones broken down into height bands stepped away from the aviation site in broad segments. Care needs to be taken to ensure that the zones are appropriate to the flying activities involved and the landscape characteristics.

You will also need to consider ground contours in setting any height criteria as these may increase or reduce the height of an obstacle that is critical. The height criteria should also take into account the need safely to avoid the obstacle and allow for this. As a start point CAP 428 suggests there should be no obstacle over 45 metres high within 2,000 metres of an unlicensed runway less than 800 metres long. If the runway is 800-1,200 metres long then there should be no such obstacle within 2,500 metres of the runway. These figures are based on runway mid-point, average runway elevation and fixed wing usage. As mentioned above, gliders, helicopters, microlights, hang gliders and other aircraft will probably operate quite differently from the typical fixed wing GA types envisaged by CAP 428. For these flying activities you may need to depart from CAP 428 guidance to suit the practicalities of your operations. Both the BGA and the GAAC are able to advise you further.

Your Safeguarding procedure will probably want to take in lesser obstacles that those 45 meters high as a smaller building, for example, might be equally critical to final approach. Your procedure ought also to envisage a "worst case" scenario such as Engine Failure After Take Off or unexpected marginal weather conditions which might necessitate precautionary flying. You should, however, set realistic criteria as it is hardly practicable or workable to expect consultation on every obstacle over tree top height within ten miles of your airstrip!

In addition to obstacles the Safeguarding procedure should also address those



activities and uses of land which might prejudice or conflict with flying from the site. These might include other shooting related uses such as clay pigeon or rifle shooting, large open air assemblies of people and even golf courses. New residential or noise sensitive developments such as housing estates might give rise to potential disturbance issues with future occupants and new roads may require “street furniture” and could in their own right conflict. In addition, certain “bird strike” developments may be a potential problem so it may be warranted to include waste handling and mineral extraction sites within the procedure.

Certain Safeguarding criteria are contained within both government planning policy and “permitted development” orders (such as for certain agricultural buildings and other miscellaneous developments) and your procedure should clearly state whether your aviation site is a Licensed Aerodrome. If you have an aircraft maintenance / repair / manufacture business on site with the benefit of Planning Permission then this should also be stated. This will assist the LPA to make appropriate determinations under these policies and orders.

It is important to remember that your Safeguarding procedure is designed to prevent the inadvertent or careless prejudice / closure of your aviation site. The criteria should therefore be comprehensive and effective. At the same time you must recognise that it needs to be easily workable on a day to day basis by the LPA and so you should evaluate the real risks and acknowledge those risks that are negligible in practice. As most aviation sites are located in the countryside, radio masts are perhaps more of a risk than high rise office blocks.

A good Safeguarding procedure relies upon a sound blend of aviation and planning judgement if it is to be both comprehensive and practical. There is a clear danger that in failing to Safeguard against a particular type of development the aviation site will be left vulnerable. As a complex planning matter in its own right it may be sensible to seek specialist advice to ensure that your Safeguarding procedure is appropriate.

The BGA are able to offer further support on the Safeguarding of gliding sites and have prepared their own detailed policy on the subject. For other aviation sites the GAAC are able to offer additional information. As a specialist planning matter you may wish to instruct a consultant with experience of Safeguarding and the GAAC is able to advise you further on suitable professionals.

## **12.5 Operating Safeguarding Procedures**

The usual way in which Safeguarding procedures are operated is set given in section 12.2 above. Further detail is given in section 12.3 You therefore need to be aware that the LPA may well consult you (probably when you least expect it!), that you need to know how to deal with that consultation, who to go to for further advice and how to respond effectively to the LPA.

As with the drawing up of a Safeguarding criteria you may feel it more appropriate to seek professional advice on the handling of Safeguarding consultations and the BGA or GAAC can refer you to suitable advisers. Some planning consultants are able to prepare and operate Safeguarding procedures on your behalf acting as the Safeguarding co-ordinator for your site. They may advise you on the complete process and the best way of protecting your interests through Safeguarding.

In dealing with any consultation you need to assess the real risks to your flying operations from the development and the real prejudice that may follow a grant of Planning Permission such as the variation of an Aerodrome Licence or the complete loss of a runway. Time is also of the essence. Advice can be sought from the CAA on all aviation sites and this would be particularly important if you operate a Licensed Aerodrome. Advice may also be sought from the BGA, the GAAC or your own flying organisation. You should then be in a position to make an informed comment to the LPA based on your own flying expertise and the available advice. You should ask to be notified of the decision when it is made.

In making your comments to the LPA you should make sure they are well focused on the planning and aviation issues. While air



safety may not necessarily be a planning consideration, the loss of a runway or the re-routing of a flight path may well be. If modifications can be made to the scheme, then it may be worth discussing them with the applicant to see if a compromise can be reached. This may even be achievable by the use of planning conditions on the Planning Permission such as to ensure an obstacle is lit by appropriate hazard lighting. In all of these situations it can be desirable to talk over your concerns with the LPA's planning officer handling the application. The earlier your concerns are known, the greater the chance the proposal may be revised.

If Planning Permission is granted against your consultation advice then it may be appropriate to seek formal legal advice on the matter without delay. If the Permission will result in the closure of a runway or will effectively prejudice the current operation of the aviation site then it may be appropriate to pursue the matter in court. This can be a costly step to take and is one that requires sound planning and legal advice. It also has to be taken swiftly. As with most legal matters the outcome is not a matter of certainty.

It may also be appropriate, if Planning Permission has been granted in spite of your comments, to take the issue to the Local Government Ombudsman. In such a situation, you would need to demonstrate that there has been mal-administration on the part of the LPA which has resulted in injustice to yourself. Here again, sound planning or legal advice may be appropriate to make your case most forcefully.

## 12.6 Safeguarding as Planning Policy

Under the planning system as it presently operates the Safeguarding procedure and comments arising through it are termed "material considerations". The LPA has to have regard to these in making a decision under the Planning Acts. It must however, by virtue of Section 54A to the Town and Country Planning Act 1990, as amended make its decision in accordance with its "development plan" unless the "material considerations indicate otherwise" when dealing with planning applications.

If the obstacle or development which you are concerned about is supported by the planning policies for the area in the

Structure Plan or Local Plan then this may make the application more difficult for the LPA to oppose. In this sort of situation the LPA may be almost obliged to follow its "development plan".

In order to address this potential problem and to add further weight to your own Safeguarding procedure you should seek its inclusion within the Local Plan for your area when the LPA next prepares one. Local Plan revisions are usually well publicised and it may be worth asking when this will be. When the opportunity arises you should formally propose your Safeguarding procedure for inclusion in the plan. Here again the involvement of a professional consultant may be worthwhile so as to present your proposal effectively and efficiently such that the LPA agree to its inclusion.

If the LPA accept your suggestion then you should have the backing of a "planning policy" when a conflicting proposal arises and your aviation site should be all the better protected. This is, of course, not an absolute security but is of great significance to planning decision making.

Inclusion of your Safeguarding procedure will, moreover, be of assistance to potential developers who will be better able to prepare their proposals mindful of your aviation site. At this early stage of the development process, developers are likely to be more flexible and open to negotiate revisions. This should, in turn, reduce the level of conflicts that arise under your Safeguarding procedure.