

## IN THE MATTER OF MIRRLEES FIELDS, STOCKPORT

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### ADVICE

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#### INTRODUCTION

1. I am instructed to advise Mirrlees Fields Friends Group (“**MFFG**”) in respect of an outline planning application (with all matters reserved) by MAN Energy Solutions UK Limited (“**MAN**”) for the following development on Mirrlees Fields in Stockport (“**the Site**”):

“... residential development for up to 200 dwellings, with associated landscaping, site infrastructure and the provision of new public open space.”

2. The application, submitted in August 2021, has reference DC/081719 and has been made to Stockport Metropolitan Borough Council (“**the Council**”).
3. I am specifically asked to advise on the following:

“\* The likelihood of success / rejection by Planning Officers based on current national and local planning policies, Stockport’s housing position and Local Plan - and a rationale for this view (basically identifying, listing and weighing the pros v cons)

\* A specific view on the strength of the security offered for the area not being developed - does their proposal genuinely safeguard the remaining fields in perpetuity

\* What areas could we realistically push back on e.g. housing density / proposed numbers etc or what additional things could realistically be asked for to benefit local community or mitigate negative environmental impacts of development

\* What is the main weakness / benefit from a planning perspective of the application that people wishing to object / support could use”

#### BACKGROUND

4. The Site is just shy of 27 hectares of open land in Stockport. It appears to have been historically used as agricultural land, and then as a golf course for much of the 20<sup>th</sup> century until 1986. It is privately owned by MAN. Access to the Site is permissive only, subject to some public rights of way, including the Fred Perry Way (a walking and cycling route), which crosses the site from east to west.
5. MAN’s proposal is for 4.4 hectares of the Site to be land for housing (200 homes), with 3.41 hectares of formal amenity open space, 0.77 hectares for the access road, and the remainder (18.30 hectares) to be informal public open space.

6. The Site is designated as “Strategic Open Space” for the purposes of Core Policy CS8 of the Council’s Core Strategy (2011) (“**the CS**”) and saved policy UOS1.2 of the Stockport Unitary Development Plan (2006) (“**the UDP**”). The Site is also designated as “Green Chain” for the purposes of saved policy NE3.1 of the UDP.

7. Core Policy CS8 provides:

“3.290 In general terms development that does not safeguard the permanence and integrity of areas of Strategic and Local Open Space will not be allowed. There may, however, be situations in which other factors determine that the need to continue to protect existing assets are outweighed by the interests of achieving sustainable communities, in particular with regards to delivering mixed communities, meeting wider leisure needs, improving participation in the use of recreation facilities and improving parks. In such situations the objective of achieving sustainable communities may be best served by the development of limited areas of open space. Such development must be designed to meet a high standard of sustainability and pay high regard to the local environment.

3.291 In addition there may be circumstances where satisfying overriding community needs such as affordable/social housing may justify loss of open space. The Council's Sport, Recreation and Open Space Study (115) audits the current level of supply against relevant assessments of demand. Also relevant is the nationally recognised Fields in Trust "6 Acre" standard which consultation confirms is an appropriate minimum standard to be applied to the borough (116). Such circumstances will only be considered acceptable where the study identifies a relative higher provision of recreational open space within an Area Committee area compared to other Area Committee areas in the borough. Any development resulting in a loss of open space within an area of relative high-levels of provision will be expected to off-set that loss by making improvements to existing open space or providing (at least) equivalent new open space in a Committee area of relative low provision so as to help not exacerbate the under-supply situation that exists across the borough as a whole.

3.292 Improved public access to these areas would make a valuable contribution towards meeting the Natural England's Accessible Natural Greenspace Standard (ANGSt) (117). This provides a set of benchmarks for ensuring access to places near to where people live.”

8. Policy UOS1.2 provides:

“Within the areas of Strategic Open Space listed below and shown on the Proposals Map, only limited development will be permitted. Development which, by reason of its type, scale, siting, materials or design would be insensitive to the maintenance or enhancement of attractive green and open areas for public enjoyment and recreation will not be permitted. In addition, development proposals in strategic open spaces should:

- (i) protect them from increased overlooking, traffic flows or other encroachment;
- (ii) protect and enhance rights of way; and
- (iii) safeguard biodiversity and nature conservation area interests.”

9. Policy NE3.1 provides:

“Development which would detract from the wildlife or recreation value of the Green Chains identified on the Proposals Map will not be permitted.

The Council will initiate and encourage measures to improve linkages and habitat value within and between these Green Chains, and, where appropriate, will require such measures through the development control process.”

10. In essence, MAN seek to obtain planning permission for 200 homes on part of the Site, which will result in a loss of the affected open land, with the *quid pro quo* being to release the remaining majority of the Site for public open space. The latter is advanced as a significant benefit of the scheme.
11. An important point of background is that the Council – so far as the latest evidence referred to in the Planning Statement submitted by MAN suggests – is currently unable to demonstrate a five year supply of housing land (“5YHLS”). The supply is around half what it should be. This has significant consequences for the planning balance in this case.
12. Given that the application is for “outline” planning permission only, all matters of detail will be reserved for future consideration. That said, MAN propose a Land Use and Building Heights Parameter Plan, which it wants to be approved so that it becomes a planning condition to comply with the Parameter Plan. This is very common and standard practice. The Parameter Plan in this case indicates that the 200 homes would be situated in the south-west corner of the Site. The buildings will be up to 3 storeys in height, which appears to have been increased in response to initial comments from the Council in pre-application discussions.
13. There is an Illustrative Masterplan which has been prepared to indicate what the development could look like, but MAN do not appear to be seeking approval for this plan at the present time.
14. Although access is a matter which will be dealt with as a “reserved matter” after outline consent is granted, MAN propose that the primary vehicular access be via an extension to the existing Mirrlees Drive, which would become adopted, but with an emergency access onto Flowery Field.
15. 50% of the homes will be affordable housing. This is in line with the Council’s policy requirement, and represents a benefit of the scheme which is likely to attract substantial weight given the Council’s apparent significant shortfall in the supply of affordable housing to meet needs.
16. Although the proposal involves significant tree loss (131 trees according to para. 10.9 of the Planning Statement), it is also proposed to plant 262 new trees, and the design has deliberately sought to ensure that as many of the higher quality trees (e.g. the two mature

Grade A Oak trees, and a mature Grade B Hawthorn tree at the centre of the site) are retained as possible.

17. In terms of biodiversity, the proposal is for biodiversity losses in the housing area to be compensated by net gains on the wider site, and MAN's ecologist has calculated a biodiversity net gain of just over 10%, which is in line with what is currently anticipated to become a legal obligation in the Environment Bill 2021: see Schedule 14 to the Bill, which proposes to insert a new Schedule 7A into the Town and Country Planning Act 1990, providing the 10% requirement at para. 2(3)).
18. The existing public rights of way through the Site would be retained, and a new series of public footpaths and cycleways would be added to improve the network.

### **ANALYSIS**

19. I will take the four questions raised by my instructions in turn.

#### **Likelihood of success**

20. Overall, I would estimate the likelihood of success (whether it be a grant of permission by the Council, or by the Secretary of State on appeal) to be in the region of 60-70%.
21. My headline reason for this is as follows: national policy provides that, given the absence of a five year housing land supply in Stockport, planning permission should be granted unless the adverse impacts of a development "significantly and demonstrably" outweigh the benefits. Although the loss of part of the Site to housing would potentially be regarded as, in my view, a significant harm due to the reduction in Strategic Open Space, this is likely to be seen as counterbalanced by the important release of the majority of the Site to public open space (rather than private land with permissive rights), the provision of market and affordable housing to address acute shortages, and the provision of other benefits, e.g. biodiversity net gain.
22. Unpacking this in more detail, section 38(6) of the Planning and Compulsory Purchase Act 2004 ("**the 2004 Act**") provides that applications must be determined in accordance with the development plan unless material considerations indicate otherwise.
23. In this case, MAN reasonably accepts (see Planning Statement para. 12.7) that the proposed development would conflict with the development plan taken as a whole,

because of the identified conflict with policies UOS1.2, NE3.1 and CS8 regarding open space and the green chain.

24. It is then a question of whether “material considerations” would justify a departure from the development plan. A significant material consideration is the National Planning Policy Framework 2021 (“NPPF”), which provides at para. 11(d) as follows:

“... decisions should apply a presumption in favour of sustainable development. ... For decision-taking this means ... where ... the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”

25. The list of policies within para. 11(d)(i) is set out in footnote 7. It does not include any policies which would apply to the site. Therefore, if the “most important” policies are “out-of-date”, the so-called “tilted balance” applies in para. 11(d)(ii). This is a balance “tilted” in favour of the development.

26. Crucially for this case, footnote 8 to the NPPF provides that the “most important” policies are deemed to be out of date “for applications involving the provision of housing ... where the local planning authority cannot demonstrate a five year supply of deliverable housing sites ...”. As noted above, there appears to be a very significant shortfall in the Council’s 5YHLS, as recorded in recent appeal decisions and the Council’s most recent housing position statement.

27. MAN also claim that the “most important” policies (i.e. UOS1.2, NE3.1 and CS8 regarding open space and the green chain) are “out of date” for a different and separate reason, namely that they are inconsistent with policies of the NPPF. Para. 219 of the NPPF provides:

“... existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”

28. It is claimed at para. 8.28 of the Planning Statement that policy UOS1.2 is inconsistent with para. 99 of the NPPF because it is more restrictive of development. Whereas the local policy permits only “limited” development, para. 99 will permit any development where one of the criteria in para. 99 is met, namely:

“Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.”

- 29. It is true that the local policy is worded differently and is arguably more restrictive than the NPPF. There is a reasonable chance that the Council will be persuaded of inconsistency.
- 30. As to NE3.1, it is claimed that this policy is not consistent with NPPF para. 180, which relates to habitats and biodiversity. I am not convinced that MAN have identified the correct paragraphs of the NPPF against which to assess consistency. In my view, the green chain policy is consistent with the paragraphs of the NPPF which support the provision of “green infrastructure”: see e.g. paras. 20(d), 92(c), 154(a) and 175.
- 31. Policy CS8 is conceded to be “broadly consistent” with the NPPF (para. 8.31 of the Planning Statement), albeit it is claimed that policy CS8 is “more onerous” than NPPF para. 99 because it requires each area of the borough to meet the “Fields in Trust” “6 Acre” standard. I am again not persuaded that MAN are correct to say policy CS8 is inconsistent with para. 99 of the NPPF. Both have flexibility in permitting open space to be built upon if there is a higher provision of open space in the area than required. In fact, CS8 is arguably less restrictive than para. 99 because it also provides that open space can be built on if there are “overriding community needs” like affordable housing, or “the interests of achieving sustainable communities”.
- 32. In any case, because the “most important” policies are out of date anyway because of the housing supply shortfall, the debate as to NPPF consistency has less significance. But it is certainly something which could be pushed back on in a consultation response.
- 33. Once it is determined that the “tilted balance” applies, it becomes necessary to review the adverse impacts and the benefits of the scheme.

#### *Adverse impacts*

- 34. In terms of adverse impacts, the very obvious and most significant one is undoubtedly the permanent loss of some of the existing Site to 200 homes, when currently it is open

space. A loss of 4.4 hectares of open land to housing is – as MAN reasonably acknowledge – not by any means “limited”: para. 8.17 of the Planning Statement. This adverse impact is more significant due to the identified deficiency of open space in the Stepping Hill analysis area within the Council’s Sport, Recreation and Open Space Study 2017, and the absence of a “relative high provision” in the area (when compared to other areas) as required by Policy CS8: see para. 8.21 of the Planning Statement. The fact that Stockport as a whole has a lower deficiency does not seem to be particularly relevant in my view; it is still a deficiency, and simply serves to indicate that Stepping Hill is worse off than other areas of the borough. As noted above, conflict with policy CS8 is openly acknowledged and accepted by MAN.

35. There will also be harm arising from the loss of a significant number of trees (131), including four category A trees.
36. There will also be harm in terms of townscape impact, which is accepted by MAN’s expert consultants but assessed as being “minor adverse” in the case of the Bramhall Moor Industrial Are and MAN Energy Solutions (TCA 5 and 8), and “minor adverse” in the case of Mirrlees Fields itself (TCA 1): see para. 10.59-10.61 of the Planning Statement. The latter is considered to be “minor” overall because, although 18% of the TCA will be lost, there will be the retention of 21.64 hectares of open space, the conversion of it to publicly accessible open space, the containment of the space by built form, and the abundance of screening woodland, together with the beneficial effects of the proposed management of the space, habitat enhancements, and improved footpath networks. This judgment as to the extent of the harm is obviously open to dispute by the Council (and by MFFG). It might be said that the townscape impact of a loss of 4.4 hectares of open fields is hard to characterise as “minor”.
37. Lastly, there is accepted adverse visual effects, albeit it is suggested that the new tree planting will ameliorate the short term changes: see para. 10.62 of the Planning Statement.
38. Based on what is said in section 10 of the Planning Statement, it would appear that all other technical considerations have been addressed by MAN’s consultants (e.g. highways, drainage, noise etc). I have no reason to dispute the expert analysis at this stage, albeit it will be important to see how the Council’s officers and consultees assess

the information and reach a judgment. This is something to monitor as the application progresses.

39. Set against this harm, are all of the benefits listed in para. 11.9-11.11 of the Planning Statement. Most importantly, these are:
- (1) The delivery of 100 market homes to address the very significant housing land supply shortfall in Stockport.
  - (2) The delivery of 100 affordable homes to address the acute needs in the area.
  - (3) The release of 18.30 hectares of currently private open space (albeit with permissive access and public rights of way) to become publicly accessible open space managed and maintained by the Land Trust in perpetuity, backed by a £1.27m endowment from MAN to the Land Trust.
  - (4) Significant ecological and landscape improvements to that public portion, including the planting of 262 new trees, and achieving 10% biodiversity net gain.
  - (5) The provision of 3.41 hectares of on-site open space for the housing development, including a Local Equipped Area for Play and a village green (accessible to both new residents and the existing community).
  - (6) The delivery of housing in a location which will enable sustainable modes of travel (e.g. the proximity of the train station and bus options, as well as local facilities and services).
  - (7) A circa £2m contribution towards education infrastructure;
  - (8) Other economic benefits flowing from the development, including the provision of construction jobs (going to local labourers).
40. Overall, although the harms are not insignificant in this case, I would not be surprised if the Council decide to give less weight to the loss of open space given that the current status of the land is private, with only permissive use other than on the public rights of way. Policy CS8 clearly acknowledges that improvements to recreational facilities can outweigh the protection of existing assets, and that overriding community needs such as the provision of affordable housing can outweigh the loss of the open space. It would be open to the Council to find compliance with policy CS8 in that respect, notwithstanding



the deficiency of open space in the area (which may be given less weight given that the Site currently not publicly accessible except through the permission of the landowner, save for the PROWs).

41. In the tilted balance which applies where there is an inadequate housing land supply, the harms must not only outweigh the benefits to justify refusing permission; they must “significantly and demonstrably” do so. In my view, given this policy approach which the Council (or an Inspector on appeal) must take (unless they can demonstrate that their housing land supply has improved significantly since it was last assessed), I would estimate a **60-70%** prospect of planning permission being granted. This is obviously subject to any consultation responses which the Council may receive from statutory consultees responding on technical considerations. I would also emphasise that the determination of the application involves a number of subjective and discretionary planning judgments looking at the extent of the harms and benefits, and the weight to attach to them. This underscores the difficulty in trying to predict the prospects of success.

#### Strength of security

42. I am asked to specifically consider the strength of the security being offered to ensure that the majority of the Site will be publicly-accessible open space in perpetuity for the enjoyment of the local community.
43. The proposal advanced by MAN is for it to enter into a legally binding agreement with the Council under section 106 of the Town and Country Planning Act 1990 (“**section 106 agreement**”). The Heads of Terms can be found at Appendix VIII of the Planning Statement. Under the section 106 agreement, if planning permission is granted and prior to it being implemented, MAN would be legally obliged to transfer the ownership of the proposed open space land to the Land Trust, together with an endowment of £1.27m. That sum would be used by the Land Trust for the maintenance and management of the open space. The section 106 agreement will also contain provisions for a management plan to be approved (and complied with) for the management and maintenance of the open space. It is envisaged that the Land Trust would also be a party to (and bound by) the section 106 agreement. Crucially, there will be obligations in the agreement to ensure that it will be used solely for open space, will not be built upon, and these obligations will run in perpetuity.

44. In my view, MFFG can have full confidence in the robustness and security of the proposed arrangements for the provision of open space in perpetuity. Section 106 agreements are entered into as deeds, and the obligations will be legally enforceable by the Council against both MAN and the Land Trust (if necessary) by an injunction ordered by the High Court. Section 106 agreements are a standard means of ensuring that obligations are secured and complied with. In addition, MFFG can be further reassured by the fact that the Land Trust, as a charity, would need to act in accordance with their charitable purposes.
45. Therefore, subject to the Council ensuring that a section 106 agreement as proposed is entered into, I have no doubt that as to the security of the proposals for the public open space.

#### Areas to push back on

46. It is more difficult for me to advise in relation to this point, because the areas to push back on will very much depend on the individual views and preferences of members of MFFG as to what they want to see out of this development.
47. However, I offer the following observations having reviewed the documentation:
- (1) Housing numbers and density: there is no particular justification for the specific provision of 200 homes covering 4.4 hectares (at a density of 45 dwellings per hectare). It would be open to MFFG members to advocate for a smaller number of homes, covering a smaller area, with a higher density. There could then be a correspondingly larger area of land given over to public open space. This would enable the harm caused by the loss of open space to be reduced, albeit it would also affect the extent of the benefit in terms of market and affordable housing provision in an area of significant need. It is worth noting that there has already been an increase in density and numbers following initial consultation with the Council.
  - (2) Building heights: the scheme has been specifically designed to ensure that the taller buildings (up to 3 storeys) are next to the MAN headquarters, and the smallest buildings (up to 2 storeys) are next to the area of publicly accessible open space, with the remainder being 2-3 storeys. This would appear to be sensible and justified, but something for MFFG to consider as to whether this is the most acceptable layout.

- (3) Loss of trees: If MFFG were to specifically scrutinise the arboricultural report supporting the application, it may be possible to take issue with some of the proposed higher quality trees to be felled to make way for the development. MAN claim that the scheme has been designed to minimise the loss of higher-quality trees, but it may be that a more specific local knowledge of the Site by MFFG members can call into question some of the design choices.
  - (4) Landscape and visual impact: An area where local residents can frequently offer constructive and positive input is in relation to measures being proposed to screen / mitigate adverse landscape and visual impacts. If it is known that there are any particularly sensitive visual receptors or views, then MAN should be pushed to ensure that these are prioritised and protected.
  - (5) Ecological benefits: the scheme already proposes a range of positive ecological enhancements in the land proposed for open space in perpetuity. However, this scheme presents MFFG members with an opportunity to press MAN for any particular ecological measures which they would like to see introduced.
  - (6) Public footpath / cycle network: there is proposed to be improvements to the footpath / cycle network. Again, local knowledge will be beneficial in considering whether the proposed improvements are exactly what the local residents want, or whether there are changes which could be made.
48. In making representations at this stage, MFFG must bear in mind what will and will not be determined at the stage of granting “outline” permission. The only things that will be fixed at this stage will be the maximum number of dwellings (“up to 200”), and the Parameter Plan (which fixes the location of the housing area, the amenity open space, the publicly-accessible protected open space, the heights of buildings and the accesses). Therefore, it is only points 1 and 2 above which will be specifically determined at this initial stage, with the remainder being determined at a later stage by the Council, pursuant to applications to discharge conditions (unless there are any other specific obligations in the section 106 agreement).

Main weakness / benefit from a planning perspective

49. This point is largely covered above, but I would summarise the main weakness and benefit as follows:

- (1) The main weakness: the permanent loss to housing of 4.4 hectares of long-standing Strategic Open Space as designated in the development plan, in a context where there is already a greater open space deficiency in the Stepping Hill area when compared with other areas of Stockport (which also has an overall open space deficiency).
- (2) The main benefit: the conversion of 18.3 hectares from private open space land into publicly-accessible land (secured as such in perpetuity) with a range of ecological and landscape enhancements, together with the provision of much-needed market and affordable housing to address significant shortfalls.

## **CONCLUSION**

50. I hope that this advice is of assistance to MFFG as an objective and independent assessment of the application, addressing the points on which my views have been sought.
51. Overall, I can appreciate that this application presents a difficult choice for MFFG, given the need to balance the benefits and limitations of the status quo against what is being proposed.
52. I am of course happy to answer any further questions which may arise from this advice, and will assist in any way that I can.

**MATTHEW FRASER**

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**23 September 2021**