



Strategic Planning & Research Unit

For and on behalf of
Templeview Developments

Examination of Milton Keynes Council
Site Allocations Plan DPD
Response to Inspectors Questions Matter 1

on behalf of
Templeview Developments

Prepared by
**Strategic Planning Research Unit
DLP Planning Limited**

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1.0 ISSUE – HAS THERE BEEN COMPLIANCE WITH RELEVANT LEGAL AND PROCEDURAL REQUIREMENTS AND AN ASSESSMENT OF REASONABLE ALTERNATIVES?

Questions

1. Is there any reason to suppose that the SAP has not been prepared in accordance with the minimum requirements of the relevant guidance and legislation?

Duty to Cooperate

- 1.1 The Council in their approach to the calculation of the five year land supply which lies at the heart of the justification for this SAP rely upon the “Liverpool” approach of spreading the shortfall over the remainder of the plan period. However this is not the required response to the inability to meet the shortfall the guidance requires that if the Council cannot meet the shortfall within the first five years then they should engaged the duty to cooperate with their neighbours. This is expressed clearly in a recent appeal decision (APP/P2935/W/15/3141228) which in discussing the two approaches stated in paragraph 25:

“Although both may be legitimate methods in certain carefully defined circumstances, the Guidance is clear, at last as far as it goes. It advocates dealing with any undersupply within the first 5 years, ‘where possible’. A legitimate doubt involves the interpretation of what ‘where possible’ might reasonably mean. It must mean more than just ‘difficult’. After all, the whole point of the exercise is to ‘boost the supply of housing significantly’ and to encourage a proactive approach in bringing forward sites for development that have already been identified and in identifying others to meet the specified requirements. Moreover, the Guidance indicates that ‘where [the shortfall] cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the Duty to Cooperate’. That is quite a severe test. It implies that, if the Sedgefield approach cannot be met within the confines of a particular authority (perhaps due to severe constraints or exceptional needs), then efforts to do so should be made by cooperating with neighbouring Councils.”

- 1.2 As the Council are still proposing to use the “Liverpool” approach for the calculation of the five year land supply then the DtC should be engaged as part of this development plan process in order to ascertain if there are any potential allocations in these authorities could assist with the early deliver of the shortfall.

Conformity with Core Strategy

- 1.3 The Legislation (P&CP Act 2004) 19 (2) requires LPA’s in preparing a local development document the local planning authority must have regard to (a) national policies and advice contained in guidance issued by the Secretary of State and (h) any other local development document which has been adopted by the authority.
- 1.4 The SAP is not in conformity with the Core Strategy for the following reasons:
- a. Policy CS1 required the SAP to provide “short term flexibility” for the period up to the adoption of Plan MK which according to Policy CSD1 should have occurred two years ago in 2015. The SAP cannot now provide this flexibility for the period identified in the Core Strategy.

- b. The second justification which was the lack of a five year land Supply (SPA paragraphs 3.7 and 3.8) is no longer the case according to the Council's most recent (albeit disputed) evidence in the "Assessment of Five Year Land Supply 2017 – 2022 July 2017" in which the Council, state as at the 1st April 2017, they able to demonstrate a land supply position of 5.16 years.
- 1.5 In terms of Regulation 8 (4) (T&CP (Local Planning) (England) Regulations 2012. The SAP is in conflict with the CS as it does not relate to the time period identified in the CS policies.
- 1.6 The inspector raised the role of the SAP in the event of there being a 5 year supply in his preliminary questions but this was not addressed in MKC's response.
- 1.7 The justification for the SAP in CS1 is set out in CS paragraph 5.5 this clearly bases the need for the SAP on the calculation of the 5 year land supply as at 2013 with a need from 2015 of 350 dwellings of which 200 are required in the rural area. Clearly not only has the time period which the SAP was meant to address already passed but the shortfall, according to the Councils evidence, no longer exists.
- 1.8 The SAP does not allocate a minimum of 200 dwellings in the rural area as suggested by CS paragraph 5.5 and the level of provision in the City is significantly in excess of the 150 minimum to such an extent that the submitted SAP is a significantly different plan to that which is described in the CS.
- 1.9 No this basis the SAP is not in conformity with the CS.
- 1.10 Clearly if the SAP is now addressing a different time period to that identified by the CS and is not justified by a lack of a five year supply it is difficult to determine that it is in accordance with the policies of the CS.
- 1.11 The Framework (Paragraph 153) and NPPG (Paragraph: 012 Reference ID: 12-012-20140306) states that while a separate site allocations document can be produced there should be a clear justification for doing so – the evidence presented by the Council including its up to date 5 year land supply provides no such justification for the SAP.

Time period

- 1.12 Crucially local plans are required to be drawn up over an appropriate time period (Framework paragraph 157).
- 1.13 The Councils declined to provide a direct response to the inspector's preliminary question on the time period for the plan. The Council's response is that the time period is open ended in that the purpose of the SAP is to provide "short term flexibility" for an indeterminate term.
- 1.14 This approach is contrary to the Framework.
- 1.15 There is a strong argument that the SAP has failed to meet the expectations of the CS as it is extremely late, however the fact that the Plan MK is even later in its delivery then there is the potential at least for the SAP to actually fulfil a wider purpose than that originally defined by the CS in so far as the SAP could make a range of smaller allocations to assist the delivery of the CS housing requirement over the remainder of the plan period to 2026. Such an approach however would require a wider range of allocations.

- 1.16 The basic point is that the SAP is not in accordance with policy CS1 or CSAD1 and to that extent is unsound.

The impact of the critical errors in the evidence base in the consideration of reasonable alternatives in respect of the soundness of the SAP

- 1.17 Regulation 8 requires that a Local Plan must contain a reasoned justification. In terms of the sites selected in the SAP it is considered that the justification is unreasonable as the process of selection was seriously flawed due to factual inaccuracies in the data base that was utilised to filter and finally select the proposed allocations.
- 1.18 Paragraph 158 of the Framework requires adequate up to date evidence on the economic, social and environmental characteristics of the area and paragraph 166 specifically requires Strategic Flood Risk Assessments and assessments of the physical constraints on land use to be undertaken.
- 1.19 In order to be justified the plan is required to be the most appropriate strategy when considered against the reasonable alternatives based on appropriate evidence.
- 1.20 In the case of the SAP we have identified a serious factual error in the data used to assess the reasonable alternatives and as such the SAP cannot be considered to be justified.

The impact of critical errors in the evidence base in respect of the Sustainability Appraisal

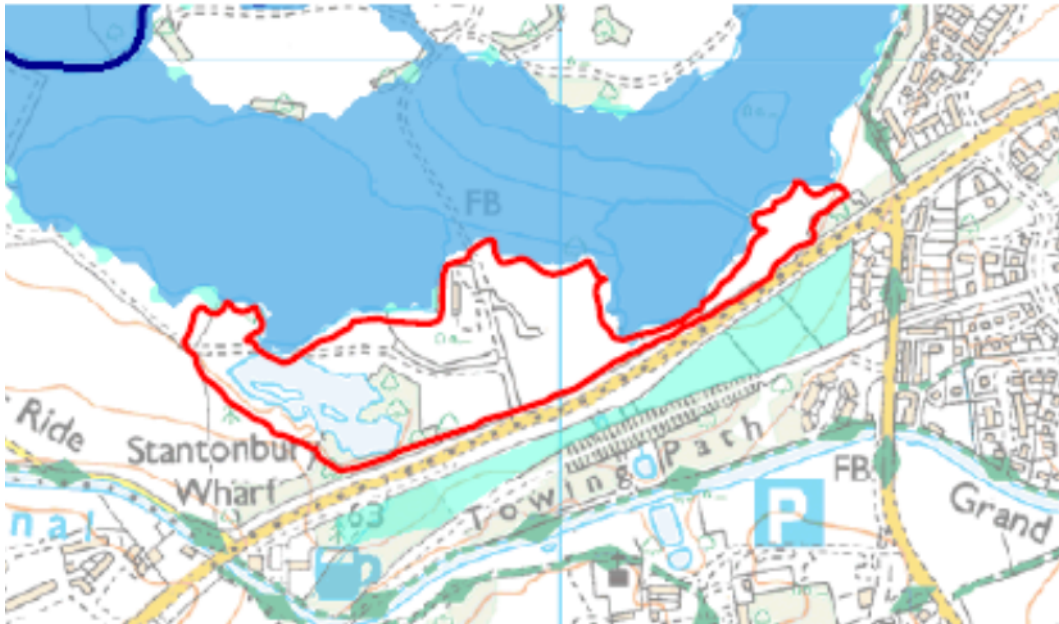
- 1.21 The SA 2016 is not legally compliant as it fails to consider in the appropriate way all reasonable alternatives as sites have been incorrectly discounted from the assessment on the grounds of errors in the Council's data base. In particular the site (SA appendix 2) site U24 land at Linford lakes is not considered as a suitable alternative as it is stated as being "Ruled out at Stage 1".
- 1.22 Table 5 (page 17) of the SA incorrectly states that site is greenfield within the floodplain (more than 50%). This is factually incorrect.
- 1.23 Table 5 of the SA Development also states that the site (U24) would have a significant negative effect on a site designated for biological or geological importance.
- 1.24 The site ruled out at stage 1
- 1.25 The site selection process appears not to have been considered in the context of the need to deliver a higher level of housing especially in the short term of the SAP – there are a number of proposed allocations which the Council have not included in their assessment of five year land supply. A such the reasoning behind site selection is unclear for particular sites..
- 1.26 Article 5.1 of the Directive is very clear in this respect:
"an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives ... , are identified, described and evaluated."
- 1.27 SA Reports are often very long and full of detail, and are also regularly scrutinised and sometimes challenged through Local Plan examinations on their contents and through legal challenge in the High Court on the process of their preparation. It is therefore essential that the legislation is followed very carefully and that the SA Report is examined fully to ensure compliance.

- 1.28 It should not be necessary to undertake a “paper chase” of the SA Reports to find the necessary information required for an SA Report, and this has been the subject of a successful legal challenge in the past. The judgement in *Save Historic Newmarket Ltd v Forest Heath District Council* was specifically in relation to the handling of alternatives, but the principle was related to the need for a paper chase.
- 1.29 It is clear from High Court judgements (*Heard v Broadland District Council*, *South Norfolk District Council*, *Norwich City Council*) that alternatives should be assessed to the same level as proposed sites and that all SA documentation should be consulted on together.

Factual Errors in the reporting of Flood Risk

- 1.30 The Environment Agency Flood Maps, have not been accurately interpreted or used by the Council in the example of Linford Lakes (site U24) and as this has resulted in what is factually a reasonable alternative not being considered. This invalidates the SA.
- 1.31 Figure 2 below clearly demonstrates that all of the land proposed for development is in flood zone 1, and this is accepted by the EA and also by Council technical officers based upon EA flood data.
- 1.32 Furthermore, with regard to the current appeal proposal, no objections are raised by Milton Keynes Council as Lead Local Flood Authority (LLFA), demonstrating that it is inappropriate to rule the site out on flood risk grounds. A copy of the LLFA response was attached to Appendix 2 of our Regulation 19 response.

Figure 1: Land at Linford Lakes and the EA Flood Zones 2 and 3



Factual Errors in the reporting of Biological or Geological Impact

- 1.33 The SA has incorrectly interpreted the available evidence with regard to biological and geological impact. Using the example of site U24 the SA stage one assessment is based upon “a significant negative impact” on these issues.

- 1.34 In the example of U24 the site is not subject to any national designation regarding either biological or geological interest.
- 1.35 In addition U24 is not subject to any local designation relating to geological or biological interest.
- 1.36 This example (site U24) has been assessed before in the Adopted Local Plan and while that plan identified the site as being in attractive landscape and open countryside and subject to a number of specific policies as part of the Linford Lakes Area none of the policies highlighted any particular geological or biological interest or importance.
- 1.37 There is no evidence to support the SA's conclusion on site U24 this demonstrates a critical failure in the SA and in turn in the SA's assessment of reasonable alternatives.
- 1.38 In respect of the likely impact of the development of this particular site the Council are in possession of the evidence which was submitted as part of the planning application which is presently subject to an appeal included an assessment of the ecological value of the site prepared under the EIA regulations.
- 1.39 In terms of the alleged "significant negative effect on a site designated for biological or geological importance" it is material to note that Natural England has not objected to the proposed development of site U24 although they have objected to one of the proposed allocations.
- 1.40 The Environmental Statement (ES) underpinning the application on site U24 demonstrates that the development will not have a "significant negative effect on a site designated for biological or geological importance".
- 1.41 The ES also concludes that any impact is not only likely to be mitigated but that there is a net ecological gain by the transference to ecology uses, as land is proposed to be provided to the Parks Trust for the purposes of an extension to the River Valley Park. A copy of the ES has been submitted alongside this application as Appendix 3 of our regulation 19 submission.
- 1.42 The responses from the Council landscape officer and tree officer on the appeal proposal again do not highlight the claimed "significant negative effect on a site designated for biological or geological importance". The response from the Countryside Office, likewise did not recommend refusal on ecology grounds but highlighted further work regrading the cumulative impact of the development be undertaken together with a Biodiversity Enhancement Scheme. This is not evidence of a "significant negative impact" as claimed by the SA
- 1.43 The site at Linford Lakes has therefore been inappropriately assessed throughout.

The appropriateness of the assessment in the SA and in the site selection process

- 1.44 The above example highlights one instance of the incorrect interpretation of factual data but we do not consider this to be an isolated incident. We have previously highlighted our concerns over the level of detail MKC at which the sites have been assessed. There appears to have been no technical evidence prepared to underpin the conclusions made, and this renders the ranking and grading of sites as both flawed and invalid. Nor has evidence has been published on the MKC website alongside the proposed submission Plan, which is a notable omission and supports our concerns.

- 1.45 In particular, we have concerns general regarding:
- a. Ecology: we would expect where ecological concerns are raised in the assessment, at the very least a basic Phase 1 appraisal of each site would have been undertaken. Instead conclusions appear to be based on individual, un-evidenced opinions and interpretation of the basic designations which do not simply preclude development.
 - b. Landscape: sites, particularly those on the edge of the urban area, should have been subject to at least a basic, high level landscape assessment to assess the capacity of sites to accommodate development and the sensitivity of the landscape. Again, as with ecology, conclusions appear to be based on assumptions and opinion rather than evidence.
 - c. Catchment areas: whilst we understand the importance of sites having access to local facilities, including schools and health, we do have concerns about how access to facilities has been assessed. In particular, a high number of sites appear to have scored negatively as they are not within 1km of a doctor's surgery with capacity. Given structural changes in service provision, the move towards larger surgeries serving a wider area, this approach is not justified. In addition, in a number of areas, it needs to be recognised that developments, particularly of the scale proposed for example at Linford lakes (Site U24), would potentially make significant financial contributions to health, education etc and this would enhance facilities for new and existing residents, and the benefits of development have not therefore been measured in the assessment process.
- 1.46 A further example of the inaccuracy and lack of justification for the judgements made in the assessment of sites can be demonstrated by reference to site U23, land at Eaton Leys, which was assessed as an unsuitable housing site and ruled out of the assessment at stage 1 for similar reasons as the land at Linford Lakes. However, within the last month, after consideration of detailed technical work, MKC resolved to grant planning consent for the development of the site. This effectively undermines the assessment process, highlights the weakness of the judgements made and also a clear need for this process to be informed by an appropriate level of technical evidence in order for it to be robust.

Conclusion on Matter

- 1.47 It is considered that the SAP is not compliant with the legislation as it is not in conformity with the Core Strategy because it does not relate to the timescale set in policy and because it proposes a substantially different scale of development with a different distribution to that envisaged in the CS.
- 1.48 The SA is also deficient in two respects clearly the SA contains factual inaccuracies which go to the heart of the assessment, this in turn has resulted in the SA not undertaking an assessment of reasonable alternatives. The SA is therefore in direct conflict with the directive.
- 1.49 These shortcomings also result in the SAP being unsound in terms of the test in the Framework.

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