LPA Ref: 19/01818/OUT

PINS Refs: APP/Y0435/W/20/3251121

LAND AT SOUTH CALDECOTTE

MILTON KEYNES

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

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1. Introduction

1.1. Mr Osborn's proof sets out at some length the inordinate difficulties that have been placed in the Appellant's way of securing planning permission on a site which is allocated for the use proposed under policy SD14 of recently adopted Plan:MK. Given the position that has now been reached between the LPA and the Appellant it is emphatically not necessary to detail those problems in this closing submission. However, the following points are worthy of note:

(i) the whole site was allocated, notwithstanding the known ecological and archaeological issues;

(ii) despite Mr Crank concluding that preservation in situ was appropriate for the Roman remains from the time of the geophysical report (which predated the LP examination) criterion (9) of SD14 doesn't actually say that;

(iii) despite the fact that the prospect of priority habitats on fields F3 and F4 being known about since 1993 – SD14 doesn't even contain a criterion requiring mitigation, let alone preservation on site;

(iv) the policy pre-supposes that a planning application will be informed by a development framework, but despite three drafts of the SPD[1] none has been advanced to adoption by the LPA;

(v) Whilst NC's consultation response may have said that his primary focus was upon Area 2, the officer's report[2] does not say that if Area 2 was excluded then the LPA would

[1] CD G1 (Feb 18); G2 (Mar 19) and G11 (July 20)
[2] CD D.2

support the proposals. It actually posits retention of most of field 3 and all of field 4 for reasons relating to the mitigation hierarchy.

1.2. The time since the receipt of the LPA's evidence has transformed the profile of this case:

- firstly, highways issues are now resolved as between Highways England, the Local Highway Authority and the Appellant;
- secondly Mr Snell's evidence accepted the results of the most recent survey that of the two fields, only F4 is actually within priority habitat type MG5 (0.76Ha)[3] & there is no issue that the correct DEFRA metric calculation had been undertaken; and
- thirdly, and most critically, that the fundamental concern of the LPA was to keep Area 2 free from development to preserve the archaeology.

1.3. The Appellant's firm view throughout has been that the nature of the archaeology (a non-designated heritage asset) was not of such significance as to warrant preservation in situ when weighed against the balance of securing the policy minimum floorspace of 195,000 sq m of B2 and B8 use. Nonetheless, given that the LPA had finally made its case clear, the Appellant set its technical team to assess what the consequences of excluding Area 2 alone would be, and in particular, whether a commercially viable scheme could be produced. It is that work which has led to the revised scheme which is now before the inquiry.

1.4. It will be recalled that the Council's refusal based on archaeology was the subject of a letter dated 3 February 2020 in which the Appellant sought deferral of the decision to allow "*continued dialogue regarding outstanding items to enable them to be resolved*."[4] The LPA instead proceeded to refuse the application rather than allow additional time for outstanding issues to be resolved. The events of the last few days have demonstrated that had that dialogue taken place then there was a potential way forwards.

1.5. It is a matter of considerable regret to the Appellant that this position hadn't been made much clearer much sooner by the LPA. However, the Appellant is nonetheless grateful that a sensible and pragmatic approach has latterly been taken by the LPA which will enable this scheme to progress rapidly and enable jobs and economic benefits to arise "early in the plan period" as anticipated by the LP examiner.

1.6. It is apprehended that by now the LPA may have sought to contend in its closing that this position could have been reached months ago and that it has now secured a sensible and

[3] Ecology SOCG paragraph 9 – CD K.7
[4] CD I.14

pragmatic conclusion to this appeal. If that has been suggested then it doesn't bear scrutiny and in fact precisely the reverse is true. However, it is welcome that amity has now been reached and it is fervently hoped that this reflects a paradigm shift in its approach to this site for the economic benefit of the area.

1.7. That said, it is recognised that third parties still invite dismissal of the appeal, at least in part because of issues which are specific to their property's relationship to the site; or because there is disagreement with the LP examiner's decision to allocate the site in the first place. In both instances the concerns are to be viewed through the prism that the principle of the development of this site for large footprint employment buildings has been robustly endorsed by the LP examiner[5]. In a plan-led system it is emphatically wrong to seek to go behind the principle of development of the site, and it is to the LPA's credit at least that it hasn't sought to do so, even if others might.

1.8. As for the revised scheme, the revisions patently do not cause prejudice to any interested party as they provide for a reduction in impacts caused by the development owing to a smaller development footprint and the exclusion of the more sensitive areas of the site. The revisions therefore do not offend the 'Wheatcroft principle' and the Appellant is grateful that the Inspector has already indicated his acceptance of the revised plans. And it is understood that both main parties now invite the Inspector to allow the appeal on the basis of those revisions.

2. Archaeology

2.1. By removing development from Area 2, the LPA and Historic England's concerns have been effectively addressed in terms of archaeology. Thus, the inquiry has been spared a detailed analysis in these closing submissions of the Trial Trenching Report[6] and the early **draft** iteration of the Written Scheme of Conservation[7]. Fundamentally the dispute between Messr's Crank and Dawson was a narrow one – i.e. both think that the remains are of regional not national importance, the difference being whether they are at the high or low end of that range. Both disagree with HE, who bizarrely remain of the view that Mr Crank was right when he said that the remains are of probable national significance in his original January 2020 consultation response[8]. There is no warrant for this conclusion and it remains of regret that

[5] see those parts of his report quoted in Mr Nicol's proof HB 1.1 para 5.8 & 5.9 and CD E.2
[6] CD A40
[7] ID4
[8] N Crank response 7 Jan 2020 (CD J5): *"Proposed development will lead to the total loss of significant buried archaeological remains of probable national significance"*
Conclusion: *"In my view these remains, may be of equivalent significance to the scheduled monument, and therefore should be considered subject to the policies for designated heritage assets."*

whilst Mr Wilkinson (the author of the HE letters) listened to much of the inquiry that he never put himself forward for his untenable view to be challenged. In the absence of oral evidence untested by cross examination, the Inspector is invited to give very limited weight to the position of HE.

2.2. Thus, this closing submission will not cover all of the ground as to why Dr Dawson rather than Mr Crank is right (though it is firmly asserted that he is). Rather, based on the revised scheme it is plainly a benefit of the scheme that the remains, albeit of low-regional importance will be preserved in situ, as a non-designated heritage asset.

2.3. As to other heritage impacts, the LPA at no point allege any direct harm to Magiovinium as a Scheduled Ancient Monument, nor did it raise complaint with regard to the other remains on Site, most notably the loss of ridge and furrow. Its objection was based on a criticism of loss of remains within Area 2 alone. This has been addressed and no sensible objection on heritage issues remains.

2.4. Thus this scheme therefore enables the preservation of the remains within Area 2 in situ, and an agreed monitoring scheme to ensure that there is no future deterioration of the remains. Insofar as there are other heritage impacts then those relate to loss of non-designated assets and the interim balance in §197 of NPPF is engaged and robustly passed. The first RfR, and the primary basis for withholding PP has been clearly and demonstrably resolved.

3. Ecology

3.1. The LPA's objection in relation to ecology related to a perceived absence of proving compliance with the mitigation hierarchy and, at least at the time of the officer's report, a failure to justify avoiding impacts upon priority habitats within F3 and F4.

3.2. It has been stated a number of times that there is "significant overlap" between Area 2 and effects on lowland meadow habitat[9]. However, this may be a hangover of the confusion on the part of Mr Snell as to which field is which. Field F3 within which Area 2 sits has been surveyed twice for these proposals, most recently earlier this year and the ecologically best parts of site which were sampled come out as MG6 and not MG5. MG6 is not a priority habitat and its loss is not protected by policies which address the loss of such habitat. The much smaller field, F4, is a degraded form of MG5, but its loss can be robustly mitigated by the translocation of turf

[9] LPA opening submissions and PS XIC day 4 PM

('the sward'), some of the soil and the green hay from F4 onto the newly created ecological mitigation area within the site, which is over 3 Ha in size, more than readily accommodating the loss of 0.76 Ha of MG5 on site. Even more robustly, the off-set payment looks to recreate a much larger area of lowland habitat off-site as well. Thus, this objection has also been effectively resolved by the avoidance of harm to Area 2 within the revised scheme to the satisfaction of the LPA. However, it was never really a proper basis to withhold consent in the first place, since even with Area 2 included the loss was adequately mitigated **and** compensated for in line with NE3.

3.3. The SOCG agrees that lowland meadow is not irreplaceable habitat[10] and re-provision off-site should therefore be acceptable in principle[11]. The revised scheme retains an increased area of lowland meadow and therefore presents an even less harmful proposal in ecological terms with all ecological units which will be lost (including the 0.76 Ha of F4 MG5 grassland) being re-provided off-site and secured through the s.106 agreement.

3.4. In any event, SD14 does not require preservation of the on-site habitats, nor does any policy within the NPPF or Plan:MK suggest that lowland meadow cannot be re-created or require the habitat to be retained at all costs. The appeal scheme therefore represents a proportionate response given the habitat type and its ability to be re-created. The proposals represent net gain and satisfy Policy NE3[12].

3.5. As for the s.106 dispute, at present, there is no policy or other requirement for the measurable net gain to be 10%. NE3 requires only "*wherever possible result measurable net gain in biodiversity*", no set percentage is given. Accordingly, the Inspector is invited to approve the s.106 with the Appellant's proposed sum. Mr Snell's arguments for setting a defined gain at 10% (that other sums would be "difficult to measure" and "seems reasonable"[13]) are unconvincing. The requirement is to meet policy and to mitigate harm, which the appeal scheme amply does. The fact that it might be easier to 'measure' if it beat the net harm threshold by a large margin is not what the policy says or requires. To the contrary on the Appellant's case the gain is significant since the loss of F4 land is being both mitigated on site by translocation into a wider area which will be managed **and** by compensation through the offices of the Environment Bank.

[10] CD K.7 paragraph 7. Para 175 of NPPF is therefore not engaged.
[11] AB oral evidence and POE 3.5.1
[12] AB oral evidence
[13] PS verbal evidence 4 Sept AM

3.6. Finally, had the parties not come to terms and Mr Snell escaped cross-examination, then it would have been pointed out to him[14] that the designated wildlife corridor in the LP along the A5 trunk road is for the most part located outside of the site itself and falls within extensive vegetation which lies within the control of HE and is untouched by the development. True the designation comes into the Site at its southern most point, but that is replicated by the open land retained alongside the A5 in the north west of the site and now by Area 2 remaining undeveloped. The loss of hedges within the site has always been recognised as a consequence of the allocation[15].

3.7. In short this RfR has never stood up to scrutiny, but with the removal of Area 2 – there is more than ever, no proper basis to withhold consent.

4. Highways

4.1. Third parties to the inquiry raised issues in relation to transport and some slight differences remain between the LPA and Appellant in relation to the quantum of contributions required within the s.106, which were explored in the highways round table discussion. All professional highways witnesses to the inquiry were of the view that the expressway was too remote and "not sufficiently certain to allow weight to be attached"[16]. Equally, the grid road reserve safeguarded for the LPA would allow sufficient land to construct a road bridge over the railway, if and when this is required as part of any future rail upgrade. However, this too is overly remote to be of direct concern to the appeal decision.

4.2. In relation to the quantum of the Pedestrian and Cycle Improvement Contribution, the Appellant's figure represents a justified and proportionate sum which is directly and reasonably related to the scale of the development and its impacts. As explained by MA, the Appellant's figure uses forecast trip generation and distribution figures to calculate the specific impact on the network of the appeal scheme. In this regard, it is analogous to the well-established approach taken to highway impacts. The Council's figure does not relate to the particular impact caused by the proposed development and is instead based on the raw cost of upgrading an entire route and apportioning that against the % distribution of trips from the development, not the actual number of cycle trips which, even in the peak hour and with securing the modal increase proposed by the Travel Plan, are no more than 36 trips. This goes beyond mitigating an impact of the proposal.

[14] see ID13
[15] see §7.99 CD D2
[16] NW evidence day 5, AM

4.3. Based on the SOCG with Highways England and the LHA it is firmly submitted that there is no residual concern which arises in respect of the development of this site in either technical highways nor in accessibility terms.

5. Benefits

5.1. The principle of development is firmly established by policy SD14 of Plan:MK, which allocates the whole of the 57Ha appeal site (see CD E1 p65) *"…as a strategic employment site for the development of large footprint B2/B8 units to meet the requirement for this type of commercial floorspace in Milton Keynes in the plan period*[17]*."*

5.2. The need for warehousing floorspace within MK is not disputed by the LPA and the SD14 allocation was chosen as Plan:MK's mechanism for meeting this need within the early part of the plan period[18]. Other large allocations, MK East for example, are intended and expected for delivery later on in the plan period, and as the Inspector heard on day one, there remain considerable hurdles before MK East will deliver significantly. Therefore, the appeal Site is the only realistic and anticipated mechanism for meeting an identified need at this point in the plan. At its earliest and most optimistic MKE could not deliver before the mid-2020s and as Mr Moore conceded on day one – without South Caldecotte coming forward MK faces a serious gap in provision – which led him to a plea that was heard by all that a compromise could be reached.

5.3. The reduction in floorspace[19] as a result of the revised plans does not affect the ability of the Site to contribute substantially towards meeting this need. Indeed, the case for the LPA was that Area 2 should be excluded and their position at the inquiry was that the benefits of the scheme could still be achieved with the amended layout proposed[20].

5.4. In relation to Policy SD14, Mr Buckley helpfully confirmed[21] that in his view there were no outstanding areas of conflict with any part of SD14 which would warrant a finding that there was overall conflict with the policy. As to floorspace, Mr Buckley confirmed that the appeal scheme represented a "*reasonable outcome*" and a "*significant amount of floorspace*". In relation to SD14(2), that there was "*no highways reason to require the grid road*" referred to

[17] ∫5.33of the explanatory text to policy SD14.
[18] IR – CD E.2 [81- 82]
[19] A 16% reduction in the net developable area.
[20] MM evidence and LPA's opening submissions
[21] DB verbal evidence 4 Sept PM

in this part of the policy, and as to SD14 as a whole, the scheme is acceptable, particularly in light of the LPA's view that "*by requiring layout to be informed by archaeology there was already a recognition [within the policy] that floorspace might be impacted*". Further, Mr Buckley agreed that the scheme complies with Policies SD1, HE1, NE2 and NE3, leaving no reason to refuse the current proposal. Mr Osborn also provided his professional view that the revised scheme was "*sufficiently close to say that scheme is compliant with policy*"[22] where the cost of addressing the archaeological issue is a marginal shortfall in delivery of the likely minimum floorspace requirement, based on the illustrative masterplan.

6. Conclusions

6.1. Overall, the scheme satisfies the site-specific policy of SD14, there is no longer any assertion that heritage policies would be offended and the scheme easily satisfies NE3 and requirements for biodiversity net gain. The scheme will create temporary and permanent jobs and is required to meet an identified need for B8 warehousing within MK. The scheme would bring about many economic and other benefits and is an essential element in the LPA's plan for achieving necessary economic growth in MK during the early part of the plan period. There is therefore no reasonable reason to resist the grant of permission, the main parties agree that the development is in accordance with the development plan taken as a whole with no material consideration indicating that permission should be refused and in line with NPPF paragraph 11 and s38 (6) P&CPA2004, the appeal should therefore be allowed without delay.

6.2. In all of the circumstances therefore the Inspector is invited to allow this appeal and to grant permission.

Kings Chambers

Birmingham, Manchester, Leeds

Paul G Tucker QC

Stephanie Hall

7th September 2020

[22] NO verbal evidence 4 Sept PM