



**TOWN AND COUNTRY PLANNING ACT 1990 (as amended)
APPEAL BY HB (South Caldecotte) Ltd**

An Appeal Against the refusal of planning permission by Milton Keynes Council of an Outline Planning Application for:
The development of the site for employment uses, comprising of warehousing and distribution (Class B8) floorspace (Including mezzanine floors) with ancillary B1a office space, general industrial (Class B2) floorspace (Including mezzanine floors) with ancillary B1a office space, a small standalone office (Class B1) and small café (Class A3) to serve the development; car and HGV parking areas, with earthworks, drainage and attenuation features and other associated infrastructure, a new primary access off Brickhill Street, alterations to Brickhill Street and provision of Grid Road reserve to Brickhill Street.

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

PROOF OF EVIDENCE

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PREAMBLE

My name is Neil Osborn and I hold a BA with Honours in Town and Country Planning and I have been a Member of the RTPI since 1984. Following a period in local government in Bedfordshire and a partnership in a national planning consultancy I co-founded Development Land and Planning Consultants, based in Bedford, in 1992. The Practice was subsequently renamed DLP Planning Ltd. and is a part of the DLP Consulting Group, a multi-disciplinary consultancy with offices in eight locations across England and Wales including a sub-office in Milton Keynes.

My clients are wide ranging and diverse. They include national and regional commercial developers, housebuilders, retail and leisure developers, renewable energy promoters and a variety of other development interests, landowners and investors ranging from publicly quoted businesses, charitable organisation to private clients and investors.

I have significant experience of both the submission and negotiation of planning applications, the promotion of development through the development plan making process, and the conduct of appeals. The Appellant is Hampton Brook (South Caldecotte) Ltd. I have acted on behalf of Hampton Brook in respect of all such matters for more than 15 years in relation to sites in various locations in and around Northampton and Milton Keynes. I am therefore familiar with the Company and its proposed forms of development; I am also familiar with Milton Keynes and with the current policies of the Local Planning Authority.

DLP were formally instructed in respect of this scheme in July 2015 and in respect of this appeal on 5th December 2019. Our instruction followed the Local Planning Authority's (LPA) refusal of the planning application that is the subject of this appeal.

I understand my duty to the Inquiry and have complied, and will continue to comply, with that duty. I confirm that this evidence identifies all facts which I regard as being relevant to the opinion that I have expressed and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion. Neither I, nor DLP Planning whom I am employed by, are instructed on the basis of a success fee.

The submissions which I have prepared and provide for this appeal are true and have been prepared, and are given, in accordance with the guidance of my professional institution, the RTPI, and I confirm that the opinions expressed are my true and professional opinions irrespective of by whom I am instructed.



Neil Osborn BA(Hons) MRTPI

1.0 SCOPE OF EVIDENCE

- 1.1 In this Proof of Evidence I present the planning case for HB (South Caldecotte) Ltd (*the Appellant*). Accordingly, I identify the relevant planning policy framework, assess the proposed development against the relevant planning policies and reach conclusions on whether the proposals accord with the development plan, and whether other material considerations indicate that a decision should be made otherwise than in accordance with the development plan.
- 1.2 In undertaking my assessment, I have had regard to and relied upon the expert opinions expressed by:
- Dr. Michael Dawson of RPS Ltd, who will adduce evidence on matters relating to archaeology.
 - Mr. Alistair Baxter of Aspect Ecology Ltd, who will adduce evidence on matters relating to ecology.
 - Mr. Matthew Addison of BWB Consulting Ltd, who will adduce evidence on transport matters.
 - Mr. Stephen Nicol of Nicol Economics, who will adduce evidence on matters relating to the impact the development would have on the economy.
- 1.3 Whilst my evidence is focused on a planning assessment of the proposed development taking into account other material planning considerations, in undertaking this assessment (and relying on the expert evidence of the witnesses above) I have set out matters that are pertinent to it. Principally these relate to matters of heritage, ecology, transport and economic matters, including the potential benefits of the proposed development.
- 1.4 In summary, I will establish that the appeal proposals are in accordance with the statutory development plan. Therefore, according to section 38(6) of the Planning and Compulsory Act 2004, permission should be approved, unless material considerations indicate otherwise. I have concluded that far from indicating otherwise, the material considerations also indicate that permission should be granted.

2.0 RELEVANT BACKGROUND

2.1 The appeal was submitted by DLP Planning Ltd. on behalf of the Appellant following the refusal of an outline planning application with all matters reserved apart from access (LPA reference 19/01818/OUT) by Milton Keynes Council, (*the LPA*).

2.2 The planning application was submitted to the LPA on 17th July 2019 and was also made valid on 17th July 2019. The application form accompanying the planning application sets out the development description as:

'The development of the site for employment uses, comprising of warehousing and distribution (Class B8) floorspace (Including mezzanine floors) with ancillary B1a office space, general industrial (Class B2) floorspace (Including mezzanine floors) with ancillary B1a office space, a small standalone office (Class B1) and small café (Class A3) to serve the development; car and HGV parking areas, with earthworks, drainage and attenuation features and other associated infrastructure, a new primary access off Brickhill Street, alterations to Brickhill Street and provision of Grid Road reserve to Brickhill Street.'

2.3 The Council amended the description for reasons which remain opaque but appear to relate to a reference to the outline form of the application. The LPA has adopted the following description:

'Outline application including access for the development of the site for employment uses, comprising of warehousing and distribution (Use Class B8) floorspace (including mezzanine floors) with ancillary B1a office space, general industrial (Use Class B2) floorspace (including mezzanine floors) with ancillary B1a office space, a small standalone office (Use Class B1) and small café (Use Class A3) to serve the development; car and HGV parking areas, with earthworks, drainage and attenuation features and other associated infrastructure, a new primary access off Brickhill Street, alterations to Brickhill Street and provision of Grid Road reserve to Brickhill Street with appearance, landscaping, layout and scale to be determined as reserved matters'

2.4 The Appellant had instructed DLP in 2015 and was engaged in detailed pre-application discussions with the LPA at that time. The parties initially worked in close co-operation in relation to the preparatory stages of the submission draft of the Local Plan known as Plan:MK, and to its examination in public which took place in July and August 2018. The Appellant and the LPA also worked jointly to prepare Supplementary Planning Guidance for the site and the Appellant supported the two rounds of public consultation which the LPA chose to undertake in February 2018 and May 2019. In preparation for the submission of an application, the parties entered into a Planning Performance Agreement (CD M.8), signed by

the Appellant on 22/05/18 and the LPA on 18/06/18.

2.5 However, notwithstanding that period of close co-operation with the Council and the favourable consideration of the Local Plan Inspector, since the adoption of Plan:MK there has been a marked change in the attitude of the LPA from delivering the application in accordance with the expectations arising from the Examination in Public and the formal allocation of the site.

2.6 I understand, from the discussions which took place with the Council following submission of the application, that the reasons underlying the Council's effective withdrawal of support for an early application are threefold:

- The fact that the Development Framework SPD had not been adopted, despite undergoing two rounds of consultation (CD I.6).
- The desire to complete a Strategic Transport Study, the need for which had not at any stage been referred to within Plan:MK or previously raised with the Appellant (CD I.7).
- The potential need for the construction of a bridge across the existing railway line to the north of the site (CD I.9), again not a matter which had been previously raised.

2.7 I shall discuss matters pertaining to the draft SPD later in my evidence.

2.8 Regarding the second issue, the Appellant repeatedly requested a copy of this work, but the LPA has not been forthcoming (CD I.19) it is presumed because the work is not complete. As such the Appellant still has no understanding of any potential implication - if any - for the delivery of the site.

2.9 Regarding the third issue, I refer to para 5.3 of the Highways SoCG in respect to the status of this matter as not determinative to this appeal. Notwithstanding that the necessity is not accepted, the Appellant has agreed to safeguard land for a future Grid Road improvement along the site frontage which would include sufficient land to enable the construction of a bridge should it be needed in the future (CD I.3). MKC has confirmed acceptance of the extent of the Grid Road reserve as shown on BWB Drawing SCD-BWB-GEN-01-DR-TR-006-S2-P6 (CD C.9).

2.10 It is notable that none of these issues were raised by the LPA in the decision notice (CD D.1).

Confirmation of the status of these issues to this appeal was sought from the Council but as the Council has declined to consider reference to them in the Statement of Common Ground, there is no evidence that my assumption is not correct.

The Evidence Base

- 2.11 Plan:MK was adopted in March 2019 following its examination.
- 2.12 As part of its formulation, the LPA gathered an evidence base which included the following documents:-
- Employment Land Topic Paper (CD F.1)
 - Employment Land Review and Employment Growth Study (Phase 1) Nov 2015 (CD F.2)
 - Employment Land Review and Employment Growth Study (Phase 2) Nov 2015 (CD F.3)
 - Economic Growth and Employment Land Study June 2017 (CD F.4)
 - Local Economic Assessment 2016 (CD F.5)
 - Milton Keynes Economic Development Strategy (CD F.6)
 - MKC Mobility Strategy 2018 (CD F.7)
 - MK Multi Modal Model Local Validation Report (CD F.8)
 - Plan:MK Sustainability Appraisal Report (CD F.12)
 - Plan:MK Sustainability Appraisal Update Note (CD F.13)
 - Initial Sustainability Appraisal (CD F.14)
- 2.13 The conclusion of the evidence was that Milton Keynes requires 132 hectares of employment floorspace to meet its employment growth needs in the plan period, of which 104 hectares is needed for large scale logistics.
- 2.14 Provisions to meet the identified need has been principally addressed as follows:
- Policy SD12 Land at Milton Keynes East (*MKE*) comprising around 105ha of mixed employment uses as part of an urban extension including at least 1475 homes in the plan period and associated infrastructure including schools, a district centre and a comprehensive network of transport works.
 - Policy SD14 Land at South Caldecotte comprising around 57ha of B2/B8 Class uses to provide a minimum 195,000m² floorspace and ancillary B1 floorspace.
 - Policy DS3 Employment Development Strategy
 - Policy ER1 Employment Sites within the Borough of Milton Keynes
- 2.15 The submission version of Plan:MK initially noted at paragraph 5.25 that land to the east of

the M1 motorway, known as MKE, would be:

'shown on the Key Diagram for a mixed residential and employment development and it was envisaged that this area would provide a sustainable urban extension post 2026 towards the east.'

2.16 During the Plan:MK examination the status of MKE was altered, as reflected by paragraph 5.29 of the adopted Local Plan which states:

'It is envisaged that this area will provide a sustainable urban extension after 2031. However, the site is the subject of a Council bid for Government funding for the infrastructure needed for its delivery. If this bid is successful, the development of the site will be allowed to commence before 2031 as a source of housing and employment land provision addition to those set out in Chapter 4 - Development Strategy.'

2.17 In relation to MKE, the LPA's Initial Sustainability Appraisal (Feb 2017) noted that the site could provide a significant amount of employment land as part of the mixed use allocation but that its delivery would be constrained by the need to provide it with the necessary infrastructure even in the event that the funding became available. Accordingly, the Inspector noted at paragraph 117 of his Final Report that an anticipated start date of 2023/24 would be a pragmatic approach and Policy SD12 states that:

'Development can commence once the necessary strategic infrastructure required to make the site deliverable is funded and is being delivered'.

2.18 In short, MKE could be brought forward earlier than anticipated by Plan:MK. However, infrastructure works to make the site deliverable cannot commence until planning permission is granted for the infrastructure planning application. It is not now anticipated that the infrastructure planning application will be submitted until early 2021 at the soonest.

2.19 The emergent role of MKE however did not and does not negate the need to deliver South Caldecotte whose allocation the Inspector described as being:

'soundly based and ... effective in meeting forecast economic growth in the early to middle period of Plan:MK.'

2.20 The Council in its Employment Topic Paper (CD F.1) acknowledged the need for South Caldecotte to come forward. Prior to the adoption of Plan:MK the Inspector in his letter to the Council dated 31st August 2018 advised that it would not be a realistic scenario for MKE to replace South Caldecotte within Plan:MK.

2.21 In fact, the allocation of land at South Caldecotte is the only freestanding strategic allocation not constrained to be brought forward as part of a mixed use development dependent on the delivery of other development before it can be made available. It is also the best placed allocation to deliver B8 uses as acknowledged in the Employment Topic Paper and to do so early in the plan period. In essence, it is the preferred solution to ensure the delivery of employment land, as reflected in the Local Plan Inspector's reflection (at paragraph 122 of his Final Report) that:

'South Caldecotte would be the principal employment land allocation to meet the identified need for mainly warehousing and distribution uses.'

2.22 Moreover, he concluded specifically, no doubt in the light of uncertainty about MKE, that:

'the proposed employment allocation at this location would be soundly based and the allocation would be effective in meeting forecast economic growth in the early to middle period of Plan:MK.'

2.23 In terms of that expectation, the context is that Plan:MK has a base year of 2016, was adopted in 2019 and has a horizon which is 2031 – in other words, we are already almost 30% the way through the plan period. The need for early delivery of the site – which I expand upon at 2.26 below - was endorsed in a Statement of Common Ground between the Appellant and the LPA entered into as part of the evidence base for Plan:MK (CD F.11). Its allocation is necessary to ensure the adopted Plan's soundness.

2.24 Arising from adoption of Plan:MK the appeal site is allocated by Policy SD14 for Class B2 and B8 uses. In the preparation of that policy the Initial Sustainability Appraisal produced by the LPA stated that:

'There are no designated sites of biodiversity value within the site area. The site is composed of mostly greenfield land however so there will be some impacts on biodiversity, the extent of which will be determined when a detailed proposal comes forward. There are opportunities to extend the existing Linear Parks system into the area.'

2.25 With regard to heritage, it stated:

'The area contains two archaeological notifications sites. As such there is some historic interest which could be affected by development and potential impacts on heritage would need to be addressed before any development could commence. The extent of this will depend on how the development proposal takes this into account. The site also lies within an Open Countryside area.'

2.26 For the reasons I shall explore in further depth later, South Caldecotte is, as a matter of fact, the only site in Milton Keynes capable of meeting an evident present demand for large scale logistics and warehousing. It follows that if South Caldecotte is not delivered, it seriously undermines the employment growth strategy set out within Plan:MK. This is because as set out in Section 5 of the Burbage Report at Appendix 1 of Mr Nichol's evidence there are effectively no available alternatives to meet short term demand for large scale logistics. The Burbage conclusion is reinforced by the recent refusal of permission on 18 June (Ref 19/02402/FUL) for development of an initial phase (19.7ha) of the employment land at MKE – on the grounds that infrastructure funding and delivery of the highway infrastructure has not yet been secured and that the scheme lacks consideration of the remainder of the allocation in terms of highway impacts, and other mitigation.

3.0 THE REASONS FOR REFUSAL

3.1 In this section I will comment on the reasons for refusal

3.2 The planning application was presented to the LPA's Development Control Committee on 6th February 2020 with an officers' recommendation for refusal. At the meeting, the Committee resolved to refuse planning permission for three reasons. The decision notice was issued on 26th February 2020 and the appeal was lodged on 17th April 2020.

3.3 The planning application was refused for the following reasons:

1. *The proposal, by reason of the total loss of non-designated heritage assets of archaeological interest, failure to ensure that consideration is given to the historic environment in informing the site layout and the quantum of development and failure to demonstrate that the benefits of the development clearly outweigh the harm, taking into account the assets significance and importance, would be unacceptable contrary to NPPF policy 197 and Plan:MK policies HE1 (F), SD1 (A19) and SD14 (C9).*
2. *The proposal, by reason of the loss of a significant extent of Priority Habitats and other ecological assets, and a failure to demonstrate an acceptable mitigation of biodiversity impacts on site, would result in an unacceptable impact on biodiversity assets within the application site, contrary to NPPF policies 170 (d), 174 (b) and 75 and Plan: MK policies, NE2 and NE3 and Planning Practice Guidance/ Natural Environment Guidance Paragraph: 024.*
3. *The proposal, by reason of failure to demonstrate provision of necessary infrastructure to mitigate the impact of the development, in particular in relation to transport, would have a harmful impact on the transport network, in terms of road, cycle and public transport provision, and would therefore fail to mitigate the impact of development, contrary to Plan: MK policies INF1, CT1 CT2, CT3, CT5 and SD14 (C.3) of Plan: MK.*

3.4 A full description of the Appeal Site and the proposed development is set out in the Council's Statement of Case and the Statement of Common Ground.

Reason 1 - Archaeology

3.5 Reason 1 for refusal relates to the loss of archaeology on the site. It is understood that the Council's concern is that the proposals would result in the excavation of buried archaeology within a part of the site known as 'Area B'.

3.6 My colleague Dr. Dawson addresses matters pertaining to archaeology, the nature of and value to be attached to, the archaeology present on the site and the weight to be attached to

that value.

- 3.7 From a planning perspective the issue is how the value of archaeology should be weighed in the balance against other material considerations particularly in relation to the development plan, which does not identify as part of the allocation of the land that any part of the site should be kept permanently free of development.
- 3.8 It is a matter of fact that the issue of archaeology was not identified at any time during the preparation of the Local Plan either in terms of the evidence base or of the argument put to the Inspector in support of the allocation by the LPA at the Examination in Public. It is presumed that at the time the local plan was in preparation, the County Archaeologist did not object to the allocation and did not contend that the remains are of national importance.
- 3.9 Explicitly, the Inspector recorded his consideration of the matters impacting upon the allocation at paragraphs 121-125 of his Report and whilst he noted comments on heritage assets none referred to archaeology. It follows that the allocation of the site to meet a significant element of the need for employment was based on the availability of the whole site.
- 3.10 Very substantial weight therefore needs to be given to the role ascribed to the site allocation as part of the economic development strategy for Milton Keynes when considering the weight to be attached to any harm that might arise to archaeology. It must have regard to the absence of weight that was accorded to archaeology by the Council in bringing forward their Local Plan, and in particular to the adverse effects on the economic strategy of seeking to now exclude part of the allocated site from development such that it cannot provide the minimum quantum of development on which the Plan is predicated.
- 3.11 As a result, on the basis of the evidence adduced by Dr. Dawson, I invite the conclusion that any harm caused by the development of the site as a whole to historic assets is capable of being addressed by condition to ensure the excavation of the site and the resultant loss of undisturbed archaeology is significantly outweighed by the benefits of the development as allocated, together with their preservation by record and does not warrant the refusal of this appeal on the grounds alleged by the LPA.
- 3.12 It follows that to exclude a significant part of the site from development would have considerable implications where it renders the renders the site both incapable of delivering

the scale of development needed to meet the requirements on which Plan:MK is dependent, but also prejudices the ability of the site to deliver the type of development for which it was allocated. The latter is of particular importance given the nature of the logistics market identified in the Burbage Report and the demonstrable lack of any available suitable alternative sites capable of meeting that type of demand. In any event, the fettering of the site not to deliver the development that was expected of it would also have a significant effect on the validity of Plan:MK.

Reason 2 – Ecology

- 3.13 The LPA alleges within Reason 2 that that the impact of development would cause the harmful loss of habitat.
- 3.14 The basis of the local plan allocation was the allocation of the whole site and there is no part of Policy SD14 that identifies the requirement to protect habitat save for the existing vegetation to site boundaries. Again, it is a matter of fact that the issue of *extent of Priority Habitats and other ecological assets* was not identified at any time during the preparation of the Local Plan either in terms of the evidence base or of the argument put to the Inspector in support of the allocation at the EiP.
- 3.15 It is accepted that the proposals would result in the loss of an area of Priority Habitat – namely lowland meadow. My colleague Dr. Baxter addresses the nature of that habitat, the quantification of its value and the impact of its loss together with the impacts on other features of the site of potentially lower importance, such as hedgerows.
- 3.16 Dr Baxter argues that such loss as will arise can be readily mitigated by conventional means such that the development would result in biodiversity net gain. Paragraphs 7.10 – 7.13 of his evidence explains how making a financial contribution towards the Environment Bank would establish new habitats to replace those lost as a result of the development and provisions for this are made in the Planning Obligation. This will result in an overall enhancement as such new (off-site) habitats will be managed for ecological purposes.
- 3.17 Policy NE3 of Plan:MK requires only that wherever possible development results in measurable net gain to biodiversity and that only if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated or compensated for, should planning permission be refused.

3.18 It is therefore the case that where there is a loss of habitat (of whatever value), Policy NE3 allows a stepped approach to address the impact which must be weighed against the benefits of the development. In this instance, habitats lost will be readily compensated for by mitigation and by allowable financial contribution. It follows that even before consideration is given to the benefits of the development, the proposal is not contrary to the development plan or national planning guidance. The loss of habitats of local importance are not grounds for withholding planning permission where indeed in the long term the effect of the proposals will be a clear net benefit in ecological terms.

3.19 Accordingly, there is no conflict in the approach taken by the Appellant to either local or national policy.

Reason 3 - Transport

3.20 Reason 3 is that the transport impacts of the proposal will be unacceptable, principally because of a Highways England holding recommendation, and also because planning conditions and a legal agreement are needed to secure necessary highways improvements in association with the development.

3.21 The Appellant has set out Heads of Terms with the intention of addressing either by Conditions or a Planning Obligation the means to address all the outstanding matters relating to the acknowledged need for transport and transportation matters. These are as set out in Mr Addison's evidence and comprise:

- Improvements to public transport
- Mitigation to Walton Park Roundabout (A4146 Bletcham Way/V10 Brickhill St)
- Improvements to Tilbrook Roundabout
- Kelly's Kitchen Roundabout (A5/A4146)
- Redway Route Improvements
- The safeguarding of land for a future Grid Road improvement along the Appeal Site frontage including land to enable a bridge replacement for the level crossing
- Travel Planning.

3.22 Whilst Mr Addison adduces evidence on highway and transportation matters, the Appellant does not accept the need for a Redway to be provided to Brickhill Street.

3.23 In the event Mr Addison describes what must be considered as reasonable in terms of National Planning Policy Framework paragraphs 109 and 56.

4.0 THE DEVELOPMENT PLAN

Legal context

- 4.1 The legislative context for the determination of planning applications and appeals is set out in Section 70(2) of the Town and Country Planning Act 1990 (as amended) and Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended). The latter provides:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

- 4.2 Accordingly, the first stage of the analysis is to examine whether the appeal proposals accord with the development plan (I will then go on to consider material considerations, including the NPPF).

The Development Plan

- 4.3 The Development Plan for Milton Keynes is made up of the following:

- Plan MK: Adopted March 2019

- 4.4 The policies of Plan:MK cited in the refusal of the planning application are:

- **HE1 (F) Heritage and Development**
- **SD1 (A19) Place Making Principles for Development**
- **SD14 (C3 & C9) South Caldecotte**
- **NE2 Protected Species and Priority Species and Habitats**
- **NE3 Biodiversity and Geological Enhancement**
- **INF1 Delivering Infrastructure**
- **CT1 Sustainable Transport Network**
- **CT2 Movement and Access**
- **CT3 Walking and Cycling**
- **CT5 Public Transport**

- 4.5 In addition to the policies referred to in the Reasons for Refusal, I consider that the following additional policies are of particular relevance to this appeal, but which are not said to be contravened by the Council:-

Policy SD1 (in its entirety) – Place-Making Principles for Development

Policy SD14 (in its entirety) – Strategic Employment, Land South of Milton Keynes, South Caldecotte

Policy DS0 – Review of Plan:MK

Policy DS3 – Employment Development Strategy

Policy ER1 – Employment Sites within the Borough of Milton Keynes

Assessment of the Reasons for Refusal Against the Relevant Development Plan Policies

Reason for Refusal 1 – Archaeology

Policy HE1

- 4.6 Policy HE1 states that proposals will be supported where they sustain or enhance non-designated archaeological sites.
- 4.7 Criterion F of Policy HE1 states that harm to the significance of non-designated heritage assets will be resisted, unless the need for and benefits of the development clearly outweigh the harm, taking into account the asset's significance and importance, and only once all feasible solutions to avoid and mitigate that harm have been fully implemented.
- 4.8 The proposals will result in the loss of buried archaeology on part of the site, but such remains will be excavated and recorded in a conventional manner. The issue is therefore whether the development should be resisted because the benefits of the development do not outweigh the harm to the asset and whether in judging that balance all feasible solutions to avoid and mitigate that harm have been taken.
- 4.9 Dr. Dawson explores the significance of the non-designated asset within his Proof of Evidence. His conclusion is that the LPA have seriously overstated the significance of the buried archaeology within the development site, and that the area of archaeology within the development area represents part of the much larger hinterland of the Roman site of Magiovinium, and not a core part of the interest of the Roman town.
- 4.10 He further concludes that the steps in mitigation that he proposes are sufficient to reflect the weight and value to be properly attached to the asset on site.
- 4.11 I have already identified at paragraph 2.33 that the allocation of the site is not predicated on

reserving any part of the land for its archaeological value. In the event that the part of the site now identified by MKC as having a value that warrants its exclusion from the development, the result would be a significant reduction in the developable area to the extent that it would severely limit the capacity of the site to deliver the required minimum scale of development as well as the forms of development that could be accommodated. It would result in the land not being part of the scheme as its control would remain with its present farming ownership.

- 4.12 Mr. Nicol's evidence refers to the market demand for B8 development and the implications for the type and scale of buildings needed. Essentially the scope for very large scale B8 units of the type for which there is a demonstrable market demand (Mr. Nicol's evidence at paragraph 4.16 and his conclusion that follows at paragraph 4.18) and for which the site has been allocated would be severely curtailed. In short, the preservation of any archaeology through mitigation by avoidance would render the site substantially unsuitable for the purposes for which it has been allocated. The practical effect is that the unique opportunity to cater for the needs of very large individual warehousing needs would be lost to Milton Keynes where there is no other site capable of accommodating them.
- 4.13 I invite the conclusion in the first instance that it is not feasible to avoid the harm whilst delivering the purpose for which the site was allocated. The impact of harm having regard to the relative value of the asset identified by Dr. Dawson must therefore be weighed against the benefits of the scheme (as described in paragraph 5.14 and 5.16 of my proof). Where the necessary conclusion is that the asset is of local or at most regional interest; the site is allocated; the economic strategy for the City would be prejudiced if the site cannot deliver both the quantum and type of development for which it has been allocated due to the lack of alternative available sites for large scale logistics; and there is no reasonable alternative means of developing the site that achieves that objective, the scheme must be concluded to meet the criteria of Clause F. It follows that the development is, as a matter of fact, compliant with the development plan.
- 4.14 It is also compliant in all other regards to the relevant clauses of Policy HE1. It meets Criteria B and I insofar as the appeal proposal has been accompanied by an appropriate desk-based heritage assessment and field evaluation (and in doing so also meets Criterion 9 of Policy SD14) and that the assessments have reflected the requirements of Criterion G.
- 4.15 It follows that the benefits of the scheme in delivering the allocation are considerable and

clearly are capable of outweighing residual harm to the archaeology on the site.

Policy SD1

- 4.16 Policy SD1 sets out a series of place-making principles for strategic scale development. The LPA allege that the proposals would not comply with Criterion A19. Criterion 19 primarily refers to matters of biodiversity but includes reference to the need for consideration of the historic environment. It follows that if the scheme is compliant with the requirements of Policy HE1 it also meets that part of SD1 19 that refers to the historic environment.
- 4.17 Notably, the LPA does not allege any conflict with any other criteria in Policy SD1, a point I shall return to later in my evidence.

Reason for Refusal 2 – Ecology

Policy NE2 & NE3

- 4.18 Policy NE2 states that where the site contains priority species or habitats, development should wherever possible promote their preservation, restoration, expansion and/or re-creation in line with Policy NE3.
- 4.19 Policy NE3 states that development proposals will be required to maintain and protect biodiversity and geological resources (Criterion A), and wherever possible result in a measurable net gain in biodiversity, enhance the structure and function of ecological networks and the ecological status of water bodies in accordance with the vision and principles set out by the Buckinghamshire and Milton Keynes NEP. If significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or, as a last resort, compensated for then planning permission should be refused (Criterion B).
- 4.20 The proposals would result affect an area of 4.8 hectares which the LPA describe as Priority Habitat (lowland meadow) – the third draft SPD refers at Fig. 2.5 (CD G.11).
- 4.21 Dr. Baxter sets out his opinion as to the value that should be placed upon the Priority Habitat (using the DEFRA Metric so far as it is relevant – Policy Criterion C) and other habitat assets and describes the mitigation allowed for in the scheme reaching his conclusion that the mitigation hierarchy has been followed and it is appropriate to compensate for the loss of this area of lowland meadow. The Scheme will achieve a measurable net gain for biodiversity, delivered onsite within a Biodiversity Enhancement Scheme (BES) and Habitat Management

Plan (HMP), that have been requested by the Council Ecologist, and offsite by the Environment Bank, with these measures secured under the S106 and/or planning conditions. The mitigation advocated by Mr Baxter are embodied in the Planning Obligation which addressed Criterion D of the Policy.

- 4.22 The allocation of the whole site for development makes no reference in Policy SD14 to the preservation of any part of the site on account of its habitat value. There is no conflict between Policy SD14 and Policy NE3 A when the Plan is read as a whole and in any respect, Policy SD14 which is specific to the site, outweighs Policy NE3 which sets out a general rather than a specific approach to decision making, In any event Policy NE3 A requires development proposals to maintain and protect biodiversity, but Policy NE3 B acknowledges that significant harm may arise, in which circumstance it should be mitigated or compensated for if it cannot be avoided.
- 4.23 Therefore, if there is a conflict between the policies, Policy SD14 demonstrably carries the greater weight in decision making. This is reinforced in the conclusion insofar as for the reason noted, Policy NE3 Criterion B then deals with the circumstances where the objective in Criterion A cannot be achieved.
- 4.24 Turning to Criterion B and having regard to the fact that Policy SD14 does not identify or otherwise suggest the need to reserve undeveloped any part of the allocated site, the areas the Council now wishes to exclude would result in an awkward shaped development that would fail to deliver the 195,000m² minimum of employment floorspace sought by Policy SD14 again also having regard to the type of development for which the site was allocated – Mr Nicol’s evidence paragraph 6.43(5) refers.
- 4.25 If one were to add this area to that which the Council now wished to avoid on archaeological grounds then it would effectively emasculate the site. The attempt to retrospectively rewrite the policy is deeply misguided where the policy is up to date. It is not possible to avoid the impacts of development, which have already been weighed in the overall balance in deciding upon the allocation.
- 4.26 Dr. Baxter explains how the impacts of development are mitigated on site and, residually, how they are compensated for where they cannot be mitigated in view of the nature of the allocated development. This includes securing by the Planning Obligation a contribution

towards delivering new habitats, including a substantial financial payment derived from the Biodiversity Impact Assessment submitted. (CD C.6) The methodology is discussed in more detail within Mr Baxter's Proof.

- 4.27 Accordingly, the Appellant has followed the cascade as set out in Policy Criterion B and where it is not possible to preserve the habitat and be compliant with the intentions and details of Policy SD14, has fulfilled the obligations of Policies NE2 and NE3 such that the appeal scheme is not in conflict with the development plan.

Reason for Refusal 3 – Transport/Infrastructure

Policy INF1

- 4.28 Policy INF1 states that development that generates a demand for infrastructure will only be permitted where permitted if on or off-site infrastructure is in place or delivered by the development.
- 4.29 I note in Reason for Refusal 3 the LPA alleges that the Scheme does not make provision for transport infrastructure, the requisite elements being those identified at 2.46 above.
- 4.30 It is clear from the consultation responses and subsequent dialogue with Milton Keynes Highways that there is no dispute between the parties over the extent of the provision offered by the scheme necessary to deliver the development, as is outlined in Mr Addison's evidence, and the requirements of the Authority to be satisfied that the development meets the requirements of Policy INF1 and those of Framework paragraphs 110 and 111.
- 4.31 The draft Conditions and Planning Obligation provide the mechanisms to deliver the requisite off-site infrastructure necessary to enable the development to proceed.
- 4.32 It follows that the only matter that occasions an objection to the scheme in respect of Policy INF1 is insofar as the legal agreement was not in place at the time the matter was determined. It is not, in terms, contrary to the development plan subject to that Obligation.
- 4.33 ***Policy CT1***
- 4.34 Policy CT1 sets out an intention to promote a series of sustainable transport measures. In this case of the appeal site this needs to be considered in the context provided by Policy SD14 where Criterion 3 requires the provision of effective public transport connections and Criterion 5 refers to direct footpath connections.

- 4.35 The former is addressed in the Planning Obligation, the latter by the layout contained in the Indicative Masterplan and beyond which are the infrastructure improvements to facilitate these sustainable connections.
- 4.36 Accordingly, the appeal proposals are not in conflict with Policy CT1 where the Highway Authority have agreed the measures proposed to improve highway infrastructure and promote sustainable transport and provisions are in place to secure this.

Policy CT2

- 4.37 Policy CT2 seeks mitigation of the impacts on the local or strategic highway network arising from the development itself or the cumulative effects of development, through the provision of, or contributions towards, necessary and relevant transport improvements including those secured by legal agreement.
- 4.38 For the reasons that are set out by Mr Addison, covered by the Planning Obligation, are embodied in the illustrative layout of the site or which can be addressed through the submission of Reserved Matters, I do not believe that the development is contrary to any of the 10 criteria set out in Section A of the Policy.
- 4.39 Section B is directed specifically to proposals that generate significant traffic or impact on level crossings. They are required to provide a Transport Statement and Travel Plan both of which accompany the appeal proposal. The Framework Travel Plan includes freight route planning initiatives in respect of achieving efficient and sustainable HGV movements – referred to by Mr Addison at paragraph 3.30 of his evidence. The scheme is not therefore contrary to Policy CT2 B.

Policy CT3

- 4.40 Policy CT3 is a policy for walking and cycling.
- 4.41 Milton Keynes is characterised by its 'Redway' network. Mr Addison addresses the issue of the Redway network as it affects the appeal site at Chapter 5 of his evidence.
- 4.42 The Appellant proposes to extend the Redway network into the site as shown on the Indicative Masterplan (Mr Addison's paragraph 5.4 refers) and to provide a connection alongside that part of the Grid Road from the site access to Kelly's Kitchen roundabout as part of the improvements of that section of the V10 Brickhill Street. It follows that this

provision for a Redway extension is in accord with Criterion E and that subject to detailed design in accord with the Redway Design Guide 2020, it would secure the objectives of the Redway to provide 'an effective coherent network of routes separate from the city road system providing attractive, safe, direct and convenient access for pedestrians and cyclists at a local, district and city scale' (Design Guide paragraph 1.1).

4.43 The Appellant does not however, in addition, propose to provide a Super Redway along V10 Brickhill Street over the remainder of the site frontage north of the site access. This is not justified on the basis of the Transport Assessment – Mr Addison refers at 5.11-5.13 of his evidence. However, in providing a Grid Road reserve to enable that section of the V10 to be improved to Grid Road standards should that need ever arise, the agreed extent of the reserve is sufficient to enable the construction of the Super Redway as part of that improvement.

4.44 The Appellant further asserts that the financial contribution requested towards the wider Super Redway Routes programme, specifically to fund an upgrade of the V10 Super Route including the delivery of the missing Redway link adjacent to Walton Park along the V10 Grid Road between H9 and H10 must meet CIL Regulations 122 and paragraph 56 of the NPPF - and be fairly and reasonably related to the impact arising from the development. The Appellant proposes to make a contribution to the improvements and upgrading commensurate to the level of use likely to arise based on the Transport Assessment.

4.45 I am of the view that the scheme put forward is compliant with the objectives and criteria of the development plan so far as it contains policies for the encouragement of walking and cycle journeys to work

Policy CT5

4.46 Policy CT5 requires development to meet the need of public transport users and operators. It establishes five criteria.

4.47 Reason for Refusal 3 refers to a harmful impact on public transport provision.

4.48 The Appellant intends to make a contribution towards public transport provision to be set out in the Planning Obligation and considers that this meets the tests within CIL Regulation 122 and paragraph 55 of the National Planning Policy Framework.

4.49 Notwithstanding this, Policy CT5 deals principally with physical measures to meet the needs of public transport such as direct convenient routes (Criterion i) safe accessible and sheltered bus stops (Criterion iii) as well as the provision of services. Physical provision will be for a Reserved Matters application but the Indicative Masterplan demonstrably shows how public transport opportunity has been considered from the outset.

4.50 The Scheme therefore complies in its entirety with Policy CT5 of Plan:MK.

4.51 Whilst Policy SD14 is also referred to in Reason for Refusal 3, I will address this later in my evidence at paragraph 4.62 on, as it is important to assess this matter as a whole.

Other Relevant Policies

4.52 I have identified a number of other policies that I consider relevant.

Policy DS0

4.53 Policy DS0 commits the LPA to an early stage review of Plan:MK, so that opportunities for long term growth can be considered as part of a new Local Plan, to take advantage of Milton Keynes strategic location within the Cambridge – Milton Keynes - Oxford Corridor.

4.54 Whilst this is of no direct relevance to this appeal in that no documents have been published to which any weight can be attached, it does indicate that the direction of travel for planning policy is to continue to support growth and in particular economic development associated with the sub region.

4.55 However the provision of new infrastructure including the east-west rail project with its attendant line, crossing and station upgrades and the putative Oxford-MK-Cambridge Expressway for which no route has yet been published for initial consultation, and no safeguarding area has been provided remain at the conceptual stage and cannot be considered material to the determination of an appeal on a site allocated in a relatively recently adopted development plan and required to serve the needs of the current planning period.

Policy DS3

4.56 The current employment strategy is that which is set out in Policy DS3 which clearly sets out the Council's intentions in a series of criteria to explicitly seek to grow and develop the local economy.

- 4.57 Section A of the policy recognises the strategic location of the Borough and its good communications of all forms. That cannot be in dispute.
- 4.58 Section B sets out a strategy to capitalise on those advantages. Criterion B3 specifically recognises the need for the appeal site (and MKE) to provide for a flexible supply of sites to cater for future employment (complementary to Criterion B2 which emphasises the importance of existing sites).
- 4.59 Section C then refers to additional measures the Council will take. Criterion C2 being that the Council will ‘*attract new businesses, encourage business start-ups and assist businesses to grow*’ amongst a basket of other business development and educational initiatives.
- 4.60 The policy also, in summary, refers to the total requirement for employment that is to be achieved, reflective of the importance that this has to the strategy with reference to Table 6.1 It should be noted that this reflects the position at the time of the adoption of Plan:MK.

Grid Square Areas	Amount of Vacant Land in Hectares	Use Classes
Bletchley	2.4	B1/B2/B8
Brickfields/Newton Leys		
Caldecotte	2.5	B1/B8/C2
Crownhill	1.2	B1/B2/B8
Eagle Farm North	25.2	B1/B2/B8
Fox Milne	1	B1/B2/B8
Knowhill	5.9	B1/B2/B8
Linford Wood	5.1	B1
Magna Park – Glebe Land	9.8	B2/B8
Milton Keynes East	105	B1/B2/B8
Mount Farm	1.9	B1/B2/B8
Pineham	10.9	B2/B8
Redmoor	1.7	B2/B8
Rooksley	1.3	B1/B2/B8
Shenley Wood	10.8	B1/B2/B8/C2/D1
Snelshall East	4.7	B1/B2/B8
Snelshall West	5.1	B1/B2/B8/C1
South Caldecotte	56.8	B2/B8
Walton	2.2	B1/B2/B8
West Ashland	1.1	B1/B2/B8
Western Expansion Area	17	B1/B2/B8
Willen Lake	1.1	B1
Wolverton	2.6	B1/B2/B8
Wolverton Mill East & South	5.6	B1/B2/B8

Wymbush	1.2	B1/B2/B8
Total	282.1	

Fig.6.1 - Vacant Employment Land in the Borough of Milton Keynes

Policy ER1

4.61 Policy ER1 must be read in conjunction with Policy DS3 and Table 6.1 as it states that planning permission will be granted for employment uses as listed in the table and shown on the Policies Map. This includes 56.8 hectares of land at South Caldecotte.

Policy SD14

4.62 Finally in this section, I turn to Policy SD14 itself which allocates the site for a mix of Class B2 and B8 uses.

4.63 The development subject to this proposal is wholly in compliance with the adopted policy. The Indicative Masterplan describes how a range of unit sizes could be accommodated to meet this requirement and Mr. Nicol refers to evidence of the market for employment and the type of demand that this site will be needed to meet that has been provided by Burbage Realty (Mr Nicol’s evidence at Appendix A, Section 4).

4.64 The policy states that a comprehensive Development Framework will be prepared. A Development Framework SPD has been prepared and has been subject to two rounds of consultation, in March 2018 and May 2019. The documents were produced in collaboration between the LPA and Appellant – indeed the Council asked, and the Appellant agreed, to pay (and in part has paid) a contribution to the Council to expedite the preparation.

4.65 The policy does not require the SPD to be adopted prior to determination or to the development of the site and the Council, for reasons which remain opaque, chose not to proceed further with the draft at the time.

4.66 I am aware that the Planning Cabinet Advisory Group of 13th July 2020 was advised that a revised SPD had now been prepared and that the LPA intended to proceed with its publication for consultation, albeit not until September. They were further advised that “*once adopted, it will become a material consideration in the determination of planning applications*”.

4.67 Paragraph 6 of the PCAG Report (CD G.12) notes that the revised draft is based on consultations and “*further engagement with local communities and residents since the two*

consultations took place". No further consultations have taken place with the Appellant as the key stakeholder however.

- 4.68 For the reasons set out in the Report at paragraphs 9-11 the matters which I refer to at 2.6 above have still yet to be resolved. Notwithstanding this, a draft of the revised SPD was attached to the PCAG Agenda. No doubt on account of that, paragraph 14 of the Report envisages that the publication of the draft will be subject to a delegated decision not to be taken until 8th September and only then will it be published for consultation prior to adoption in 2021.
- 4.69 As I note that the Committee Report refers to the SPD only being a material consideration once adopted, no weight can be attached to the intention of the Council to proceed further with a revised SPD any more than can be attached to the contents of the previous drafts. In any event, dependent on the outcome of this appeal the content of this third revised draft could at best be a waste of public money and at worst, entirely misleading to the general public.
- 4.70 The development proposed and illustrated by the Indicative Masterplan has been based around and is nonetheless in conformity with the provisions of the draft SPD as subject to both rounds of consultation and it is noted that there is no reason for refusal related to non-conformity with its provisions.
- 4.71 So far as the second draft SPD refers to matters that are raised by the Reasons for Refusal, section 2.6 acknowledges that in the central west of the site is an area of Priority Habitat and goes on to say:
- 'Overall it is considered that the grassland represents a fairly poor quality example of lowland meadow habitat type.'*
- 4.72 I note that sentence has been deleted from the emergent third draft.
- 4.73 Concerning heritage at section 2.7 the second draft recognises that geophysical survey and trial trenching has been undertaken whilst the third draft now refers to the historic asset as being *of possible* national significance.
- 4.74 Thus in the second draft the baseline conditions for habitat, heritage and indeed public transport, are identified but although the Development Framework Plan at Fig 3.5 indicated

the Priority Habitat Area it made no reference to any archaeological zone and nor did it provide any indication that these areas are effectively to be excluded from the development as the third draft now does.

- 4.75 Figure 3.1 & 3.2 of the SPD show Redway routes within the development. I note that para 3.5.11 states that a new Redway will be provided along Brickhill Street. For the reasons discussed above and by Mr. Addison, I do not consider that it is necessary either in transport terms or for the delivery of the development given that a Redway is provided through the development so as to deliver users directly to their places of work. A Grid Road reserve is however provided, which could accommodate an extension of the Super Redway if and when there is a need for it in the future.
- 4.76 Nevertheless, as noted the SPD is not adopted despite the consultations carried out to date. Its adoption is not a pre-requisite of Policy SD14.
- 4.77 Turning to the development criteria set out in the policy, Criterion 1 states that Development should provide a minimum of 195,000m² of floorspace.
- 4.78 Planning permission has been sought for up to 241,548m², as shown on the Parameters Plan accompanying the planning application.
- 4.79 The Indicative Masterplan illustrates how the development might be realised, and shows development with a footprint of 216,567m² (a modest 11% larger than the minimum anticipated in the policy) The remaining 24,684m² would be expected to arise from mezzanine levels within the units, for example to provide ancillary office accommodation in Class B8 units.
- 4.80 Paragraph 7.5 of the LPA's Statement of Case wrongly states that a failure to meet the minimum 195,000m² provision would result in 'policy harm'. Two factors follow from this.
- 4.81 Provision over the minimum does not result in harm. Milton Keynes is acknowledged to be a growth area (Plan:MK paragraph 6.9), and for the reasons set out at paragraph 3.53 above, will continue to grow beyond the life of this plan. Moreover, economic growth is one of the three pillars of sustainability – Framework paragraph 8a refers. There is therefore no restriction on the scale of development and it is for this reason that Policy SD14 is expressly stated as a minimum and is supported by other policies in the plan aimed at retaining and

maximising existing allocated land and resources. This is all the more important given that as noted, Policy SD14 is the only 'bespoke' employment allocation and other employment proposals such as Policy SD12 - MKE are part of mixed uses where the availability of land is open to a greater degree of uncertainty and also in regard to Mr Nicol's evidence and the Statement of Common Ground. Mr Nicol identifies that there has been a reduction in available sites since March 2019, further emphasising the desirability of maximising the utility of sites which are allocated and available.

- 4.82 The second factor is that exclusion of the areas of heritage and habitat interest would not enable the minimum to be achieved and would fetter the ability to meet a significant element of the market demand for large logistics operations: it would therefore be in conflict with the pre-dominant policy. It is our assessment that the site excluding the areas in dispute would yield a maximum footprint (taking into account parking and circulation, the Redway and drainage requirements) of just less than 154,000m². Even with an allowance for mezzanines, it would not deliver the minimum prescribed in the policy.
- 4.83 It follows from the LPA's own evidence base underpinning Plan:MK that delivering at least 195,000m² is the minimum necessary to secure the requirements of Policies DS3 and ER1. That is without consideration of the qualitative nature of the development that would be capable of being delivered by a site of reduced area – a point I will return to in Section 4 below.
- 4.84 Criterion 2 sets out that access will be taken from Brickhill Street, which shall be upgraded to Grid Road Standard.
- 4.85 The appeal relates to an outline planning application with the matter of access to be considered. Access would be taken from Brickhill Street.
- 4.86 The proposals would secure the upgrade of Brickhill Street to the south of the access to Grid Road Standard through the Planning Obligation.
- 4.87 The upgrade of Brickhill Street to the north of the access is not proposed, as the Transport Assessment accompanying the proposals has found that this is not necessary. This has been accepted by the Local Highway Authority (See Core Document A.25)
- 4.88 A Grid Road Reserve will however be provided to the north of the access which would

safeguard the ability to reconstruct Brickhill Street as a Grid Road when this is necessitated in transport terms – likely by the development of land allocated to the east of the appeal site under Policy SD11 South East Milton Keynes Strategic Urban Extension.

- 4.89 Whilst there would be some tension with Criterion 2 in that as a matter of fact the north part of Brickhill Street would not be upgraded, to do so without necessity would be counter to Framework paragraph 56a) and c). The provision of the Grid Road Reserve however ensures that no planning harm would arise. I note that the Council's reason for refusal does not allege any conflict with this part of the policy, nor would such tension give rise to a breach of the policy as a whole, especially where there is no warrant for the works in question.
- 4.90 Criterion 3 states that the development will be subject to a Transport Assessment, which will investigate the development's impact on the local highway network, including the A5/Watling Street roundabout (known as Kelly's Kitchen) and set out the basis for effective public transport connections.
- 4.91 The planning application is accompanied by a Transport Assessment produced by BWB Consulting and Mr Addison addresses the steps this has taken to identify highway issues and the solutions that it has proposed and which have been agreed with the Highway Authority in respect of the highway network and public transport.
- 4.92 The residual issues identified within the Transport Assessment are addressed through the steps I refer to at paragraph 2.46 above and by Mr. Addison in his evidence. Overall Mr. Addison's concludes that the development would not have a severe impact on the highway network if the mitigation put forward by the Appellant is secured.
- 4.93 At the time of writing this evidence, Highways England have issued a holding response, stating that a decision should not be made until 23rd June 2020. This relates principally to the impact on the A5 roundabout and A4146. The Appellant is working with Highways England to address the issues raised ahead of the inquiry. Nevertheless, the development is fully compliant with the requirements set out in Criterion 3 in that it has investigated the impact on the highway network, will make contributions to necessary improvements and provides for public transport.
- 4.94 Policy SD14 Criterion 4 requires that a green open space link be created on the site, linking into Caldecotte Lake to the north and providing future opportunity to link the park to the

south/east.

- 4.95 The Parameters Plan accompanying the Scheme (CD C.19) shows land to the west and the north of the development set aside for a green open space link. This conforms to the Development Framework Plan in the draft SPG.
- 4.96 The Planning Obligation provides for open space land to be transferred to MKC with the intention that it would be leased to the Parks Trust to manage the open space, with an appropriate management plan and contribution – the Heads of Terms refer (CD K.10). The development is fully compliant with Criterion 4.
- 4.97 Criterion 5 states that direct footpath connections to Bow Brickhill railway station and the existing Public Right of Way running along the site's northern boundary will be effectively integrated into the development.
- 4.98 The Parameters Plan (CD C.19) shows how the footpath connections between Bow Brickhill railway station and the existing footpath to the north of the site will be integrated into the development. This would include the diversion of the existing footpath as necessary. The development is therefore compliant with Criterion 5.
- 4.99 Criterion 6 refers to a relationship between building heights and a landscape assessment. The Scheme is accompanied by a detailed Landscape and Visual Impact Assessment (LVIA) which assesses the effect of the proposed development in line with GLVIA3 (Guidelines for Landscape and Visual Impact Assessment 3 Edition), which is standard methodology.
- 4.100 Arising from this the maximum height of buildings would be 24m in Zones 1 and 2. The lowest buildings within the proposed development would be sited within Zone 4 of the Parameters Plan (CD C.19) – limited to a height of 11m having regard to the proximity of two residential properties on the east side of Station Road. This is reflective of discussion with the LPA in preparation of the draft SPG and it is noted that this aspect is not cited as a matter of dispute between the parties. It follows that the scheme meets Criterion 6.
- 4.101 Criterion 7 then requires the design and appearance of buildings to be sensitive to the neighbouring uses and to views into the site from the wider landscape with buildings designed to provide an attractive entrance to Milton Keynes from the south.

- 4.102 The Parameter Plan addresses this issue and formed the basis of the Indicative Masterplan locating and orientating buildings to achieve these objectives having regard to Criterion 6. Paragraph 7.59 and 7.60 of Officer's report to the Development Control Committee (CD D.2) sets out that detailed matters of appearance could be dealt with at reserved matters stage. Landscape & Appearance does not form a reason for refusal.
- 4.103 The LPA rightly does not allege that the impact on above ground heritage assets and the setting of the Scheduled Monument would warrant refusal of planning permission. This is confirmed within paragraph 6 of the Archaeology Statement of Common Ground.
- 4.104 The Council's Urban Design Officer have expressed no objections to the proposals, as set out within their response. (CD J.15). This is based on the agreement underpinning the drafts of the Development Framework SPD where orientation of buildings is one of the key measures to mitigate their overall impact – a consideration carried over unchanged to the third draft. It follows that the scheme as proposed meets Criterion 7.
- 4.105 Criterion 8 requires that existing vegetation to site boundaries should be maintained and enhanced to screen the development where shown to be necessary. New planting should be of native species to mitigate the loss of hedgerows necessary to facilitate development.
- 4.106 Landscaping is a matter that is reserved and not to be assessed at outline stage. Paragraph 7.57 of Officer's Committee Report (CD D.2) states that there are significant setbacks from the edge of the site shown on the submitted Indicative Masterplan (CD C.20), particularly along the western side adjacent to the Scheduled Monument, partly to accommodate the leisure route/green link. A significant setback will also be provided along the north to accommodate the PROW (public right of way). The form of landscaping that will be provided has not been specified as landscape is a reserved matter.
- 4.107 Paragraph 5.14 of the Statement of Common Ground confirms that the LPA has sufficient confidence that the issue of landscape external appearance can be satisfactorily dealt with at reserved matters stage, based upon the Parameters Plan and Indicative Masterplan. The development therefore complies with Criterion 8.
- 4.108 Criterion 9 requires only that a desktop Archaeological Assessment be undertaken to understand the likely presence of archaeological remains within the site and that its recommendations be followed. An archaeological assessment was undertaken prior to

commencing preparation of the planning application and shared at that time with the LPA (CD A.32 and CD A.33). Its recommendations were available to the LPA during the preparation of the local plan and do not indicate that preservation in situ is required.

- 4.109 Criterion 9 further states that it may be necessary to undertake a field investigation to understand the archaeological potential and significance of this site and to inform the layout of development. An extensive field investigation, including trial trenching has been undertaken. (CD A.40)
- 4.110 The field investigation provides an evaluation of the archaeology within the site, and these are discussed further in the Supplementary Heritage Assessment (CD A.38) which identifies that the development would cause loss of some 250m of street in what appears to have been a craft quarter on the periphery of a small Roman town, classed as Medium significance, able to address some of the regional research objectives, and the achievement of the employment aims and objectives of Plan:MK.
- 4.111 The LPA allege that there is a conflict with Criterion 9, because they have not seen evidence of avoidance and mitigation strategies, and they have not seen evidence that archaeology has informed the layout of the development (para 7.81 of Officer's report, CD D.2). Given the nature of the remains, avoidance is not warranted or appropriate and preservation by record is appropriate. For the reasons set out by Dr. Dawson the interpretation and value of the archaeology is in dispute but the requirements of Criterion 9 to investigate and to base the layout upon the conclusions of that investigation have been fulfilled. The development subject to this appeal meets the requirement of Criterion 9.
- 4.112 The Priority Habitat was known before the allocation of the site within Plan:MK and is not referenced within SD14 notwithstanding that the LPA had access to the historic data – Mr Baxter's evidence at 2.2.3 refers.
- 4.113 Where either the issue of Priority Habitats or below ground archaeology issues are now thought to prevent development of specific parts of the site, these should have been identified within Policy SD14. As a matter of fact, these are not.
- 4.114 Policy SD14 as the site allocation policy should be considered to be the most important policy relating to the site. Other policies that are not site specific should be considered alongside Policy SD14 accordingly. Therefore, when assessed against Policy SD14 as a whole, the

proposals are in compliance with Policy SD14 and would deliver the strategic allocation at South Caldecotte.

Summary

- 4.115 The Courts have held that accordance isn't based on one policy, rather against the development plan as a whole.
- 4.116 Overall, the proposals comply with policies as a whole, so far as they are not in conflict with each other, and specifically and in full with Policy SD14, which allocates the site for development. It should, as directed by paragraph 38(6) of the Planning & Compulsory Purchase Act 2004, be determined in accordance with the development plan and should therefore have been granted permission. I will now go on to consider the material considerations which also necessarily must be weighed in the balance.

5.0 THE MATERIAL CONSIDERATIONS

- 5.1 As set out above, the appeal proposals are in accordance with the development plan. Therefore, section 38(6) directs that permission should be approved, unless material considerations indicate otherwise. I will now assess those material considerations, which include the National Planning Policy Framework (the Framework) and the emerging Local Plan.

National Planning Policy Framework

- 5.2 The Framework is an important material consideration.

Paragraph 8

- 5.3 Paragraph 8 sets out that sustainable development is the purpose of the planning system and is to be achieved by the contributions from the economic, social and environmental objectives that underpin it.
- 5.4 The economic objective of this development is evidential. It is allocated for the purpose and a development that falls short of the provision would cause demonstrable harm to a number of material considerations.
- 5.5 It would fail to deliver the right type of development in the right place and at the right time. That in turn would have a significant adverse social consequence in failing to ensure that the

needs of present and future generations have access to the job opportunities they need which in turn supports the health and well-being of Milton Keynes as a whole.

- 5.6 In addition to the economic consequences, objective benefits such as the transfer of land to enable the extension of the Grid Road network (including the possibility of a new railway bridge) would not be obtained.
- 5.7 There is an environmental consequence of all development. That is taken into account in the allocation of land in the development plan and at worst in this instance the environmental consequence of the development in the form proposed where it meets the criteria of the development plan policy is neutral.
- 5.8 The proposed development therefore fully accords with the intent of government policy for planning as expressed in paragraph 8.

Paragraph 11

- 5.9 I have reviewed the proposals against the presumption in favour of sustainable development. The Scheme accords with an up to date development plan and therefore should be approved without delay as set out in paragraph 11c) for the reasons established in my evidence as any adverse impacts on heritage and habitat are significantly outweighed by the numerous and wide ranging benefits to the economy and to the community that will arise from the development.

Paragraph 80

- 5.10 Paragraph 80 provides a context for policies and decisions that should help create the conditions in which businesses can invest, expand and adapt. It is explicit in attaching significant weight to the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development, allowing each area to build on its strengths, counter any weaknesses and address the challenges of the future. Mr Nichol refers in his evidence to the economic context and market characteristics specific to Milton Keynes and the importance of the site in that context.
- 5.11 The Framework demonstrably places a significant emphasis on the economic benefits of planning applications.
- 5.12 Hampton Brook as the Appellant is a leading regional property development and investment

company specialising in delivering commercial developments for a wide range of occupiers and Institutional Funds. Hampton Brook's emphasis is on delivering premium quality buildings that are based on a full understanding of occupier's requirements. They have delivered a number of schemes supporting inward investment and economic growth throughout the region and especially in Milton Keynes. Examples of recent developments include:

- Brioche Pasquier Wymbush Milton Keynes
- Magnetic Park, Desborough
- Velocity, Knowlhill, Milton Keynes
- Reiser Kingston Milton Keynes
- J16 M1 Logistics Park .
- The Pinnacle, Milton Keynes
- Trek Cycles HQ Milton Keynes
- Express Park, Rushden
- Luton Airport office development

5.13 The Appellant is in discussion with potential end users at this time and has funding in place to implement the scheme. There is a strong likelihood of rapid delivery and job creation in the event that permission is granted.

5.14 The scheme would meet identified growth required within Plan:MK. The Inspector examining Plan:MK noted that the proposed employment allocation at this location would be soundly based and the allocation would be effective in meeting forecast economic growth in the early to middle period of Plan:MK (CD E.2). I have drawn attention to Appendix 1 of Mr. Nichol's evidence above. There is evident and continuing market demand for Class B8 uses. Appendix A to Mr's Nichol's evidence identifies the scale of such demand, the type of demand for large scale B8 warehousing in particular, and the lack of available alternatives to meet that demand.

5.15 There are also demonstrably significant economic benefits arising from implementation of the scheme – in addition to merely providing compliance with the development plan. As set out at Section 7 paragraphs 7.11-7.21 of his proof, Mr Nichol's cites the number of jobs to be created (his lowest figure estimate is 2500 FTE jobs); the multiplier effect – in other words the 10-15% additional jobs supported locally by the supply chain and spending effects across Milton Keynes; the limited displacement of jobs elsewhere – the requirements would not be satisfied elsewhere in Milton Keynes and this scheme would not be at the expense of jobs elsewhere in the City; and the value of the economic output to the community – the annual

GVA is estimated to be between £135-£184m. There is then the construction value – the employment of an estimated further 1050 jobs with its attendant impact on the local economy as a whole - and the business rates that will be derived when the site is in operation.

- 5.16 These are substantial economic benefits judged individually and cumulatively. Moreover they would be significantly diminished in the event that the residual developable area were to be reduced as implied by the LPA so that not only would the planned objectives and expectations embodied in Plan:MK not be achieved, there would be material harm arising from the reduction in the number of jobs, the wealth that the scheme would generate to the community and the direct income that the City would derive. That diminution would clearly be amplified if the scheme were no longer able to cater for very large scale logistics operators who would necessarily need to look outside Milton Keynes as an alternative but also through diminishing the range and number of users that could be accommodated on the site.

Paragraph 82

- 5.17 Where paragraph 80 provides a context, paragraph 82 emphasises that planning decisions should recognise and address the specific locational requirements of different sectors, including storage and distribution operations at a variety of scales and in suitably accessible locations.
- 5.18 Storage and distribution sector is a key sector of the economy, that continues to develop and evolve. Logistics is becoming increasingly crucial, with e-commerce playing an increasing role, alongside international trade, capital growth, and manufacturing. Logistics as a sector is increasingly demanding higher skills employees where there are high degrees of automation require increased literacy, numeracy and ICT skills. As noted by Burbage Realty at Section 5 of Appendix 1 of Mr Nicol's evidence, logistics demand has if anything increased as a result of the current pandemic in spite of any wider economic uncertainties.
- 5.19 The benefits of the proposal in contributing to the growing logistics sector are further noted in Mr Nicol's Proof of Evidence. Specifically, logistics are recognised as being of key importance within the Oxford-Cambridge Arc (paragraph 3.5) and are a major contributor to the Milton Keynes economy (paragraph 4.3) where they are relatively more important than elsewhere in the South East region.
- 5.20 This is reflected in Plan:MK itself which states that logistics are increasingly reliant on high

degrees of automation, demanding higher skilled employees with greater levels of literacy, numeracy and ICT skills and paying higher salaries to attract the skills required (Plan:MK paragraph 4.45). Mr Nicol refers at his paragraph 4.7 to some of the benefits of that importance on terms of wages being above the all-industry average for the South East region.

5.21 It is in that context that the Site forms the largest single site immediately available for development for large scale industries of this type.

5.22 It follows from that that it is not just the overall quantity of space that can be created on the site but also the nature of the space. Whilst the exclusion of a significant part of the site will unquestionably lead to the delivery of less than the minimum policy requirement for floorspace, it also fetters the ability to accommodate any user requiring very large logistic units. Whilst no doubt a single very large unit could be provided it would so compromise the remainder of the site such that it would wholly lose its ability to meet the needs of a range of users. and therefore fail to meet the policy objective of allocating the site in the first instance.

Paragraph 170

5.23 With reference to the Reasons for Refusal, paragraph 170 refers to the need for decisions to contribute to and enhance the natural and local environment by a series of six measures. Only clauses a) and d) are relevant: clause a) refers to protecting landscapes – and it is agreed that there are no unacceptable landscape impacts arising from the development. Clause d) seeks to minimise the impacts and to provide net gains to biodiversity. Mr Baxter explains how this is achieved.

Paragraph 174

5.24 In relation to habitats, paragraph 174 notes that plans should identify and map key ecological constraints. Demonstrably Plan:MK does not do that in relation to any habitat value ascribed to the Appeal site and the weight which the LPA give to is was best illustrated in the draft SPD to which I have referred at paragraph 4.69 above.

Paragraph 175

5.25 Where paragraph 174 provides a policy context to biodiversity protection and enhancement, paragraph 175 advises the decision taker to adopt a cascade approach of avoidance, mitigation, compensation or refusal if no compensation can be achieved. That is effectively and correctly the basis of policy in the development plan and for the reasons I have outlined

and Dr Baxter explains in detail, the Appeal scheme avoids where possible, mitigates through design and specifically identified measures and compensates where such mitigation cannot be achieved because of the nature of the specific form of development allocated to the site.

Paragraph 197

- 5.26 Finally, paragraph 197 refers to non-designated heritage assets. It is clear that a balanced judgement is required having regard to the scale of harm or loss and the significance of the heritage asset.
- 5.27 Dr Dawson explains the significance of the archaeology but even if it carried the significance the LPA attaches to it, that value must be considered in relation to the harm to the development plan and to the economic and social limbs of sustainable development were the development not to meet the intentions of Policy SD14 or indeed not be delivered at all.

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