**LPA Ref: 19/01818/OUT**

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

**LAND AT SOUTH CALDECOTTE**

**MILTON KEYNES**

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**APPEARANCES ON BEHALF OF THE APPELLANT**

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**OPENING SUBMISSIONS ON BEHALF OF THE APPELLANT**

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1. This appeal seeks outline planning permission for employment development on a site which is allocated for employment. The issues which remain between the parties are not those of principle – it would seem - but the proposed quantum of development, and whether development should extend across the whole site, or leave areas undisturbed to take account of known constraints. Thus, 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*[1]*."*

2. The policy, which was adopted in March 2019 following the usual detailed consideration of the evidence base and examination in public inherent in the Local Plan process, requires a ¨minimum" of 195,000m2 of Class B2/B8 to be delivered on site, together with ancillary B1 floorspace – which is readily achieved by the appeal proposals which total 241,000m2 of floorspace including mezzanines. Whilst the explanatory text and the policy itself anticipate the preparation of a Development Framework for the site – no such Framework has been finalised, despite the LPA starting the process in 2014 and having a number of false starts since. However, it is rightly not now contended by the LPA that PP should be refused on this 'procedural' basis, but upon more substantial grounds relating to archaeology and ecology.

[1] ∫5.33of the explanatory text to policy SD14.

3. It therefore follows that of the 9 criteria of the policy, 8 are agreed to be addressed.

4. The third reason for refusal essentially contended that the highways impact upon the local and strategic road network was not proven to be acceptable. With hindsight it is regrettable that Highways England were not sent a request for a consultation response until the last week of the thirteen weeks for determination of this application which might explain the somewhat slow start. Nonetheless, it is with some degree of pleasure that the Appellant can indicate that both HE and the LHA are now satisfied that the site can be properly accessed and accommodated within the local and strategic highway networks – and that a SOCG with HE was produced last Friday. The agreement now with the LHA and HE extends to the means by which the site can be accessed by non-car modes, with a proposal for bus and cycle accessibility to be improved and noting that the site adjoins the Bow Brickhill railway station and is within reasonably easy distance of an existing and a large new proposed population. Additionally, there is no dispute with MK that the site is strategically well-located along the E-W Rail Corridor. The third RfR is therefore understood to have been addressed.

5. The second reason for refusal relates to ecological issues and contends that the Appellant hasn't proven that sufficient mitigation is being promoted, arising from the loss of the on-site habitat. The LPA's evidence makes it clear[2] that the issue is not that the priority habitats on site should remain clear of development but that they should not be developed unless a robust mitigation strategy has been produced.

6. To that end, the figure which is needed to generate off-site mitigation to meet local policy has been agreed using the DEFRA metric and amounts to £1,680,000 plus VAT[3]. It is also agreed with the LPA in principle that losses on site can be mitigated. However, the LPA's evidence queries that no site has been identified where such mitigation can take place. The Appellant's approach has been to approach the UK's leading facilitator of off-setting, the Environment Bank who have confirmed that 5 sites have been identified as potential locations for off-setting, but that it is not usual for those sites to be acquired prior to the grant of PP. Rather, the site, and the exact mitigation would be secured by the discharge of the obligations in the s.106 obligation; an approach which has been achieved elsewhere on other sites in MK and beyond. The disagreement is that in this case, unlike other instances where it has granted PP

[2] Para 6(f) and 8(e)of Mr Snell's POE, & LPA SoC Para 7.5

[3] Para 6.7.3 of Mr Baxter's POE. The cost to also accommodate 10% net gain would be £1,885,000 plus VAT (Para 6.8.3 Mr Baxter POE).

on a similar basis, MK want certainty of delivery of the mitigation prior to the grant of PP, rather than accepting a mechanism to ensure that such mitigation is indeed identified and secured as a precondition to the delivery of the scheme.

7. Essentially, the LPA are seeking to place the cart well before the horse by requiring proof of mitigation upfront, down to the identification of the site and therefore challenge (by inference) the ability of the Environment Bank to live up to its promises. With respect if that was the case then the obligation in the s.106 obligation would never be discharged and the site never developed. Thus, the real issue for the inquiry ought to be whether the s.106 provides the requisite level of control and not whether or not a mitigation site has been acquired and a mitigation package worked up.

8. A secondary issue is the policy point now raised by the LPA of a supposed ecology hierarchy which requires the developer of an allocated site to prove why the ecologically sensitive area on site can't remain undisturbed, despite there being no criteria within SD14 to that effect, and despite the entire site being allocated for the use which is proposed. As with heritage issues (arising from policy HE1) the interaction between the general policies and the specific land use policy for this site (SD14) will be debated between the planners. However, it is and will be firmly submitted that if the Inspector is satisfied that sufficient off-site mitigation is secured to compensate for the onsite loss, that there is no other basis upon which to withhold consent (nor is one alleged by the RfR on a proper reading).

9. Thus, the only real issue between the parties is that of archaeology. That is to say that the LPA do not consider that a case has been presented which warrants the loss of the non-designated heritage asset of below ground Roman archaeology on this site as a result of the appeal proposals.

10. It is agreed between the main parties to the appeal that there is no effect upon the SAM itself, upon its setting, nor upon any designated asset[4]. Nor is it alleged that other impacts, such as the relationship of the site to the Woburn Estate or the loss of the ubiquitous ridge and furrow from the site warrant the withholding of consent[5]. Rather the sole area of dispute relates to the significance of the below ground Roman archaeology within what is referred to variously as Unwin's Land or Area 2 of the site.

11. There is not understood to be a dispute on the facts which have been ascertained as a result of a variety of investigations and reports (most notably the desk based review (CDA32), the geophysical report (CDA33), the Supplementary Heritage Appraisal ('SHA') (CDA38) and the trial trench evaluation report (CDA40), all of which were scoped and agreed with MK). Rather the dispute is about what judgments should be made based upon those reports. The dispute has a number of facets, but the way it is articulated is that on the one hand, NC alleges that the remains should be considered to be of High Regional Value, whereas MD considers that they are properly understood to be of local and no more than regional importance. NC considers that the remains are of an "integral part of the town of Magiovinium" whereas MD allies himself with the conclusions of the Trial Trench Evaluation report that the remains are a short stretch of peri-urban activity.

12. It will be necessary for the Inspector to carefully consider the evidence and separate out what is likely and what is conjecture when assessing the basis of the differential judgments. Allegations that this short stretch of 250m of Roman Road running north of the town is actually a regional route linking to Harrold and/or Irchester is as unproven as the proposition that the evident enclosures alongside are "regular" or planned in some way. Similarly the confidence with which it is asserted that a couple of buckets full of fragmented roman tile and brick evidence and as yet unknown stone built Roman building somewhere in the SD14 area, even though it is not evidenced on the geophysical survey or within the 89 trenches remains conjectural.

13. In short, these remains are non-designated heritage assets which are unprotected by any formal designation and therefore fall to be weighed in the intermediate balance of §197 of NPPF. To that end NC makes the superficially attractive point that Area 2 demarked in Orange on his appendix 1 comprises a mere 6.5% of the site area – and therefore why can't it simply be excluded from the developable area, especially when what is being proposed is in excess of the minimum 195,000m2. Whilst Mr Crank may not have followed the import of CDA.38 (especially paragraphs 4.41 to 4.69 & 4.76) the import is clear and obvious (and indeed is repeated in the Addendum ES 5.3.4 to 5.3.10), merely excluding the orange area from the developable area would be insufficient. The location of the orange area is such that it

[4] CD K.6 Archaeology SOCG paragraphs 5-7
[5] Ibid at paragraph 8

effectively constrains the siting of large industrial units (as proposed by the allocation) on a much wider area of the site. Further, in order to redevelop the remainder of the site there is a need to substantially alter the topography and alter the hydrology of the site. Indeed to ensure that the hydrology of the remains were unaltered would mean leaving a large part of the southern part of the site undeveloped; which would result in literally no prospect of achieving anything approaching 195,000m2 of large scale employment generating development on the SD14 site.

14. The consequences of excluding the orange land from the developable area will leave the Roman remains at significant threat from dewatering; and the removal of that threat would seriously undermine the ability of SD14 to deliver anything approaching the policy minimum square meterage.

15. Put another way the balance required by §197 of NPPF where there is substantial harm to a non-designated asset is not a balance between losing a very small amount of the developable area against the benefits of retaining the asset in situ. Rather it is the balance of retaining a non-designated heritage asset in situ, and sterilising much of the SD14 site (part of an up to date development plan strategy) against the substantial economic benefits which arise from these proposals. If MD is right as to its significance, then the balance is, with respect obvious and points clearly to a favourable outcome.

16. This site has been identified and then allocated to specifically meet a deficit in the provision of warehouse sites to accommodate large scale logistic uses or larger general industrial occupiers. The need for additional land was put to the LP examiner by the LPA in its examination statement (∫4.3.5 of CDF.15, quoted SN ∫5.7), was accepted by the LP examiner (∫78 to 81 CDE.2, quoted SN ∫5.8) and the South Caldecotte site was identified as being identified as the principal site to meet that need for warehousing by the LP examiner (∫120 CDF.15), and that it was intended to meet that need "in the short term" (∫83 CDF.15, quoted SN ∫5.9). Whilst MKEast could accommodate some B8 development in the longer term – SNs analysis is that the LP was quite right that the appeal site is by far the largest site which is available to meet the short to medium term needs of the district to accommodate large floorplate warehouse development in a location which is proximate to the strategic road network and that the need has only increased since the plan was adopted.

17. In market terms the site is exceptionally well placed (see the Burbage Realty report SNappx 1 page 13) to meet a very clear immediate demand and for which there is no realistic alternative location (ibid pp9 to 12). It is being promoted by a local developer with a proven track record[6] who is keen to meet that market demand as soon as reasonably practicable and which has institutional funding in place. If consented then the scheme will deliver substantial local inward investment and will be creating construction jobs within a year of the grant of PP and operational jobs six months thereafter. This is a site which ought to be treated favourably given it significant economic benefits at a time of national economic need.

18. Mr Moore seeks to dispute some (but not all) of the above but does so on the thesis that permission ought to be granted for B8 warehousing over a reduced part of the site to preserve the archaeology in situ. However that misses the evidence that this simply isn't possible given the extent of level changes and the alteration to the Site's hydrology. Thus, to ensure that the remains will be preserved in situ would require a substantial part of the allocation to be lost. Add this to the throw away point about an ecological hierarchy and the superficial attraction of the LPA's point of allowing employment outside of the 'orange area' on Mr Crank's plan is both demonstrably wrong and amounts to an invitation to emasculate an allocation within a recently adopted local plan.

19. Thus, the issues in this case are clear – grant PP and enable a development to come forward in a sustainable location which will fulfil the objectives of a recently adopted local plan, which will provide suitable off-site mitigation and will involve a full excavation of the Roman remains on site which are interesting but patently not of "high regional value". The site will be properly accommodated in the local road network and will generate at least 2500 FTE jobs and an additional £135M to the local economy[7].

20. The grant of PP in this case is, to use the Americanism, something of a "no-brainer" and accordingly, in due course the Appellant will invite you to allow this appeal.

***25th August 2020***

Kings Chambers — ***Paul G Tucker QC***

Manchester, Leeds, Birmingham — ***Stephanie Hall***

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[6] See SN ∫82. To 8.4

[7] The number of jobs could be up to 3400 and additional GVA £184M. Construction jobs would be 1,000 years of construction employment and £140M investment