

SOUTH CALDECOTT INQUIRY

OPENING SUBMISSIONS ON BEHALF OF MILTON KEYNES COUNCIL

The Proposal and this Appeal

1. This Inquiry arises out of an appeal by HB (South Caldecotte) Ltd against a refusal by Milton Keynes Council (“MKC”) to grant planning permission for the following proposal (“the Proposal”):

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. The Proposal relates to a very sizable application site to the south of Milton Keynes, with Bow Brickhill train station to its north and Brickhill Street and the A5 closeby. It measures approximately 57 acres in area and constitutes the entirety of the South Caldecotte site as allocated in Policy SD14 of Plan: MK Strategic Employment Allocation, Land South Of Milton Keynes, South Caldecotte’ (“the Site Allocation Policy”) for a minimum of 195,000 sq m of mixed Class B2 and B8 employment floorspace.

3. The Proposal was refused for the following three reasons relating to archaeology, ecology/biodiversity and highways and transport/infrastructure:

(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 175 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.

4. Now that transport issues have been resolved as between MKC and the Appellant the remaining issues between these parties (to respectfully adopt and adapt the encapsulation of main issues provided by the Inspector in his note of the CMC of 24 06 20) relate to the effect of the Proposal on:

- (i) the historic environment (i.e. archaeology)
- (ii) biodiversity
- (iii) the objective of building a strong, competitive economy

5. The third of these issues (as well as the balance required by the policies cited in RfR (1)) call for an understanding of the need for the Proposal and in the event of its need, its urgency.

Archaeology

6. Mr Nicholas Crank provides MKC's evidence in support of its Archaeology RfR. He concludes that the Roman remains in Archaeology Area 2 possess a clear association with the nearby Scheduled Monument and should be considered to be at the higher end of the scale of regional significance. It is worth emphasising that the Proposal will result in the total loss of (rather than mere damage to) these assets causing considerable harm in heritage terms.

7. According to Plan:MK policy HE1(F) the assessment of the benefits outweighing such (or any) heritage harm should only be made once 'all feasible solutions to avoid and mitigate that harm have been fully implemented'. The Site Allocation Policy itself expressly anticipates such a requirement in stating at paragraph C9, that as part of the required development principles (inter alia)

'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.'

8. It is MKC's case that the level of significance here is such that a layout informed by the archaeological findings in Archaeology Area 2 is necessary.
9. National planning policy reflects and supports policy HE1(F) and the requirement of paragraph C9 in Site Allocation Policy SD14. Paragraph 197 of the NPPF in particular provides that:

"The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

10. The field investigation in Trial Trench Evaluation and Geophysical Survey found that Archaeology Area 2 covers roughly 3.5ha or 35,000 sq m (calculated by Mr Crank, using GIS software) which is equivalent to roughly 6% of the allocated site area. The area of greatest archaeological concern to MKC is therefore remarkably small as a proportion of the Site as a whole. In the circumstances, not only is the protection of this area necessary but it would also have been eminently achievable had the scheme been designed to account for it.
11. However and regrettably, the trial trench and geophysical findings were not used to provide a layout informed by the archaeological findings that could have avoided or at the very least reduced the level of harm. And given that the Proposal would deliver approximately 46,000 sq. m in excess of the policy requirement minimum, it is MKC's case that there was ample slack in the system to enable the protection of these rare and special heritage assets.

Ecology

12. Mr Phillip Snell provides MKC's evidence in relation to the biodiversity RfR. MKC's principal concern in this regard are the two fields comprising lowland meadow, which are identified as Priority Habitat, and located within the proposed development footprint. As with archaeology so too with ecology, the Proposal would result in a total loss of these meadows and of this precious natural resource. Priority habitats are specifically protected by national policy which provides, at NPPF paragraph 174 b), that "To protect and enhance biodiversity and geodiversity, plans should...promote the conservation, restoration and enhancement of priority habitats"¹.
13. Whilst the Site Allocation Policy does not require areas of Priority Habitat or other ecological features to necessarily be kept completely free from development, such designation and/or features are nonetheless identified as constraints in the draft development framework. Plan:MK policies NE2 and NE3 which require appropriate mitigation in order to address biodiversity impacts.
14. Policy NE2 requires that where a site contains priority species or habitats, development should wherever possible promote their preservation, restoration, expansion and/or re-creation in line with Policy NE3. Policy NE3 and NPPF paragraph 175a require that where significant harm to biodiversity cannot be avoided, adequately mitigated or compensated for, then planning permission should be refused.
15. This Appellant has failed properly to follow the mitigation hierarchy in policy NE3 and NPPF 175 and failed therefore to provide the ecological protection which is here required.
16. More specifically, in terms of the first requirement of the mitigation hierarchy, avoidance, the Appellant has failed to demonstrate an attempt to avoid impacts on Priority Habitats and/or how such an attempt would impact floorspace delivery on the Site.

¹ See also National Planning Policy Guidance 024 which provides that "Biodiversity net gain complements and works with the biodiversity mitigation hierarchy set out in NPPF paragraph 175a. It does not override the protection for designated sites, protected or priority species and irreplaceable or priority habitats set out in the NPPF. Local planning authorities need to ensure that habitat improvement will be a genuine additional benefit, and go further than measures already required to implement a compensation strategy."

17. As for the next element of the mitigation hierarchy, the Appellant has not proposed adequate onsite mitigation. Compensation, which is a measure of last resort according to the mitigation hierarchy, should be considered where it has already been demonstrated that avoidance and mitigation could not be undertaken or fully undertaken. Not only has the Appellant moved directly to the last stage in the mitigation hierarchy without first addressing the first two stages, but even such compensation/offsetting as are proposed lack adequate supporting justification in relation to the financial quotation and/or details of where this offsetting payment could or would be used.
18. Overall, the Appellant has failed to follow the mitigation hierarchy properly or at all and would therefore inflict a significant degree of harm to Priority Habitats that would not be properly mitigated or as a last resort, compensated for. MKC considers the resulting harm to be unacceptable and to outweigh the benefits of the scheme.

Economics

19. Mr Michael Moore provides MKC's evidence in relation to the economic benefits associated with the Proposal. The Site is an employment allocation within Plan:MK, which is capable of being delivered within the early stage of Plan: MK and it is acknowledged that the benefits of the development of the Site, in economic and employment terms, were part of the reason for the allocation of the Site in Plan:MK SD14.
20. Consequently it is accepted that there is policy support for the Proposal which encourages economic growth and meeting additional employment land need in the short term.
21. However, once again the Appellant has failed to demonstrate that such benefits would be unachievable with a revised layout that addressed archaeology and/or biodiversity.
22. The extent to which, in a revised layout, the deliverable floorspace would fall below the policy minimum of 195,000 sq m is a relevant policy consideration as is wider employment land availability and deliverability which could mitigate the impact of any such reduced floorspace

delivery on the Site. Mr Moore's evidence is to the effect that MKC can currently demonstrate a robust supply position of employment land that would significantly mitigate any shortfall of employment floorspace at the Site.

Conclusion

23. The principal area of disagreement between the parties in this appeal is not as to the principle of delivery of employment floorspace on the Site, but rather in relation to the degree of harm (both archaeological and ecological) the Proposal would cause.
24. The Proposal's acknowledged benefits fall to be weighed against other material planning considerations, which include the total and permanent loss of the buried remains of a Roman settlement containing significant heritage assets of archaeological interest and ecological harm.
25. MKC considers that despite the merits of the Proposal, the loss of these assets has not been justified.
26. Overall the Proposal is therefore not in accordance with the development plan and material considerations in this case do not indicate that planning permission should be granted. On the contrary they weigh against the Proposal and in support of MKC's decision to refuse the application.

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