



TOWN AND COUNTRY PLANNING ACT 1990

S78 APPEAL AGAINST THE REFUSAL OF PLANNING PERMISSION

Evidence:	Ecology Matters
Witness:	Phillip Snell BSc (Hons), MSc, Dip, MA,
Reference:	PINS APP/Y0435/W/20/ 3251121
	LPA 19/01818/OUT
Appellant:	HB (South Caldecotte) Ltd
Site:	South Caldecotte Site

Development 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

Date:

28 July 2020

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1 Summary

1.1 My name is Phillip Snell. I am employed by Milton Keynes Council (“MKC”) as Strategic Landscape and Countryside Manager and I am the MKC’s witness on ecological matters in this appeal.

1.2 My evidence considers

- The ecological background to the Site (section 3) detailing the scarce Priority Habitats and why the Proposal is not compliant with the ecological objectives of the NPPF paragraph 170 (d), 174 (b) and 175 and does not comply with the development plan policies set out in Plan:MK Policy NE1,NE2
- (section 4) define the status of the Wildlife Corridor and the role they play in ecology and challenge the adequacy buffer put forward by the Appellant as compensation and why it does not meet NPPF paragraph 170(d) or comply with development plan policies set out in Plan:MK Policy NE1,NE2,NE3
- set out the approach to the Mitigation Hierarchy (section 5), and how the Appellant fails to demonstrate its use and subsequent harm to biodiversity is not compliant with NPPF paragraph 174 (b) and/or Planning Practice Guidance paragraph 024 and development plan policies set out in Plan:MK Policy NE1,NE2,NE3
- discuss the use of the DEFRA metric (section 6) and its noncompliance NPPF paragraph 175 and development plan policies set out in Plan:MK PolicyNE3
- and finally (section 7), I summarise why taking into account the above evidence, the Proposal is not compliant with the ecological objectives of the NPPF paragraph 170 (d), 174 (b) and 175 , and also does not comply with the development plan policies set out in Plan:MK Policy NE1,NE2,NE3,NE4

2 Qualifications and Experience

- 2.1 I hold a BSc Hon in Ecology and Agricultural Biology; Diploma in Agroforestry and MA in Landscape Architecture and I am an Accredited Member of the Countryside Management Association. I have over 20 years' experience in ecology and countryside management and have been employed in both the public and private sector.
- 2.2 I am currently employed by MKC as Strategic Landscape and Countryside Manager. I have experience across the Landscape and Countryside realm and frequently advise on the environmental impact of development Proposal of all uses and sizes.
- 2.3 I confirm that the evidence which I have prepared and provided for this appeal is true to the best of my knowledge and belief. I confirm that the opinions expressed are my true and professional opinions.

3 Main Issues and the Scope of this Proof

- 3.1 This appeal relates to MKC's refusal of application 19/01818/OUT ("the Proposal") for outline planning permission for development comprising 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 etc .
- 3.2 The Proposal was refused for three reasons, two of these refer to highway and transport matters and archaeology and so are not relevant to this Proof but Reason for Refusal concerns ecology and states that:
- "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 unacceptable impact on biodiversity assets within the application site, contrary to NPPF paragraph 170 (d), 174 (b) and 175 and*

*Plan; MK, NE2 and NE3 and Planning Guidance / Natural Environment paragraph: 024.
The LPA do not agree that the Milton Keynes Wildlife Corridors associated with the site
would not be significantly adversely affected.”*

- a. My evidence considers the loss of nationally scarce Priority Habitat which are those habitats that are of principal importance for conservation in England. These habitats have been identified as being the most threatened and requiring conservation action under the UK Biodiversity Action Plan¹. habitats of principal importance for conservation in England under the UK Biodiversity Action Plan.
- b. The impacts on the Wildlife Corridor which, treated in the same way as Local Wildlife Sites in Plan MK as those wildlife-rich sites selected for their local nature conservation.
- c. The Appellant has not demonstrated a process which will limit the negative impacts on biodiversity. The Proposal will result in an almost 100% loss of the extant biodiversity leading to a complete loss of Priority Habitats including lowland meadow, orchard and hedgerow and other ecological assets including, pond, stream, improved grassland and trees
- d. The Biodiversity Metric 2.0; a way of measuring and accounting for biodiversity losses and gains is incomplete and no detail has been provided for a potential off-set.
- e. I declare that:
 - i. To the best of my knowledge, information and belief, this proof of evidence complies with the requirements of the giving of expert evidence and, as a witness, I understand my duty to the Inspector and have complied with this duty;

¹ UK Biodiversity Action Plan Priority Habitat Descriptions UK Biodiversity Action Plan; Priority Habitat Descriptions. BRIG (ed. Ant Maddock) 2008. (Updated 'HF 201)

- ii. I believe that the facts I have stated in this proof of evidence are true, and that the opinions I have expressed are my own professional opinions;
- iii. That the proof of evidence includes all the facts which I have regard as being relevant to the opinion which I have expressed, and I have drawn attention of the Inspector any matter which would affect the validity of that opinion.

4 Priority Habitats

I will set out below the case for the preservation of Priority Habitats, paying special attention to the most valuable examples, demonstrate that the Proposal will involve the destruction of these, and then explain why this is unacceptable in terms of ecology.

- a. Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on public bodies to have regard to the conservation of biodiversity in the exercise of their normal functions. This duty is designed to encourage effective management of biodiversity in the wider environment and extends from internationally protected sites and species to sites and species of local importance. The duty places an obligation on public authorities, including local authorities, to help halt the loss of biodiversity within their jurisdiction, and where possible, to enhance it.

The following Priority Habitats within the site qualify for such protection:

- Hedgerow (not all, but also covered by the Hedgerow Regulations 1997)
- Mixed deciduous woodlands
- Orchard
- Unimproved grassland

All these Priority Habitats would be lost as a result of the Proposal as shown on the Habitats and Ecological Features Plan ².

- b. Of the greatest importance within this list of Priority Habitats is the unimproved grassland known under the National Vegetation Classification (NVC) system, as MG5. MG5 is a type of old meadow and pasture found in English lowlands and were once widespread, since the late 1960's it has sustained large losses. Its designation as a UK Biological Action Plan (BAP) Priority Habitat is intended as a measure to protect what remains. The primary biological interest of MG5 Lowland Meadow, is the species-rich assemblage of mostly widespread, unsown, native plants rather than the presence of rare species. Herbaceous plants usually comprise a substantial proportion of the herbage and exceptionally may be as high as 95% cover³. The diversity of the plants in turn provides a food source for large numbers of invertebrates including pollinators, vital for food production.
- c. MG5 Lowland Meadow covers less than 6000 hectares in England, with over 50% of that area within Sites of Special Scientific⁴ Interest demonstrating is national importance. The national profile shows that 80% of MG5 sites are less than 5 hectares in size, making them vulnerable to neighbouring land management changes⁵. The NPPF paragraph 174 (b) sets out the need to protect and enhance biodiversity and geodiversity, plans should:

“(b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity”.

² Aspect ecology Biodiversity Impact assessment 23.1.20 (5263/EC03)

³ Natural England Technical Information Note TIN147

⁴ Natural England Technical Information Note TIN147

⁵ Natural England Technical Information Note TIN147

- d. The evidence for Priority Habitat MG5 on the Site dates to a survey in 1993, covering an area of approximately 6 hectares⁶. The habitats are shown on plan⁷ as fields F3 and F4, at 6 hectares they account for approximately 1% of the national total. Milton Keynes retains just 9.5 hectares of Lowland Meadow so this scale of loss would result in an overall reduction of more than 60%. As acknowledged in the Appellant's report⁸, it is of value at a district level, forming an important ecological feature.

- e. Subsequent surveys carried out by Blackstone Ecology⁹ conclude that on initial inspection F3 was found to reflect MG5 Lowland Meadow with eleven of the indicator species listed within the floristic table for MG5 present and five were recorded as constant species, as would be anticipated if the sward were an MG5 Community. However, the Appellant's report concludes that the species recorded within F3 are also characteristic of MG6 grassland, a lower status neutral grassland,

- f. The Appellants Botanical Assessment of Grassland¹⁰ report does consider that F4 represent the Priority Habitat MG5 Lowland Meadow and therefore it should be afforded protection by Plan MK Policy NE1 as it is a site of county or local importance. Additionally, as set out in Planning Practice Guidance (paragraph 024) Biodiversity Net Gain; through the creation of new habitats, does not override the protection for priority habitats.

- g. Whilst the Appellants survey results show the F3 to have affinity with other vegetation classifications, this is wholly to be expected as nature does not uniformly fit within categorisation. MG5 can form transitions with other semi-

⁶ NVC survey report 1993 – DEFRA Magic Map: <https://magic.defra.gov.uk/MagicMap.aspx>

⁷ Plan 5263/EC03 in Aspect Ecology Biodiversity Impact assessment 23rd January 2020

⁸ Aspect Ecology (ECO5263) Biodiversity Impact Assessment (4.5.7)

⁹ Botanical Assessment of grassland. Prepared by Ian Johnson. Blackstone ecology Ltd: South Caldecotte. June 2020 (Page 6)

¹⁰ Botanical Assessment of grassland. Prepared by Ian Johnson. Blackstone ecology Ltd: South Caldecotte. June 2020 (Page 8 4.15)

natural vegetation communities that may be related to changes in geology, soil type, slope, topography and hydrology¹¹. The NVC handbook states that:

“A poor fit to such defined types is therefore seen as sub-standard. In fact, both well and ill-fitting stands represent the real field of variation in a vegetation type which is summarised in a floristic table and description. In many cases, a ‘poor’ fit may indicate valuable local peculiarities, perhaps the very features for which a site was designated¹²”

- h. Whilst I do not disagree that some degradation may have occurred, this is not irreversible and appropriate management would return the whole area to MG5 Lowland Meadow. Whilst vegetation that approximates to MG5 can be recreated such grasslands should not be confused with long-established grasslands such as MG5.¹³
- i. MG5 grassland is important for more than its vegetative diversity, providing a habitat for communities of macrofungi, birds, mammals and may have significant invertebrate interest including the presence of the following species:
 - grasshoppers and crickets;
 - butterflies and moths;
 - plant hoppers;
 - plant bugs.
- j. As a result of the long continuity of management, MG5 grassland can protect and preserve archaeological sites. This is visible in the ancient ridge and furrow mounding which can be seen on the surface as well as the Roman layer below;

¹¹ Natural England Technical Information Note TIN147

¹² JNC: National Vegetation Classification users hand book . J.S Rodwell 2006

¹³ Natural England Technical Information Note TIN147: National Vegetation Classification:MG5 grassland. 2013

which is discussed by my colleague Nick Crank (see paragraph 5.5.1 of his proof of evidence).

- k. The biodiversity present and the historical use of the site go hand in hand, the historical use of ridge and furrow had several important practical features. It created natural divisions which were used as boundaries and in a wet year, the crop growing on top of the ridge was likely to survive, while in drier weather a good crop could probably be harvested out of the furrow. The ridge and furrow mounding create a range of micro-climates that influence the biodiversity to this day. This point is made in the survey carried out by Blackstone Ecology¹⁴ : “ it was apparent from scanning the field that the ridge tops supported a more extensive and diverse herb community than the bottom”.
- l. Peterken¹⁵ has postulated that MG5 is an artefact of post Neolithic farming, and analogous to near natural vegetation¹⁶. The Lowland Meadow and its Site context; meandering stream and hedgerows, provides an insight in to how and where our ancestors lived; its value, therefore, is more than the sum of its parts. It is unique and irreplaceable.
- m. Plan MK, Policy NE1 gives protection to sites where development proposals would be likely to harm the biodiversity value of a site of county or local importance. The Proposal, by loss of the Priority habitats and in particular the MG5 Lowland Meadow represent significant harm and contravene this Policy. Plan MK, Policy NE2 (b) provides that:

¹⁴ Botanical Assessment of grassland. Prepared by Ian Johnson. Blackstone ecology Ltd: South Caldecotte. June 2020 (Page 2 2.5)

¹⁵ Peterken, G.2009 Woodland origins of meadows. *British Wildlife*, 20, 161-170

¹⁶ Natural England Technical Information Note TIN147: National Vegetation Classification:MG5 grassland. 2013

“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”.

- n. The Proposal does not promote preservation, restoration or expansion of Priority Habitats. On the contrary it would cause the loss of Priority Habitats, particularly MG5 Lowland Meadow and thereby lead to a permanent and significant adverse environmental effect in contravention of NPPF paragraph 174 (b). The Proposal does not demonstrate an approach consistent with the Mitigation Hierarchy and is therefore not compliant with NPPF paragraph 174 (b) and/or Planning Practice Guidance paragraph 024.

5 Wildlife Corridor

- a. Wildlife Corridors are treated in the same way as Local Wildlife Sites in Plan MK.¹⁷ Local Wildlife Sites are those wildlife-rich sites selected for their local nature conservation value and protected through the planning system. Wildlife Corridors are a specific designation to Milton Keynes, representing linear pathways of habitats that encourage movement of plants and animals between important habitats. I will set out the case (see paragraph 5.2) for the preservation of the Wildlife Corridor. The Proposal would destroy the Wildlife Corridor and its ecological assets including hedgerow, trees and grassland and is therefore considered ecologically unacceptable.
- b. Plan MK, Policy NE1 gives protection to sites where a "development Proposal would be likely to harm the biodiversity value of a site of county or local importance, this includes Wildlife Corridors: Plan MK, Policy NE4 (C) provides that: “Existing wildlife sites should be used to structure a development such that the wildlife site is well integrated into the development and provides

¹⁷ Plan MK 2016-2031 12.11

visual amenity wherever possible”¹⁸. The Biodiversity Impact Assessment¹⁹ demonstrates that the Proposal will cause the destruction of the Wildlife Corridor as it presently is.

- c. The Proposal will remove all vegetation and damage soil and sub soil and thereby destroying its value to wildlife. The Wildlife Corridor which currently exists will therefore cease to be and its character will be lost. The character and features that are recreated will take many years to re-establish. Not only will this be a loss to the biodiversity on site it will also reduce its ability as a conduit for species to move through it to the wider network of Wildlife Corridors and associated habitats.

- d. Plan MK²⁰ requires the provision and long-term management of a minimum buffer between development and irreplaceable habitats, such as ancient woodland and veteran trees, and hedgerows in line with national standing advice to protect their value. The Proposal offers no buffer to the existing Wildlife Corridor or Priority Habitats.

- e. As set out in *The Wildlife Corridors of Milton Keynes* ²¹ Wildlife Corridors should:
 - be as continuous as possible.
 - be as wide as possible to maximise habitat, minimise the risk of degradation.
 - have the most benefit for the widest range of wildlife if it is predominately composed of semi-natural habitats.
 - be as diverse in vegetation composition and age structure as possible, so that there is a wide range of potential users

¹⁸ Plan MK Appendix C Open Space and Recreation Facility Provision p241

¹⁹ Aspect Ecology: Technical Briefing note 02 Biodiversity Impact Assessment

²⁰ Plan MK 12.20

²¹ *The Wildlife Corridors of Milton Keynes*. 1996 – English Nature, Milton Keynes borough Council, Buckingham County Council, Commission for New Towns and Milton Keynes Parks Trust (2.1 p8)

- act as a conduit for colonisation or re-colonisation of sites, linking areas which are reservoirs of species.

f. The proposed buffer (as described in the illustrative plan²², to the western boundary) is narrower than the Wildlife Corridor is at present thus reducing its connectivity and buffering capacity. The Proposal will remove the existing semi-natural vegetation and habitats that have developed with a diverse age structure. The existing structure provides a wider variety of habitats and thus greater biodiversity than the proposed buffer will offer for many years. The resultant loss is contrary to Plan MK, Policy NE1 (C) and NE3 (A).

g. The car parking proposed on the boundary to the buffer strip will cause disturbance from the movement of the cars, headlights and engine noise further reducing its suitability. As acknowledged in the Appellant's plan²³ the movement of the existing stream will require a 9 metre easement strip to enable the Inland Drainage Board to maintain the water course. The reinstated water course lacks any of the natural features of the existing one further reducing the proposed landscaping and opportunities for wildlife.

h. Plan MK, Policy NE2 (b) 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”.

i. The Proposal does not promote preservation, restoration or expansion of Priority Species or Habitats

²² Land at South Caldecotte illustrative Landscape Strategy Plan: Aspect landscape planning 640/LSP/ASP4

²³ Aspect Ecology Biodiversity Impact assessment 23.1.20 ((6340/LSP/ASP4

- j. The Proposal does not demonstrate that measures have been taken to limit impacts to biodiversity or protected sites (NE1 / NE2). A process for this is outlined in British Standards BS 42020:2013 Biodiversity – Code of practice for planning and development through the production of an Ecological Constraints and Opportunities Plan (ECOP), no ECOP has been submitted by the Appellant.
- k. The Appellant’s Biodiversity Impact Assessment dated 23rd January 2020 contained a Landscape Strategy Plan. The plan²⁴ is a high level one, lacking any significant detail. The proposed buffer is shown with a footpath near buildings and car parks. None of these features are beneficial to wildlife, compromising its value as both a habitat and a corridor for species movement.
- l. Paragraph 170 of the NPPF 2019 requires that planning policies and decisions should contribute to and enhance the natural and local environment. They should minimize impacts on, and provide net gains for biodiversity, including, by establishing coherent ecological networks, that are more resilient to current and future pressures.
- m. The Appellant has provided no evidence to suggest that the removal of all vegetation and soils in the Wildlife Corridor will result in any increase of coherency. The resultant action would result in a loss for biodiversity for many years, contrary to NPPF paragraph 170(d) or comply with development plan policies set out in Plan:MK Policy NE1,NE2,NE3,NE4

6 Mitigation Hierarchy

- a. The State of Nature Report²⁵ documents a steady decline in biodiversity within the UK. In response, the UK Government is mandating Biodiversity Net Gain (BNG) to ensure that new developments enhance biodiversity and help deliver

²⁴ Plan 5263/EC03 in Aspect Ecology Biodiversity Impact assessment 23rd January 2020

²⁵ State of Nature Partnership, State of Nature Reports (2013-2019):

<https://www.rspb.org.uk/ourwork/conservation/projects/state-of-nature-reporting>

thriving natural spaces for communities. BNG is an approach that ‘leaves biodiversity in a better state than before.’²⁶

- b. The Mitigation Hierarchy is a methodology which seeks to provide a process for the minimisation of harm from development to ecology interests. The Mitigation Hierarchy sets out a process so that all possible avoidance, mitigation or opportunities for compensation for losses of biodiversity take place on-site before considering any off-site provision, which is the last-resort option. Following the hierarchy means that genuine attempts must be made on-site to reduce impacts on biodiversity as a result of development, and the scheme is not a means to develop and “just pay” for biodiversity gains elsewhere.

- c. The Appellant has not evidenced how the Mitigation Hierarchy has been followed and as a result the Proposal will cause unacceptable harm to the existing biodiversity and is not compliant with NPPF paragraph 174 (b) and/or Planning Practice Guidance paragraph 024 and development plan policies set out in Plan: MK Policy NE1,NE2,NE3.

- d. Paragraph 174(b) of the NPPF 2019 refers to the conservation, restoration and enhancement of Priority Habitats, several which currently exist on this site, and which must be taken into consideration. The National Planning Practice Guidance was updated in July 2019 and contains the following provision relevant to the Mitigation Hierarchy at paragraph 19:
 - Avoidance: Can significant harm to wildlife species and habitats be avoided; for example, by locating on an alternative site with less harmful impacts?
 - Mitigation: Where significant harm cannot be wholly or partially avoided, can it be minimised by design or using effective mitigation measures that can be secured by, for example, conditions or planning obligations?

²⁶ Baker, J. 2016. Biodiversity Net Gain Good Practice Principles for Development. CIEEM, IEMA, CIRIA, UK

- Compensation: Where, despite mitigation, there would still be significant residual harm, as a last resort, can this be properly compensated for by measures to provide for an equivalent or greater value of biodiversity?
- e. An Ecological Constraints and Opportunities Plan (ECOP) as outlined in BS 42020 is a useful method of illustrating the key points gathered from the ecological surveys. The ECOP can show graphically how the Mitigation Hierarchy has been applied in practice. No ECOP or similar document has been provided by the appellant to demonstrate how the Mitigation Hierarchy has been followed. Accordingly, the Proposal contravenes Policy NE3.
- f. Despite the Priority Habitat being shown in the draft development framework and identified on DEFRA MAGIC biological database:
- No dialogue regarding an alternative development footprint has been entered into with MKC ecology
 - No evidence has been produced to demonstrate attempts to avoid or limit the impacts on Priority Habitats
 - No evidence has been produced to demonstrate attempts to mitigate the impact of the development on Priority Habitats
- g. There is no specific mention of Priority Habitat in the Biodiversity Impact Assessment²⁷ on either Ecological Designation Plan(5263/EC02) or Habitats and Ecological Features Plan (5263/EC03). The only reference to the Priority Habitat and the Mitigation Hierarchy:

“The two fields containing lowland meadow are located within the development footprint and due to the extent and nature (sic) of the proposed development it would not be practicable to retain the habitat in situ “²⁸.

²⁷ South Caldecotte Ecological Appraisal: Aspect Ecology June 2019

²⁸ South Caldecotte Ecological Appraisal: Aspect Ecology June 2019 para 4.5.8

- h. The omission of an ECOP or demonstrable approach to minimise impact on a Priority Habitats reveals a failure by the Appellant to comply with Planning Practice Guidance paragraph 024 Reference ID: 8-024-20190721 in 2019, which provides as follows:

“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.”

- i. The importance of the Priority Habitat, MG5 Lowland meadow, is not simply its vegetation. It is also emblematic of non-disturbed, unimproved soils. The historic value of MG Lowland Meadow is as a result of the long continual management. It is a repository of social and cultural history. It cannot therefore be recreated or replicated easily or over a short period of time²⁹.
- j. Vegetation that approximates to MG5 can be created on suitable arable soils using hay strewing or seed mixtures over timescales of 10-20 years. However, such grasslands should not be confused with long-established grasslands including MG5 which are very different in character in terms of:³⁰
- species richness and diversity;
 - presence of local or scarce species;
 - presence of so-called species indicative of long continuity and/or species that are difficult to establish in new swards;
 - soil structure and topographical heterogeneity;
 - other components of the ecosystem including above and below ground biota.

²⁹ Natural England Technical Information Note TIN147: National Vegetation Classification:MG5 grassland. 2013

³⁰ Natural England Technical Information Note TIN147: National Vegetation Classification:MG5 grassland. 2013

- k. For these reasons Compensation is the last process in the Mitigation Hierarchy and the reason why it

“...should only be used in exceptional circumstances and as a last a last resort, after all options for avoidance and mitigation have been fully considered.”³¹

- l. The Chartered Institute of Ecology and Environmental Management (CIEEM) with others have produced a set of principles in “Biodiversity Net Gain Good Practice Principles for development”³² . The guide follows the steps of the Mitigation Hierarchy, Principle 1. Apply the Mitigation Hierarchy

“Do everything possible to first avoid and then minimise impacts on biodiversity. Only as a last resort, and in agreement with external decision-makers where possible, compensate for losses that cannot be avoided. If compensating for losses within the development footprint is not possible or does not generate the most benefits for nature conservation, then offset biodiversity losses by gains elsewhere.”

Appellant has discussed avoidance measures with MKC and no detail of how or where compensation would be generated, therefore it is not possible to quantify what benefits to nature would be derived.

- m. Principle 2 in the CIEEM guide states:

“Avoid losing biodiversity that cannot be offset by gains elsewhere. Avoid impacts on irreplaceable biodiversity – these impacts cannot be offset to achieve No Net Loss or Net Gain” Loss of the Priority Habitat is irreplaceable.

³¹BSI Standards Publication. Biodiversity – Code of practice for planning and development BS42020:2013

³² Baker, J. 2016. Biodiversity Net Gain Good Practice Principles for Development. CIEEM, IEMA, CIRIA, UK

As discussed in above in 4.1 there are several Priority Habitats on site, including the nationally scarce MG5 Lowland Meadow. No evidence has been provided by the Appellant to demonstrate avoidance of impact on the Priority Habitats or demonstrate how they could be offset contrary to the detail set out in the principle.

- n. The Proposal does not satisfy MK policy NE1 (A), no evidence has been provided to show all reasonable possibilities for mitigation have been put in place. Or that the local development needs significantly outweigh the biodiversity value – NE1 (C1). The Proposal does not demonstrate an approach consistent with the Mitigation Hierarchy and is therefore not compliant with NPPF paragraph 174 (b) and/or Planning Practice Guidance paragraph 024.

7 Defra Metric

- a. The Biodiversity Metric 2.0 provides a way of measuring and accounting for biodiversity losses and gains resulting from development or land management change. I will set out the case that the approach undertaken to determine ‘no net loss’ / ‘net gain’ of biodiversity, as set out in the Aspect Ecology’s note entitled ‘Biodiversity Impact Assessment’ dated January 2020, is unsatisfactory and fail to accord with the requirement within NPPF Paragraph 170:

“Conserving and enhancing the natural environment, planning policies and decisions should contribute to and enhance the natural and local environment and minimise impacts on and provide net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.”

- b. When determining planning applications, local planning authorities should apply the following principle:

“if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.” NPPF paragraph 175

- c. The Biodiversity Metric 2.0 provides a way of measuring and accounting for biodiversity losses and gains resulting from development or land management change. Failure to follow the Mitigation Hierarchy is manifested in the Appellant’s Biodiversity Impact Assessment³³. The calculation shows:
- Loss of (habitat) units of 220: a loss of 99.9% of existing habitats - (prior to onsite post-intervention)
 - Loss of Hedgerow units 20.84: a loss of 98% of existing habitats - (prior to onsite post-intervention)
 - Loss of stream units 5.68: a loss of 100% of existing habitat - (prior to onsite post-intervention)
- d. The figures in 7.3 clearly demonstrate a failure to comply with first step in the Mitigation Hierarchy, i.e. Avoidance and demonstrate a failure to minimising impacts on biodiversity as set out in NPPF paragraph 170 (d).
- e. The Appellants DEFRA Biodiversity Impact Calculation³⁴ demonstrates the almost total loss of extant biodiversity due to the limited mitigation measures of the Proposal. Moreover, there is little evidence on the Illustrative Landscape Strategy Plan³⁵ to demonstrate how even the newly created habitats on site are to be mitigated by the effects of the development i.e. light and noise pollution from car parks and buildings. As discussed in paragraph 5.8, the narrowing of the existing wildlife corridor, the inclusion of paths and adjacent

³³ Aspect Ecology: Technical Briefing note 02 Biodiversity Impact Assessment

³⁴ Aspect Ecology: Technical Briefing note 02 Biodiversity Impact Assessment Annex 5261/1

³⁵ Aspect landscape planning – Land at South Caldecotte. Illustrative landscape Strategy Plan 6340/LSP/ASP4 June 2019

car parking and lights will limit potential biodiversity. This is contrary NPPF paragraph 170 (d) planning decisions should contribute to “establishing coherent ecological networks that are more resilient to current and future pressures”.

- f. As discussed above in paragraph 4.4, the site contains the Priority Habitat Lowland Meadow. The Appellant states

“When Lowland Meadow, represented by field F4, is inputted to the spreadsheet (at Ref 15) it generates an output ‘bespoke compensation likely to be required’. This is automatically generated when any habitat of ‘high distinctiveness’ is present. The generation of the advisory of ‘bespoke compensation likely to be required’, effectively prevents the metric from being run...”³⁶

- g. The Appellant states³⁷that it has sought advice from the Environment Bank, a private limited company, to account for the presence of Lowland Meadow in the DEFRA calculator. As discussed at paragraph 4.6 above, any superficial recreation of the MG5 Lowland Meadow would be a callow facsimile of the extant feature.

- h. NPPF paragraph 175 requires authorities to apply the following principles:

“a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;”

³⁶ Aspect Ecology: Technical Briefing note 02 Biodiversity Impact Assessment (4.3)

³⁷ Plan 5263/EC03 in Aspect Ecology Biodiversity Impact assessment 23rd January 2020 (2.6)

As the Appellant has proposed no detail of where or how the offsite compensation would be delivered the proposal does not accord with the principles set out in NPPF paragraph 175.

- i. According to MK Policy NE3 MKC's preferred approach is that compensation for the loss of biodiversity on one part of the site should be implemented elsewhere on-site. The potential to enhance the Priority Habitat meadows would be a preference and be a significant compensation for the loss of other ecological assets on site.
- j. The Environment Bank has provided a quotation for a biodiversity compensation scheme to offset the biodiversity impact of the Proposal, based on the results of the metric calculation. The Environment Bank would devise a scheme for the sum of £1,741,000 +VAT
- k. The location of any offset should be in line with good ecological principle. In the Making Space for Nature Report ³⁸ cites the importance of ecological networks, suites of high-quality wildlife sites containing biological diversity, with connections between them enabling species, or their genes, to move. The Buckinghamshire and Milton Keynes Biodiversity Action Plan advocates a landscape-scale approach which means effort should be focused on areas already identified as being of high value for biodiversity, referred to as Biodiversity Opportunity Areas.
- l. The Appellant has provided no detail regarding the location or possible locations for where the offset may go. Consequently, the DEFRA calculation remains incomplete. It is therefore unclear whether the habitats could be created or whether the location could meet the objectives set out in the

³⁸ Lawton, J.H., Brotherton, P.N.M., Brown, V.K., Elphick, C., Fitter, A.H., Forshaw, J., Haddow, R.W., Hilborne, S., Leafe, R.N., Mace, G.M., Southgate, M.P., Sutherland, W.J., Tew, T.E., Varley, J., & Wynne, G.R. (2010) Making Space for Nature: a review of England's wildlife sites and ecological network. Report to Defra.

conservation objectives of the NPPF paragraph 170 (d), 174 (b) and 175 and does not comply with the development plan policies set out in Plan:MK Policy NE1,NE2

8 Conclusion

- a. The Proposal will, by its destruction of Priority Habitats and in particular the MG5 Lowland Meadow, lead to a permanent and significant adverse environmental effect.
- b. This would be contrary to NPPF paragraphs 170 (d), 174 (b) and 175 and Plan; MK, NE2 and NE3 and Planning Guidance / Natural Environment paragraph: 024
- c. The Wildlife Corridor would be impacted by the loss of the present ecology, reduction in size and new built infrastructure lead to a permanent and significant adverse environmental effect along the Wildlife Corridor which in turn would impact the wider environment. This contrary to NPPF paragraph 170 (d MK, Policy NE2 and NE4.
- d. The Proposal does not demonstrate an approach consistent with the Mitigation Hierarchy and is therefore not compliant with NPPF paragraph 174 (b), Planning Practice Guidance paragraph 024 or BS 42020.
- e. The Proposal does not satisfy MK policy NE1 (A). No evidence has been provided to show all reasonable possibilities for mitigation have been put in place or that the local development needs significantly outweigh the biodiversity value – NE1 (C1).
- f. The Biodiversity Metric 2.0 submitted is incomplete and assumptions have been made about the detail without discussion with MKC. Whilst a financial cost has been provided to compensate for the loss no explanation for this has been provided. Nor have the details of management or location been identified. The submission therefore fails to show it will achieve “net gains for biodiversity, including by establishing coherent ecological networks that are

more resilient to current and future pressures NPPF paragraph 170 or that it will “will contribute to the enhancement and strengthening of existing green infrastructure” MK Policy NE4 (b)

- g. Overall, the Proposal is considered unacceptable in ecological terms due to
 - (i) the lack of a clear and convincing assessment of the significance of the affected ecology,
 - (ii) Loss of the existing Wildlife Corridor
 - (iii) Loss of Priority Habitats including the national scarce MG5 Lowland Meadow
 - (iv) a failure to demonstrate the Mitigation Hierarchy, and
 - (v) the near total loss of extant vegetation and soils and an incomplete DEFRA Metric makes.