

MK 5.1



**Town and Country planning Act 1990
S78 Appeal against the Refusal of Planning
Permission**

Evidence: Planning Matters
Witness: David Buckley MA MRTPI
PINS Reference: APP/Y0435/W/20/ 3251121

Site: Land At Brickhill Street, South
Caldecotte, Milton Keynes, MK17 9FE

Date: 28th July 2020

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1. Summary

1.1 This Inquiry is into the refusal of a planning application for land at South Caldecotte (“the Site”) in Milton Keynes registered under Milton Keynes planning reference 19/01818/OUT (‘the Proposal’). The Proposal was for outline planning permission with all matters reserved except access.

1.2 The Proposal was refused for three reasons as set out in the decision notice, which relate respectively to archaeology, ecology/biodiversity and highways and transport/infrastructure, which are as follows:

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.

- 1.3 This proof of evidence examines the range of planning benefits and dis-benefits of the Proposal and sets out the weight, which in my opinion should be applied to each of these.
- 1.4 My evidence should be read together with the evidence of Milton Keynes Council (“MKC”)’s other witnesses, as follows:
- Mr Nick Crank addressing the effect of the proposal on the historic environment
 - Mr Philip Snell addressing the effect of the proposal on biodiversity
 - Mr Nigel Weeks addressing highways considerations
 - Mr Michael Moore addressing the extent to which the proposal would support the objective of building a strong, competitive economy
- 1.5 Taking the above matters together, I conclude that the Proposal is not in accordance with the development plan and material considerations in this case do not indicate that planning permission should be granted. Therefore, MKC’s decision to refuse the application was (and remains) justified in accordance with the three reasons for refusal and this appeal should be dismissed.

2 Qualifications and Experience

- 2.1 My name is David Buckley. I am currently a Senior Planning Officer at MKC where I have been employed for two years. I have worked as a planning officer for approximately seven years.

- 2.2 I was the officer involved in this scheme, since approximately November 2018 when it was in its pre-application stage when I took over from another officer. I was the case officer who recommended the scheme for refusal at Development Control Committee.

- 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 and that it has been prepared and is given in accordance with the guidance of the RTPI, my professional institution. I confirm that the opinions expressed are my true and professional opinions.

3 The Appeal Site and Surroundings

- 3.1 The Site is a plot of land of approximately 57 hectares in area and forms the whole of the South Caldecotte allocation within 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.
- 3.2 The Site is located to the south of Milton Keynes and located off V10 Road/Brickhill Street with the A5 road in proximity, with Bow Brickhill train station immediately to its north.
- 3.3 MKC has developed and consulted upon a draft Development Framework. However, adoption of the Framework was put on hold by MKC in July 2019 pending further information on the Oxford-Cambridge Expressway route and its completion of a transport study. The Site Allocation Policy requires a Development Framework to be prepared prior to planning applications being approved.
- 3.4 The Site is near the village of Bow Brickhill. The majority of dwellings are several hundred metres from the Site, but there are a small number of houses at the roundabout of Station Road and Brickhill Street, very close to the Site.
- 3.5 The Site is adjacent to the A5 road and Brickhill Street, while Bow Brickhill railway station is a short distance from the site to the north, where there is currently a level crossing for road traffic. The Site sits in a very important strategic location. It includes a relationship to the East West Rail project, connecting Oxford to Cambridge, which will use the railway line immediately to the north of the site. This has potential implications in terms of future increased intensity of use on the line and the potential need for a bridge for road traffic to replace the level crossing.

- 3.6 The Site is also located within the preferred corridor for the Oxford-Cambridge Expressway.
- 3.7 There is a public right of way that runs through the northern part of the Site and there are also Redway connections nearby.
- 3.8 There are a number of nearby major schemes, either sites allocated in Plan:MK or with planning permission. This includes South East MK which is allocated by Plan:MK policy SD11 for 3,000 homes and Eaton Leys which has outline planning permission for up to 600 homes and reserved matters permission for 450 homes.
- 3.9 The Site currently comprises arable farmland and pastures with the northern half of the site in arable cultivation with two fields separated by a hedgerow and the southern half in use for pasture. The Site contains significant biodiversity assets, including Priority Habitats and Wildlife Corridors and lies adjacent to an area identified as an Area of Attractive Landscape. It does not contain any Areas of Outstanding Natural Beauty.
- 3.10 The Scheduled Monument of the Roman Town of Magiovinium and Roman Fort (National Heritage List no. 1006943) is located directly across the A5 to the south west. Significant heritage assets of archaeological interest¹ have been discovered on the Site, which are described in paragraph 7.5 below and addressed in Mr Crank's evidence.
- 3.11 The Site is located within Flood Zone 1 on the Environment Agency Flood Map which represents a low risk of fluvial flooding, although there are other flood risk considerations including watercourses within the application site. There is an Anglian Water pipe running underneath the northern part of the Site.

¹ Archaeological interest: There will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point. NPPF Glossary p.65

- 3.12 MKC undertook screening for EIA development at the Site under reference 18/01760/EIASCR on 11th September 2018. It found that at that time an Environmental Statement was not required.
- 3.13 On the submission of the current application , MKC re-screened due to changes in circumstances since the original screening, including the increase of the floor space proposed from 196,000 sq m to 241,000 sq m (an increase of 45,000 sq m or 23%) and further information being made available regarding the significance of the heritage assets of archaeological interest on the Site. MKC issued a Screening Opinion on 30th July 2019 which concluded that the Proposal for 241,000 sq m of development was EIA development and that an Environmental Statement was required for the Proposal. Subsequent to this, the Secretary of State issued a decision that the Proposal represents EIA development in respect of archaeology and cumulative impacts.
- 3.14 In response to the Secretary of State's decision, the Appellant submitted an Environmental Statement as is required under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. A full re-consultation with relevant internal and external consultees was undertaken. The submission of the Environmental Statement created a new statutory expiry date of 3rd March, based on a 16-week period from submission of the Environmental Statement. This complies with the National Planning Practice Guidance (2019) ("NPPG") on Environmental Impact Assessment, found in the flowchart at paragraph 046 Reference ID:4-046-20170728. This NPPG states that the local planning authority must take into account the information in the Environmental Statement, the response to the consultation and any other relevant information.
- 3.15 MKC are aware that on 5th June 2020, PINS requested further information from the Appellant on their Environmental Statement. MKC reserves the right to comment on such further information within its evidence as may be appropriate.

3.16 Development Description

3.17 The Proposal was for the development of an allocated employment site, comprising the following:

Use Type	Floor Space
B8 Use Class warehousing and distribution with ancillary B1a office space	192,159 sq m
B2 Use Class general industrial	48,040 sq m
B1 office	999 sq m
A3 Use Class Café	350 sq m
Total	241,548

3.18 The Proposal would also include 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 a section of Brickhill Street.

3.19 An indicative layout and other details were submitted by the Appellant with the planning application. However, as an outline planning application, issues of appearance, layout, scale and landscaping did not fall to be determined by MKC as part of this application.

4 Relevant Planning History

4.1 The second screening opinion as described in paragraphs 3.12-3.14 above was undertaken by MKC as part of the subject planning application. Relevant planning history at the Site is limited to first EIA screening opinion below:

4.2 18/01760/EIASCR

Environmental Statement not required

11th September 2018

5 Main Issues and Scope of this Proof

- 5.1 As indicated on the Inspector's pre-inquiry conference summary letter dated 24th June 2020, the key issues relating to the appeal case are as follows:
- a) The effect of the proposal on the historic environment;
 - b) The effect of the proposal on biodiversity;
 - c) The effect of the proposal on the transport network and the extent to which it would support the objective of promoting sustainable transport; and
 - d) The extent to which the proposal would support the objective of building a strong, competitive economy.
- 5.2 The key issues a, b and c relate to reasons for refusal 1,2 and 3. The reasons for refusal are produced in full in paragraph 1.2 above.
- 5.3 My evidence should be read alongside the evidence presented by the other witnesses for MKC, as listed in 1.4 above.
- 5.4 The scope of this proof is to review the issues highlighted in 5.1 above, identify the benefits and dis-benefits associated with the Proposal, consider the weight to be afforded to each and assess the planning balance and whether the Proposal represents a sustainable form of development for the purposes of the National Planning Policy Framework (February 2019) ("NPPF"). Taking all these matters into account I then reach an overall conclusion within the statutory framework of section 70 of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004.

6 Relevant Planning Policies

- 6.1 A full list of NPPF sections that were pertinent to the determination of the Proposal are provided in MKC's Statement of Case, paragraphs 4.1 to 4.7.
- 6.2 This section seeks to highlight specific planning policies and guidance which are relevant to this evidence:
- 6.3 NPPF 197 relates to non-designated heritage assets. It will be explored in paragraph 7.6 below.
- 6.4 NPPF policy 174 (b) relates inter alia to Priority Habitats and securing measurable net gains for biodiversity and will be explored in paragraph 7.21 below.
- 6.5 NPPF policy 175 (a) outlines the mitigation hierarchy in relation to biodiversity harm and will be explored in paragraph 7.28 to 7.31 below.
- 6.6 The NPPG was issued at the same time as the NPPF and while not development plan policy, is a material planning consideration. NPPG paragraphs relevant to determination of the application are provided in MKC's Statement of Case paragraph 4.3. NPPG Paragraph: 024 Reference ID: 8-024-20190721, which relates inter alia, to biodiversity net gain and priority habitats is of particular relevance and is explored in paragraph 7.28 below.

The Development Plan

6.7 *Neighbourhood Plan*

The Site does not currently have a made neighbourhood plan, but it is part of the designated neighbourhood area of Bow Brickhill, with a Neighbourhood Plan presently under consideration.

6.8 *Plan: MK (March 2019)*

The application was determined in accordance with Plan: MK which had been adopted at that time, the full list of relevant policies is provided in paragraph 5.25 of MKC's Statement of Case. Some specific policies, relevant to the reasons for refusal are highlighted below:

6.9 The site allocation policy for the Site is Plan: MK policy SD14 '*Strategic Employment Allocation, Land South of Milton Keynes, South Caldecotte*', ("the Site Allocation Policy").

6.10 Plan:MK policy HE1 'Heritage and Development' paragraph (F) states that: '*Proposals that result in 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.*'

6.11 Plan:MK policy NE2 '*Protected Species and Priority Species and Habitats*' paragraph 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.*'

6.12 Plan:MK policy NE3 '*Biodiversity and Geological Enhancement*' paragraph B states that: '*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.*'

6.13 *Supplementary Planning Documents/Guidance*

6.14 The Draft South Caldecotte Development Framework (has been subject to public consultation on two occasions. The second round of consultation took place during May-July 2019. A total of 72 responses were received to the consultation. Consideration of the comments received on the revised draft SPD has been put on hold, pending the completion of a highways study being undertaken by the Council looking at the safeguarding of land for a potential bridge in place of the Bow Brickhill level crossing

Parking Standards SPD (January 2016)

Sustainable Construction Guide SPD (April 2007)

Milton Keynes Drainage Strategy - Development and Flood Risk SPG (May 2004)

7 Assessment and Planning Balance

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Section 70(2) of the Town and Country Planning Act 1990 requires that in the determination of a planning application regard should be had to the development plan, so far as material to the application, and to any other material considerations.
- 7.2 MKC maintains its opposition to the Proposal in accordance with the reasons for refusal.
- 7.3 Against the relevant policy background set out above and in MKC's Statement of Case this proof of evidence addresses the key issues identified by the Inspector at the Case Management Conference as set out in paragraph 5.1 above.

a) The effect of the proposal on the historic environment

- 7.4 Mr Crank's evidence forms the evidential basis of MKC's case in relation to the impact of the Proposal on heritage assets.
- 7.5 There are a number of heritage assets of archaeological interest on the Site. The assets to which specific reference is given in the archaeology reason for refusal are the remains of a Roman street (c.250m in length) and adjacent areas of settlement, craft and industry associated with, or forming part of, the Roman town of Magiovinium located in the southern part of the site – referred to by the Appellant as 'Unwins Land' indicated in Area 2 shaded orange on Fig. 1 in Appendix 1 of Mr Cranks evidence "Archaeology Area 2".
- 7.6 NPPF paragraph 197 provides that in weighing applications a balanced judgement is required having regard to the scale of any harm or loss and the significance to the heritage asset. The Proposal would, based on the indicative

layout result in the total loss of the remains of a Roman street and adjacent settlement areas.

- 7.7 The NPPF does not recognise 'offsetting' in relation to loss of heritage assets, and it is stated (inter alia) in NPPF 199 and Plan:MK policy HE1 (j) that: '*The ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.*'
- 7.8 The significance of the heritage assets in question and the rationale behind the higher weight applied to these by MKC in comparison with the Appellant's approach is addressed in detail in Mr Crank's evidence.
- 7.9 However, in summary Mr Crank's evidence finds that the Roman remains in Archaeology Area 2, described in paragraph 7.5 above should be considered to be at the higher end of the scale of regional significance and also possess some attributes in common and a clear association with the nearby Scheduled Monument. Historic England in their consultation response to the Proposal dated 9th January 2020 reached a view that the non-designated heritage assets are of high and maybe of national significance. Mr Crank's evidence also finds that in NPPF terms it is clear that though the heritage assets affected by the Proposal are non-designated they are at the higher end of the scale of significance of non-designated heritage assets and because the Proposal will result in the total loss of significance of these assets, the resulting harm to heritage is considerable.
- 7.10 The understanding of the significance of the heritage assets of archaeological interest within the planning application was based on analysis of the applicants Archaeological Assessment and other documents submitted with the planning application as referred to in Mr Crank's evidence.
- 7.11 Having established the significance of the Roman remains and the harmful impact that would result from the Proposal, consideration must be given to the development approach. Plan:MK policy HE1 requires that the assessment of the benefits outweighing the harm should only be made once 'all feasible solutions to avoid and mitigate that harm have been fully implemented'.

- 7.12 The Appellant's Statement of Case paragraph 5.22 contends that if the Council's position was correct that (Archaeology) Area 2 should be kept permanently free of development due to the potential level of significance of any archaeological remains, then this should have been an issue raised prior to the allocation of the land in the draft Plan:MK.
- 7.13 However, the site allocation itself, Plan:MK policy SD14, states in 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.*' The policy wording above clearly indicates that there may be circumstances where the site layout should be informed by archaeological findings, subject to their significance. The significance of the findings is discussed above in paragraph 7.9 and is addressed in Mr Crank's evidence. Mr Crank's evidence has found that the level of significance of the findings in Archaeology Area 2 are at the higher end of the scale of significance of non-designated heritage assets and that their total loss that would result from the Proposal would result in a considerable level of heritage harm. Therefore, the level of significance is such that a layout informed by the archaeological findings in Archaeology Area 2 would be appropriate. The indicative layout in the Proposal layout would be contrary to this development principle of the Site Allocation Policy as well as the other policies cited in the archaeology reason for refusal, resulting in unacceptable harm.
- 7.14 The scale of the assets is an important consideration in considering issues of avoidance and mitigation of harm informed by layout. 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 MKC Archaeologist Mr Crank, using GIS software) equivalent to roughly 6% of the allocated site area. However, the findings were not used to provide a layout informed by the archaeological findings that could avoid or at least reduce the level of harm. The Proposal would in fact deliver approximately 46,000 sq. m in excess of the policy requirement minimum.

- 7.15 Another relevant point in relation to avoidance or mitigation of harm is the extent of co-location of the most important archaeological assets (in Archaeology Area 2) and biodiversity assets within the Site. This indicates that an alternative layout informed by the heritage assets could also reduce the level of harm to biodiversity, in particular Priority Habitats, on site. The impacts of the proposal on biodiversity are discussed in paragraphs 7.16 to 7.34 below and addressed in Mr Snell's evidence.
- 7.16 MKC acknowledges that a layout informed by archaeological considerations would be likely to reduce the amount of floor space that could be delivered on what is an employment allocation. Whether this would require the level of floorspace to be reduced below the minimum policy allocation of 195,000 sq m has not been established, but if this were the case a degree of policy harm would be acknowledged by MKC.
- 7.17 The potential level of harm resulting from a reduced delivery of floorspace would be influenced by two main factors: firstly, the extent to which the Site would deliver below the policy requirement and secondly employment land availability and delivery on alternative sites to make up for any shortfall. This is addressed in greater depth in section d below and in Mr Moore's evidence. However, in summary, MKC can demonstrate a robust supply position of employment land that would significantly mitigate a shortfall of employment land at the Site.
- 7.18 On this basis, the Proposal is considered unacceptable in accordance with the archaeology reason for refusal and the level of harm would outweigh the benefits of the Proposal.

b) The Effect of The Proposal on Biodiversity

7.19 Mr Snell's evidence forms the evidential basis of MKC's case in relation to the impact of the Proposal on biodiversity assets.

Biodiversity Assets on Site and Site Allocation

7.20 The Site contains two fields comprising lowland meadow, which are identified as Priority Habitat, and located within the proposed development footprint. The Proposal would result in a total loss of these meadows as well as species rich hedges and an orchard, both also identified as Priority Habitat. There are other ecological features within the Site including wildlife corridors which are identified in Plan:MK policy NE1 as being of local importance.

7.21 Priority Habitat enjoys a higher level of protection than some other biodiversity assets in planning policy terms. This is identified in NPPF paragraph 174 b) which states inter alia that plan making is required to promote the conservation, restoration and enhancement of Priority Habitats.

7.22 The Appellant's Statement of Case, at paragraph 5.26, contends that if it is the Council's position that any part of the Site should be kept permanently free from development on ecological (or any other) grounds, this would have been an issue raised prior to the allocation of the land in the draft Plan:MK.

7.23 The draft Development Framework, which while not adopted at the time the Proposal was submitted as a planning application, was in the public domain. This contained an 'Opportunities and Constraints' map which indicated the lowland meadows/Priority Habitat and other ecological features including wildlife corridors.

7.24 It is acknowledged that the Site Allocation Policy does not require areas of Priority Habitat or other ecological features to be kept free from development. The constraint of Priority Habitats was noted during the examination of the allocation, and it was accepted by MKC and the Inspector (paragraph 1.20 of Report on the Examination of Plan:MK) that the impact could be mitigated in

line with Plan:MK policies NE2 and NE3 without making the Site undeliverable for development. The Proposal failed to provide acceptable mitigation, as required by policies NE2 and NE3, which contributed to the biodiversity reason for refusal (paragraph 1.2 above).

The Significance of the Biodiversity Assets

- 7.25 The character of the biodiversity assets, their status in policy and the extent of the loss of these assets that would be caused by the Proposal, are established above. The evidence of Mr Snell addresses the significance of these assets which is a major area of disagreement between the two parties.
- 7.26 Mr Snell's evidences notes that the existing lowland meadow forms an important ecological feature. The Proposal would also result in the loss of the species rich hedges and orchards which are identified as Priority Habitats. The position of MKC is that the loss of the identified Priority Habitats will result in significant harm in policy terms. The scheme would also have a harmful impact on the wildlife corridors on the Site, which like the Priority Habitats, are shown on the draft Development Framework 'Opportunities and Constraints' map (Core Document G2). The detail of the significance of the biodiversity on the Site is addressed in the evidence of Mr Snell.
- 7.27 The parties agree that the Proposal will result in the loss of biodiversity assets on Site. However, the Appellant Statement of Case paragraph 5.27 contends that they will demonstrate that any biodiversity loss that results from the Proposal would be outweighed by proposed mitigation and compensation incorporated into the development as proposed. MKC refutes this contention, which again is addressed in Mr Snell's evidence.
- 7.28 An important change in national guidance since the preparation and examination of Plan:MK regarding biodiversity is the adoption of NPPG paragraph 024 Reference ID: 8-024-20190721 in 2019. Which is 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.

- 7.29 This guidance is designed to inform policy. It emphasises the mitigation hierarchy set out in the NPPF paragraph 175a and requires habitat improvement in relation to Priority Habitats to go further than measures already required to implement a compensation strategy.
- 7.30 Due to the significance of the assets, the extent of loss that would result from the Proposal and the inadequacy of the proposed mitigation and compensation, the resulting level of harm is unacceptable.

Mitigation Hierarchy: Avoidance, Mitigation, Compensation

- 7.31 The mitigation hierarchy is set out in NPPF paragraph 175a provides that when determining a planning application, where harm cannot be avoided, adequately mitigated or compensated for, then planning permission should be refused. This is echoed in Plan:MK policy NE3.
- 7.32 Furthermore, Plan:MK policy NE2 states 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.

Mitigation Hierarchy: Avoidance

- 7.33 Mr Snell's evidence is to the effect that, in terms of the first requirement of the Mitigation Hierarchy, avoidance, the Appellant has not demonstrated an attempt to avoid impacts on Priority Habitats. An additional point of relevance is the level of co-location of the most important archaeological and biodiversity assets within the Site. This suggests that a layout that avoided areas of Priority Habitats could also significantly reduce harm to the most significant archaeological assets (Archaeology Area 2).

- 7.34 The Appellant has argued in its Statement of Case at paragraph 5.37 that a development proposal that avoided loss of the lowland meadow would prejudice the ability to deliver the Site Allocation Policy requirement of 195,000 sq m of employment space. MKC acknowledges that a layout that avoided areas of Priority Habitat would be likely to reduce the amount of employment floorspace that could be delivered on what is an employment allocation. The issue of floorspace delivery, etc is explored in greater depth in section d below and in Mr Moore's evidence. In summary, however, Mr Moore's evidence shows that MKC can demonstrate a robust supply position of employment land that would significantly mitigate a shortfall of employment land at the Site.

Mitigation Hierarchy: Mitigation and Compensation

- 7.35 Mr Snell's evidence raises concerns in relation to the onsite mitigation proposed. Compensation for the loss of biodiversity assets was also put forward as part of the Proposal.
- 7.36 A DEFRA 2.0 Biodiversity Impact Assessment (BIA) Metric (referred to hereon in as the Metric) was included in a late submission as part of the planning application, as part of an Aspect Ecology report dated 23rd January 2020. The Metric was accompanied by a financial quotation for a biodiversity offset scheme, provided by Environment Bank, a private company/consultancy that provides services in relation to biodiversity, including in compensation/offsetting.
- 7.37 The offsetting scheme would primarily consist of an agreement for a separate area of land that would be within Milton Keynes Authority and not under the ownership of the Appellant, to be restored or created as Lowland Meadow and managed and monitored in that form for a period of 30 years. However, supporting justification for arriving at the financial quotation was not provided, nor were details of where this offsetting payment could be used.
- 7.38 Mr Snell's evidence is to the effect that even if compensation was considered an acceptable approach, it would be very unlikely to overcome the significant level of harm caused by the loss of Priority Habitat and other biodiversity assets

from the Site. A further updated Ecological Assessment and BIA Calculator was submitted as part of a late updated to the Environmental Statement which does not alter the position in this regard.

- 7.39 Therefore, as stated in the biodiversity reason for refusal, the Proposal would result in an unacceptable impact on biodiversity assets within the 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. This level of harm would outweigh the benefits of the scheme, which will be addressed in greater depth in sections d below and the conclusion (section 8) below.

c) Highways and Transport/Infrastructure

- 7.40 Mr Week's evidence forms the evidential basis of MKC's case in relation to the impact of the Proposal on highways and transport.

Highways England Considerations

- 7.41 The site allocation policy SD14 C3 states inter alia 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. The development will contribute to any necessary improvements, as agreed by the relevant highway authorities and Highways England.*'
- 7.42 Highways England provided an updated consultation response to the planning application on 29th January 2020. This stated that while they had been in discussions with the applicant's transport consultant for transport assessment reviews since pre-application stage, there were serious outstanding issues in relation to the Proposal. It went on to recommend that planning permission not be granted for a specified period, until 24th April 2020, effectively a holding objection. The consultation response highlighted outstanding issues in relation to the large A5/A4146/Brickhill Street roundabout and congestion issues that

the development may cause if proper mitigation were not provided. This was the position at the date of determination of the planning application.

- 7.43 The Appellant's comment in its Statement of Case paragraph 5.30 that the Appellant is working with Highways England to overcome their holding objection is noted. This paragraph goes on to state that it is anticipated that the holding objection will be removed. The latest update the LPA have received from Highways England has added a further holding objection until June 23rd. At the date of submitting this evidence, the holding objection has not been removed.
- 7.44 Therefore, the assertion in the Appellant's Statement of Case (para 5.1) that the: '*...Council's reason for refusal are without merit and that planning permission should have been granted...*' (emphasis added) is strongly contested. The Appellant's Statement of Case fails to clarify how granting planning permission in the context of a Highways England holding objection and without clear mitigation measures in place would have been acceptable in planning terms.

Redway/Cycle Routes

- 7.45 A contribution is required to the wider Redway super route programme to fund an upgrade of the V10 (Brickhill Street) Super Route including adjacent to Walton Park which would be used by employees and visitors.

Highways and Public Transport Considerations

- 7.46 Highways improvements within and outside the application site boundary would be required to avoid an unacceptably harmful highways impact. These could be secured via planning condition or legal agreement subject to details.
- 7.47 A financial contribution to a bus service, would also be required to mitigate unacceptably harmful transport impacts of the development.

Grid Road Provision

- 7.48 The Site Allocation Policy paragraph C2 states: '*Access to be taken from Brickhill Street, which will be upgraded to grid road standard.*' Provision of sufficient land to provide a grid road upgrade at a later date is considered by MKC to be a requirement.
- 7.49 The highways and infrastructure reason for refusal also related to other infrastructure requirements. Appropriate contributions would be required to mitigate impacts of the development.

d) Economic Benefits and Planning Balance

- 7.50 Mr Moore's evidence forms the evidential basis of MKC's case in relation to economic benefits associated with the Proposal.
- 7.51 The Site is an employment allocation within Plan:MK, which is capable of being delivered within the early stage of Plan: MK. 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.
- 7.52 There is a policy basis in favour of the Proposal for encouraging economic growth in the area and the importance for meeting additional employment land need in the short term. However, while it is an allocated employment site, there is a wider policy framework, which includes archaeology, biodiversity and highways/infrastructure considerations (listed in full in MKC Statement of Case sections 4 and 5), under which the Proposal was assessed and found unacceptable.
- 7.53 In the Appellant's Statement of Case (para 5.37) it is contended that a revised layout that kept the areas of lowland meadow and the most valuable of the heritage assets free of development would materially prejudice the ability to deliver the minimum floorspace stated in the Site Allocation Policy of 195,000 sq m and therefore would have a material adverse impact on the delivery of the Council's employment strategy.

- 7.54 The extent to which a revised layout as described above would impact delivery of floorspace is not elaborated within the Appellant's Statement of Case. However, an important consideration is that the Proposal would exceed the minimum policy requirement of 195,000 sq m of floorspace by 46,000 sq m/ 4.6 hectares. This equates to an additional 24% in excess of the policy requirement.
- 7.55 MKC acknowledges that a revised layout informed by the archaeology and biodiversity considerations would be likely to deliver a lower amount of floor space than is currently proposed. Whether this would require the level of floorspace to be reduced below the minimum policy allocation of 195,000 sq m has not been established, but if this were the case a degree of policy harm would have to be acknowledged by MKC.
- 7.56 In other respects, the Proposal does not comply fully with the Site Allocation Policy. However, MKC considers this non-compliance acceptable in the planning balance, due to the limited level of harm that resulted in planning terms. Examples of this include the absence of an adopted development framework required by SD14 B and the requirement for Brickhill Street to be upgraded to grid road standard by policy SD14 C.2 where the Proposal will only be required to provide an upgrade to a limited section of Brickhill Street and a grid road corridor on other sections of Brickhill Street.
- 7.57 Therefore the level of policy harm that would result from a revised layout, that avoided the disputed areas of the Site would be heavily impacted by two main factors: firstly the extent to which the deliverable floorspace would fall below the required policy minimum of 195,000 sq m and secondly, wider employment land availability and deliverability which could mitigate the impact of reduced floorspace delivery on the Site.
- 7.58 On the first point, details were not provided in the Appellant's Statement of Case, but it is acknowledged by MKC that the more significant the shortfall below 195,000 sq m, the greater the level of policy harm would be.

7.59 However, on the second point, as is shown in Mr Moore's evidence, MKC can demonstrate a robust supply position of employment land that would significantly mitigate a shortfall of employment floorspace at the Site. This would in turn reduce the level of policy harm resulting from a shortfall in employment floorspace.

8 Conclusions

- 8.1 The Appellant's Statement of Case (at para 5.1) contends that MKC's reasons for refusal of the Proposal are without merit and that planning permission should have been granted having regard to all the material considerations. MKC refutes this contention, which it considers is simply not borne out by a proper understanding of the available evidence and applicable policies and guidance.
- 8.2 All the material planning considerations have been taken into account in the determination of the planning application and in this Proof of Evidence. This includes the Site Allocation Policy and the economic benefits of the Proposal. The Site is important to the delivery of the economic strategy set out in Plan: MK. The provision of significant economic and employment opportunities through development of the site have been acknowledged by MKC.
- 8.3 However, the principal area of disagreement is not in relation to the principle of delivery of employment floorspace on the Site, but in relation to the Proposal and the unacceptably harmful impacts it would cause. The benefits acknowledged in paragraph 8.2 above must be weighed against other material planning considerations, particularly the total loss of the buried remains of a Roman settlement, which contains significant heritage assets of archaeological interest. MKC maintains its position that even in the context of the merits of the Proposal, the loss of the assets has not been justified.
- 8.4 The Proposal would result in the total loss of significant amounts of Priority Habitats onsite. In addition, the Mitigation Hierarchy has not been properly followed and the compensation offered would not appropriately address the harm, which is also unacceptable. As with the archaeological reason for refusal, the harm caused by this is not outweighed by the merits of the Proposal.
- 8.5 The site allocation policy is for a minimum of 195,000 sq m of floorspace, while the Proposal would comprise over 241,000 sq m. It is recognised that a layout informed by the archaeological and ecological assets would be likely to reduce the extent of floor space on site. However, while a scheme that delivered below

195,000 sq m of floor space would result in policy harm, the extent of the policy harm must be weighed against the benefits of this and the extent to which it would be mitigated by the availability of alternative employment land.

- 8.6 The other reasons for refusal related to highways, where there is currently a Highways England holding objection in relation to impacts on the A5 roundabout. There are also mitigation measures required in relation to highways and other infrastructure, without which the Proposal would be considered unacceptable.