



**Town and Country Planning Act 1990
S78 Appeal against the Refusal of Planning
Permission
Summary Proof of Evidence**

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
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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.
2. 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. 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. These reasons for refusal are set out in full in my proof of evidence MK 5.1 at paragraph 1.2.
4. Mr Crank’s evidence forms the basis of MKC’s case in relation to the impact of the Proposal on heritage assets and concludes that the Roman remains in Archaeology Area 2 should be considered to be at the higher end of the scale of regional significance and also possesses some attributes in common and a clear association with the nearby Scheduled Monument. Mr Crank’s evidence also concludes that the Proposal will result in the total loss of these assets, causing considerable harm in heritage terms.
5. 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’. 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 level of significance is such that a layout informed by the archaeological findings in Archaeology Area 2 would be appropriate.

6. 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. Mr Snell's evidence forms the basis of MKC's case in relation to the impact of the Proposal on biodiversity assets. The main concern in this regard are the 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. Priority Habitat enjoys a higher level of protection than some other biodiversity assets in planning policy terms as identified in NPPF paragraph 174 b) and National Planning Policy Guidance 024.
8. It is acknowledged by MKC that the Site Allocation Policy does not require areas of Priority Habitat or other ecological features to be kept free from development. However, it is identified as a constraint in the draft development framework; Plan:MK policies NE2 and NE3 require appropriate mitigation in relation to impact on these biodiversity assets as was stated by the Planning Inspector at the plan examination stage.
9. 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.

10. MKC's position is that the Proposal failed to properly follow the mitigation hierarchy in policy NE3 and NPPF 175 a, which led to the biodiversity reason for refusal.
11. 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. The Appellant's Statement of Case has also not demonstrated the extent to which avoiding the Priority Habitats would impact floorspace delivery on the site.
12. Moving to the next element of the mitigation hierarchy, Mr Snell's evidence raises concerns that the onsite mitigation proposed would be inadequate. Compensation, the last resort of the mitigation hierarchy could be considered where it has been demonstrated that avoidance and mitigation could not be undertaken. However, the compensation/offsetting scheme as proposed did not contain supporting justification in relation to the financial quotation or details of where this offsetting payment could or would be used.
13. According to Mr Snell mitigation hierarchy has not been properly followed, resulting in a significant level of harm to Priority Habitats that would not be properly mitigated or as a last resort, compensated for. This would result in unacceptable harm that would outweigh the benefits of the scheme.
14. Mr Week's evidence forms the basis of MKC's case in relation to the impact of the Proposal on biodiversity highways and transport. As part of the planning application related to the Proposal, Highways England recommended a holding objection, which 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 and submission of Proofs of Evidence on 28th July. Refusal of planning permission in the context of a Highways England holding objection and without clear mitigation measures in place was and is considered the appropriate course of action by MKC. However, it is acknowledged that the Appellant is working with Highways

England to overcome their holding objection and if this were achieved MKC would accept that position.

15. A contribution to highways improvements within and outside the application site boundary and a financial contribution to a bus service and the wider Redway super route programme, would be required to mitigate unacceptably harmful transport impacts of the development. Land for a grid road upgrade and other infrastructure requirements are considered necessary by MKC to overcome unacceptable impacts of the Proposal.
16. Mr Moore's evidence forms the basis of MKC's case in relation to 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. 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. 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.
17. The extent to which a revised layout that addressed archaeology or biodiversity is not elaborated within the Appellant's Statement of Case. 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. However, as mentioned in paragraph 9 above, biodiversity policy NE3 and NPPF 175a do allow compensation for loss of biodiversity assets where avoidance and mitigation cannot be undertaken. This does not apply in respect of archaeological assets, whose loss cannot be compensated for.
18. The extent to which, in a revised layout, the deliverable floorspace would fall below the required policy minimum of 195,000 sq m is an important policy consideration. A second important policy and economic consideration is wider employment land availability and deliverability which could mitigate the impact

of reduced floorspace delivery on the Site. 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.

19. The principal area of disagreement here 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 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 and as mentioned cannot be compensated for. MKC maintains its position that even in the context of the merits of the Proposal, the loss of the assets has not been justified.
20. 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.