

SOUTH WEST MILTON KEYNES CONSORTIUM

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78 AGAINST THE REFUSAL BY MILTON KEYNES COUNCIL OF AN OUTLINE PLANNING APPLICATION FOR PHYSICAL IMPROVEMENTS TO THE BOTTLEDUMP ROUNDABOUT AND A NEW ACCESS ONTO THE A421 (PRIORITY LEFT IN ONLY) TO ACCOMMODATE THE DEVELOPMENT OF LAND IN AYLESBURY VALE DISTRICT REFERENCE 15/00314/AOP (FOR OUTLINE PLANNING APPLICATION WITH ALL MATTERS RESERVED EXCEPT FOR ACCESS FOR A MIXED-USE SUSTAINABLE URBAN EXTENSION ON LAND TO THE SOUTH WEST OF MILTON KEYNES TO PROVIDE UP TO 1,855 MIXED TENURE DWELLINGS; AN EMPLOYMENT AREA (B1); A NEIGHBOURHOOD CENTRE INCLUDING RETAIL (A1/A2/A3/A4/A5), COMMUNITY (D1/D2) AND RESIDENTIAL (C3) USES; A PRIMARY AND A SECONDARY SCHOOL; A GRID ROAD RESERVE; MULTI-FUNCTIONAL GREEN SPACE; A SUSTAINABLE DRAINAGE SYSTEM; AND ASSOCIATED ACCESS, DRAINAGE AND PUBLIC TRANSPORT INFRASTRUCTURE - EIA DEVELOPMENT.

LAND AT BUCKINGHAM ROAD, TATTENHOE ROUNDABOUT, STANDING WAY TO BOTTLEDUMP ROUNDABOUT, MILTON KEYNES.

REBUTTAL PROOF OF EVIDENCE – APRIL 2021

LPA Reference: 15/00619/FUL

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1. INTRODUCTION

Personal Details

- 1.01 My name is Mark Jeremy Hyde. I hold a Bachelor of Arts (Hons) degree in Environmental Studies from Sheffield City Polytechnic (1985) and a Bachelor of Town Planning degree from the Polytechnic of the South Bank, London (1988). I am a Chartered Town Planner, I obtained membership of the Royal Town Planning Institute in 1988 and I am a Practitioner of the Institute of Environmental Management and Assessment. I have over 35 years' experience as a practicing Town Planner in both Local Government and Planning Consultancy. I am currently employed as a Partner in the Planning & Development Team at the Cambridge office of Carter Jonas LLP, a leading nationwide firm providing property services to private and corporate clients.
- 1.02 I have been instructed by the Appellant in relation to the South West Milton Keynes area since November 2005. I was initially engaged to provide planning consultancy advice in promotion of the area through the preparation of the South East Plan (RSS9) and subsequently the Aylesbury Vale Core Strategy, the Vale of Aylesbury Plan and the Vale of Aylesbury Local Plan. In January 2012 I was instructed by the Appellant to provide planning consultancy services in the preparation of duplicate planning applications for the Proposed Development. I am familiar with the Proposed Development Site and its surroundings.

Scope of Evidence

- 1.03 This Planning Rebuttal Proof of Evidence has been prepared to respond to matters raised in the Proof of Evidence (PoE) prepared by Mr. Keen for Milton Keynes Council. Mr. Keen's PoE extensively cross refers to the evidence provided by the MKC Highways witness Mr. McKechnie. Where that is the case, I am reliant on the rebuttal that has been prepared by the Appellant's Highways witness, Mr. Paddle. I have set out my commentary by reference to identified paragraphs in Mr. Keen's PoE.
- 1.04 I have sought to respond to issues where I consider the Inspector would be assisted by a specific response. The fact that I have not responded to every point raised by Mr. Keen is not an indication that I agree with those points.

Statement of Truth

- 1.05 The evidence which I have prepared and provide for this appeal is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

2. REBUTTAL

Paragraph 1.5

- 2.01 Mr. Keen suggests that MKC was right to refuse planning permission in light of Mr. McKechnie's review of the transportation evidence considered by the Council. Reliance on Mr. McKechnie's evidence appears to be something of an ex post facto rationalisation of the committee's decision. His review took place long after the decision to refuse planning permission. At the time of the Council's decision, the technical transport consultants and planning officers advising the committee were both satisfied that the scheme would not give rise to any unacceptable transport impacts and that the scheme was in accordance with relevant policies, including policies CT1 and CT2 of Plan:MK. Those expert officers raised no concerns about the adequacy of the transport evidence and did not consider that the transports impacts of the development justified a refusal of permission.
- 2.02 Mr. Keen complains about the '*mass of subsequent material provided by the appellant at various stages*' since submission of the appeal. The Council had addressed the matter at the Case Management Conference (CMC) on the 3rd September 2020 and subsequently set out its position in the letter to PINS dated September 2020 (CD12/Q). A postponement of the Inquiry was agreed to allow the Council time to fully consider the material and this was subsequently extended at the second CMC on the 20th November, at which a timetable was agreed for the submission of all further technical evidence by the 29th January 2021. At the third CMC held on the 9th February, there was no complaint by the Council in this regard, the Inspector's note of the CMC recording that '*It did not request a further postponement as it indicated that it should have sufficient time to look at the new matters.*'

Paragraph 1.6

- 2.03 This paragraph is not correct. The updated 2020 TA concludes that with the implementation of the proposed mitigation package the impact on highway safety would be acceptable and the residual cumulative impacts on the road network would not be severe (see paragraph 5.17 of CD20/A).

Paragraphs 3.3 & 3.4

- 2.04 I would observe that MKC has been fully involved in the progression of the application residing with Buckinghamshire Council, see paragraph 3.2 of the agreed SoCG with MKC (CD19/E) and paragraph 2.27 of my PoE (CD20/A). MKC does not object to the principle of the proposed development (e.g. paragraphs 6.6 & 8.3 of Mr. Keen's PoE).

Paragraphs 4.2 & 4.10

- 2.05 I repeat my observations at 2.02 above. The additional technical evidence was submitted in accordance with the timetable agreed with the Inspector at the CMC in November 2020. TRN1 was originally provided as an Appendix to Mr. Paddle's PoE on September 15th 2020.

Paragraph 4.11

- 2.06 Mr. Keen references Mr. McKechnie's PoE (paragraph 1.4) and claims that MKC made extensive attempts to '*work through issues*' with the Appellant, despite the '*unreasonableness of late information and insufficiency of the information provided*'. I simply draw attention to my paragraph 2.02 above. My colleague Mr. Paddle will address the matters raised in Mr. McKechnie's PoE at paragraph 1.4.

Paragraph 5.4

- 2.07 I do not agree with the assertion that criteria 1 – 5 of Policy CT1 are not met by the proposed development. The reason for refusal deals with highway impacts only and there has been no previous dispute about sustainable transport measures. I explain in my PoE (CD20/A) at paragraphs 4.21, 4.22, 5.18 & 5.19 that the proposed development is highly sustainable in transportation terms, which was acknowledged by officers at MKC (see 4.18 of CD20/A).

Paragraph 5.6

- 2.08 Mr. Keen alleges that the proposed development will conflict with Policy CT2, claiming that it will '*potentially prejudice*' a number of matters, including:
- the ability of other developments to come forward;
 - suitable onsite layout;
 - protection/enhancement of PRoW.
- 2.09 None of these claims have been made before and Mr. Keen has provided no evidence to support the alleged harm he has identified. These are in the main matters for Buckinghamshire Council's determination and MKC has not raised these concerns in response to the consultation exercise carried out by BC. Indeed to the contrary and to date, MKC officers have supported the proposed development (see 4.18 of CD20/A).

Paragraph 5.9

- 2.10 Mr Keen states that '*the appeal scheme is not in compliance with SD15 of Plan:MK (CD/5), specifically point B6...*'. He then quotes extracts from Policy SD15 and in paragraph 5.10 cross references to Mr. McKechnie's PoE, agreeing with his conclusions in relation to mitigation. However, the inference I take from Mr. Keen's statement is that the Council considers that the appeal development conflicts with other aspects of Policy SD15, but Mr. Keen has not evidenced this. In contrast at paragraphs 4.03 – 4.15 of my PoE (CD20/A) I have undertaken an assessment of SD15 and conclude (4.27) that the scheme accords with it.

Paragraph 5.14

- 2.11 Mr. Keen addresses CT8 suggesting that it '*has less relevance to this appeal as it deals with changes and impacts to existing routes*'. This statement underplays the relevance of Policy CT8, which is addressed at paragraph 6.52 of my PoE (CD20/A).

Paragraph 6.5

- 2.12 Mr. Keen maintains his procedural complaint upon which I have commented at 2.02 above. He goes on to complain about the provision of a draft Highways Works Delivery Scheme (HWDS) for comment in circumstances where a draft condition has been agreed in the SoCG (CD19/E – Appendix 1 Condition 10) that would require the agreement of just such a document. The draft HWDS (CD20/E Appendix MJP17) has been prepared to assist the Inspector's understanding of the application of the draft condition. I do not consider that this can be characterised as demonstrating further the *'unreasonable procedural path the Appellant has followed and wasted time and work in responding to such requests'*.

Paragraph 6.6

- 2.13 I acknowledge that the Buckinghamshire Council Strategic Sites Committee has yet to formally consider the proposed revisions to the planning application before them. This is anticipated to take place at a meeting on the 10th June. However, officers have assessed the transport and highways issues arising and will advise the Committee in the normal way (CD11/K). I do not understand why Mr. Keen characterises the need for MKC to undertake the same process in relation to the appeal development as unreasonable (see 2.02 above). MKC clearly stated at the CMC on the 9th February that it had sufficient time to consider matters in accordance with the inquiry timetable. In the final sentence Mr. Keen notes that MKC maintains its objection to the proposed development on highway impact grounds, whilst not objecting to the principle of development, which is a helpful confirmation, although aspects of paragraph 5.6 of his PoE (CD12/S) do not chime with this (see 2.08 & 2.09 above).

Paragraphs 6.8 & 6.9

- 2.14 Mr. Keen notes points raised by the MKC Highways witness Mr. McKechnie in his PoE (CD12/N). It has been suggested that there is *'missing or potentially inaccurate information'* as geometric designs have been based on Ordnance Survey mapping rather than topographical surveys putting the accuracy of drawings in questions. My colleague Mr. Paddle has addressed this matter in his Rebuttal PoE (paragraphs 5.2, 5.9 & 6.16) and I agree with him that providing the design on a topographic base is not necessary at this stage of design.
- 2.15 Mr. Keen goes on to address the delineation of the application site (red line) boundary noting that aspects of the proposed mitigation works falls outside the application site boundary J6 (Bottledump Roundabout) and J5 (Tattenhoe Roundabout). He suggests that *'this is concerning given that access is not a reserved matter and detailed drawings would usually be expected at the planning stage and with all proposed works to be included within the application red line boundary'*. However, neither junction is an access point to the proposed development, rather they are part of the highway network that is closest to the proposed development site. Notwithstanding, the land in question at J6 falls entirely within the highway boundary in Buckinghamshire Council's administrative area and the land in question at J5 falls entirely within the highway boundary. Consequently any matters arising can be suitably controlled by the operation of suitable conditions on planning permission if needed.

- 2.16 In paragraph 6.9 Mr. Keen refers again to Mr. McKechnie's PoE in which he criticises the submitted Framework Travel Plan (CD10/H/B) and agreeing with his analysis. My colleague Mr. Paddle has responded to that critique in paragraphs XX to XX of his Rebuttal PoE. I agree with Mr. Paddle's conclusion that the 2020 Framework Travel Plan provides a robust commitment to Travel Planning across the site, commensurate with the outline stage of the planning application.

Paragraphs 7.12 & 7.13

- 2.17 Mr. Keen raises issues in relation to compliance with the EIA Regulations cross referring to Mr McKechnie's evidence (paragraph 7.4.3 of CD12/N) which discusses the potential for redistribution and suggests that such information should be contained in the Environmental Statement. The assessment of traffic impacts in the Updated 2020 TA and TRNs 1 – 3 (CD16/A/B/C) presents a worst case scenario, as clearly explained by Mr Paddle. I am advised that environmental assessments should assess the reasonable worst case scenario and I consider that this has been done.

Paragraph 7.17 & 7.18

- 2.18 Mr. Keen notes that the Council needs to be satisfied that the highways mitigation works required to the MKC network are secured at the appeal. This matter has been agreed with MKC. The Planning SoCG (CD19/E) at paragraph 9.5 states that '*the mitigation works in MKC will be secured by way of appropriate agreements under the Highways Act*'. Appropriate draft conditions are set in Appendix 1 to ensure that this is secured. However, Mr. Keen is incorrect to characterise this as a consequence of a '*lack of progress*' by Buckinghamshire Council in consideration of the application that rests with them. Rather it is the preferred route of the Council in securing highways mitigation on the MKC network. The current working draft of the S106 with Buckinghamshire Council is a Core Document, CD4.

Paragraphs 7.19 – 7.25 (inc)

- 2.19 In this section of his PoE, Mr. Keen sets out his assessment of the benefits of the proposed development and the weight that should be given to them. This replicates the assessment set out in paragraph 7.21 onwards in his PoE of September 2021. I have addressed that assessment in paragraphs 6.71 – 6.79 of my own PoE (CD20/A) and so do not replicate it here.

Paragraphs 7.29 – 7.32

- 2.20 In paragraph 7.29 Mr. Keen states that the appeal development will '*fail to achieve the NPPF definition of sustainable development*'. He alleges '*likely impacts resulting from the proposed development without adequate mitigation*', i.e. unacceptable economic, social and environmental impacts, including social impact of travel delays, adverse impact on air quality, '*increased likelihood*' of accidents & associated costs, higher fuel costs, visual impacts (stationary or rerouted traffic), congestion arising elsewhere, increased travel time & associated costs, risks to inward investment & economic cost.
- 2.21 The proposed development is subject to a planning application that rests with Buckinghamshire Council which will arrive at a decision in accordance with its statutory duties.

None of the listed matters have been previously identified by MKC as cause for concern and it is something of a statement of the obvious that unmitigated development may lead to harm. However, Mr. Keen has done nothing more than posit these matters, he has not provided any evidence to demonstrate that these harms will arise. I am satisfied that Buckinghamshire Council will properly conclude on these matters with due regard to potential harm and necessary mitigation.

Paragraph 8.1

- 2.22 Mr. Keen concludes that a '*lack of information*' and an '*insufficiency of evidence means that the development may have a severe or unacceptable impact*'. These statements sit at odds with Mr. Keen's earlier complaints about the '*mass of information*' provided by the appellant (see 2.02 above). However, I note that Mr. Keen does not allege that a severe or unacceptable impact in NPPF paragraph 109 terms will arise, only that it may arise. As Mr Paddle's evidence demonstrates, the mitigation is adequate to ensure no such impact will arise.
- 2.23 A substantive transport evidence base has been provided by the Appellant. The updated 2020 TA; TRNs 1 – 3 and Mr Paddle's proof of evidence conclude that with the implementation of the proposed mitigation package the impact on highway safety would be acceptable and the residual cumulative impacts on the road network would not be severe (see paragraph 5.17 of CD20/A). A similar conclusion has been reached by officers of Buckinghamshire Council (paragraph 9.37 of CD21/A). Contrary to Mr Keen's view, I am firmly of the view that sufficient evidence has been supplied to allow the Inspector to conclude that the appeal development will not result in unacceptable safety impacts or a severe residual cumulative impact on the road network, and that the appeal should be allowed.

Paragraph 9.6

- 2.24 See my comments at paragraph 2.01 above.

3. CONCLUSION

- 3.01 This rebuttal PoE should be read alongside the rebuttal PoE that has been prepared by the Appellant's highways witness Mr. Paddle.
- 3.02 I have read nothing in Mr. Keen's PoE that leads me to conclude other than that the Appeal Development complies with the development plan and that there are no material considerations which justify the refusal of permission. Therefore, in accordance with S38(6) of the Planning & Compensation Act 2004 and Paragraph 11 (c) of the NPPF, I respectfully request that the appeal is allowed and planning permission is granted for the Appeal Development.