Place Directorate
Growth Economy and Culture

milton keynes council

Dear Sir

Proposed development of Land at Buckingham Road, Tattenhoe Roundabout Standing way to Bottledump Roundabout, Milton Keynes

Appeal against the refusal of planning permission LPA reference 15/00619/FUL by South West Milton Keynes Consortium (SWMK)

Planning Inspectorate Reference APP/Y0435/W/20/3252528

Summary

We write in relation to the progress of the appeal. In particular we write to explain why we do not consider that the Inquiry can proceed as currently timetabled given the recent production of extensive and new technical evidence by the appellant. The Inquiry is currently scheduled to start on the 13th October 2020.

Context

As identified in the CMC on the 3rd September 2020 the main issue for consideration at the Inquiry relates to the effect of the proposed development on the flow of traffic and congestion on the highway and grid road network.

The appellant had, when making the appeal, relied upon what it referred to as an 'updated Transport Assessment' 2020. As the Council (hereafter referred to as the Council or 'MK')

explained in its statement of case (paragraphs 16 and 62 especially) this body of evidence was in fact a new body of work that relied upon a different methodology and different data in assessing the level, distribution and impact of development traffic when compared with the earlier TA (which was considered by the Council when refusing the application). The Council was clear in its concerns about this but expressed a willingness to seek to progress matters (see for example paragraph 64 of the statement of case from MK). Part of the case of the Council remained that even the new TA was lacking in critical information.

As the Inspector will have seen in the evidence served by the Council (see especially section 1.4 in the proof of James McKechnie (JM) from Hydrock Consultants Ltd - transport experts acting for the Council for this appeal) it has sought to be proactive with the appellant and has, for example, held meetings in July, August and September before the exchange of evidence to that end. In particular JM had requested specific information from the appellant (identified at para 1.4.6 of his proof) which he and the Council considered essential to assess the TA and which, frankly, should have been provided by the appellant already. It is also important to note from the outset that because of the cross boundary nature of wider development (of which the appeal proposals are just a part) it is essential that all parties to the inquiry and members of the public are given an opportunity to assess the environmental effects of proposals in BC (a point MK made clearly in our statement of case).

As JM sets out in his evidence, in August the appellant indicated it was not willing to provide the additional information requested. He has also explained that the Council had made it crystal clear it considered this failure to provide what was likely to be highly technical material had the potential to hinder the progress of the appeal[1]. In the absence of such material – despite clear requests for it - the evidence of JM explains that there is an insufficiency of evidence to rely on the TA conclusions and in any event why it appears – even on the basis of what was in the new TA - that the proposal would lead to

[1] E.g. at JM PoE 4.7.20.

unacceptable safety effects and a severe residual operational impact. This of course was also the conclusion inherent in the basis for refusal.

It is important to further note that in the highways statement of common ground produced for the Inquiry between Clive Burbridge (Highways expert for the rule 6 party) and JM it was agreed and explained that:

"*There are significant evidential gaps in the TA and the appellant has not provided this further information in advance of exchange of proofs of evidence. Given the nature and extent of the required information, if it is provided in evidence then there is now insufficient time for it to be considered in advance of the date of the public inquiry*." (para 2.2).

On 16th September 2020 (day after submission date) the Council received the proofs of evidence from the Appellant via the PINs Caseworker. Despite only having had a brief time to review such evidence the following is already abundantly clear:

The appellant has produced for the first time extensive new technical transport evidence appended to and relied upon by Mr Paddle which includes:

- February traffic surveys – see Appendix MJP10 which is a Technical Note 67 pages in length.
- Appendix MJP2 is Transport Response Note 1 (TRN1), a Technical Note of 78 pages of text plus extensive appendices. This is described by Mr Paddle as 'an alternative approach to assessing the impact of the Proposed Development on the local highway network' and includes:
    - New walking and cycling isochrone assessments;
    - New proposals for pedestrian / cycle movements on the Old Buckingham Road alignment, south of the proposed A421 access;
    - Notes relating to a change in predicted job numbers between the previous TA / scoping of the new TA, and the production of the new TA;
    - A new and revised traffic distribution, with supporting diagrams;

    - Acceptance that modelled queue lengths in the TA do not align with recommended best-practice – new modelling is provided for BC area, but not for MKC;
    - New traffic flow diagrams, including changes at site accesses; and,
    - Revised junction models including at Bottledump Roundabout.
- Appendix MJP11 – which is a further Technical Note regarding traffic model calibration.
- Appendix MJP12 – which is another Technical Note (with well over 200 pages of technical information) that includes a fundamentally-changed and expanded signalisation proposal for Tattenhoe Roundabout. This location is within the red line area the subject of this appeal. It appears that:
    - This there is now proposed to be change to the development proposals – there has been no consultation with the LHA or local people as far as MK is aware in relation to this;
    - There is no Road Safety Audit of the scheme and its acceptability in safety terms is unconfirmed.

Submissions

In relation to such new evidence and the context outlined above we make the following submissions:

(i) There now exists extensive new evidence produced for the first time by the appellant in proofs received by the Council on 16th September 2020 . In context this approach is plainly contrary to what should be well understood guidance for appeals. The introduction of '*fresh and substantial evidence at a late stage*' is expressly recognised, for example, by the Planning Practice Guidance as conduct which may necessitate an adjournment[2]. Further, and while we know this is familiar to the Inspector we set out (we hope for obvious reasons and for the record at this stage) and refer to the following excerpts (our highlights

[2] Paragraph: 052 Reference ID: 16-052-20140306

in bold)from the latest version of the Planning Inspectorate Procedural Guide to Planning Appeals(July2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915415/Procedural_Guide_Planning_appeals_version_10__2__AC.pdf :

Appendix B

"***New evidence will only be exceptionally accepted where it is clear that it would not have been possible for the party to have provided the evidence when they sent us their full statement of case****.*

B.2.3 If, exceptionally, any party provides new evidence at appeal stage this may lead to:

- ***delay – so that we can give the other party or interested people the opportunity to comment****; and/or*
- *additional expense by another party who may make an application for costs; or*
- *the Inspector initiating an award of costs*."

Appendix F re Inquiries and proofs which states (our emphasis in bold) :

F.11.1 The term "proofs of evidence" is used in the Inquiries Procedure Rules and refers to the document containing the written evidence about which a person appearing at a public inquiry will speak. It must be received by us no later than 4 weeks before the inquiry.

F.11.2 The case for the appellant, the local planning authority (and any Rule 6 party) should be set out in full in their 'full statement of case'.

Accordingly, **the main role of a 'proof of evidence' is to allow expert witnesses to:**

• **marshal previously provided evidence** in a way which is convenient to the presentation of their case at the inquiry;

• give their professional opinion on evidence provided by other parties in their statements of case.

F.11.3 It should:

• refer to the information that witnesses representing the appellant, or the local planning authority, wish the Inspector to take into account;

• cover only areas which remain at issue between the parties;

• contain the witness's concisely expressed opinion and argument;

• contain a clear cross reference to any supporting documents, for example containing data, analysis or copies of legal cases which should have been provided with the full statement of case;

• not include new areas of evidence unless, exceptionally, there is good reason why new factual evidence has to await the exchange of written proof(s);

• not repeat or quote national or local policy, but should provide policy name and paragraph numbers;

• not omit necessary detail;

• not include long irrelevant biographical detail of the witness.

It is plain that the appellant has acted in a way contrary to such guidance. Appeals should not be made until relevant evidence exists to support them and this should be provided/identified at the statement of case stage. Proofs of evidence are not a time to provide extensive new evidence.

(ii) Moreover, such extensive new evidence and information is of a highly technical nature that is relevant to the main issue. It arrives in a context where further information has been requested from the appellant prior to the exchange of evidence (not least so that the Council and members of the public might have at least have time to assess it, address it in evidence and to avoid the need for an adjournment). No good reason has put forward for this new evidence being provided for the first time now. Some of the new evidence addresses requests previously made by Mr McKechnie and should have been provided at a far earlier stage, whilst much of the new evidence changes aspects of the appeal proposals and revises key elements of the TA which was agreed to be the evidential basis for the Inquiry. The production of the vast majority of this evidence - taking place just a few weeks prior to the proposed opening of the Inquiry - was not foreshadowed in the statement of case of the appellant or in discussions with the highways experts that have taken place[3].

(iii) We have carefully considered whether we are able to sensibly address the new evidence in time for the appeal to continue as currently timetabled – or whether it would be fair for members of the public /interested parties to grapple with it now. We have taken instructions from our highways expert and his team as to how much time will be needed to assess matters. In particular we are informed that:

[3] The sole exception being that at the meeting between Mr Paddle and Mr McKechnie on 14th September 2020, Mr Paddle indicated that he would be submitting a new design for Tattenhoe Roundabout, and associated modelling, within his proof of evidence. Proofs of evidence were due to be submitted the following day.

- In relation to the technical elements of a TA (see the new evidence in TRN1) – consideration of this alone will take several weeks to review;
- To understand the acceptability of the proposed highway works in safety terms – will involve third-parties (Road Safety Auditors) and is realistically at least three weeks' work (minimum). This work would potentially be abortive in terms of its financial cost to the Council if it was run in parallel with other elements of the technical review, as that review might identify the need for changes to the proposed highway works.
- To review newly provided information relating to the s106 and associated costings is likely to take several weeks, will involve third-parties (e.g. Quantity Surveyors) and is also dependent upon the results of the technical review.
- To review the note on February traffic, the model calibration note and the Tattenhoe Roundabout modelling and new layout proposals will all take several weeks.

In light of this we submit that the Inquiry cannot sensibly proceed as timetabled and that – at the very least - an adjournment is necessitated by the production of this extensive new evidence at this stage. MK will not be in a position to address key evidence within the Inquiry timetable.

(iv) We further note that BC are <u>still not</u> in a position to even form a position on the acceptability of the TA (see Bedingfeld proof at para 9.3) (which is the same TA relied on at this appeal) and so cannot state their position to the Inquiry even at this late stage. We are not aware whether or not BC have been provided with the extensive new evidence relevant to the TA in advance of the service of proofs. In any event BC are a party to the appeal and MK may wish to challenge their conclusions at the Inquiry. We contend that it would not be acceptable or fair to allow a party to simply provide an 'update' at a later stage by way of further evidence (which is what appears to be being suggested by BC) and expect other parties who may disagree to consider their position at the last minute.

(v) Further, as MK understands it Highways England has issued a three month holding objection in relation to the TA in the context of the consideration of the application before BC (JM proof at para 6.1.3 refers) and so has not expressed as yet a final view on the acceptability of the TA also relied on at this appeal. Again we are not aware whether HE has been provided with the latest information contained in the proofs from the appellant or what the position it takes in relation to the TA relied upon at this Inquiry.

In light of the above we submit that the Inquiry cannot fairly proceed at this stage. MK would not be in a position to deal with critical evidence for several weeks (we advised at least 9 weeks or so would be required) and are not even able currently to discern or challenge the position of BC at the Inquiry. We invite the Inspector to consider the matters we have raised and make arrangements for the Inquiry to be adjourned to a time when members of the public and the Council are in a position to have been able to assess relevant evidence and understand the cases being put forward by all parties. That is unlikely we suspect to be in the next 2-3 months. We reserve our position in relation to other procedural applications we may need to make until we have had a chance to consider the evidence in detail and the full implications. It may be that the approach of the appellant has now reached a point where a new application is the appropriate course as the evidence appears now to be further evolving the appeal proposals – something that is not the purpose of the appeal process.

We accordingly request the Inspector addresses the matters we have raised as a matter of urgency.

Yours Sincerely

Paul Keen

Team Leader, Development Management, on behalf of Milton Keynes Council