



Appeal Decision

Site visit made on 17 January 2024

by H Heward BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11th March 2024

Appeal Ref: APP/Y0435/W/3325545

Cuckoo Hill Farm Castlethorpe Road Hanslope Milton Keynes MK19 7HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The application Ref 22/01109/FUL, was refused by notice dated 13 January 2023.
 - The appeal is made by Mr Simon Hill against the decision of Milton Keynes Council.
 - The development proposed is described as "*the construction of 2 new commercial buildings use class E*".
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Although the parties describe the proposal as a resubmission of a previous proposal, I have considered the appeal on its own merits.
3. The appeal was accompanied by a number of updated documents including an updated Preliminary Ecological Appraisal (PEA); Ecological Method Statement, Acoustics Assessment, Lighting Assessment; Landscape and Visual Appeal Statement; Detailed Drainage Strategy and Drainage Technical Note.
4. On 20 September 2023 further documents were submitted including a Full Common Reptile Survey, Cherryfield Ecology, 2023; Biological Impact Assessment (BIA) and Biodiversity Net Gain (BNG) Metric, Cherryfield Ecology, 2023. The Council addressed all the information provided, and I have taken it into consideration in my decision.

Main Issues

5. From the five reasons for refusal on the decision Notice, I identify that the main issues are
 - (i) whether the proposed development complies with the Development Plan for development outside development boundaries, with particular regard to the effect upon the character and appearance of the open countryside, and
 - (ii) the effect of the proposed development upon biodiversity and protected species.
6. Issues relating to the sustainability of the location, best and most versatile land and proposed drainage details are dealt with under other matters.

Reasons

Development in the Open Countryside

7. Milton Keynes Council Development Plan – Plan:MK2016-2031, March 2019, (the Local Plan) Policy DS1 sets out a settlement hierarchy. The majority of development will be focussed on and adjacent to the existing urban area of Milton Keynes. Within the rural area most new development will be concentrated within the key settlements of Newport Pagnell, Olney, and Woburn Sands. Elsewhere new development will occur within villages and other rural settlements at locations identified in made neighbourhood plans.
8. The site (save for the access) is in 'Open Countryside' beyond the defined settlement boundary for Hanslope in both the Local Plan and Hanslope Neighbourhood Plan, 23 October 2019, (Neighbourhood Plan). Local Plan Policy DS5 A. defines 'Open Countryside' as all land outside the development boundaries defined on the Policies Map where development will be limited to that which is essential for agriculture, forestry, countryside recreation, highway infrastructure or other development which is wholly appropriate to a rural area and cannot be located within a settlement or where other policies within the plan indicate development would be appropriate.
9. Local Plan Paragraph 4.78 and 4.79 explain that the term 'Open Countryside' is a policy designation that applies to all land outside the development boundaries of settlements. The open countryside that surrounds Milton Keynes provides distinct and intrinsic character for the whole community to enjoy. The benefits of open countryside are well established, and the Council recognises the importance of safeguarding its character. Paragraph 4.80 adds that the objective of Policy DS5 is to inform and provide a vision for development proposals on land outside of the defined settlement development boundaries, aligning with the National Planning Policy Framework (the Framework), whilst ensuring the safeguarding of open countryside from inappropriate development.
10. The application seeks consent for the construction of two commercial buildings to provide eight units for purposes falling within Use Class E, commercial business and service uses.¹
11. Whilst a future user could plausibly be involved in agricultural associated businesses, the development applied for is not development essential for agriculture, forestry, countryside recreation, or highway infrastructure. Hanslope is only a few kilometres from areas on the edge of Milton Keynes with large areas of commercial and business development. Use Class E buildings could be provided within Milton Keynes or other settlements.
12. Local Plan Paragraph 4.80 also states that other policies cover specific types of development that may be acceptable in the open countryside as exceptions.
13. Policy ER8 part A supports proposals which sustain and enhance the rural economy by creating or safeguarding jobs and businesses where they are of an appropriate scale to their location and respect the environmental quality and character of the open countryside. A list of types of development considered to be acceptable in rural areas is set out in Policy ER8 part B. It includes schemes

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

- for farm diversification involving small-scale business and commercial development; the expansion of small-scale businesses in their existing locations depending on the nature of the activities involved, the character of the site and its accessibility; and small-scale employment development to meet local needs.
14. Neighbourhood Plan Policy HAN6 supports rural economic development to expand or diversify existing rural employment sites, including new build development immediately adjoining existing buildings.
 15. Framework Paragraph 88 a) states that planning policies and decisions should enable the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, beautiful new buildings; 88 b) supports the development and diversification of agricultural and other land-based rural businesses.
 16. Framework Paragraph 89 adds that planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.
 17. 'Small-scale' is not defined and the provisions in Policy ER8 part B are more prescriptive and limiting than advice in the Framework and Neighbourhood Plan Policy HAN6. I attach limited weight to Policy ER8 part B.
 18. The proposed buildings would share the same access as, and be adjacent to, the existing building complex at Cuckoo Hill Farm. A 'blue line' drawing accompanying the application indicates the existing and proposed buildings to be in the same ownership. The existing buildings have already been repurposed for a mix of uses including light industrial and residential. The proposal would represent an extension of an existing rural employment site with new buildings immediately adjoining existing.
 19. But that is not an end to the matter. Policy ER8 part A expressly requires proposals which sustain and enhance the rural economy to be of an appropriate scale to their location and respect the environmental quality and character of the open countryside. Paragraph 6.36 explains that Policy ER8 aims to strike a balance between ensuring the economic sustainability of rural communities while addressing any potential environmental consequences. Where new buildings are a necessary part of any scheme they should be well designed and respect the character of the open countryside.
 20. Neighbourhood Plan Policy HAN6 criterion ii. requires that development includes a landscape scheme that will effectively screen the site from the surrounding countryside, and criterion iii. requires that design conforms to other policies of the Development Plan.

21. In the Milton Keynes Landscape Character Assessment (2016) the site lies within the "Hanslope Clay Plateau Farmland" LCA 1b. Key characteristics include a wider and more open plateau landscape, the majority of the land use is arable with smaller areas of pasture. Settlement is limited except for the large village of Hanslope. Fragmentation of key characteristics and field pattern has occurred.
22. The appeal site forms part of a small field on the edge of the settlement. It is part of a wider tract of open countryside wrapping around the west side of Hanslope. The buildings would measure approximately 4.9m to the eaves and 6.1m to the ridge. A long side elevation to Unit 2 would be remarkably close to the western boundary. The proposal would extend development out into the open countryside. It would be visible from the countryside, including views from public rights of way. Without adequate landscaping, such a large modern industrial building would be clearly visible, would fail to create a satisfactory settlement edge, and would harm the character and appearance of the open countryside.
23. Two LVIA's are submitted for the Appellant. The Landscape and Visual Impact Assessment, 2023, (LVIA 2023) identifies that the key views toward the site are from the wider landscape to the west and northwest. There are views toward the site from public footpaths H053 and 059. Both LVIAs conclude that the proposals could be integrated without notable adverse effects upon the receiving landscape character, would integrate built form, soften the perceived built edge in views from two public rights of ways to the north and west, and that only the proposed roofscape would be visible in glimpsed views. These conclusions are predicated upon a comprehensive scheme of landscaping, and a maturing landscape with a vegetated skyline.
24. A Landscape Strategy Plan by ES Landscape Planning, March 2022, indicates that existing native hedgerow and trees would be retained and reinforced to screen and ensure a mature landscaped setting for the proposals. Using an aerial photograph as a base, it appears to show existing planting straddling the boundary. But a Site Parking Plan and Location Plan Dwg RF-20-1532B indicates that the hedge is outside of the existing fence. The fence line on this plan would appear to be consistent with red line plan OB/3.295/Hill/Cuckoo Hill.
25. Drawing OB/3/295/CHF/Hedgerows and Tree Protection Plan in the Arboricultural Impact Assessment (LVIA 2023 Appendices AM2 and AM4) is not persuasive in evidencing that the hedgerow is within the red line. Even if the roots were within the appeal site, roots need protection during construction and effective screening needs space to grow.
26. A long side of one building would be so close to the boundary that there would be insufficient space within the site to achieve suitable new planting to reinforce the existing, to ensure a mature landscaped setting for the building, and to effectively screen the site from the surrounding countryside.
27. Due to the proximity to the field boundary, the existing native hedgerow, and trees in the vicinity of the site boundary could suffer during construction and following completion. Drawing RF-20-1532A indicates that five units in the building adjacent to the western boundary would each have a ground floor office with a window in the elevation towards the site boundary. I am not reassured that there would be no pressure to prune.

28. Planning conditions regulating development, including landscaping, can be applied to other land under the control of the Appellant even if it is outside the site which is the subject of the application. Even so, the hard edge of a large industrial building so close to a field boundary would be an unsatisfactory settlement edge, harmful to the already fragmented field pattern of the Hanslope Clay Plateau Farmland landscape and views from public rights of way.
29. The settlement edge is not neat. Mixed uses at Cuckoo Hill Farm and a backdrop of residential development, including quite tall and large buildings, are seen. Some are not well screened. I do not know all of the details about these sites and cases of residential development granted at appeal. I have considered this appeal on its own merits.
30. The Officer's Report accepted that given existing commercial buildings to the north, and the potential for landscaping to soften the appearance of the buildings, the proposal would not have a significant detrimental impact on the character of the local area. With time landscaping on the southern part of the site could mitigate views from that direction.
31. Nonetheless, Framework Paragraph 131 includes that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Paragraph 135 adds that (b) developments, should be visually attractive as a result of good architecture, layout, and appropriate and effective landscaping.
32. The proximity of the long, tall side of one building to the field boundary does not represent a well-designed scheme appropriate to the site and location. It would be detrimental to the environmental quality and character and appearance of the open countryside and would fail to satisfy requirements of Local Plan Policy NE5 that locally distinctive features that contribute towards landscape character have been conserved and where possible improved.
33. The Council takes issue with the LVIA's submitted at the application and appeal stage. Amongst other things the Council states that viewpoints were not agreed, the baseline is out of date, and the Milton Keynes Landscape Character Assessment (2016) was updated in 2022. For their part, the Appellant argues that the Council has not made any comment as to the acceptability or otherwise of those provided for the Appellant. Conclusions drawn on landscape and visual matters involve subjective judgements, and I have reached my own, having studied the evidence before me, and from observations on my visit to the site and locality.
34. An Acoustic Assessment by Mewies Engineering Consultants Limited predicts that the impact for the nearest Noise Sensitive Receptors would be 'Low' and would not amount to a Significant Observed Adverse Effect Level. The Council's Environmental Health Officer raises no objection at appeal. At appeal, the Council further agrees that matters relating to noise, and lighting impacts, could be made acceptable by the imposition of suitable conditions. I agree.
35. I conclude that the proposal is not of an appropriate scale, size and layout for the site and location and fails to respect the environmental quality and character of the open countryside, contrary to requirements of Local Plan Policies DS5A and ER8, NE5 and Neighbourhood Plan Policy HAN6 criteria ii. and iii.

36. The proposal also fails to satisfy requirements in the Framework for good design and that development to meet local business and community needs in rural areas beyond existing settlements is sensitive to its surroundings.

Biodiversity and protected species

37. A reason for refusal relates to ecological information. Having reviewed additional information submitted at appeal the Council advises that there are still insufficiencies and inconsistencies with the development proposed.
38. Section 5 of the Biological Impact Assessment (BIA) reports that the proposed development would result in a +12.76% net gain in Habitat Units and a +56.67% net gain in Hedgerow Units on site. However, the BNG Metric calculation indicates a trading error. Section 5.1 of the BIA acknowledges that the Metric's trading rules require lost habitat to be replaced with 'like for like' or 'like for better' within the various broad habitat categories.
39. The proposal does not meet the trading rules, with insufficient Medium Distinctiveness grassland. The executive summary and Table 9 of the BIA states that the proposal includes for the development of only part of the field. The rest of the field is within the same ownership. Enhancing 0.19ha of the remaining field as off-site-compensation could allow the trading rules to be satisfied.
40. The Preliminary Ecological Appraisal by Cherryfield Ecology, 2023, did not include the area of the drainage pond in the Great Crested Newts (GCN) survey. The Appellant advises that a Preliminary Ecological Assessment conducted for a planning application in 2020 demonstrated no reasonable likelihood of the presence of statutorily protected species or their habitats in this area. However, survey work referred to at that time is likely to be over three years old and out of date.
41. From the conclusions in the 2023 report, I find that on a balance of probability, it is reasonable to conclude that GCN may be present on the wider site, and the potential for drainage works to impact GCN exists. Ecological surveys should only be left to coverage under planning conditions in exceptional circumstances.
42. Although the submitted evidence goes some way to addressing the reason for refusal, it does not satisfactorily demonstrate that the proposed development would not negatively impact protected species and habitats, contrary to requirements of Local Plan Policies NE1 and NE2.

Other Matters

Sustainability of the location for the proposed development

43. The site lies approximately two miles from the A508 and four miles from the A5 providing access to Milton Keynes, Northampton, and surrounding villages. I have no doubt that some journeys would be by car.
44. There is a bus stop on Castlethorpe Road, close to the site. The 33/33A bus service runs between Milton Keynes and Northampton 33/33A giving access to key/main locations. The Council states the frequency is 'every hour - hour and a half'. Weekend and evening availability may be limited. Even so, the site is reasonably accessible by bus.

45. The Council accepts that the site can be accessed by bicycle but argues that it is not on dedicated cycle paths or redways. On my visit I observed there is a dedicated footpath along Castlethorpe Road. Within Hanslope and Long Street the main roads and estate roads have reasonable amounts of street lighting. Development would have access to easy to follow, safe, convenient, attractive, and direct walking and cycling connections to existing developments, neighbourhoods, jobs, and services within Hanslope and Long Street.
46. There would be flexibility of travel modes, with walking cycling and public transport options available as genuine alternatives to the car. Development could integrate into existing sustainable transport networks and would not have an inappropriate impact on the operation, safety, or accessibility to the local or strategic highway networks.
47. The Council acknowledges that the Framework refers to the need for planning policies and decisions to recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.
48. I find no conflict with Local Plan Policies CT1 and CT3 which, amongst other things, seek to minimise the need to travel and reduce dependence on the private car, promote opportunities for sustainable transport modes and support developments which enable people to access employment, essential services and community facilities by walking and cycling.

Best and most versatile land

49. Local Plan Policy NE7 seeks to protect the Best and Most Versatile (BMV) agricultural land. Development involving the loss of agricultural land should seek to use areas of poorer quality land in preference to that of a higher quality unless other sustainability considerations suggest otherwise. Amongst other things, Framework paragraph 180 (a) seeks to protect and enhance soils in a manner commensurate with their identified quality in the Development Plan. Development would result in the loss of a small amount of Grade 3a land. It falls within the BMV category.
50. Natural England's Guidance on assessing development proposals on agricultural land on Gov.UK indicates that account should be taken of smaller losses (under 20ha) if they are significant when making a decision and should avoid unnecessary loss of BMV land. If I had concluded otherwise in respect of the main issue, the loss of less than 1Ha would not have been significant. For this reason, I do not consider BMV to be determinative and attach limited weight to conflict with Policy NE7 and Framework Paragraph 180 (a) in this case.

Drainage Details

51. The Council argues that a hydrobreak orifice diameter proposed within the drainage layout measuring 41mm is smaller than best practice guidance set out in the Design and Construction Guidance contrary to requirements of Local Plan Policies FR1 and FR2.
52. The appeal is accompanied by revised drainage information which has increased the orifice diameter of the hydrobrake flow control from 41mm to 84mm to reduce the risk of blockage. The information details the intention to discharge

surface water runoff to an ordinary watercourse at a rate of 3.5 l/s for all events up to a 1% Annual Exceedance Probability (AEP) storm event, with an appropriate allowance for climate change. The Local Lead Flood Authority acknowledge that this will increase the proposed discharge rate above the greenfield Q_{BAR} . The Council agrees that the revised information has satisfactorily demonstrated the development would not increase the flood risk to the surrounding area, subject to the conditioning of a detailed surface water drainage scheme based on the sustainable drainage principles and details of how surface water will be managed during the construction phase of the development. There is no evidence to the contrary and I find no conflict with Local Plan Policies FR1 and FR2 for managing flood risk and sustainable drainage systems.

Other Objections

53. Objections have been received from interested parties and Hanslope Parish Council. They consider the access road to be too narrow to accommodate two-way vehicle movement and roadside parking. There are concerns about traffic speeds, the width of gaps and spaces for parking are disputed, and there are concerns that traffic exiting the site would be close to, and incur into, residential gardens. Occupants of one domestic property state that since the removal of a wooden barrier to the footpath, they no longer feel safe in their own garden when lorries pass. There are concerns about conflicts with walkers, the potential for accidents and requests for a safety assessment. However, the Council's Transport Development Team found the layout and details of the proposal acceptable and did not object on highway safety grounds.
54. Objections include that the additional traffic from employees and goods vehicles will result in noise disturbance and significantly diminish the quality of life for surrounding residents. However, the Acoustic Assessment by Mewies Engineering Consultants Limited predicts that the impact for the nearest Noise Sensitive Receptors would be 'Low', hours of operation could be limited by a planning condition, and the Council's Environmental Health Officer raises no objection subject to the imposition of planning conditions.
55. Comments relating to the Appellant cutting down trees and making multiple applications are not material to the decision.

Conclusions

56. Whilst the Framework and policies of the Development Plan provide in principle support for rural employment development outside of settlement boundaries and in the open countryside, none do so unconditionally.
57. The proposal is not of an appropriate scale, size and layout for the site and location and fails to respect the environmental quality and character of the open countryside. As such it is contrary to requirements of Local Plan Policies DS5A and ER8, NE5 and Neighbourhood Plan Policy HAN6 criteria ii. and iii; and fails to satisfy requirements in the Framework for good design, and that development to meet local business and community needs in rural areas beyond existing settlements is sensitive to its surroundings.

58. In addition, the evidence fails to satisfactorily demonstrate that development would not negatively impact protected species and habitats, contrary to requirements of Local Plan Policies NE1 and NE2.
59. These harms attract significant weight against the proposal.
60. For reasons given, I attached limited weight to conflict with Policy NE7 and Framework Paragraph 180 (a) for the loss of less than 1Ha of BMV.
61. Having regard to all other matters raised, and for the reasons given above, the appeal is dismissed.

Helen Heward

PLANNING INSPECTOR