



Appeal Decision

Site visit made on 12 August 2025

by **U P Han BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 September 2025

Appeal Ref: APP/Y0435/W/25/3367460

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 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Simon Hill against the decision of Milton Keynes Council.
 - The application Ref is PLN/2024/2063.
 - The development proposed is construction of three new commercial buildings (use class E(g)(iii)).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal was submitted with a revised Ecological Appraisal¹ (EA), a revised Great Crested Newt Ecological Method² Statement (GCNMS) and a Reptile Mitigation and Method Statement³ (RMMS). The Council has addressed all the information provided. In reaching my decision, I have carefully considered both the documents and the Council's comments on them.

Main Issues

3. The main issues in this appeal are:
 - whether the proposed development complies with the development plan for development outside defined settlement boundaries, with particular regard to its effect on the character and appearance of the open countryside;
 - whether the proposed development includes adequate measures to manage surface water effectively;
 - the effect of the proposed development on protected and priority species; and
 - whether the proposed development would be capable of complying with the general condition of planning permission set out at paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 (as amended) in respect of Biodiversity Net Gain (BNG).

¹ Ecological Appraisal, Version: Revised (10 December 2024) prepared by Cherryfield Ecology.

² Great Crested Newt Ecological Method Statement, Version: Amended new plans added (dated 5 December 2024) prepared by Cherryfield Ecology.

³ Reptile Mitigation and Method Statement, Version: Final (dated 9 December 2024), prepared by Cherryfield Ecology.

Reasons

Development in open countryside

4. Policy DS5 of the Milton Keynes Council Development Plans – Plan:MK 2016-2031 (March 2019) (the LP) sets out that ‘planning permission within the open countryside will only be granted for development 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 this plan indicate development would be appropriate.’ (My emphasis).
5. The appeal site (except for the access road) is located outside the settlement boundary of Hanslope. Within the context of Policy DSC5 of the LP, the main parties do not dispute that the proposal falls within the category of ‘other development’. The two criteria for ‘other development’ – both of which must be satisfied – are: (1) that the development must be wholly appropriate to a rural area and (2) it must be incapable of being located within a settlement.
6. Turning first to the second test, the appellant contends that there is an absence of suitable sites within Hanslope and other settlements such that Milton Keynes would be the only suitable place for the proposed development. However, no detailed information has been submitted to substantiate this claim such as site search assessment. Without such supporting evidence, it is not possible to conclude that the proposed location is the only viable option. Limited evidence has been provided to justify the necessity of locating the proposed commercial units in a rural area. Land ownership is not a material planning consideration.
7. Policy DS5 of the LP does not provide a specific definition for development that is ‘wholly appropriate to a rural area’, leaving its interpretation open to planning judgment and contextual analysis. The appellant has pointed to paragraph 88 of the Framework which encourages the sustainable growth and expansion of all types of business in rural areas. Furthermore, paragraph 89 of the Framework recognises that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements. However, it goes on to say that in these circumstances it will be important to ensure that development is sensitive to its surroundings. While the proposed development could have the potential to meet a local business need, it must nevertheless be sensitive to its surroundings.
8. The appellant has drawn my attention to Policy ER8 of the LP which states that ‘Proposals which sustain and enhance the rural economy will be supported where they are of an appropriate scale for the location and respect the environmental quality and character of the open countryside.’ Contrary to the appellant’s assertion, engagement of Policy ER8 does not automatically mean that development would be acceptable under Policy DS5. Similarly to paragraph 89 of the Framework, Policy ER8 requires development in rural areas to respect its surroundings.
9. Furthermore, Policy NE5 of the LP requires development in the open countryside to respect the particular character of the surrounding landscape. Additionally, Policy HAN6 of the Hanslope Neighbourhood Plan (made March 2025) (the HNP) supports proposals to expand or diversify existing rural employment sites provided the listed policy criteria are met. In this case, the Council specifically identified

conflict with criterion ii) and iii), which are now criterion iii) and iv), of Policy HAN6 in the NP. These require proposals to include a landscaping scheme that would effectively screen the site from the surrounding countryside and the design of the proposed development to conform with policies in the development. Within the above policy context, I note the Council's concerns regarding the impact of the proposed development on the character and appearance of the open countryside.

10. The appeal site relates to part of an agricultural field, accessed via a private road from Castlethorpe Road. The site is largely open, comprising a mix of grassland and hardstanding, and bordered by overgrown vegetation along its northeastern and western boundaries. The site is adjacent to an existing cluster of commercial units and recently developed housing to the southeast. The northwestern and southwestern boundaries of the site are bordered by agricultural fields, with open countryside extending beyond.
11. A previous scheme for two commercial buildings at the appeal site was dismissed at appeal⁴. The proposal before me is similar to the previous scheme, delivering eight commercial units arranged in a similar layout. However, the units would be contained within three buildings. The two units in the northwestern part of the site would be a little further away from the boundary than the previous scheme. In addition, the building in the eastern part of the site has been reduced in size to reflect the scale of the existing adjacent commercial building that lies to the southeast of the site.
12. Despite the subdivision of the built form into two units near the northwestern boundary of the site, the proposed buildings would remain prominently visible from the surrounding area due to their considerable scale, bulk and position within the landscape. While mature hedgerow defines the northwestern boundary of the site and offers a degree of screening, the proposed buildings - standing at approximately six metres in height - would remain clearly visible above it, particularly given the rising topography towards the appeal site from the north west.
13. The appellant has submitted a Landscape and Visual Impact Assessment⁵ (the LVIA) which concludes that the receiving landscape character and views have the capacity to accommodate the proposed development. Taking into account the landscape proposals⁶ for the site, the LVIA anticipates that the perceived effect of the scheme on the landscape character of the area would reduce from minor adverse to negligible by year 15 as additional planting matures. In terms of visual effect, the LVIA concludes that the proposal would cause some initial adverse visual effect which could be mitigated by the landscape proposals and use of a recessive materials palette.
14. I recognise that the visual impacts of the proposal could, to some extent, be mitigated through materials and the landscape proposals. However, the latter would take time to mature to provide meaningful screening. During this period, the buildings will remain clearly visible, particularly from public viewpoints and footpaths, and will continue to exert a dominant presence in the landscape. The scale and massing of the buildings means that even mature planting may not fully obscure them. The rising topography from the northwest further exacerbates this

⁴ Ref. APP/Y0435/W/3325545.

⁵ Landscape & Visual Impact Assessment, prepared by ES Landscape Planning, August 2024, 9024L.RA_LVIA.002.

⁶ Drawing no. PRI24599-11C and 9024L.RA_LSP.004.

issue, elevating the buildings in the view and making them more prominent above any current vegetative screening.

15. Moreover, landscaping can soften but not eliminate the perception of built form in a rural setting. The introduction of commercial buildings into an otherwise open and undeveloped landscape represents a fundamental change in character. Planting may reduce visual contrast, but it cannot reverse the loss of openness or the shift from rural to semi-industrial character. Without robust long-term management and enforcement, planting can fail, deteriorate, or be removed, further reducing its effectiveness.
16. While the appeal site does not represent a 'valued landscape' in the context of the Framework, the intrinsic character and beauty of the countryside is recognised by it, and development should be sympathetic to the context and character of the area. Although adjacent to existing commercial buildings, the proposal would represent a significant encroachment into the open countryside in a way that erodes its rural character and appearance through the introduction of substantial built form in a location that is currently undeveloped and predominantly rural in nature. The scheme would break the relative containment of the existing commercial units, appearing as an intrusive expansion that would result in a perceptible shift from a predominantly rural landscape to a more urbanised edge.
17. I conclude that the proposed development is not of an appropriate scale for the location and would cause unacceptable harm to the character and appearance of the open countryside, contrary to the requirements of Policies DS5, ER8 and NE5 of the LP and Policy HAN6 of the HNP.

Surface water drainage

18. To manage surface water from the proposed development, the appellant indicates that surface water would be discharged, through an attenuation basin and hydrobrake, into an ordinary watercourse. The proposed drainage system is outside of the red line boundary but within land under the appellant's ownership.
19. Planning conditions could be applied to blue line land under the appellant's control. However, the Council has indicated that the creation of the attenuation basin amounts to development that would require planning permission, which will not be granted.
20. While the Lead Local Flood Authority has raised no objection to the principle of the drainage strategy subject to relevant conditions, there is no substantive evidence before me to demonstrate that the proposed drainage strategy can be delivered, particularly in light of the Council's reluctance to grant planning permission for the attenuation basin.
21. The attenuation basin is a core component of the drainage strategy. Without it, the development could result in increased flood risk to the site and surrounding areas. Relying on planning conditions in this context introduces unacceptable uncertainty.
22. For the reasons given, the proposed development does not provide adequate measures to manage surface water effectively. As such, the proposal conflicts with Policies FR1 and FR2 of the LP insofar as they require all new development to incorporate a sustainable drainage system.

Protected species

Great Crested Newt (GCNs)

23. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) impose a duty on me to consider whether European Protected Species would be affected by the development and whether associated mitigation measures would be effective. GCNs fall within those protections.
24. I am advised that the site lies within an amber impact zone of the Nature Space District Level Licensing Scheme, indicating the presence of suitable habitat for GCNs. The revised EA indicates that an environmental DNA (eDNA) survey was conducted in May 2023 at a balancing pond approximately 300 metres north of the appeal site, which returned a negative result. A non-licensable method statement for GCNs for has been produced - the revised GCNMS.
25. The proposed off-site drainage measures, including the attenuation basin, would be in a field close to the appeal site. While the revised EA includes the proposed off-site drainage area, there remains uncertainty as to whether the revised GCNMS has adequately accounted for the off-site drainage area in its assessment. This is because Table 2 of the revised GCNMS states *'The works are confined to the land adjacent to the current buildings... No works will affect any adjacent woodland, semi-improved grassland or hedging including any log and brash piles.'*
26. As such, the revised GCNMS raises doubt as to whether it has robustly assessed all land impacted by the development. Instead, its focus appears to remain restricted to land within the red line boundary, thereby omitting areas that will nonetheless be affected by construction activity associated with the drainage proposals. Based on the revised GCNMS, there is insufficient confidence that all potential impacts have been identified and appropriately mitigated.
27. The appellant suggests that, should GCNs be discovered on site, any impacts could subsequently be addressed through an application for a District Level Licence (DLL). However, due to the identified shortcomings of the GCNMS, it cannot be relied upon to demonstrate compliance with the licensing tests under the Regulations. In particular, it creates doubt as to whether the development could meet the requirement to maintain the species' Favourable Conservation Status. Consequently, I cannot be satisfied that there is a reasonable likelihood of a DLL being granted.
28. Furthermore, reliance on the possibility that a DLL could later be obtained does not demonstrate compliance with the statutory requirements at the planning stage. If a GCN were to be encountered on site during construction without a DLL in place, the continuation of works would present a real risk of unlawful activity. This underlines the necessity of demonstrating, prior to the grant of planning permission, that the licensing tests are capable of being met and that appropriate mitigation or licensing routes are secured. Reliance on addressing the issue only after development has commenced cannot provide the degree of certainty required.
29. Despite the appellant's acceptance of a pre-commencement planning condition requiring a risk assessment/ method statement for GCNs to include off-site habitats potentially affected by the proposal, such an approach would undermine

the precautionary principle embedded in national policy and the Regulations. The presence or absence of protected species and the extent to which they could be affected by the proposed development should be established before planning permission is granted, and if there are, whether mitigation measures are appropriate. Given the degree of uncertainty relating to the risk assessment/ method statement, the use of conditions would not be reasonable in this case.

Skylark

30. The revised EA concludes that the site has the potential to support ground nesting birds such as Skylark, which are a Rest List and Priority Species. However, no evidence of breeding birds was found at the site at the time of the survey. The revised EA proposes no mitigation measures in relation to Skylark.
31. The Council has advised that in a previous iteration of the EA, mitigation to safeguard Skylark was recommended in the form of compensatory nesting plots. Although I do not have the previous EA before me, the appellant has not challenged the Council's observation, nor have they provided a robust justification for the change in approach regarding mitigation to safeguard Skylark.
32. The inconsistency between the recommendations presented in the two versions of the EA, combined with revised EA's identification of the site as having moderate potential for breeding birds, raises significant uncertainty regarding the adequacy of the proposed mitigation measures for Skylark.
33. Furthermore, the revised EA advises that the findings outlined in the report are valid for one year, after which updated surveys will be required. Given that site inspection was last updated on 1 August 2024, the findings would now be out-of-date. Out-dated information/ surveys potentially underestimate or fail to detect protected species and habitats. This creates uncertainty over potential impacts and the adequacy of mitigation.

Reptiles

34. The submitted RMMS does not include the proposed off-site drainage area. However, the Council has suggested that a planning condition could be imposed requiring the submission of a Reptile Mitigation Strategy to include the proposed off-site drainage area. As such and having regard to Planning Practice Guidance and the Framework in relation to planning conditions, I am satisfied that the proposal would satisfactorily safeguard any protected and/ or priority species from undue disturbance and impact.
35. Similarly, if the appeal were allowed, a planning condition could be imposed requiring the submission, approval and implementation of a detailed lighting scheme to prevent any potential adverse effects on biodiversity. A condition could also be imposed, if the appeal were allowed, requiring detail in relation to the location and specification of enhancement features such as bat tubes, bird bricks and Swift boxes.

Conclusion on third main issue

36. For the reasons given, I am not satisfied that the extent to which protected species and habitats may be affected by the proposed development has been satisfactorily addressed. Accordingly, the proposed development would have the potential to harm protected and priority species. On this basis, there would be conflict with

Policy NE2 of the LP which seeks to protect protected species and priority species and habitats.

BNG

37. Where an applicant believes the development would be subject to the biodiversity gain condition, the application must be accompanied by minimum information set out in Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015. This does not include a separate spreadsheet relating to full condition assessments. On the evidence submitted, I consider the minimum information requirements have been met.
38. For the purposes of BNG, planning obligations are one of the mechanisms under paragraph 9 of Schedule 7A of the Act necessary to secure the maintenance of significant onsite habitat enhancements for at least 30 years. They are also required to register sites for offsite gains (unless conservation covenants are used).
39. The appellant proposes to secure off-site BNG via a conservation covenant with a responsible body. The Council has not presented any policy or legal requirement indicating that a signed conservation covenant agreement must be in place prior to the granting of planning permission.
40. The proposed development includes significant on-site habitat enhancement measures intended to deliver the required BNG. Consequently, a planning obligation, such as a Section 106 agreement, is necessary in accordance with the Act. However, no policy or legal basis has been presented by the Council to indicate that a signed Section 106 agreement is required before planning permission is granted.
41. The statutory framework for BNG involves the discharge of the biodiversity gain condition following the grant of planning permission to ensure the objective of at least 10% net gain will be met for a development. The determination of the Biodiversity Gain Plan under this condition is the mechanism to confirm whether the development meets the biodiversity gain objective.⁷ PPG states that 'Given this, it would generally be inappropriate for decision makers, when determining a planning application for a development subject to biodiversity net gain, to refuse an application on the grounds that the biodiversity gain objective will not be met. However, decision makers may need to consider more broadly whether the biodiversity gain condition is capable of being successfully discharged.' It then goes on to set out a non-exhaustive list of considerations. This includes whether the type and location of any significant onsite habitat enhancements proposed for onsite gains are appropriate. I also note Principle 7 of the Statutory Biodiversity Metric User Guide (July 2025) which requires habitat interventions to be realistic and deliverable within a relevant project timeframe.
42. The BNG/ BIA proposes to create good condition 'other neutral grassland' around the proposed commercial buildings. The existing baseline of the site comprises a large proportion of poor condition modified grassland. The Council advises that the site is likely to exhibit high nutrient levels that would hinder the creation of good condition 'other neutral grassland' in the absence of remedial measures. No evidence has been presented to dispute this assessment. Furthermore, given the

⁷ Planning Practice Guide, Paragraph: 019 Reference ID: 74-019-20240214.

limited size of the proposed grassland, it would be difficult for the proposed habitat to meet the target condition.

43. Moreover, Figure 3: Proposed Habitats Site Plan within the BNG/BIA is inconsistent with the Landscape Proposals⁸. The former depicts only one building on the site with a large contiguous area of grassland, whereas the latter shows three buildings and a smaller area of grassland. This discrepancy introduces reasonable doubt regarding reliability of the BNG/BIA and accompanying statutory BNG metric submitted. The inconsistency between the site layouts undermines confidence in the assumptions used to calculate the BNG, which is fundamental to the credibility of the BNG assessment.
44. Given the above, it is unclear whether the proposed biodiversity gains can be delivered or sustained in accordance with statutory requirements. Consequently, I am not satisfied that the proposal is capable of complying with the general BNG condition. As such, the proposed development does not comply with Schedule 7A to the Town and Country Planning Act 1990 (as amended). There would also be conflict with Policy NE3 of the LP insofar as it requires development proposals, where possible, to achieve measurable biodiversity net gain.

Planning Balance and Conclusion

45. The appellant advises the proposal would create 16 full time jobs. I attribute significant positive weight to this benefit in the planning balance.
46. On the other hand, the proposal would harm the character and appearance of the open countryside, it does not include adequate measures to manage surface water effectively and would have the potential to harm protected and priority species. Furthermore, I am not satisfied that the proposal is capable of complying with the general BNG condition. Collectively, these harms weigh heavily against the scheme.
47. As such, the proposal conflicts with the development plan as a whole. The identified policies from the development plan are, in the circumstances of this case, broadly consistent with the Framework. I therefore attach significant weight to the conflict with the policies identified above and the associated harms.
48. Taking all matters into account, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with the development plan. For the reasons given above, the appeal should be dismissed.

U P Han

INSPECTOR

⁸ Drawing no. PRI24599-11C.