



Appeal Decision

Site visit made on 19 August 2025

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2025

Appeal Ref: APP/Y0435/W/25/3360694

Phase D, Olney Park, Land South West of Warrington Road, Olney MK46 5GP

- 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 on behalf of Angle Property (Olney Park) LLP against the decision of Milton Keynes Council.
 - The application Ref is 23/02880/FUL.
 - The development proposed is erection of drive-thru coffee shop and associated works.
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Decision

1. The appeal is allowed, and planning permission is granted for erection of drive-thru coffee shop and associated works at Phase D, Olney Park, Land South West of Warrington Road, Olney MK46 5GP in accordance with the terms of the application, Ref 23/02880/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have taken the description of development from the application form but I have amended it so as to remove reference to the number of parking, EV charging and cycle spaces to ensure that the description of development would not conflict with the approved plans and the conditions.
3. The Council has referred to the Milton Keynes City Plan which is currently within the consultation period. It is, therefore, at an early stage and I cannot be certain if any policies are to be modified or when they are likely to be adopted. I have therefore given little weight to the City Plan and have determined the appeal in accordance with the current development plan.

Main Issues

4. The main issues are:
 - the effect of the development on the supply of employment land and employment opportunities; and
 - whether a satisfactory sequential test has been carried out so as to comply with national and local planning policy which seeks to steer main town centre uses to town centre sites.

Reasons

Employment land and opportunities

5. The appeal site forms part of a wider site allocated for employment uses in the Milton Keynes Council Plan:MK 2016-2031 (Plan:MK). It is also allocated for employment led development in Policy ONP12 of the Onley Neighbourhood Plan 2016-2031 (the NP).
6. Outline planning permission was granted for the development of the whole of the allocation for mixed business use and complimentary uses including hotel, care facility institution, children's day nursery and car showroom. The appeal site forms the area originally identified for a car showroom. Although the outline consent has lapsed the site remains allocated for employment uses.
7. Both Plan:MK and the NP seek to resist the change of use or redevelopment of employment land for other purposes and Policy ER3 of Plan:MK specifically seeks to resist retailing on employment land. Part A of Policy ER2 provides three criteria against which other uses are to be considered on employment land. The criteria do not all have to be achieved, the use of the word "or" means that only one of the three needs to be met for a development to be acceptable under Part A.
8. The third exception in Part A of Policy ER2 seeks to resist development that significantly reduces the provision of local employment opportunities. It does not resist any development that provides less job opportunities, neither does it require developments to justify the effect on employment opportunities on the basis of wages. Even though the number of employees for a drive-thru coffee shop may be lower than could be achieved for an employment use, they could also be higher, dependent on the employment use. The only use identified as interested in the site during the marketing, that of a container storage facility, would likely have had lower employment figures. Moreover, the employment figures for a drive-thru use would not be dissimilar to the previously approved car showroom use.
9. Nevertheless, even if I were to accept the Council's lower employment figures for the proposed development, I have no compelling evidence that the effect on employment opportunities would be significant. It would continue to provide employment alongside the other uses on the allocated site. Moreover, as noted, I therefore, find that the appeal proposal would comply with the third exception set out in Part A of Policy ER2 of Plan:MK.
10. Marketing of the appeal site has been carried out since 2020. Initially the appeal site was targeted to operators that would comply with the outline consent. However, although that was the primary marketing aim, the evidence does not show that this was the only use that the site was being marketed for. The appellant's marketing reports clearly show that the whole of the allocation was marketed for mixed use development for employment uses and I saw the marketing board on the appeal site continues to advertise the site. No price was set as this would have been part of the negotiation process. However, this is not unusual for employment uses, especially on mixed use sites and has been the same for the other plots.
11. Alternative uses were also promoted and considered for the site, including medical uses, public houses, and roadside services, including drive-thrus. Some of the information provided by the appellant does indicate the appeal site as a drive-thru.

However, the evidence also shows the appeal site being marketed for mixed-use development, including for commercial business uses, alongside other uses.

12. As already noted, some interest was received. It is clear that the lack of a defined price was, therefore, not a dissuading factor. The storage container use was discounted by the appellant as not suitable for the site and I agree that such a use would be harmful to the character and appearance of the area given the prominent position of the site. The appellant has also confirmed that the other interest noted as an industrial use was not actually an industrial use but a developer for a drive-thru coffee shop.
13. I find that there is sufficient evidence that the site has been marketed for general employment uses, amongst other uses, for substantially more than six months. In my judgement there is sufficient evidence to show that there is no longer a reasonable prospect of the site being used for the designated employment use, as required by Part B of Policy ER2 of Plan:MK.
14. The appeal site is also the smallest plot on the wider employment led allocation. From the evidence before me, the development of this site as propose would, even if I take the Council's figures, still result in the uses on the whole of the allocation being predominantly the employment uses listed in Policy ONP12 of the NP.
15. The appeal proposal would not strictly comply with Policy ER3 of Plan:MK which seeks to resist retailing on employment land unless it is an ancillary retail use or a car-related use. The justification for the policy seeks to direct retail uses to the town centres and seeks to protect employment land. However, Policy ER3 seeks to go beyond the requirements of the National Planning Policy Framework (the Framework) where the provision of retail on employment land would not, in itself, conflict with the sequential test. Providing the development can justify that there are no sequentially preferable sites then employment land may be suitable for retail uses. I will return to this issue.
16. For the above reasons, although the appeal proposal would fail to comply with Policy ER3 of Plan:MK it would comply with the local plan policies when read as a whole. I, therefore, find that the appeal site would not adversely affect the supply of employment land and would not significantly reduce the provision of local employment opportunities. The proposed development would comply with the requirements of Policy ER2 of Plan:MK which resists non-employment uses on employment land unless it complies with one of three criteria and where it can be demonstrated that there is no longer a reasonable prospect of it being used for the designated use.
17. For the same reasons, the appeal would comply with Policy ONP12 of the NP which allocates the appeal site as part of an employment led mixed use development and only supports uses, other than those within B1, B2 and B8, subject to demonstration that those uses would be the dominant uses on site.

Sequential test

18. A coffee shop is a main town centre use, as defined in Plan:MK and the Framework. Policy ER10 of Plan:MK allows for edge of centre and out of centre retail development, subject to the application of the sequential test. The Framework advises that applicants and local authorities should demonstrate

flexibility on issues such as format and scale, so that opportunities to utilise town centre or edge of centre sites are fully explored.

19. Warners Retail (Moreton) Ltd v Cotswold District Council and others [2016] EWCA Civ 606 advises that more centrally located sites should not be rejected on the self-imposed requirements or preferences of a single operator. That reference is taken from an earlier version of Planning Practice Guidance (PPG) and the relevant paragraph, which is quoted in the judgment, also advised that the consideration of more central locations would need to satisfactorily meet the need/demand of the applicant's proposal.
20. The current advice in PPG is that developments must have due regard to the requirement to demonstrate flexibility. However, it is also not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal. The advice is clear that flexibility should be shown in regard to the format and scale of the proposal, not part of what is proposed, as was confirmed by the Scotch Corner Secretary of State decision.
21. The appeal proposal is for a drive-thru coffee shop. Although the drive-thru counter is only a small part of the footprint of the building it is a key part of the proposal. Having regard to the Tesco Stores v Dundee City Council and Aldergate Properties Ltd v Mansfield District Council caselaw, I have considered the proposal for a coffee shop with drive-thru. This is also consistent with the Council's decision at Watling Street where flexibility of format and scale did not include the need to consider sites without a drive-thru and where town centre sites were discounted as being unsuitable for such a use. The Watling Street site is different to the appeal before me as it would serve a larger town, nevertheless it is material in considering the flexibility required for the sequential test.
22. The coffee shop element of the appeal proposal would be capable of being accommodated in one of the units identified as available in both the appellant's and Council's evidence. However, with the exception of the town centre car parks, which are required to provide parking, I have not been made aware of any sequentially preferable sites that could accommodate the requirements of the proposed drive-thru, even having regard to flexibility of format and scale.
23. Although the Council, and interested parties, have referred to the potential for the development to adversely affect the vitality and viability of Onley town centre the size of the appeal proposal would fall below the 350sqm threshold set out in Policy ER10 of Plan:MK as requiring an impact assessment. It would, therefore, not be reasonable or necessary to assess the impact of the development on the existing town centre, even though there are existing coffee shops within the town. Moreover, I have no compelling evidence that the appeal proposal would adversely affect the vitality and viability of the town centre as a whole.
24. There is also no planning policy requirement for the appellant to justify the need for the use, even though there are coffee shops within the town and a retailer further out of town that also sells coffee. Subject to the provision of the additional footpath outside the appeal site it would be accessible on foot from the surrounding businesses and houses, including the care home development. It is also within

walking distance of a bus stop and would, therefore, be accessible by a choice of means of transport.

25. For the above reasons, I find that the proposal has provided a satisfactory sequential test so as to comply with national and local planning policy which seeks to steer main town centre uses to town centre sites. I, therefore, find no conflict with Policy ER10 of Plan:MK which requires a sequential test for main town centre uses which are outside of defined town centre areas and which are not on sites specifically allocated for such uses.

Other Matters

26. Given my findings on the main issues, the appeal proposal would comply with the development plan as a whole, including the NP. The development would have economic benefits both during and after construction, albeit limited. It would also have social benefits in providing a facility for employees on the wider employment site and residents of the local area to meet. Nevertheless, the benefits are not determinative in this appeal.
27. Interested parties have noted concerns relating to highway safety, parking and the potential conflict with the transportation of cranes from another part of the employment site. The appeal proposal would result in a degree of vehicle movements associated with customers and deliveries. During the consideration of the planning application amended plans were submitted which included an additional area of footpath outside the site to provide pedestrian access to the wider area, relocating the cycle parking, and providing vehicle tracking to show that vehicles can manoeuvre safely within the site and that large vehicles can enter and leave in a forward gear.
28. The proposed access to the site is a sufficient distance from the junction of the estate road with Warrington Road and is off set from the access to Aldi to limit the risk of conflict. The level of car parking proposed is appropriate for the intended use, as evidenced by reference to similar uses. The car parking also includes disabled spaces and bays for electric vehicle charging. The amended plans would ensure that the access and layout are acceptable and would not result in highway safety implications. The use of another site on the estate for storage and maintenance of cranes was considered on its own merits and was determined to be an acceptable use which would not result in adverse effects on highway safety. That the cranes would be on the same road as vehicles associated with the drive-thru would not result in any greater risk of vehicle conflict than with any of the other existing uses.
29. The risk of litter and waste from the coffee shop would need to be managed on site and additional bins could be provided if required by the business. Litter from the drive-thru is more difficult to manage as once a customer has left, they are responsible for their litter. Nevertheless, I have no compelling evidence that the drive-thru would result in unacceptable levels of litter in the surrounding area. Light pollution would not be significant and not dissimilar to the retail store on the opposite side of the estate road access. A condition can be used to ensure that light spillage would not adversely affect biodiversity and landscaping is proposed that would provide habitats within the site. The drainage of the development would be subject to conditions.

Conditions

30. The Council has submitted a list of conditions, and the appellant has had an opportunity to comment on these. I have considered the list in light of the Framework and PPG, and I have undertaken some minor editing and rationalisation of the conditions in the interests of precision and clarity.
31. In addition to the standard condition which limits the lifespan of the planning permission I have specified the approved plans for the avoidance of doubt and in the interests of proper planning.
32. The reason for the recommended Site Waste Management Plan condition is to ensure that the development would be sustainable. Referring to the policies submitted by the Council, Policy SC1 of Plan:MK requires developments to demonstrate how they have implemented sustainable construction principles, including reducing and re-using waste during construction and providing space for recycling post construction. Given the policy relates to the construction period as well as the operational period I find that this condition is necessary and that the trigger point should be prior to commencement.
33. To ensure that the development provides the ecological mitigation measures proposed, as required by Policy NE3 of Plan:MK, it is necessary to secure these through a condition. Given the existing changes in levels on the site it is also necessary for the finished floor levels of the site and the building to be submitted for approval, to ensure that the finished development is appropriate in regard to the character and appearance of the area.
34. In the interests of the development providing the maximum available renewable energy and other sustainable measures, and as the existing plans and details do not provide sufficient information, a revised Sustainability Statement is required. It is also necessary to require details of the external materials to be submitted for approval to ensure that the development is appropriate in its context.
35. To ensure that the development would not increase flood risk, either within the site or elsewhere, and provide suitable drainage, in line with the requirements of Policies FR1 and FR2 of Plan:MK, full details of the surface water drainage is required. I have followed the Council's recommended trigger for these works so that this is not required prior to commencement of any work on the site whilst ensuring that the details are provided at a suitable point. Furthermore, I have included the surface water requirements of the construction into the same condition in the interests of being concise.
36. To ensure that the access, parking and turning spaces, and the drive-thru lane are provided prior to the building being brought into use it is essential that this work is secured by condition. In the interests of providing access to the site for pedestrians and to the wider public transport network it is also necessary that the development provides the footway along the employment site estate road. The provision of disabled parking, electric charging points and cycle parking are all required to meet Policies CT2 and CT6 of Plan:MK and Policy ONP15 of the NP, so as to ensure appropriate levels of parking for all users, including cyclists and motorised two-wheel vehicles, and to promote low emission vehicles.
37. In the interests of the character and appearance of the area and to ensure that the development provides biodiversity enhancements additional details are required

for the soft landscaping, hard surfacing and retaining walls. The protection of existing landscaping and the replacement of any landscaping lost within the first five years also needs to be secured by condition, for the same reasons. However, I have not sought further details of the boundary treatments within the condition as these details are shown on the approved boundary treatments plan.

38. Further details of the lighting scheme and a scheme for external waste bins for customers are also required to ensure that the development would not cause unacceptable levels of light pollution, as required by Policy NE7 of Plan:MK, would not adversely affect biodiversity and landscaping, and would provide waste bins for customers within the site. I have also included the condition to require the installation of broadband to ensure that the development is served by at least superfast broadband, in accordance with Policy CT9 of Plan:MK and Policy ONP8 of the NP.

Conclusion

39. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should be allowed, subject to the conditions listed in the attached schedule.

K Townsend

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Unless otherwise required by a condition attached to this permission the development hereby permitted shall be carried out in accordance with the following plans and drawings: Site Location Plan A078G (SK)707 Rev B, Proposed Drive-Thru Site Plan A078G (SK)062 Rev R; Proposed Drive-Thru Ground Floor Plan A078G (SK)701 Rev B; Proposed Drive-Thru Elevations A078G (SK)704 Rev B; Proposed Drive-Thru Roof Plan A078G (SK)702 Rev B; Proposed Boundary Treatment A078G (SK)708, Vehicle Tracking Plan 1228/11.
- 3) The development hereby permitted shall be carried out in accordance with the details provided in the ACD Environmental Ecological Letter, dated 6 December 2023 and the mitigation and general measures therein provided.
- 4) No development shall take place until full details of the finished levels of the ground floor of the proposed building and the external areas of the site, above ordnance datum and in relation to existing ground levels, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels.
- 5) No development shall take place until a Site Waste Management Plan, based on the requirements of Policy SC1 of Plan:MK, has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 6) Prior to any equipment, machinery or materials being brought onto the site for the purposes of the development, all the trees and hedges shown on the landscaping plan as "to be retained" and/or any trees whose canopies overhang the site shall be protected by strong fencing in accordance with the ACD Environmental 'Technical Note for Protection of Offsite Boundary Trees Along Warrington Road'. The fencing shall be erected in accordance with the approved details and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.
- 7) Prior to the laying of any services, hard surfaces or the construction of the building a revised Sustainability Statement based on the submitted Energy & Sustainability Statement, Version 1.1, dated 12/12/2023, shall be submitted to and approved in writing by the Local Planning Authority. The sustainability statement shall be accompanied by drawings detailing the locations of renewable energy generation and other sustainable development measures such as green roofs and rainwater harvesting. The development shall subsequently be carried out in accordance with the approved details prior to the building first being brought into use.
- 8) Prior to the laying of any services, hard surfaces or the construction of the building a detailed surface water drainage scheme for the site, based on sustainable drainage principles and the Broughton Beatty Wearing Surface Water Drainage Statement, dated 15 November 2023, shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall include:

- Full calculations detailing the existing surface water runoff rates for the QBAR, 3.3% Annual Exceedance Probability (AEP) (1 in 30) and 1% AEP (1 in 100) storm events;
- Full results of the proposed drainage system modelling in the above-referenced storm events (as well as 1% AEP plus climate change), inclusive of all collection, conveyance, storage, flow control and disposal elements and including an allowance for urban creep, together with an assessment of system performance;
- Detailed drawings of the entire surface water drainage system, attenuation and flow control measures, including levels, gradients, dimensions and pipe reference numbers, designed to accord with the CIRIA C753 SuDS Manual (or any equivalent guidance that may supersede or replace it);
- Full detail of SuDS proposals (including location, type, size, depths, side slopes and cross sections);
- Measures taken to prevent pollution of the receiving groundwater and/or surface water;
- Measures to avoid surface water run-off during the construction;
- A timetable for the implementation of the surface water and SuDS proposals; and,
- A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details and the sustainable drainage system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.

- 9) Notwithstanding the details shown on the approved plans, prior to any above ground works, a revised parking plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall detail revised accessible (disabled) parking, a two-wheeler space including anchorage points and EV Charging Points meeting the requirements in the Milton Keynes 2023 Parking Standards SPD, or any document that supersedes this. The development shall be carried out in accordance with the approved details prior to first occupation and shall be retained thereafter.
- 10) Prior to any above ground works details of both hard and soft landscape works shall have been submitted to and approved in writing by the Local Planning Authority. These details shall include:
 - planting plans at a minimum scale of 1:300 with schedules of plants noting species, supply sizes and proposed densities;
 - details of existing trees and/or hedges to be retained and/or removed accurately shown with root protection areas;
 - hard surfacing materials;
 - structural details of any retaining walls;
 - proposed and existing functional services above and below ground;
 - an implementation programme.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is brought into use, in accordance with the agreed implementation programme.

- 11) Prior to any above ground works details of all external facing materials, including photographic examples, RAL numbers or samples, shall have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 12) The development hereby permitted shall not be brought into use until the means of access for vehicles, pedestrians and cyclists, the parking and manoeuvring spaces and the drive-thru lane have been constructed in accordance with the approved plans. The access, parking, manoeuvring and drive-thru lane shall be retained thereafter.
- 13) The development hereby permitted shall not be brought into use until the proposed footway and pedestrian crossing shown on the submitted drawing 19067/235 Revision A - Additional Spine Road Footway Proposals, dated 12/6/24 by Abington Consulting Engineers, has been installed. The footway and pedestrian crossing shall thereafter be retained for the intended use.
- 14) The development hereby permitted shall not be brought into use until details of the bicycle parking, including methods of securing the bicycles and weatherproof covering, has been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details prior to first use and that space shall thereafter be kept available for the storage of bicycles.
- 15) The development hereby permitted shall not be brought into use until lighting details have been submitted to and approved in writing by the Local Planning Authority. The details shall include a plan indicating light spillage so as not to artificially illuminate any landscaping or water features to more than 1 Lux. The development shall be carried out in accordance with the approved details and shall be maintained thereafter.
- 16) The development hereby permitted shall not be brought into use until a plan showing location and details of external waste bins for customers has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained thereafter or replaced with equivalent bins in terms of capacity and number.
- 17) The development hereby permitted shall not be brought into use until a superfast or ultrafast broadband connection has been installed, in accordance with the details within the submitted Digital Connectivity Statement, dated 12 December 2023, and shall be retained thereafter.
- 18) If, within a period of five years from the date of planting, any tree (or any tree planted in replacement for it) is removed, uprooted, destroyed or dies or becomes seriously damaged or defective, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree.

*** END OF SCHEDULE ***