



Appeal Decision

Site visit made on 11 February 2026

by **D Wilson BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 March 2026

Appeal Ref: APP/Y0435/W/25/3375042

Moat Cottage, Newport Pagnell, Milton Keynes MK16 0JJ

- 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 BHK Moat Ltd against the decision of Milton Keynes Council.
 - The application Ref is PLN/2025/1450.
 - The development proposed is Residential development.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Milton Keynes Council against BHK Moat Ltd. This application is the subject of a separate decision.

Preliminary Matters

3. The appellant submitted amended documents with the appeal which include Cherryfield Ecology, Report prepared for: BHK Construction Ltd (ecological appraisal) and Flood Risk and Drainage Technical Statement Ref: 1354/TS October 2025. The Council had the opportunity to comment on the amended documents which have not resulted in any significant changes to the proposed scheme, instead they have provided clarification. Accordingly, I am satisfied that no one would be prejudiced were my decision to have had regard to the amended documents.
4. My attention has been drawn to an Emerging Local Plan¹ which has reached the Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage. However, limited information is before me to indicate if any policies have been modified or if there are any unresolved objections. Accordingly, I attribute limited weight to it.

Main Issues

5. The main issues are:
 - whether the proposed development would secure adequate infrastructure provision,
 - the effect of the proposed development on ecology with regard to protected species,

¹ Proposed Submission Milton Keynes City Plan 2050 Regulation 19 plan for consultation October 2025

- whether the proposed development would achieve Biodiversity Net Gain,
- the effect of the proposed development on highway safety with regard to access,
- the effect of the proposed development on flood risk with regard to surface water flooding,
- whether the proposed dwellings would be constructed sustainably, and
- the effect of the proposed development on the character and appearance of the area.

Reasons

Infrastructure

6. The appeal site is located within the Milton Keynes East Strategic Urban Extension (SUE), which is identified through Policy SD12 of the Milton Keynes Council Plan:MK 2016-2031 (Plan:MK) as being allocated for a comprehensive new residential and employment development. Development within this allocation is expected to, amongst other things, deliver around 5,000 new homes and associated infrastructure.
7. Policy SD9 of the Plan:MK requires amongst other things, planning obligations relating to the phasing of development and the provision of on-site and off-site infrastructure and facilities, to include land, capital and initial running costs. There is no planning obligation before me to consider and therefore the proposed development would not contribute to infrastructure and facilities. Policy INF1 of the Plan:MK also requires that new development that generates a demand for infrastructure, that such infrastructure if already in place or there is a mechanism in place to secure it.
8. The Milton Keynes East Strategic Urban Extension Development Framework Supplementary Planning Document (SUE SPD) March 2020 provides further guidance. In particular regard to infrastructure delivery, the SUE SPD outlines that this will be secured through a number of individual S106 agreements entered in compliance with an overarching MK Tariff Framework Agreement whereby a contribution is made to infrastructure costs through Tariff payments for each unit of development.
9. There is significant development taking place around the appeal site, which I acknowledge that the appeal scheme is of a smaller scale when comparing. However, the appeal site is still located within the SUE and would contribute to the overall delivery of homes within the allocation and as such, there is no reason why the requirements of the relevant Policies do not need to be adhered to.

10. The appellant considers that any obligations could be secured by an appropriately worded planning condition. However, there is no condition before me to consider and in any case, I am mindful of guidance contained within Planning Practice Guidance which states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases². There are no exceptional circumstances such as where there is clear evidence that the delivery of the development would otherwise be at serious risk before me that would justify a negatively worded condition to secure an obligation.
11. I therefore conclude that the proposed development would not secure adequate infrastructure provision and would be contrary to Policies SD9, SD12 and INF1 of the Plan:MK and guidance contained within the SUE SPD. Amongst other things, these seek to ensure the provision of on-site and off-site infrastructure.

Ecology

12. The appellant's Ecology Report identifies that there is a presence of some suitable habitats on the appeal site and surrounding area for great crested newts and recommends that a district level licence is applied for.
13. Under the district level license scheme, developers apply for an Impact Assessment and Conservation Payment Certificate (IACPC) from Natural England. While there is some intent shown from the appellant through emails to NatureSpace Partnership, no IACPC has been submitted and so the impact of the proposal on great crested newts and any necessary mitigation has not been demonstrated.
14. In the absence of this information, I am not satisfied that a condition could be used as it would not meet the tests outlined in Planning Practice Guidance with regard to precision and enforceability.
15. I therefore conclude that it has not been demonstrated that the proposed development would not harm ecology with particular regard to protected species. It would be contrary to Policies NE1 and NE2 of the Plan:MK which amongst other things, seek to ensure that development does not have a negative impact on protected species.

Biodiversity Net Gain

16. Under the statutory framework for BNG, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met ("the biodiversity gain condition"). This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat.
17. Developments subject to the mandatory BNG are required to meet the minimum information requirements set out in Article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. This includes information demonstrating the pre-development biodiversity value of the site and the completed metric calculation tool.

² Paragraph: 010 Reference ID: 21a-010-20190723

18. The evidence before me suggests that trees have been cleared within the site between 2020 and 2025, however, these have not been included within the pre-development value of the site. The appellant's ecological report has addressed this by stating that this removal was due to the appellant's personal reasons, which have not been outlined, but were not associated with the proposed development. As such, this is identified as the reason why the trees have not been taken into account for the pre-development value.
19. I acknowledge that the tree removal may have been due to other reasons, however, Planning Practice Guidance defines unauthorised degradation of onsite habitat as any degradation which is not in accordance with a previous planning permission³. There is no evidence that the tree removal was in accordance with a previous planning permission and as such, their removal would appear to be unauthorised degradation.
20. For the purposes of submitting a planning application, where degradation activities have taken place (as listed above) before the submission of the application or an earlier proposed date, the applicant must provide: a statement setting out that these degradation activities have been carried out; confirmation of the date immediately before these activities were carried out; the pre-development biodiversity value of the site on this date; the completed metric calculation tool showing the calculations, and any available supporting evidence of this. These are not before me to consider.
21. The Council also raise concern with the access track which has not been included within the calculations. While the track is not within the control of the appellant and may be subject to change in the future, it is nonetheless shown within the red line and as such, there is little information to justify why this has not been taken into account within the calculations. In light of the above matters, the pre-development value of the site cannot be established and as a result, it is not clear whether BNG can be achieved.
22. I therefore conclude that it has not been demonstrated that the proposed development would achieve BNG. I find conflict with Policy NE2 and NE3 of the Plan:MK which amongst other things, seeks to ensure a net gain in biodiversity.

Highway safety

23. The appeal site is currently served by a long and narrow driveway which has limited passing spaces. Notwithstanding this, it is noted that due to the significant development that is taking place surrounding the appeal site that most of the current access would be removed and replaced with a new road layout.
24. I have been provided with many plans which illustrate road layouts for the surrounding development; however, it is unclear whether these plans form any approved layouts for the surrounding development. I also acknowledge that access rights will be maintained for the existing dwelling, and I note reference has been made to a deed the appellant has secured with the neighbouring developer, albeit this is confidential and has therefore not been provided.

³ Paragraph: 036 Reference ID: 74-036-20240214

25. There is little information before me which demonstrates the layout of the roads that would serve the appeal site, and I am therefore unable to conclude that the proposed access to the site would be suitable for future users of the appeal site. The appellant has suggested a condition could be imposed, however, based on the limited information before me I am not satisfied that a condition would meet the tests outlined in Planning Practice Guidance with regard to precision.
26. I therefore conclude that it has not been demonstrated that the proposed development would not harm highway safety with regard to access. It would be contrary to Policies CT2, CT3 and CT5 of the Plan:MK, which amongst other things, seeks to ensure that development integrates into existing sustainable transport networks and does not have an inappropriate impact on safety or accessibility.

Flood risk

27. The appeal site is located within flood zone 1, however areas of the appeal site are identified as being at high and medium risk of surface water flooding. The appellant did not submit a site-specific flood risk assessment with the application; however, a flood risk and drainage technical statement has since been submitted with the appeal.
28. The appellant considers that the surface water flooding appears to coincide with isolated low-lying areas in and around the site. It is considered that these low-lying areas would be removed as part of the proposed development, finished floor levels would be set above surrounding ground and positive drainage would be installed.
29. There is little information before me to demonstrate how these matters would be incorporated with the proposed development. I am mindful that an appropriately worded planning condition could be imposed to secure drainage details. However, in the first instance, Paragraphs 170 and 175 of the Framework which state that development should be made safe for its lifetime without increasing flood risk elsewhere. An exception is allowed where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future.
30. The proposed development includes built form within areas identified as being at high and medium risk of surface water flooding. There is no evidence that removing the low-lying areas would not increase flood risk elsewhere and furthermore, the flood risk and drainage technical statement does not demonstrate that there would be no built development in these areas. It has therefore not been demonstrated that the proposed development would be safe from risk with regard to surface water flooding.
31. The Council raise concern over a swale that is proposed to be located close to plot 1 and consider it has not been demonstrated how this drainage feature would adequately function. The appellant's flood risk and drainage technical statement considers that the location of the swale is indicative and would need to be moved. The appellant also considers that the Council approved the swale's location to within 9m of the site boundary, which they consider is contrary to legislation.

32. There is limited evidence before me regarding the location of the swale, particularly in regard to whether it would need to be located where shown in order to comply with the overall flood risk strategy associated with the adjoining development. However, the appellant is relying on the location of the swale being changed, which may not happen and on this basis there is very little information in terms of how this has been assessed as part of the scheme before me and I am not satisfied that it's been shown how flood risk would be managed in this regard.
33. The Council consider that foul drainage has not been addressed, however, based on the information before me it would appear that a connection is illustrated for the appeal site through the neighbouring development. I am satisfied that that a suitably worded planning condition could be imposed to secure further details for the proposed development in regard to foul drainage.
34. Notwithstanding my findings above on foul drainage, I conclude that it has not been demonstrated that the proposed development would be safe from flood risk with regard to surface water flooding. It would be contrary to Policies FR1 and FR3 of the Plan:MK which amongst other things, seek to ensure that development demonstrates no increase in flood risk to the site or surrounding area.

Sustainable construction

35. 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.
36. The appellant submitted a sustainability statement with the appeal which outlines some measures that would be incorporated into the scheme. However, the information provided only provides general details and there is a lack of specific information that demonstrates compliance with the requirements of Policy SC1 of Plan:MK.
37. I am mindful that a condition could be imposed to ensure further details are submitted, and I also note that these have been used on other developments. However, I find that the information before me is not detailed enough to impose such a condition.
38. I therefore conclude that there is insufficient information before me to demonstrate that the proposed dwellings would be constructed sustainably. The proposal would conflict with Policy SC1 of the Plan:MK which amongst other things, seeks to ensure that developments implement sustainable construction principles.

Character and appearance

39. The appeal site is a large parcel of land which is currently open and grassed with the wider area being predominantly open fields. However, there is significant development taking place within the wider area around the appeal site in connection with new housing and associated infrastructure.

40. The dwellings proposed would be significant in size and combined with the access road, driveways and garages would take up the majority of the appeal site. While development has largely not taken place yet immediately surrounding the appeal site, based on the information before me, much of the land surrounding the appeal site would be for a park and other open space. The significant size of the dwellings and amount of built form would be particularly prominent in this context and attention would be drawn from areas of these parks and open spaces, resulting in a dominant and intrusive appearance.
41. The SUE SPD identified the appeal site as lying with the general character typology where the build form and layout is identified as short terraces, semi-detached and detached at a density of 25-40 dwellings per hectare. The appeal proposal would significantly fall below this density and while I note that there are a limited number of large, 5-bedroom dwellings proposed as part of the surrounding development, there is little evidence to suggest that there is a need for 5-bedroom dwellings at the appeal site.
42. Dwellings within the surrounding area would be at a much higher density than the proposed dwellings which would mean that the layout of the proposed development would stand out as an odd and jarring in this context. There is very little landscaping proposed as part of the scheme and while I note that a condition could be imposed to secure further landscaping, due to the overall size of the dwellings and amount of hard landscaping there would be limited space for this. I am therefore not convinced that this would mitigate the harm.
43. I note that Moulsoe Parish Council did not object to the density and design of the proposed scheme, however, this does not outweigh the harm I have identified.
44. I therefore conclude that the proposed development would harm the character and appearance of the area. It would be contrary to Policies D1, D2, D3, SD1 and SD12 of Plan:MK and guidance contained within the SUE SPD. Amongst other things, these seek to ensure that development responds appropriately to the site and surrounding context and exhibits a positive character or sense of place.

Other Matters

45. The appellant has referred to other developments and appeals in an attempt to justify their case. I do not have the full details in respect of such examples so I cannot be sure of the circumstances. In any case, I have determined the appeal on its own merits, based on the evidence before me.
46. In regard to 43 Water Lane⁴, this relates to a smaller scheme of two dwellings and the Council acknowledge in their officer report that the sustainable information is limited. However, they considered that due to the limited scale of the development, this information was sufficient which differs from the appeal before me where the scheme is larger.

⁴ 24/01652/FUL

47. In regard to Caldecote Cottage⁵, while I note the various screenshots that have been provided, demonstrating that additional documents were submitted during the application's consideration, I have been provided with little information about this application to compare it to the scheme before me. In any case, while it may be unhelpful, the Council are not obliged to request or accept additional information and it is clear that the Council had overriding concerns which they consider would not have been resolved by delaying the applications determination which is not unreasonable.
48. In regard to the appeals⁶ where BNG has been addressed by condition, none of these appeals identified degradation activities or omitted land within the red line from BNG calculations which I have found in the scheme before me.
49. The Council is able to demonstrate a 5-year housing land supply, however, the proposed development would still make an important contribution to housing which attracts significant weight in favour of the proposed scheme. The small scale of the scheme means that it could be built out quicker, however, these matters do not outweigh the harm I have identified.

Conclusion

50. 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 it.

D Wilson

INSPECTOR

⁵ 24/01996/FUL

⁶ APP/Y3615/W/25/3366764, APP/R0660/W/25/3363280, APP/V1260/W/24/3358113 and APP/X1545/W/25/3372731