

Appeal by Gladman Developments Ltd

Land off Olney Road, Lavendon

**Against the Refusal of Planning Permission by
Milton Keynes Council on the Application for:**

“Outline planning application for the erection of up to 95 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Olney Road with all matters reserved except for means of access.”

Rule 6 Statement of Case



August 2017

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1 INTRODUCTION

1.1 Context

1.1.1 This Statement of Case is submitted by Gladman (the Appellant) and it relates to an appeal against Milton Keynes Council's (MKC) decision to refuse the outline application for:

“Outline planning application for the erection of up to 95 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Olney Road with all matters reserved except for means of access.”

1.1.2 A draft list of Core Documents that will be referred to during the course of the appeal is appended to the submitted Statement of Common Ground. These documents may be added to by the Appellant or Council prior to the commencement of the appeal.

1.1.3 The Appellant considers a public inquiry is the most appropriate forum in which to test the appeal proposal. A justification for this request is provided in accordance with the PINs Procedural Guide 2016 (Annex K) at **Appendix 1**.

1.2 Site and Surroundings

1.2.1 The site, comprising 8.24 ha of agricultural land, is located in Lavendon, approximately 400m from the centre of Lavendon.

1.2.2 A full description of the appeal site and surroundings is set out in the Statement of Common Ground for agreement with the Council.

1.3 Background

1.3.1 The planning application for the proposed development was validated by Milton Keynes Council on the 23rd January 2017 (Application ref: 17/00165/OUT). The application was supported by a comprehensive suite of technical reports in accordance with the Council's planning application validation requirements, which are set out in the Planning Statement that accompanied the application.

1.3.2 The Council using delegated powers, refused permission by notice on the 14th July 2017. The reasons for refusal are:

1. **Saved Policy S10 of the Milton Keynes Local Plan 2001-2011 (Adopted 2005) states that planning permission will only be granted for development in the open countryside where it is essential for agriculture, forestry, countryside recreation and other development which is wholly appropriate to a rural area and cannot be located within a settlement. In addition, Policies CS1 and CS9 of the Milton Keynes Core Strategy (Adopted 2013) seek to focus development in the rural area within**

the development boundaries of the main and most sustainable towns or key settlements. The application site lies outside the settlement boundary of Lavendon, and falls within land designated as 'Open Countryside' and an Area of Attractive Landscape. Furthermore, given the location of the development it is considered that the proposal would represent an intrusive form of development in the open countryside, having an urbanising effect and detracting from the open, rural character of the locality and wider surrounding countryside, contrary to the environmental aims and objectives of the NPPF. It is not considered that the benefits arising from the development would outweigh the harm that would be caused. The proposal is therefore contrary to Saved Policies S10 and S11 of the Milton Keynes Local Plan 2001-2011 (Adopted 2005), Policies CS1 and CS9 of the Milton Keynes Core Strategy (Adopted 2013) and the core planning principles in Paragraph 17 of the National Planning Policy Framework (2012) which recognise the intrinsic character and beauty of the countryside.

- 2. In the absence of necessary planning obligations being secured by a s106 agreement, the applicant has failed to demonstrate that the proposed development would not lead to a burden on or have an adverse impact on existing local social and sustainable infrastructure, education and leisure facilities. The proposal is therefore contrary to the guidance within Supplementary Planning Documents (SPDs) for Affordable Housing SPD (2013), Education Facilities SPG (2004), Leisure Recreation and Sports Facilities SPG (2005), Social Infrastructure SPD (2005), and Sustainable Construction SPD (2007) which support the Milton Keynes Core Strategy Policy CS21, Policy P04 of the Milton Keynes Local Plan 2005, and the aims of the National Planning Policy Framework (NPPF).**

1.3.3 A full copy of the Decision Notice is enclosed at **CD5.2**.

1.4 Housing Land Supply

1.4.1 The Council claims it can demonstrate a 5 year housing land supply. Evidence will be adduced to demonstrate the Council's claimed housing land supply of 5.16 years is incorrect and is not founded on reasonable and credible evidence. The Appellant will therefore demonstrate the appeal proposal responds to the urgent requirement to identify new development sites to meet housing needs.

2 THE DEVELOPMENT PLAN

2.1.1 The Development Plan consists of:

- Local Plan (2005)
- Core Strategy (December 2013)
- Minerals Local Plan (July 2017)
- Waste Development Plan Document (2008)

2.1.2 There are no policies of relevance to the development proposal in the Minerals Local Plan or the Waste Development Plan Document and they have not been cited in the reasons for refusal.

2.2 Local Plan (2005)

2.2.1 The Milton Keynes Local Plan (MKLP) 2001-2011 was adopted in December 2005. On 24 October 2008, a number of policies were 'saved' for continued use by the Local Authority, including site allocations in S10 concerning Open Countryside and also S11 concerning Areas of Attractive Landscape.

2.2.2 A list of the planning policies relevant to the appeal proposal is enclosed in the submitted Statement of Common Ground for agreement with the Council.

2.3 Core Strategy (December 2013)

2.3.1 The Milton Keynes Core Strategy (CS) was adopted in July 2013 and it sets out planning policies and proposals for Milton Keynes from 2010 up to 2026. It supersedes a number of policies in the Local Plan 2001 – 2011; however, policies S10 and S11 of the MKLP remain unaffected by the CS.

2.3.2 A list of the planning policies relevant to the appeal proposal is enclosed in the submitted Statement of Common Ground for agreement with the Council.

2.4 Weight to be Afforded to the Development Plan

2.4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that determination must be made in accordance with the development plan unless material considerations indicate otherwise. Section 39 of the Act requires decision makers to exercise their functions with the objective of contributing to the achievement of sustainable development.

2.4.2 The MKLP was designed to cover the period from 2001 – 2011. Whilst policies were saved for continued use, the policies were prepared in the context of previous national and regional planning policy and the plan is time expired. The weight the plan and its policies, including Policy S11 concerning Areas of Attractive Landscape, can be attributed is therefore reduced.

2.4.3 The CS outlines a housing requirement of at least 28,000 new homes over the plan period from 2010 - 2026. The CS states;

“The interim housing target will be used for the purpose of monitoring housing land supply until such a time that a new housing target is adopted in Plan:MK. It is to be regarded as a minimum figure.”

- 2.4.4 The 1,750 annual dwelling requirement identified within the CS is below the levels of the now revoked South East Plan at 2,068 per annum (2006-26) and significantly below the MK growth area figure of 2,617.5 dwellings per annum.
- 2.4.5 The adopted requirement is also inconsistent with the Council’s own Milton Keynes Strategic Housing Market Assessment 2016 – 2031 (SHMA), published in February 2017, which identifies an Objectively Assessed Housing Need (OAN) of 26,493 dwellings, equivalent to 1,766 dwellings per annum. Evidence will be adduced demonstrating the OAN presented in the Council’s SHMA underestimates the full objectively assessed needs for Milton Keynes, which further exacerbates the housing land supply shortfall in the Borough.
- 2.4.6 Policy CSAD1 states:
- “The Council will undertake an early review of the Core Strategy in the form of Plan:MK, to 2031 or such longer period as the Council chooses, with the aim of having an adopted plan in place in 2015.”**
- 2.4.7 Plan:MK was the subject of a Preferred Options consultation in March 2017, and then Council anticipate adoption of the Plan by the end of 2018, some 3 years later than was aimed for in the CS.
- 2.4.8 In accordance with the guidance at Paragraph 215 of the Framework, the housing requirement policy (CS2) is inconsistent with paragraph 47 of the Framework, as the requirements set out do not represent a Full Objective Assessment of Needs and it is incapable of delivering, let alone “boosting significantly”, the supply of housing in the Borough.
- 2.4.9 Since the Council cannot demonstrate a 5 year housing land supply, Policy CS2 comprises a relevant policy for the supply of housing and it is therefore also out of date for the purposes of paragraph 49 of the Framework.
- 2.4.10 The Development Strategy for Milton Keynes, as set out in Policy CS1 sets out in part (ii) that small scale redevelopment infill development will be permitted in the ‘Other Villages’ with a development boundary, and Table 5.1 and footnote 26 of the CS confirm Lavendon comprises one of those settlements. Policy CS9 (Strategy for the Rural Area) goes on to explain that only appropriate infill development and conversions will be allowed in such settlements. At a time when the Council cannot demonstrate a 5 year supply of housing sites, Policies CS1 and CS9 are therefore restrictive of the scale and location of development that may come forward in Lavendon to help address the housing shortfall. In the light of the adverse housing land supply position, additional sites will need to be identified in sustainable locations to meet housing needs and the adopted Development Strategy should therefore be accorded limited weight.
- 2.4.11 For the same reason, saved Policy S10 of the MKLP restricts the type of development that can come forward in the open countryside and therefore this policy should also be accorded limited weight.

- 2.4.12 The 'tilted balance' of the presumption in favour of sustainable development set out in the Framework at paragraph 14 therefore applies, and a determination other than in accordance with the Development Plan is justified.

2.5 Principle of Development

- 2.5.1 It is accepted the appeal proposal does not comply with Policy CS1, CS9 and Saved Policy S10 regarding the Milton Keynes Development Strategy, Strategy for the Rural Area and Open Countryside respectively.
- 2.5.2 However, all three policies serve to restrict development and frustrate the Framework's objective of boosting the supply of housing. In the light of the adverse supply position outlined by the appellant these policies should be accorded limited weight in the determination of the appeal. The conflict with these policies should therefore be accorded limited weight. The location of the site in the open countryside immediately adjacent to existing residential development cannot therefore be a reason in principle for resisting the development.
- 2.5.3 Whilst the Appeal Site is situated in an Area of Attractive landscape, this policy is not based on up to date evidence. Despite the limited weight it therefore attracts, evidence will be adduced to demonstrate the proposal would not materially impact on the wider landscape, by virtue of its visual containment and relationship to the existing settlement. The development therefore complies with Policy S11 of the MKLP.

3 OTHER MATERIAL CONSIDERATIONS

3.1 The National Planning Policy Framework

3.1.1 The Appellant will demonstrate that, having regard to the proper application of the Framework, the following can be said of the appeal proposals.

Sustainable Development

An economic role

3.1.2 Evidence will be adduced to demonstrate the beneficial economic impacts of the appeal proposal. Delivery of new market and affordable homes now in Lavendon is a key contributor that will enable Milton Keynes Council to promote and sustain a strong, responsive and competitive economy.

A social role

3.1.3 It will be demonstrated that the appeal proposals will deliver new homes of the right type and mix, at the right place and at the right time to meet market and affordable housing need and in turn will support Lavendon's growth aspirations. Without a sufficient supply of new homes, Milton Keynes Council cannot meet the needs of present or future generations. It will be demonstrated that the site is located in an accessible and sustainable location close to key services and facilities, and the wider area, that will help support the health, social and cultural wellbeing of Lavendon and the Borough.

An environmental role

3.1.4 It will be demonstrated that the appeal proposals have no unacceptable adverse effects on environmental considerations. The proposals involve the provision of a significant area of informal and formal public open space, landscaping and ecological mitigation works which together deliver a net gain to biodiversity.

The Presumption in Favour of Sustainable Development

3.1.5 It will be demonstrated that the appeal proposal benefits from the presumption in favour of sustainable development set out in Paragraph 14 of the Framework and that it accords with the Core Planning Principles set out in paragraph 17 of Framework.

3.1.6 The appeal proposals will deliver new housing development which will assist Milton Keynes Council by contributing towards providing the requisite land supply and will also assist in meeting the central government objective of "boosting significantly" the supply of housing whilst also serving to remedy a position of deficit.

3.1.7 There are therefore very significant material considerations which outweigh the statutory presumption in favour of the Milton Keynes Core Strategy.

3.2 Emerging Site Allocations Plan

3.2.1 The Site Allocations Plan (SAP) was the subject of an Issues and Options consultation in September 2014 with the most recent Proposed Submission Draft being submitted for examination in April 2017. Examination of the SAP is scheduled for September 2017, with an adoption target of Winter 2017 to Spring 2018.

3.2.2 The Site Allocations Plan is being prepared to support the delivery of the housing targets for Milton Keynes of 1,750 homes per year on average. Whilst the SAP therefore seeks to identify and allocate a number of sites to meet housing needs, it being prepared in the context of the Core Strategy requirement, which is out of date. Additional sites, beyond those to meet the Core Strategy housing requirement are therefore required to meet objectively assessed housing needs.

3.3 Emerging Plan:MK

3.3.1 Milton Keynes is currently working on a new Local Plan: Plan:MK. This will replace all existing policies in the Core Strategy (2013) and Local Plan (2005). Once adopted it will be used to identify the development needed within the Borough up to 2031.

3.3.2 Plan:MK was released as a Preferred Options draft for consultation March-June 2017 having previously been consulted on in late 2014 and early 2016. The plan is scheduled for publication of a submission draft in late 2017 and submission for examination is scheduled for spring 2018, with adoption by the end of 2018.

3.3.3 Policy DS2 outlines the housing strategy for Milton Keynes across the plan period and states an overall housing target of 26,500 dwellings (2016-2031), the equivalent of 1,767 dwellings per annum.

3.3.4 Plan:MK is yet to be tested at examination and it is only in the early stages of preparation. In the light of the number of unresolved objections, including those of the Appellant, Plan:MK carries limited weight.

3.4 Other Documents

3.4.1 The Appellant may also refer to the following policy documents:

Supplementary Planning Documents/ Guidance

- Affordable Housing SPD
- Education Facilities SPG
- Leisure Recreation & Sports SPG
- Social Infrastructure SPD
- Sustainable Construction SPD
- New Residential Development Design Guide SPD (2012)
- Planning Obligations SPG

- Parking Standards (Supplementary Planning Document)
2016

Planning Decisions / Appeals

- 3.4.2 The Appellant will refer to other planning decisions/appeal decisions of relevance to the appeal proposal. These will be agreed with the Local Authority and provided as Core Documents.

4 RESPONSE TO THE COUNCIL'S REASONS FOR REFUSAL

4.1 Introduction

4.1.1 This section of the Statement of Case sets out the Appellant's position in relation to the Council's Reasons for Refusal, provided in Section 1.

4.2 Reason for Refusal 1

4.2.1 Reason for Refusal 1 (RfR1) sets out the Council's objection to the appeal proposal, in the light of its location in the Borough, the scale of development proposed, and the alleged concomitant impacts on the open countryside and Area of Attractive Landscape.

4.2.2 The Appellant will demonstrate that the Council cannot demonstrate a 5 year housing land supply and that the conflict with the development strategy of the CS should be accorded limited weight when additional housing sites in sustainable locations are required to meet urgent housing needs. The cited conflict with Policies CS1, CS9 and S10 should not be determinative and a decision other than in accordance with the Development Plan is justified.

4.2.3 Turning to the alleged impact on the countryside and landscape, it will be demonstrated that the site and the landscape can accommodate up to 95 dwellings without unacceptable harm being caused to the wider landscape. Whilst Policy S11 is out of date and the weight it should be accorded is limited, it will be demonstrated that the appeal scheme would nevertheless accord with its provisions.

4.3 Reason for Refusal 2

4.3.1 Reason for Refusal 2 (RfR2) sets out the Council's concerns in relation to the absence of necessary planning obligations being secured through a Section 106 agreement.

4.3.2 The Appellant does not agree that all contributions sought by the Council are compliant with the CIL Regulations 2010. The Appellant will seek to agree with the Council a set of planning obligations for inclusion in a Unilateral Undertaking. Evidence will be adduced in relation to the planning obligations and the Inspector will be invited to apply his or her discretion under the 'blue pencil clause' such that obligations determined to comply with the CIL Regulations could be applied to a permission and those which are deemed not to comply could be struck out.

4.3.3 It is therefore considered this reason for refusal is capable of being resolved through the appeal process.

4.4 Third Party Objections

4.4.1 In addition to the Council's reasons for refusal, a number of objections were received from third parties to the planning application. These raise issues similar to those of the Council, as well as a number of other potential material considerations, which are summarised and considered in the table enclosed at **Appendix 2** to this Statement of Case. The Appellant will also address those

material considerations raised in evidence to demonstrate those concerns are unfounded, or that they can be suitably mitigated by condition or planning obligation.

5 PLANNING CONDITIONS AND SECTION 106 OBLIGATIONS

5.1 Planning Conditions

5.1.1 The parties will seek to reach agreement on other planning conditions in advance of the Inquiry. An update will be provided accordingly.

5.2 Section 106 Obligations

5.2.1 It is proposed that the obligation will be provided by way of Unilateral Undertaking (UU). This will be issued to the Council for comment in advance of the appeal in order to provide reasonable opportunity for agreement to be reached and in order for a draft UU to be provided to the Inspector 10 days in advance of the Inquiry, in accordance with the PINs Procedural Guide (2016).

5.2.2 As explained in Section 4, the Appellant will adduce evidence to demonstrate that a number of the obligations sought by the Council are not compliant with Regulation 122 of the CIL Regulations 2010. The Inspector will be invited to apply his or her discretion under a blue pencil clause in the agreement as to whether all obligations sought by the Council are CIL compliant.

6 THE PLANNING BALANCE AND CONCLUSIONS

6.1 The Planning Balance

6.1.1 It is accepted that the appeal proposal constitutes a departure from certain policies of the adopted Milton Keynes Development Plan. The Appellant will demonstrate those policies serve to restrict the construction of much needed market and affordable homes and that those policies cannot be determinative in this case.

6.1.2 On the basis that the proposal constitutes sustainable development and the Council does not have the minimum requisite five year land supply, the Appellant submits that the presumption in favour of sustainable development, set out in the Framework, applies.

6.1.3 The appeal proposal will secure a range of benefits that will be demonstrated in full in evidence. These include, *inter alia*:

- Up to 95 market and affordable dwellings to meet pressing housing needs;
- Up to 30% affordable housing on-site;
- Estimated construction spend of around £11.9 million;
- Household expenditure of circa £4.35 million per year in Milton Keynes; and
- The provision of significant formal and informal public open space and green infrastructure, including a LEAP and community garden / orchard;
- New footway and bus stop infrastructure on the southern side of Olney Road.

6.1.4 It will be demonstrated that the harm arising in respect of the appeal proposal is no more than might reasonably be anticipated when changing a green field to one of built form.

6.2 Conclusions

6.2.1 In accordance with Paragraph 14 of the Framework, it will be demonstrated there are no material adverse impacts arising from the appeal proposal, which would significantly and demonstrably outweigh the benefits the development will deliver. There are no specific policies of the Framework which would either preclude or restrict the development and in the circumstances.

6.2.2 It is clear there are very significant material considerations which outweigh the statutory presumption in favour of the Milton Keynes Development Plan. It is therefore concluded the presumption in favour of sustainable directs that planning permission should be granted.

APPENDIX 1 – JUSTIFICATION FOR AN INQUIRY

With reference to Annexe K of The Planning Inspectorate's Procedural Guide for Planning Appeals – England (23 March 2016), the Appellant requests a Public Inquiry for the following reasons:

Need for the Evidence to be tested through Formal Questioning by an Advocate

Matters in relation to housing land supply (incorporating objective assessments of housing needs) and landscape impacts of the appeal proposal are contested between the Council and the Appellant. Emerging case law in relation to the interpretation of national policy means detailed legal submissions will be necessary.

Complexity of Issues

The evidence pertaining to the above will be complex and it will need to be dealt with through detailed evidence adduced by both parties. As such, it is the view of the Appellant that these matters will require cross examination to establish the extent of the evidence which underpins the Council's claims.

The Appellant expects to use expert witnesses to advance its case in respect of objective assessment of housing needs and landscape impacts. Detailed scrutiny of the Council's claimed housing land supply is also a matter that will require detailed evidence.

Likely Length of Inquiry

It is considered that to address all matters, 6 sitting days will be required. This exceeds the single day usually reserved for a hearing (or even a two day hearing, which are understood to be used only in exceptional circumstances). The Annexe therefore suggests that a public inquiry is necessary.

Summary

For the above reasons, the Appellant considers a public inquiry is the only appropriate procedure in this case.

APPENDIX 2 – RESPONSE TO THIRD PARTIES

Purpose

This document summarises, responds, and gives due consideration to the relevant interested third party representations submitted to Milton Keynes Borough Council as part of the planning application process. Responses to the planning application are summarised, together with the applicant's response in the table below:

Summary of Comments	
Highways	Response
<ul style="list-style-type: none"> - More traffic on Olney Road is dangerous, and makes crossing the road a hazard - On-road parking on Olney Road makes it single carriage - The access point is not feasible due to traffic flow and visibility 	<ul style="list-style-type: none"> - The application has been the subject of a full Transport Assessment. This has confirmed to the satisfaction of the County Council that the site can be accessed safely from the highway for pedestrians, cyclists and vehicles. - The access to the site was amended as part of the application to provide a slightly wider bell mouth in response to Officer Comments. The amended access would meet the required design and safety standards.
Infrastructure	Response
<ul style="list-style-type: none"> - Surrounding schools, medical centres and roads are already at capacity. - Power supply cannot cope and power cuts occur in the village - Broadband speeds are low and will get even slower 	<ul style="list-style-type: none"> - A s.106 Agreement will be provided which mitigates the impacts of development in accordance with the CIL Regulations. - A utilities assessment has confirmed there is sufficient energy infrastructure available to serve the development. - Basic broadband speeds of up to 4Mb are available in Lavendon, which is sufficient for home working; however, Lavendon is also enabled for superfast fibre broadband.
Environment and Ecology	Response
<ul style="list-style-type: none"> - Abundance of bats, badgers, deer, foxes and birds will be disturbed by the development. 	<ul style="list-style-type: none"> - The application was supported by an Ecological Assessment which confirmed the

<p>Therefore, a bat survey is necessary and should be undertaken.</p> <ul style="list-style-type: none"> - The site has been free and open access for many years and is seen as a community asset. - Spoils the view of the countryside and impacts the area of attractive landscape. 	<p>site can be developed without adverse impact on protected and other species using the site.</p> <ul style="list-style-type: none"> - The site includes a public right of way, but it is not open access and therefore is not a community asset. - The submitted Landscape and Visual Impact Assessment confirmed that the site can be developed without unacceptable adverse impacts on the wider landscape.
<p>- Flooding</p>	<p>- Response</p>
<ul style="list-style-type: none"> - Village is a flood risk area and there have been 2 serious floods in the village in the last few years 	<ul style="list-style-type: none"> - The Council and Environment Agency has confirmed the site is wholly within Flood Zone 1 and that the development would not cause an increased risk of flooding to people or property elsewhere in Lavendon.
<p>- Heritage</p>	<p>- Response</p>
<ul style="list-style-type: none"> - Site is adjacent to Lavendon Conservation Area and development would destroy the purpose of the Conservation Area 	<ul style="list-style-type: none"> - The appeal site is situated adjacent to the Conservation Area; however, development has not been proposed in the field directly adjacent to it. The Council's Heritage Officer has confirmed there would be no harm to the significance or setting of the Conservation Area or Listed Buildings in Lavendon.
<p>Other</p>	<p>Response</p>
<ul style="list-style-type: none"> - Lack of public consultation undertaken and no attendance to a Parish Council meeting. - Description as Stables and Pony Paddock is not appropriate. - Pollution will increase will more cars. - Increase in noise pollution from the development. 	<ul style="list-style-type: none"> - A full public consultation exercise was undertaken prior to the application being submitted. - The Council made the decision to describe the site as the Stables and Pony Paddock in relation to a previous application on the site. - Neither the appeal site, nor Lavendon is the subject of air quality management area.

	<ul style="list-style-type: none">- The development of the site will be subject to an Construction Environment Management Plan to ensure noise and dust pollution is controlled during the construction stages.
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