ITEM 9

Application Number: 20/00678/FULMMA

Subject: Consultation from the Planning Inspectorate concerning an Environmental Statement relating to a planning appeal into the refusal by Milton Keynes Council of an application for the variation of conditions 2 (operational life), 3, (restoration sequence) and 5 (final restoration of the site) attached to planning application MK/806/95 to extend the operational life of the site by 15 years with final restoration of the whole site to be completed within a further 24 months **at** Bletchley Landfill Site, Guernsey Road, Milton Keynes MK3 5FP

Appellant: FCC Environment Ltd

Ward: Bletchley East **Parish**: Bletchley and Fenny Stratford

Case Officer: Vincent Maher
Planning Consultant (on behalf of MKC)

Team Manager: Chris Nash
Development Management Manager
chris.nash@milton-keynes.gov.uk

1.0 Recommendation

1.1 That the Committee note the findings of this report (see sections 6 and 7) as it relates to the level and quality of information submitted with the Environmental Statement (ES) by the appellant.

1.2 That the Committee delegate authority to the Head of Planning in consultation with the Chair and Vice Chair to make any final adjustments to the content of a formal response which will primarily be sections 5 to 7 of this report, so to accommodate any further observations made by the appeal team (expert witnesses and Counsel) so to ensure consistency with evidence to be presented and examined.

2.0 Introduction

2.1 This report reviews an Environmental Statement (ES) that has been prepared by the appellant in connection with a proposal to extend the lifetime of the Bletchley landfill site. This was refused permission by the Committee in September 2020 and now the subject of an appeal proceeding by inquiry, currently scheduled to resume on 19th October 2021.

2.2 The report considers whether there is sufficient information to enable the Planning Inspectorate to proceed with the case and thereafter reviews the adequacy of the information provided.

2.3 This report is presented to the Committee as the original application was considered controversial and was subject to a call-in by Bletchley and Fenny Stratford Town Council and Ward Councillor Emily Darlington. Given the content of an ES normally accompanies a planning application, it is considered that the Committee should also consider this document and form a position on it on behalf of the Council.

3.0 Background

Site and context

3.1 The appeal site is the Bletchley Landfill Site ('the LFS'), located off Guernsey Road in Newton Leys. The LFS has been in operation since the 1970s and was created on the site of the former Newton Longville clay pit. Access is via a gated entrance off Guernsey Road which leads into the staff/visitor parking area and routes further into the site for waste delivery vehicles. The LFS covers an area of 116ha.

3.2 The site is bounded by residential areas of Bletchley to the north and east. To the east is the Blue Lagoon Nature Reserve and the West Coast railway line. The new neighbourhood of Newton Leys is located to the south with Newton Longville village beyond, to the south west.

3.3 The site benefits from planning permission for the *"recontouring of existing landfill site with new reception area"* which was granted on 6th February 2002 (ref. MK/806/95). This grant of permission imposed several conditions controlling operations. Condition 2 sets a final date for landfill operations to cease by February 2022. Condition 3 requires the landfill to be restored in accordance with the site restoration sequence plan accompanying the original application, unless otherwise approved in writing by the Council. Condition 5 requires the final restoration of the site (topsoil and capping) to be completed within 12 months of the cessation of landfill activity on site.

The planning applications

3.4 FCC Environment Ltd operates the LFS. In March 2020, it applied under section 73 of the Town and Country Planning Act 1990 ('the s73 application') to vary these three planning conditions. The s73 application sought to extend operations on the site for a further 15 years, that is until 2037, with an extra two years thereafter to carry out the final restoration. The application also sought to restore of the site in accordance with a revised set of plans that reflects actual landfill operations since the original permission was granted.

3.5 The Committee refused this s73 application for a single reason:

> *"The continuation of the existing operation (the development) would be unacceptable in terms of negative impact upon amenity of the local community in the longer term. A further fifteen years in operation would be harmful to the relative enjoyment of the community. The associated postponement of the restoration works would result in a loss of opportunity for the community to benefit from open space recreation as originally agreed. The application is therefore contrary to Policy D1, D5, NE5 and NE6 of Plan: MK (2019) and Section 8 of the NPPF (2019)".*

3.6 FCC Environment Ltd separately applied for permission to construct a surface water attenuation lagoon at the northern edge of the site, in association with the long-term restoration of the LFS. (ref. 20/00849/FUL). This was refused permission on ecological grounds, under delegated powers, on 20th December 2020.

The planning appeals

3.7 FCC Environment Ltd appealed both decisions and these appeals are currently the subject of a public inquiry. However, the Planning Inspectorate, acting on behalf of the Secretary of State, has determined that the appellant must submit, for the s73 application only, an ES consistent with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ('the EIA Regs') before the public inquiry can resume. The public inquiry has therefore been adjourned until the ES has been submitted and considered by the appointed Inspector.

Legislative and procedural context

3.8 In brief, an ES must identify, describe and assess the direct and indirect significant effects of the proposed development on the following factors:

(a) population and human health;
(b) biodiversity, with particular attention to species and protected habitats;
(c) land, soil, water, air and climate;
(d) material assets, cultural heritage and the landscape; and
(e) the interaction between the factors referred to in paragraphs (a) to (d).

3.9 The ES must also include the operational effects of the proposed development, where the proposed development will have operational effects. In this case, this means the operation of the landfill site as well as its long-term restoration.

3.10 As the Planning Inspectorate has asked for an ES to be prepared before a decision can be made in connection with the appeal, it has organised a public consultation on this document.

3.11 The Planning Inspectorate has written to the Council for its views on the ES as well as to local residents and interested parties who were notified on the section 73 application, and other public bodies such as town and parish councils and the Environment Agency. This report therefore only collates comments on the ES from MKC consultees, noting that these will collectively contribute to the response 'of the Council'. Other interested parties have been invited to send their comments on the ES directly to the Planning Inspectorate, with the deadline to submit comments set as 2nd September 2021.

3.12 Before the s73 appeal can proceed further, the Inspectorate must be satisfied that there is sufficient information in the ES to enable its inspector to assess the likely significant effects of the proposal and therefore to reach a decision. The Inspectorate has the power to require the appellant to supply more information under Regulation 25 of the EIA Regs. This report therefore addresses the level of information submitted as well as its quality.

4.0 Structure and content of the ES

4.1 The ES comprises four volumes of evidence. The following section of this report summarises its contents.

4.2 Volume 1 sets out the structure for the ES, including consideration of two alternatives to the proposed s73 application proposal (Chapter 2), an assessment of the likely significant effects of the development having regard to the current position (the LFS as is) (Chapters 3 to 6), along with a more detailed assessment of the effects of the proposal on the local landscape (a Landscape and Visual Impact Assessment ('LVIA') and ecology (Chapters 5 and 6).

4.3 Two alternatives to the current scheme are proposed. The first is a "no new development" scenario. This would mean landfilling operations ceasing in 2022. The appellant has rejected this because it would leave a large uncapped void with subsequent land stability problems and risk of leachate and gas control leak issues. The second alternative is the "soils only" scenario. This is also rejected as the appellant estimates it would take over 20 years to fill the site and require additional re-design of the remaining area of site.

4.4 Chapters 3 to 6 of Volume 1 assess the likely significant effects of the proposal relative to the baseline position – the "current" state of the environment. This is a landfill site that has a void of approximately 9.1 million cubic metres. The appellant contends that the s73 application proposal is not likely to have any significant effects having regard to:

(a) population and human health;
(b) biodiversity, with particular attention to species and protected habitats;
(c) land, soil, water, air and climate;
(d) material assets, cultural heritage and the landscape; and
(e) the interaction between the factors referred to in paragraphs (a) to (d).

4.5 The appellant has come to this view based on a number of technical reports. However, the ES asserts that there are likely to be significant beneficial effects for the local population and the landscape having regard to the proposed restoration works and some non-significant and other significant beneficial effects to local biodiversity proposed as part of the proposed site restoration works. These works would include increased areas of grassland, woodland and scrub/grass mosaic habitats and the reduction in sparsely vegetated land and bare ground. The site restoration works proposed would reduce emissions to the Water Eaton Brook.

4.6 Section 4.2 of the ES assesses other potential issues. Pests, vermin and litter are managed as part of the Environmental Permit issued by the Environment Agency. Nonetheless, the appellant contends that there is likely to be a reduction in food waste, which can attract vermin, over the lifetime of the proposal, consistent with the 2021 Waste Management Plan for England.

4.7 The proposed development would continue to secure employment for 15 members of staff and other ancillary jobs and would not affect any heritage assets. The appellant acknowledges that the site will continue to produce methane, a source of greenhouse gas emissions. It is stated the emissions from the proposed development would not be significant relative to the baseline

position. Finally, the appellant asserts that the proposal would not be vulnerable to major accidents or disasters and is already the subject of other regulatory consents.

4.8 Volume 2 contains the extensive plans which accompany the rest of the evidence in the ES. This volume comprises indicative phasing drawings showing how the site would be likely infilled over the lifetime of the proposal, and a comparison of the pre-settlement and post-settlement contours (that is, the contours when landfill operations close and the eventual contours when the land has settled, typically five to ten years later) between 2002 permission and the s73 proposal. Volume 2 also contains a series of photomontages from seven viewpoints across the area that show the baseline position and pre and post-settlement outlooks[1].

4.9 Volume 3 contains six additional technical reports covering air quality, noise, traffic, geology and hydrogeology; a Preliminary Ecological Appraisal; and a Biodiversity Net Gain report. It is fair to summarise that the new evidence does not lead the appellant to amend their view made under the section 73 application.

4.10 The air quality report (Appendix 4.1) supplements evidence submitted to the public inquiry already. It contains new material comprising:

a) additional sampling of emission rates from the LFS;
b) additional "sniff testing" of the impacts of activities from the LFS on surrounding areas, focusing on Newton Leys;
c) an analysis of eight fresh complaints from local residents made to the Environment Agency between 28 May and 25 June 2021; and
d) additional consideration of potential impacts on human health and ecological receptors arising from vehicle exhaust emissions.

4.11 A noise report (Appendix 4.2) identifies that predicted noise levels of landfill and restoration activities accord with the Planning Practice Guidance (PPG) and within the relevant BS standard - BS8233:2014 (i.e. 50dB to 55dB LAeq), and in accordance with Plan:MK Policy NE6 and Milton Keynes Waste Development Plan Policy WDC1. It is contended there would not be likely to be any noise-related health effects arising from the development on local populations, nor to any ecologically sensitive site.

4.12 A Traffic and Transportation report (Appendix 4.3) considers trip generation associated with the s73 application based on survey work done in 2019. A total of 139 HGV deliveries to the LFS were recorded on 25 June 2019, which therefore equates to 278 two-way HGV trips. A total of 18 HGV deliveries to the waste transfer station were recorded on 25 June 2019, which equates to 36 two-way HGV trips. This report also reviews road safety collision statistics from the Department for Transport from 2017 to June 2020. It records that there were no accidents on Guernsey Road or Jersey Drive and only a single accident on the A4146/Jersey Drive/Drayton Road roundabout, involving a car and pedal cycle and resulting in only 'slight' injury. No HGV was involved. It concludes that there would be minor traffic impacts on the environment during the development and some minor beneficial effects post-restoration.

[1] There are additional landscape documents supporting the LVIA and assessment of landscape matters in Volume 3 of the ES (Appendices 5.1 to 5.4)

4.13 Additional technical information has been prepared on local geology, hydrogeology and surface water conditions and the appellant identifies that the current operations and long-term management of the LFS are regulated by the Environment Agency in accordance with an Environment Permit.

4.14 Appendix 6.1 provides a Preliminary Ecological Appraisal of the site dated August 2019 which was submitted with the s73 application. Using a mix of desk study, habitat and field surveys, it identifies a number of notable habitats and protected and notable species, including the suitability of the site's ponds for great crested newt habitat. Appendix 6.2 contains a Biodiversity Net Gain Assessment of the s73 application. The landscape and other interventions proposed as part of the site restoration would result in a significant positive change to habitats, hedgerow and riverside locations relative to the current situation.

4.15 Volume 4 contains a non-technical summary to the ES as required by law. It summarises the findings of the overall ES, namely that no likely significant effects were found in respect of air quality, noise, traffic, hydrogeology and ground conditions and drainage and flood risk.

4.16 From a landscape and visual perspective, the appellant states that the s73 application does not seek to increase the height or footprint of the landfill from what is consented, other than to reduce the landform marginally so as to retain Great Crested Newt (GCN) habitat. Following completion of the fifteen-year operational phase, the effects would be significant and beneficial with a rational landform becoming established with a range of vegetation in contrast with the current landform.

4.17 Finally, it is stated there would be significant biodiversity net gain in excess of the anticipated future requirements of a 10% net gain under the Environment Bill. In conclusion, the appellant asserts the proposal is likely to result in a significant positive ecological effect relative to baseline conditions.

5.0 Consultations and representations

5.1 The Planning Inspectorate has directly consulted local residents, relevant town and parish councils, and other public bodies. This report only reviews the views of internal MKC consultees. All comments received can be viewed in full, online at www.milton-keynes.gov.uk/publicaccess using application ref. 20/00678/FULMMA. The following paragraphs summarise those responses and representations.

5.2 MKC Development Plans

They note that paragraph 43 of the NPPF advises that having the right information is crucial to good decision-making, particularly where formal assessments are required. It is commented that the submitted ES should be reviewed by the case officer for the appeal and officers within the Council who are experts and specialists in their field so to provide comments on relevant chapters of the ES.

The ES submitted by appellant provides their review of the possible environmental implications of the development. Development Plans officers have no comments to make on specific chapters of the submitted.

5.3 MKC Highways

Whilst the methodology of assessment of traffic and transport matters is considered to be sound, the lack of some key information means that it is not possible to confirm the traffic figures provided in the tables in Technical Appendix 4.3.

5.4 MKC Rights of Way Officer

Bletchley Public Footpath 28 crosses the site, and Bletchley Public Footpaths 26 and 27 run adjacent to the site. It is observed that Footpath 28 is presently obstructed by the LFS and is unable to be used by the public. The footpath needs to be reinstated or diverted if the proposal is approved. Under the 'no new development scenario' it would not be likely to provide this footpath on its original line.

It is noted that landscaping documents do not show the restored Footpath 28. A restored LFS would offer benefits to the public footpath. It is also noted that if the footpath is not able to be reinstated in the very near future due to on-going operations as a landfill site, or due to ground conditions, then the landowners will have to apply to formally divert it. It is recommended that a condition be used to restore right of way if the appeal is allowed.

5.5 MKC Flood and Water Management Officer (Lead Local Flood Authority ('LLFA'))

No comments to make regarding this application as it is a brownfield site, and it is always encouraged that sites to return to greenfield where possible. While the ES does not contain a specific chapter on surface water drainage, this could be addressed by way of a planning condition as recommended on the s73 application. They also recommend an informative on pollution control regarding surface water and groundwater protection.

5.6 MKC Landscape Services (Tree Officer)

Little to comment on in the ES regarding trees. The existing void will have little arboricultural impact beyond what incidental tree damage might occur by prolonging the period of time that large vehicles and plant are operating in the vicinity of tree cover. The main arboricultural impact would be removal of significant portion of semi mature woodland to accommodate the proposed lagoon at the northern edge of the site. This comprises Willow, Ash, Birch and Poplar with amenity, biodiversity and climate-change resilience value.

If it is not possible to amend or relocate the proposed lagoon to minimise the amount of the woodland to be lost, mitigating woodland planting would be appropriate. The mitigating planting could be added to the restoration scheme and it should be clear from the scheme that this mitigating woodland planting is specifically identified over and above the general woodland planting of the scheme as a whole. The mitigating woodland should be at least equal in area to that lost and include standard trees as well as whip and feathered trees.

With respect to the wider restoration scheme, tree planting will provide benefits including carbon storage, mitigation of visual impact and mitigation of biodiversity depletion, subject to the right location, species choice, treatment of stock, careful planting at the right season and

right stage of the development, correct root soil specification and volumes and an aftercare programme. Conditions are recommended for both for the lagoon appeal and the s73 appeal.

5.7 MKC Landscape Architect

The LVIA methodology broadly consistent with professional guidelines. Guidance recommends that a local authority is involved in the selection of viewpoints, type and location of visualisations, agreeing the zone of theoretical visibility (ZTV) and methodology prior to surveying. This did not happen here, but it is accepted that the consultants had very limited time to produce the LVIA. However, it is noted that it has not been possible to find the details of the consultants who undertook the LVIA and details of their qualifications, and experience in this specialist field, which would be expected so to be able to review.

The LVIA includes photographs and visualisations of what the site looks like now and photomontage views at 'pre-settlement landform' and 'post-settlement landform'. Proposed woodland planting is added to the post-settlement model, at a height of approximately 10m which appears to be an over-simplistic calculation and does not appear to account for the made-up ground conditions affecting growth rates (gas release, etc.). No timescales are provided in the submission to indicate the point in time these images are supposed to represent, which would have been useful and standard practice. It is standard practice to use a time frame for photomontages/visualisations of 15 years and, although guidance for LVIA (GLVIA) do not specify this as such, it does include case studies using the 15-year time frame. Unlike building construction when a LVIA may include the existing views, views 1 year after implementation (i.e. buildings completed) and finally views after 15 years when the planting is well established; it would make little difference in the case of landfill to include views after 1 or 5 or 10 years as the planting will simply be in younger stages of growth and provide less screening effect. However, it would be accurate to consider that some views over the 15 years will deteriorate before they are finally restored and the landscape matures.

The proposed use of Hybrid Poplar planting evident in the photomontages is questionable. Presumably it is proposed due to its value as a fast growing screening / shelter-belt tree but its impact in the landscape as a tree with a distinctive silhouette doesn't lend itself to enhancing and strengthening the character of the landscape, and can in itself be viewed as negative addition to the landscape character of the area. A broad mix of native trees such as Oak etc. would provide a better fit in terms of overall enhancement to the landscape character and function of the landscape for biodiversity. The quality of the final landscape scheme for landscape character and biodiversity should not be compromised for short-term screening gains.

The cross-sections appear to suggest that views would be blocked by the planting of fast-growing Poplars. However, the cross-sections do not take into account that Poplar trees compared to other tree forms are relatively narrow, are not a densely clothed canopy and would be spaced apart and would provide a filtering effect on views of the development in summer and less so in winter. They would not block out the views of development phases.

The proposed development operations would continue for another 15 years if approved but final restoration and landscaping would continue for a further 2 years beyond that to February 2039. That said, restoration would occur progressively, with areas where operations have

ceased typically being restored, soiled, planted and well established during the life of the proposed development. Some parts of the site, in particular areas where restoration is already complete, would become available for public access at a point during the lifespan of the proposed development, prior to 2037. ES figure 1.25 illustrates how the proposed permissive paths across the site would be laid out and indicates that paths would open in phases as the site conditions allow. Eventually there would be a wide choice and range of routes available through different habitats to the benefit of local people. The details of an implementation timetable for the restoration phases, monitoring of its progress against the timetable and opening up of public access paths can be secured by condition.

The proposed restoration scheme is similar to the approved scheme with some improvements such as more species rich grassland and different types of woodland, an area of open mosaic habitat, a retained existing ditch for GCNs, three small ponds and a better pattern of proposed hedgerows. All, over time, will add visual amenity and biodiversity richness and a greater number of permissive paths as an amenity resource for local residents. However, from a landscape character perspective, the additional planting added at the southern boundary of a belt of hybrid Poplars is not advocated. Hybrid Poplar like Leylandii can create an artificial and unwanted landscape character which is not as attractive (providing less amenity benefit) as a naturalistic mix of native woodland. The detailed planting scheme details including the planting mix for the woodland and tree planting would need to be agreed by conditions in order to finalise an acceptable planting scheme with optimal benefits for wildlife, landscape character and local amenity.

Overall, the proposal has the potential to deliver improvements in the final restoration scheme which in landscape terms is supported. The final details of planting, implementation timescales of the restoration, implementation monitoring and phased public access to paths can be secured by conditions.

5.8 MKC Countryside Officer (Ecology)

The ES should assess the cumulative effects of the proposal in combination with the lagoon proposal. The ES should also provide an Ecological Impact Assessment.

The Preliminary Ecological Assessment (PEA) is based on surveys from May 2019 and likely to be out-of-date. A fresh site visit and updated desk study information is required (effectively updating the PEA) and further studies carried out including surveys to determine whether the broadleaved woodland on site meets the criteria for Priority Habitat under the NERC Act 2006; bat surveys to determine use of the site by roosting, foraging and commuting bats; otter and water vole surveys of the Water Eaton Brook; reptile presence/absence surveys; and badger surveys.

The biodiversity net gain report refers to an unpublished habitat survey (January 2021) which has not been provided. This is required as it forms the basis of the assessment. The applicant should also submit the Biodiversity Net Gain metric to allow interrogation of the calculation.

5.9 MKC Environmental Health Officer (EHO)

The EHO comments on air quality issues other than odour. It is confirmed that the relevant study follows the framework described in the Institute of Air Quality Management (IAQM) 'Land-Use Planning & Development Control: Planning for Air Quality' and therefore agrees with the conclusion of the report in that site related vehicle exhaust emissions would not result in a significant impact on local air quality.

Control of dust would be most appropriately controlled through the regulation and enforcement of the environmental permit by the Environment Agency. The Environmental Permit would also cover ground contamination.

External consultees

5.10 The Council has appointed waste management, waste policy and odour expert witnesses to assist in the appeal. Their advice has been incorporated into this report.

6.0 Relevant policies, guidance and legislation

The Development Plan

6.1 Plan:MK (adopted March 2019)

- Policy SD1 – Place Making Principles
- Policy SD8 – Newton Leys
- Policy HN11 – Gypsies and Travellers (there is a site allocation adjacent to the LFS)
- Policy CT2 – Movement and Access
- Policy ER14 – New Local Centres
- Policy NE1 – Protection of Sites
- Policy NE2 – Protected Species and Priority Species and Habitats
- Policy NE3 – Biodiversity and Geological Enhancement
- Policy NE5 – Conserving and Enhancing Landscape Character
- Policy NE6 – Environmental Pollution
- Policy D1 – Designing a High-Quality Place
- Policy D2 – Creating a Positive Character
- Policy D5 – Amenity and Street Scene

6.2 Waste Development Plan Document (DPD) (adopted February 2018)

- Policy WA1 – Strategic Waste Management Site
- Policy WA2 – Safeguarding Existing and Allocated Waste Sites
- Policy WDC1 – Development Control Criteria
- Policy WDC2 – Environmental Objectives
- Policy WDC4 – Restoration

Supplementary Planning Documents/Guidance (SPDs/SPG)

6.3 The following topic-based SPDs/SPGs are relevant:

- Biodiversity SPD (2021)

National planning policy and guidance

6.4 National Planning Policy Framework (2021) (NPPF):

- Section 2 - Achieving sustainable development
- Section 8 - Promoting healthy and safe communities
- Section 9 - Promoting sustainable transport
- Section 14 - Meeting the challenge of climate change, flooding and coastal change
- Section 15 - Conserving and enhancing the natural environment
- Section 16 - Conserving and enhancing the historic environment

6.5 Noise Policy Statement for England (NPSE)

6.6 The Planning Practice Guidance ('the PPG') has a chapter on the preparation and consideration of Environmental Impact Assessments.

Legislation

6.7 The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended).

7.0 Appraisal of the ES

7.1 The consultation from the Planning Inspectorate on this ES raises two main issues. These are:

a) whether FCC Environment Ltd has submitted sufficient information and evidence with their ES and, if not, whether the Planning Inspectorate should serve a notification under Regulation 25 of the EIA Regs on the appellant seeking "further information"; and
b) the council's view of the quality of information submitted and the main findings of the ES.

a) Whether sufficient information and evidence has been submitted

7.2 The ES broadly follows the EIA Regs and the PPG in its content and scope. It describes the site and development proposal. It identifies and considers two alternatives to the scheme being progressed. It purports to show ways in which the appellant has mitigated the impacts of the proposal on the surrounding area (chiefly through the existing Environmental Permit from the Environment Agency). The ES is informed by a number of technical reports which cover air

quality; noise; traffic; geology, hydrology and surface water; landscape; and ecology (including biodiversity net gain). It contains a non-technical summary as required by law.

7.3 Using the findings of these technical reports, the ES purports to identify the likely significant effects of the proposal.

7.4 The ES concludes that the effects will be minimal with some long term beneficial effects to local ecology/biodiversity and landscape once the site is restored, albeit that the ES does not fully assess the landscape impacts on residents during the lifetime of the landfill activities on the site but, rather, only compares the impacts of the baseline position (that is, the situation now) with montages of pre and post-restoration landscapes.

7.5 Overall, the ES has largely followed relevant professional practices in the preparation of the various technical reports that underpin it, even though officers do not agree with their findings or have other concerns.

7.6 However, there are two shortcomings in the information submitted with the ES. These relate to an assessment of the site's hydrogeology and the ecological information underpinning it.

7.7 On hydrogeology, the ES refers to the TerraConsult (2017) Bletchley Landfill Site Hydrogeological Risk Assessment ref. 2972-R-03. In addition, the ES states that monitoring of hydrogeology is undertaken in accordance with the Environmental Permit issued by the Environment Agency. In order to ensure that there is no risk to the groundwater, further information including the hydrogeological risk assessment and any recent annual reports reporting on the monitoring undertaken should be provided to Planning Inspectorate to enable consideration of the proposal's likely impact on hydrogeology.

7.8 On the subject of ecology, the PEA which relies on surveys carried out in May 2019 is out-of-date. It is suggested that the Inspectorate should ask for a more up-to-date assessment to enable assessment of the baseline position consistent with CIEEM's *Advice Note on the Lifespan of Ecological Reports & Surveys* (April 2019)[2]. An ES should also be accompanied by an Ecological Impact Assessment to accord with good practice set out in CIEEM's *Guidelines for Ecological Impact Assessment in the UK and Ireland* (updated September 2019)[3].

Comments on the quality of the information submitted

7.9 Officers have several concerns about the information submitted. These are summarised under the following topic areas.

Alternatives

7.10 Clearly, the "no new development" scenario alternative is impractical. It would not be appropriate to leave a void on the site in 2022. However, it is considered that the other

[2] https://cieem.net/resource/advice-note-on-the-lifespan-of-ecological-reports-and-surveys/
[3] https://cieem.net/resource/guidelines-for-ecological-impact-assessment-ecia/

alternative offered – "the soils only" scenario – is not the only reasonable alternative. The appellant has not fully investigated the range of options for the site.

7.11 Other alternatives could include different phasing or ways of achieving the infill of this site that might result in changes to the pre and post-settlement contours on the site or site gradients, or a scenario that did not just rely on soils only. It is a fact that, relative to the original permission (ref. MK/806/95) the appellant has changed the layout of the site, for example, by retaining a lagoon on the southern end of the site and reducing the overall capacity of the landfill site by 500,000 cubic metres. As a result of this defect in the way the appellant has considered alternatives, it is submitted that the appellant has not adequately considered ways of lessening impacts on local people (for example, on the living conditions of residents at Newton Leys who are currently adversely affected by activities associated with the LFS).

Baseline position

7.12 It is correct to state that the baseline for considering effects are the current landfilling operations. However, it is also recognised that it would not be appropriate to consider the likely effects of the current situation which would result in a void being left on the site in 2022.

Missing information

7.13 There is significant evidence that the ES has been rushed and several pieces of information have not been provided, or the evidence behind assertions in it are unclear. Areas include:

i. Traffic

Some of the data quoted in Appendix 4.3 is incorrect and a number of its findings cannot be validated. The study relies on 12-hour traffic counts carried out in June 2019. Para 1.3.13 of TA4.3 refers to the 2-way Jersey Drive counts, but the numbers quoted are incorrect. The correct figures are 6,822 (not 6,812) total flow and 641 (not 672) HGV flow. Para 1.4.3 of TA4.3 states that the 2019 survey data was projected to 2021 flows using TEMPRO growth rates. No details of the factors or dataset used are provided and there is no information about which national traffic model they are used in conjunction with. Furthermore, there is no information about the number of presumed occupations on Newton Leys between June 2019 and July 2021 although this has influenced the traffic growth projection. The growth of HGV traffic from 641 to 708 is not explained. Consequently, the figures in Table 1 "Baseline AADT Traffic Flows" cannot be validated. Similarly, the TEMPRO calculation referred to in Para 1.4.6 of TA4.3 is not detailed and the figures from the listed committed developments are not provided. As a result, the Future Year (2037) forecast and figures provided in Table 2 cannot be validated. Tables 3-6 in TA4.3 rely on the figures provided in Tables 1 and 2. Given that the calculation of the figures in Table 1 and 2 cannot be verified, it is not possible to validate the figures

in Tables 3-6. The derivation of the HGV figures in these tables is not detailed and it is not possible to verify them with the (lack of) information provided.

ii. Ecology

The Preliminary Ecological Assessment (2019) recommends that further surveys are required but these surveys have not been included in the ES. Information on the suitability of the site for badgers has been redacted and so it is not possible to advise on the potential effects of the proposal on their habitat. This information should be provided separately to the Planning Inspectorate and marked as confidential. The biodiversity net gain research refers to an unpublished survey by Avian Ecology (January 2021) not included in the ES.

iii. Landscape

The appellant's approach has been to consider the current baseline position and then model for two scenarios in the long term. These are a pre- and post-settlement landscape position. There is a missed opportunity in the ES to consider and provide rapid improvements to the interface between the southern edge of the site and the housing in Newton Leys, and this reflects the appellant's shortcoming in not rigorously considering alternatives to the "no new development" and "soils only" scenarios.

Cumulative impacts

7.14 The appellant has attempted to assess cumulative impacts but has not considered the cumulative impacts of the s73 application alongside the lagoon appeal proposal that is also being considered by the inspector and which the appellant says forms an integral part of the LFS. There are therefore opportunities to review these cumulative impacts and potentially to consider providing additional tree coverage on the rest of the restored LFS in compensation for the tree cover that would be lost if the northern lagoon proposal were to proceed.

Other matters

7.15 The appellant has stated that there are no residential properties adjacent to the site. This is correct but fails sufficiently to acknowledge the proximity of housing (50m at its closest point) to the site or that the Council has allocated a gypsy and traveller site immediately south of the entrance to the site.

7.16 The appellant has submitted further evidence on matters such as air quality including additional "sniff" tests. The Council has already submitted a proof of evidence challenging the approach the appellant's expert has taken to assessing off site impacts caused by odour.

7.17 The use of Hybrid Poplars is insensitive as an interim landscape solution especially in the context of Newton Leys. Other landscape solutions should be considered consistent with the detailed comments of the landscape architect set out in this report.

8.0 Conclusions

8.1 The ES does not raise any new matters that would lead officers to amend their recommendation in connection with this proposal. It is recommended that the Council continue to defend its position opposing the s73 application. It has already appointed Counsel and a team of expert witnesses and prepared proofs of evidence to this effect.

8.2 Officers will seek to incorporate the advice of MKC consultees on additional potential conditions to be imposed, where they meet the relevant tests for their imposition, should the appeal be allowed. The Rights of Way officer request for Bletchley Footpath 28 to be reinstated or moved will need to be addressed under other powers.

8.3 The consultation on the ES does not raise any obvious matters having regard to the Council's public sector equality duty, as required by section 149 of the Equality Act 2010 or to local finance considerations (as far as they are material material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change and human rights legislation (including Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions).

Annex

A1.0 Link to the ES

A2.1 Full information about the s73 application and the appeal proposal can be viewed online at www.milton-keynes.gov.uk/publicaccess using application ref. 20/00678/FULMMA.

A2.2 A separate page has set up on the Milton Keynes Council website that aims to keep the public informed about the public inquiry and the evidence prepared so far. The full ES can be viewed online through the attached link: https://drive.google.com/drive/folders/1-Plnuwy9TiILp6RJF9CU6Z2WOL1VvMN9?usp=sharing.

A2.0 Full text of consultation responses

A2.1 Full information about the s73 application and the appeal proposal can be viewed online at www.milton-keynes.gov.uk/publicaccess using application ref. 20/00678/FULMMA.

A2.2 MKC Development Plans

"As per Para 43 of the NPPF the right information is crucial to good decision-making, particularly where formal assessments are required. Inspector for the Bletchley landfill appeal has referred to the Secretary of State, pursuant to Regulation 14(2) of the EIA Regulations, the question as to whether the application that is the subject of the appeal is an EIA application within the meaning of the EIA Regulations. In the opinion of the Secretary of State, and having taken into account the criteria in Schedule 3 to the EIA Regulations, the proposal is likely to have significant effect on the environment and therefor directed that the application is an EIA application for the purposes of the Regulations.

Development Plans officers were asked to review the Environment Statement (ES) submitted by the appellant. The team provided comments to the Bletchley landfill application 20/00678/FULMMA and those contained information on planning policy matters in relation to the proposed development. The case is at appeal stage and it will be for the decision maker to decide whether the development should be allowed based on the information submitted to the case including the ES.

Submitted ES should be reviewed by the case officer for the appeal and officers within the Council, who are experts and specialists in their field and can provide specialist comments on the relevant chapters of the ES. The ES submitted by appellant provides their review of the possible environmental implications of the development. Development Plans team officers have no comments to make on specific chapters of the submitted ES."

MKC Highways

A2.3 Whilst the methodology of assessment of traffic and transport matters is considered to be sound, the lack of some key information means that it is not possible to confirm the traffic figures provided in the tables in Technical Appendix 4.3.

MKC Rights of Way Officer

A2.4 "1) Three public footpaths either cross or abut the site:

- Bletchley Footpath 28 commences at the north-east of the site adjacent to the Blue Lagoon Nature Reserve site and travels south before reaching the landfill site. It then crosses the landfill site in a general south-south westerly direction and then travels north-west along the borough boundary.
- Bletchley Footpath 27 travels along the eastern end of the north site boundary and, along with Bletchley Footpath 28, provides access to the Blue Lagoon Nature Reserve.
- Bletchley Footpath 26 travels south-east of the site along a route adjacent to Montserrat Court and Honduras Gardens.

2) Bletchley Footpath 28 is currently obstructed and is unable to be used due to metal fencing erected at the site perimeter at O.S grid reference 486689 232251. The nature of the landfill onsite operations also means that the footpath is unable to be used by the public. This is an offence of obstruction under section 137 of the Highways Act 1980.

If the landfill site remains in operation for a further 15 years, with the consequence of the footpath obstruction also remaining without a suitable alternative footpath being provided by way of a formal diversion, then this would be unacceptable.

3) Restoration Scheme, section 1.2.9 of ES and Mitigation, section 5.6.3:
"The early opening of a perimeter permissive footpath connecting the Milton Keynes Boundary Walk adjacent to the Newton Leys residential development with other areas of open space further north, including the Blue Lagoon Nature Park would enhance the connectivity of the existing network of footpaths and open spaces. The subsequent phased release of the other proposed permissive paths would have further benefits."

The provision of a number of permissive paths across the site which connect to public rights of way is welcomed. This provision does not, however, negate any need to restore the obstructed route of Bletchley Footpath 28 on its legally definitive line, or to apply to make an application to formally divert the public footpath onto a new route.

4) Landscape character, section 5.5.10:
The ES states that "A public footpath formerly ran in a north to south direction across land that now forms part of the Site. This previously connected what is now the Boundary Walk to a path on the west side of the Blue Lagoon Park and was temporarily diverted for a period of ten years in to facilitate landfill operations in 1985. Following the expiration of this diversion, no action was taken by MKC and so the diversion was never formalised. The path cannot currently be reinstated as its route coincides with operational areas and it has in fact arguably been destroyed. A route has been identified within FCC land ownership along which the original footpath connection could be re-provided."

This relates to Bletchley Footpath 28. The temporary diversion was undertaken under the 1951 Mineral Workings Act for a period of 10 years to allow for extraction. When this temporary diversion ran out in 1996 the footpath legally reverted back to its original line, however it was not physically provided by the landfill site. The obstruction therefore remains unlawful and the

fact that it does not exist in a physical context on the ground does not mean that it does not exist in law.

5) Outline of Likely Evolution Without Implementation, section 3.3.4:
It appears that the 'no new development scenario' would likely impact on the ability to provide the public footpath on its original line. If the footpath is not able to be reinstated in the very near future due to on-going operations as a landfill site, or due to ground conditions, then the landowners will have to apply to formally divert this public footpath.

6) Scoping of Likely Significant Effects – Landscape and Visual Table 4.3 -
Population and Human Health - Effects from Restoration.
"The assessment concludes that the change in view resulting from landfill operations leading to restoration would give rise to significant and beneficial visual effects from a single viewpoint along the public footpath north-west of Newton Leys, and that effects from other viewpoints would also be beneficial but would not be significant."

And,

Appendix 5.4
Viewpoint 2 - Public footpath Newton LeysA viewpoint of the landfill is described as being through a gap in the hedge and that a view may be the main reason for a journey.

My comment on the above two points is that, whilst a view of the restored landfill will no doubt offer a benefit to the public footpath, which is Bletchley Footpath 28, the fact that it is a view through a gap in the hedge would not have a significant effect on the desirability or amenity of the journey along this public footpath.

7) Fig ES1.29 Approved Restoration Scheme:
This plan shows the public footpaths in the vicinity, but it does not include the section of Bletchley Footpath 28 which crosses the site and is currently obstructed.

It should be noted that the need for this public footpath has significantly increased recently due to the recent Newton Leys development. The footpath provides a link between this new estate and the Blue Lagoon and Bletchley beyond.

Regardless of the outcome of the appeal, it appears that it may not be possible for Bletchley Footpath 28 to be restored on its original and legal line in a timely manner. If the footpath cannot be properly restored then an application to divert Bletchley Footpath 28 must be undertaken by the landowner.

Therefore if you are minded to approve the application, I ask that you make the following condition;

1. A condition is set that prior to the commencement date of the condition 2 variation, an access scheme shall be submitted to and approved by the local authority Rights of Way team. Such scheme shall outline plans to reinstate public access including any proposals for a footpath diversion.

Reason: - To ensure that public rights of way are properly safeguarded in the public interest."

MKC Flood and Water Management Officer (Lead Local Flood Authority ('LLFA'))

A2.5 "The flooding team have no comments to make regarding this application as it is a brownfield site. We always encourage to return sites to greenfield where possible.

A2.6 "We have reviewed the submitted Environmental Statement documents and whilst there are no specific chapters relating to surface water drainage, we are satisfied that the following condition (as suggested in our response on 22 July 2020) will be sufficient to ensure satisfactory management of surface water:
Condition
The surface water drainage scheme shall be constructed and maintained in full accordance with the Surface Water Drainage Scheme Report prepared by Sirius as submitted (ref: WR7439/JD/01) dated 15 June 2020.
Reason
To prevent an increased risk of flooding and protect water quality.

Informatives

Pollution Control
Surface water and groundwater bodies are highly vulnerable to pollution and the impact of construction activities. It is essential that the risk of pollution (particularly during the construction phase) is considered and mitigated appropriately. It is important to remember that flow within the watercourse is likely to vary by season and it could be dry at certain times throughout the year. Dry watercourses should not be overlooked as these watercourses may flow or even flood following heavy rainfall."

MKC Landscape Services (Tree Officer)

A2.7 "Arboriculturally speaking these is not a great deal to comment upon in the environmental submissions, the extension of time for the filling of the existing void will have little arboricultural impact beyond what incidental tree damage might occur by prolonging the period of time that large vehicles and plant are operating in the vicinity of tree cover on site.

The main arboricultural impact would be the removal of a significant portion of a woodland to accommodate the proposed lagoon at the northern edge of the site. I understand that the woodland is semi-mature and comprised largely of Willow, Ash, Birch and Poplar. It is unfortunate that in the urban environment and on urban margins such vegetation is increasingly under pressure particularly from issues related to construction, highways, resident's concerns, underground services and building foundations, etc. Such losses are regrettable and this woodland, though young has value for amenity, biodiversity and climate-change resilience.

Generally speaking it is now clear that just preventing destruction of existing trees, let alone looking after them properly will be many times more beneficial in terms of limiting climate change and biodiversity depletion than the perceived panacea of new planting, though new planting is obviously a vital part of any canopy strategy to ensure effective succession.

If it is not possible to amend or relocate the proposed lagoon to minimise the amount of the woodland that has to be lost or even avoid the losses completely, mitigating woodland planting would be appropriate. The mitigating planting could be added to the restoration scheme and it should be clear from the scheme plan that this mitigating woodland planting is specifically identified over and above the general woodland planting of the scheme as a whole. The mitigating woodland should be at least equal in area to that lost and include standard trees as well as whip and feathered trees.

With respect to the wider restoration scheme, the tree planting will be expected to provide wide ranging benefits including carbon storage, mitigation of visual impact and mitigation of bio-diversity depletion, but in order for it to have a chance of achieving these goals it will be heavily reliant on location-correct species choice, careful treatment of stock, careful and correct planting at the right season and right stage of the development, correct root soil specification and volumes and above all, the necessary level and period of aftercare, ideally in accordance with BS8545:2014 'Trees: From nursery to independence in the landscape: Recommendations'. The species used should be as wide a range of native species as possible and include some appropriate naturalised species as well to create canopy cover and hedgerows that are as resilient, diverse and as interesting as possible.

I further understand that the Poplars in the woodland are native Black Poplar and are mainly to the north edge of the woodland and are therefore able to be retained, which is ideal as these are an important native species that are under threat nationally, they should be protected from the works in accordance with the provisions of BS5837:2012.
Retained trees and hedges should be protected according to the provisions of BS 5837: 2012 'Trees in relation to design, demolition and construction - Recommendations'. All protective measures must be in place prior to any other work commencing on site and be maintained in good functional condition until the project is entirely complete. The fencing should of the same specification as figure 2, page 20 of BS 5837: 2012 unless it is not possible to drive the posts in which case the figure 3a/b should be used. Signs should be fixed to the fencing informing of its purpose and the local authority tree officer shall be notified so the erected fencing can be inspected and approved. The developer should appoint a project arboriculturalist to oversee the arboricultural elements throughout the lagoon construction phase.

If it is permissible to ask for conditions, the following standard conditions may be appropriate for these proposals;

1. All existing trees, woodlands and hedges to be retained are to be protected according to the provisions of BS 5837: 2012 'Trees in relation to design, demolition and construction - Recommendations' All protective measures especially the fencing and ground protection must be put in place first, prior to any other work commencing on site (this includes vegetation clearance, ground-works, vehicle movements, machinery / materials delivery etc.) and shall thereafter be maintained in place in good functional condition until the project is entirely complete and until, with the exception of soft landscaping works, all contactors, equipment and materials have left site. The fencing shall be on the RPA margin and of the same specification as that depicted in figure 2, page 20 and ground protection as specified in 6.2.3.1 - 6.2.3.5 pages 21/22 in BS 5837: 2012.

Signs informing of the purpose of the fencing and warning of the penalties against destruction or damage to the trees and their root zones shall be installed at minimum intervals of 10 metres and a minimum of two signs per separate stretch of fencing.
Once erected the local authority tree officer shall be notified so the fencing can be inspected and approved. The developer shall retain an arboricultural consultant to oversee and police the critical stages and elements of the arboricultural protection measures.
The Root Protection Area (RPA) within the protective fencing must be kept free of all construction, construction plant, machinery, personnel, digging and scraping, service runs, water-logging, changes in level, building materials and all other operations, personnel, structures, tools, storage and materials, for the duration of the construction phase.
The developer shall submit details of the proposed layout and general arrangements of the site in relation to the trees to be retained. In particular, details of storage areas including what substances will stored and where, locations of car parking, welfare facilities, cement plant, fuel storage and where discharge, filling and mixing of substances will take place. The details should include site levels to enable risks posed to trees to be quantified. The RPA will be amended as the arboriculture officer feels appropriate after taking account of the details submitted.
No fire shall be lit such that it is closer than 20 metres to any tree or that flames would come within 5 metres of any part of any tree.
Earthworks, level changes, service runs, foundations and all other works involving excavation should not be located within the root protection areas.

2. Full details of woodland and hedge planting schemes in accordance with BS 8545: 2014 are to be submitted for approval as part of a general landscaping scheme where appropriate, and which should include full details of tree sizes, species, planting locations, planting spacings, pre-planting ground preparations, planting method and long term maintenance. Tree species proposed must be sufficiently diverse to maximise biodiversity, climate change resilience and human interest. Particular attention should be paid to ensuring the trees are planted in a sufficient quantity of high quality growing medium, to ensure their quick establishment and the early provision of maximum benefit to the locality. Any trees failing to thrive within five years of planting to be replaced in accordance with the original planting specification.

3. A tree survey and report, an arboricultural impact assessment and an arboricultural method statement all in accordance with BS 5837:2012 shall be submitted for approval following which pertinent amendments should be made to the proposed layout and levels in light of the arboricultural findings, in order that as many existing trees and hedges and particularly the better quality ones, are viably retained within the development for the long term.
The documents should include a scale plan accurately marking the position of all the retained trees and hedges alongside the removals and the proposed layout, the extent of the root protection areas, the BS 5837: 2012 default tree protection fencing along the root protection area margin, any areas to be covered in BS 5837: 2012 ground protection, construction details for the BS 5837: 2012 fencing and ground protection, method statements for soft and hard landscaping works within root protection areas including cultivation, paving and fencing and where appropriate construction details for areas of raised construction, nil-excavation hard surfacing, specifically tailored to this site context, locations and proposed finished levels. In addition, sufficient detail of hard & soft landscaping works, service and drainage runs and proposed & existing spot levels in sufficient numbers and at appropriate spacing's should be included to enable the general impact of the development on the tree root zones to be assessed."

MKC Landscape Architect

A2.8 "The methodology of the LVIA is broadly consist with the GLVIA guidelines and is acceptable. GLVIA does recommend that the local authority is involved in the selection of viewpoints, the type and location of visualisations, agreeing the ZTV, methodology prior to surveying. This didn't happen (to my knowledge) but it is accepted that the consultants had very limited time to produce the LVIA within the submission deadline. However, we are unable to find the details of the consultants who undertook the LVIA and details of their qualifications, experience in this specialist field, which we would expect to be able to review.

The LVIA includes photographs and visualisations of what the site looks like now and photomontage views at 'pre-settlement landform' and 'post-settlement landform'. Proposed woodland planting was added to the post-settlement model, at a height of approximately 10m which appears to be an over-simplistic calculation and doesn't appear to account for the made-up ground conditions (gas release etc.) affecting growth rates. No timescales are provided in the submission to indicate the point in time these images are supposed to represent which would have been useful and standard practice. It is standard practice to use a time frame for photomontages / visualisations of 15 years and although GLVIA guidelines do not specify this as such it does include case studies using the 15 year time frame. Unlike building construction when a LVIA may include: a) the existing views, b) views 1 year after implementation (i.e. buildings completed) and finally c) views after 15 years when the planting is well established; it would make little difference in the case of landfill to include views after 1 or 5 or 10 years as the planting will simply be in younger stages of growth and provide less screening effect. However, it would be accurate to consider that some views over the 15 years will deteriorate before they are finally restored and the landscape matures.

The proposed use of Hybrid Poplar planting evident in the photomontages is questionable, presumably it is proposed due to its value as a fast growing screening / shelter-belt tree but its impact in the landscape as a tree with a distinctive silhouette doesn't lend itself to enhancing and strengthening the character of the landscape and can in itself be viewed as negative addition to the landscape character of the area. A broad mix of native trees such as Oak etc. would provide a better fit in terms of overall enhancement to the landscape character and function of the landscape for biodiversity. The quality of the final landscape scheme for landscape character and biodiversity shouldn't be compromised for short-term screening gains.

The cross-sections appear to suggest that views would be blocked by the planting of fast growing Poplars. However, the cross-sections do not take into account that Poplar trees compared to other tree forms are relatively narrow, are not a densely clothed canopy and would be spaced apart and would provide a filtering effect on views of the development in summer and less so in winter. They would not block out the views of development phases.

The proposed development operations would continue for another 15 years if approved but final restoration and landscaping would continue for a further 2 years beyond that to February 2039. That said, restoration would occur progressively, with areas where operations have ceased typically being restored, soiled, planted and well established during the life of the proposed development. Some parts of the site, in particular areas where restoration is already complete, would become available for public access at a point during the lifespan of the

proposed development, prior to 2037. Figure ES 1.25 illustrates how the proposed permissive paths across the site would be laid out and indicates that paths would open in phases as the site conditions allow. Eventually there would be a wide choice and range of routes available through different habitats to the benefit of local people. The details of an implementation timetable for the restoration phases, monitoring of its progress against the timetable and opening up of public access paths can be secured by conditions.

The proposed restoration scheme is similar to the approved scheme with some improvements such as more species rich grassland and different types of woodland, an area of open mosaic habitat, a retained existing ditch for GC Newts, three small ponds and a better pattern of proposed hedgerows. All of which over time will add visual amenity and biodiversity richness and a greater number of permissive paths as an amenity resource for local residents. However, from a landscape character perspective we wouldn't advocate the additional planting added at the southern boundary of a belt of hybrid poplars. Hybrid Poplar like Leylandii can create an artificial and unwanted landscape character which is not as attractive (providing less amenity benefit) as a naturalistic mix of native woodland. The detailed planting scheme details including the planting mix for the woodland and tree planting would need to be agreed by conditions in order to finalise an acceptable planting scheme with optimal benefits for wildlife, landscape character and local amenity.

Overall the proposal has the potential to deliver improvements in the final restoration scheme which in landscape terms is supported. The final details of planting, implementation timescales of the restoration, implementation monitoring and phased public access to paths can be secured by conditions."

MKC Countryside Officer (Ecology)

A2.9 **Significant Effects**

The assessment of significant effects in the Environmental Statement includes avoidance/mitigation in the assessment. There is no baseline of the likely effects without mitigation.

Similarly, the assessment includes the restoration of the site. The assessment should also consider the effects of extending the operational life of the site by 15 years, there has been an assumption that the effects will be exactly the same as for the original lifespan.

Cumulative Effects

The assessment of cumulative effects should consider the effects of the proposals in combination with the proposals for the retention lagoon.

Data Validity

The PEA is based on surveys carried out in May 2019, at least some of this information is likely to be out-of-date. CIEEM's *Advice Note on the Lifespan of Ecological Reports & Surveys* (April 2019) advises that for reports and surveys between 18 months and 3 years old the following steps should be taken:

- A site visit and updated desk study information (effectively updating the Preliminary Ecological Appraisal) and a review the validity of the report, based on the factors listed below. Some or all the other ecological surveys may need to be updated.
- Submission of a statement including justification on:
    - The validity of the report;
    - Required updated surveys; and
    - The scope, timing, and methods for the update survey(s).

The need to update surveys increases with time and is dependent on the species being surveyed. The need to update surveys for mobile species, such as bats and birds, is greater and consideration needs to be given to changes in habitats and land management. Factors to be considered include:

- Whether the site supports, or may support, a mobile species which could have moved on to site, or changed its distribution within a site;
- Whether there have been significant changes to the habitats present since the surveys were undertaken, including through changes to site management;
- Whether the local distribution of a species in the wider area around a site has changed.

Ecological Impact Assessment

- I would expect an Ecological Impact Assessment, following CIEEM *Guidelines for Ecological Impact Assessment in the UK and Ireland* (updated September 2019) to be submitted as part of the Environmental Statement. EcIA identifies, quantifies, and evaluates the potential effects of development on ecology. It usually provides the ecological component of EIA.
- The PEA provides the scope for the EcIA, but additional surveys are often required, as is the case here.

Further Surveys Required

The PEA recommends further surveys, and I advise that the following surveys are required:

- Surveys to determine whether the broadleaved woodland on site meets the criteria for Priority Habitat under the NERC Act 2006;
- Bat surveys to determine use of the site by roosting, foraging and commuting bats;
- Otter and water vole surveys of the Water Eaton Brook;
- Reptile presence/absence surveys;
- Badger surveys

These surveys are required prior to determination of a planning application and it is impossible to determine likely significant effects on the various species without them.

Biodiversity Net Gain

There is reference to an unpublished habitat survey (Avian Ecology, January 2021), which has not been provided. This is required as it forms the bases of the assessment.

The applicant should submit the Biodiversity Net Gain metric in the form of an Excel spreadsheet. This allows the interrogation of the calculation.

Detailed comments

Page/ para number	Issue	Observation
PEA s. 4.2.2	States "*assessment is preliminary and further surveys may be required to investigate the value of the habitat further*". This relates to the broadleaved woodland on site	This has not been carried out and it is important to determine whether this habitat meets the criteria for Priority Habitat
PEA s. 4.3.1 s. 5.4.2	Information on the suitability of the site for badger has been redacted	Whilst it is good practice to keep this information out of the public realm, it is not possible to advise on the potential effects on badger without it and it should have been submitted and marked as confidential
PEA s. 5.4	Requirements for further surveys	The PEA clearly sets out the recommendation for additional surveys. These have not been carried out.

MKC Environmental Health Officer (EHO)

A2.10 "Further to our previous correspondence, I have reviewed the comments related to air quality with the exception of odour, which are being considered by Dr Michael Bull. I agree with the environmental consultancy (Smith Grant LLP, June 2021) following the framework described in IAQM Institute of Air Quality Management (IAQM), Land-Use Planning & Development Control: Planning for Air Quality, and on this basis of the information provided I agree with the conclusion of the report that the site related vehicle exhaust emissions would not result in a significant impact on local air quality.

As per David Parrish's previous email dated 11 June 2020; the environmental permit issued by the Environment Agency contains legally binding conditions designed to control dust emissions. Similarly, I do not have any comments in respect of ground contamination as controls are in place through the Environmental Permit and its surrender that should prevent the site becoming 'contaminated land' as defined under Part 2A of the Environmental Protection Act 1990."