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# Report to Milton Keynes Council

**by Mrs KA Ellison, BA, MPhil, MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Date: 19 April 2017**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the Milton Keynes Minerals Local Plan**

The Plan was submitted for examination on 31 March 2016

The examination hearings were held on 18 and 19 October 2016

File Ref: PINS/Y0435/429/8

## **Abbreviations used in this report**

AA	Appropriate Assessment
BGS	British Geological Survey
DtC	Duty to Co-operate
LDS	Local Development Scheme
LP	Local Plan
LAA	Local Aggregate Assessment
MM	Main Modification
MCA	Minerals Consultation Area
MSA	Minerals Safeguarding Area
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
SA	Sustainability Appraisal
SCI	Statement of Community Involvement

## **Non-Technical Summary**

This report concludes that the Milton Keynes Minerals Local Plan provides an appropriate basis for minerals planning in the Borough, provided that a number of main modifications [MMs] are made to it. Milton Keynes Council has specifically asked me to recommend any MMs necessary to enable the Plan to be adopted.

All the MMs were proposed by the Council, and were subject to public consultation over a six-week period. I have recommended their inclusion in the Plan after considering all the representations made in response to consultation on them.

The Main Modifications can be summarised as follows:

- To ensure the Plan takes proper account of biodiversity - MM1, MM2, MM4, MM6, MM7
- To clarify the scope and effect of policies – MM3, MM4, MM15, MM16
- To aid effectiveness – MM5, MM8-13, MM17-23, MM27, MM32
- To give further details of site requirements – MM24, MM25, MM26

## Introduction

1. This report contains my assessment of the Milton Keynes Minerals Local Plan in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate. It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework (paragraph 182) makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. I have taken the Milton Keynes Minerals Local Plan – Submission Local Plan, submitted in March 2016 as the basis for my examination. This includes a small number of changes from the document on which consultation took place<sup>1</sup>. However, these were minor changes, solely for clarification, such as the addition of a cross reference or the correction of a printing error<sup>2</sup>. I am satisfied that they do not impinge upon the matters raised in responses made during the consultation period.

## Main Modifications

3. In accordance with section 20(7C) of the 2004 Act the Council requested that I should recommend any main modifications [MMs] necessary to rectify matters that make the Plan unsound and thus incapable of being adopted. My report explains why the recommended MMs, all of which relate to matters that were discussed at the examination hearings, are necessary. The MMs are referenced in bold in the report in the form **MM1, MM2, MM3** etc, and are set out in full in the Appendix.
4. Following the examination hearings, the Council prepared a schedule of proposed MMs. The MM schedule was subject to public consultation for six weeks. I have taken account of the consultation responses in coming to my conclusions in this report.

## Policies Map

5. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a local plan for examination, the Council is required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted local plan. The Minerals Local Plan is accompanied by the submission policies map itself and four insets.

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<sup>1</sup> Consultation on the Milton Keynes Minerals Local Plan Final Draft (Proposed Submission) Plan was carried out from 27 January – 9 March 2016.

<sup>2</sup> The changes are set out in doc 629

## **Procedural Matters**

6. The hearing sessions were originally programmed for 13-14 September 2016. However, when the hearings programme was published, it became clear that not all of the representations on the Final Draft (Proposed Submission) Plan had been provided to me. Consequently, the hearing sessions were rearranged so as to afford all representors an opportunity to participate in the examination.

## **Assessment of Duty to Co-operate**

7. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
8. During preparation of the Minerals Local Plan, consultation was undertaken with Minerals Planning Authorities (MPAs), Aggregate Working Parties (AWPs), government agencies, industry and other stakeholders. Such actions would have brought about early and active engagement as well as would have helped highlight strategic cross-boundary issues which, for Milton Keynes, related mainly to the spatial strategy and the minerals provision rate. The Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan. Whilst some procedural points were raised such as the circumstances that led to the rearranged hearing sessions, I am satisfied that that the duty to co-operate has been met<sup>3</sup>.

## **Assessment of Soundness**

### **Background**

9. The Minerals Local Plan has a plan period up to 31 December 2032 and will replace the Milton Keynes Minerals Local Plan 2006. Milton Keynes was designated as a new town in 1967, since when it has grown into a significant regional centre with a population of around 250,000. This growth is expected to continue, so that by 2030 the population is projected to be well above 300,000. The Borough covers some 8,900ha, about 40% of which comprises the urban area of Milton Keynes. The main mineral resource of economic value is sand and gravel, mostly confined to river deposits especially in the Great Ouse Valley although a small amount of extraction for building stone purposes also takes place.

### **Main Issues**

10. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings I have identified four main issues upon which the soundness of the Plan depends. Under these headings my report deals with the main matters of soundness rather than responding to every point raised by representors.

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<sup>3</sup> See Exam doc ref 628, *Duty to Co-operate Statement of Compliance*

**Issue 1 – Whether the Plan has been positively prepared and is justified, effective and consistent with national policy**

11. The Plan is positively prepared in that it identifies the likely level of need for minerals and makes allocations accordingly, whilst not seeking to set a limit on provision. Also, the identification of primary and secondary areas within the spatial strategy provides flexibility and will allow the Plan to respond to changing local circumstances, so that other minerals-related developments could come forward, providing they satisfy the relevant development criteria. A range of possible options are set out in the Sustainability Appraisal, which provides appropriate justification for the selected strategy against the reasonable alternatives considered.
12. The Vision and Strategic Objectives set out the foundation for the subsequent policies. However, Objective 6 appears to apply an unduly restrictive approach to the protection and enhancement of environmental and heritage designations. In order to ensure consistency with national policy, the words 'key (national and international)' should be deleted from the objective and the Biodiversity Opportunity Areas should be included in the ecological networks which are shown on the associated Fig 6 (**MM1, MM2**).
13. Subject to these and the other modifications identified in this report, the Plan would satisfy the requirements to be positively prepared, justified, effective and consistent with national policy, as set out at NPPF paragraph 182.

**Issue 2 – Whether the Plan makes appropriate provision for the steady and adequate supply of minerals of local and national importance and for safeguarding known reserves.**

14. Data in the Local Aggregate Assessments (LAA) shows that sales during the preceding ten year period fluctuated, depending on the number of quarries which were operational. Thus, although the rolling average of 10-years sales is 0.13 million tonnes (Mt), the Plan is based on a provision rate of 0.17Mt which was derived from the average sales over the three-year period 2010 to 2012. Although this includes a period of recession, it is also a period when there were fewest constraints on supply as a result of the limited availability of sites. Consequently, I am satisfied that this approach would be more consistent with the approach outlined in PPG ID 27-064-20140306, especially since it looks ahead and takes into account planned growth in the area.
15. In line with the PPG, the Plan defines areas of Primary and Secondary Focus, based on the most recent and up to date information from the British Geological Survey<sup>4</sup>. The site specific allocations reflect these areas. The methodology for site assessments is consistent with national guidance in that it assesses whether viable resources are known to exist, whether landowners are supportive and whether the proposal is likely to be acceptable in planning terms (PPG ID 27-008-20140306). A further call for sites was carried out in 2015 which revealed landowner support for other sites for extraction. I recognise that these sites may well be brought forward in due course. However, the sites as allocated achieve an acceptable balance between the areas of primary and secondary focus and are based on adequate, up-to-date

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<sup>4</sup> Exam doc ref 437, *Sand and gravel resources of Milton Keynes Borough 2010*

evidence. Given the flexibility afforded by policy 5 it is not necessary, in my view to add to the allocations in order to make the Plan sound.

16. Minerals can only be worked where they occur and, consistent with national policy, the Plan defines Minerals Safeguarding Areas (MSAs) to ensure that known resources are not needlessly sterilised. Since opportunities for redevelopment may arise within the developed area, the MSAs as defined are appropriate. Like the MSAs, the associated Minerals Consultation Areas (MCAs) are also based on the most up to date BGS information. Policy 18 expects that more detailed information will be provided before a decision is made on whether prior extraction is feasible. Although it was suggested that some sites should not be subject to safeguarding by reason of past workings or their potential for other forms of development, no clear evidence was provided to indicate that safeguarding would not still serve a useful purpose in terms of ensuring consideration was given to the potential benefits of extracting any mineral resource. Consequently, it has not been shown that the approach of relying on BGS data has led to a lack of soundness in the definition of MSAs and MCAs. Policy 18 provides an appropriate basis on which to consider the merits and viability of extracting the mineral as compared to the merits of allowing development to proceed.
17. I am satisfied therefore that, through policies 1-4 and policies 18-19, the Plan makes appropriate provision with regard to the supply and safeguarding of minerals and associated infrastructure.

**Issue 3 - Whether the Plan makes appropriate policy provision for managing development, for restoration and for implementation.**

18. The development management policies in Chapter 5 refer to 'minerals-related development'. This term is given a slightly different definition at the different points it is used in the Plan. To ensure the effectiveness of policies 9-16, it is necessary to amend paragraphs 4.34 and 5.1 so that there is clarity as to the range of development proposals which this term will cover and the manner in which the policies will be applied (**MM30** and **MM3**). The term itself should be defined in the Glossary (**MM27** and **MM28**). For consistency, the definitions elsewhere in the Plan should be removed (**MM23**, **MM29**, **MM31** and **MM32**).
19. In furtherance of Objective 6, policy 9 seeks to give effect to the aim of protection and enhancement of areas subject to environmental designations. Several modifications are necessary to more closely reflect the principle of conserving and enhancing biodiversity, as set out in NPPF paragraph 118: firstly, the supporting text at paragraph 5.7 should refer to the opportunities for species conservation and habitat creation or enhancement (**MM4**); secondly, policy 9 should be made more effective by setting out an expectation that development will contribute to the natural environment (**MM5**); thirdly, the first bullet point of the policy should refer to the protection of species as well as sites (**MM6**); and, finally, the second bullet point should include a reference to Biodiversity Opportunity Areas (**MM7**).
20. With regard to impact on quality of life and amenity, the supporting text to policy 12 includes a review of the different levels of sensitivity of various land uses. However, sensitivity depends on proximity and context as well as land use type and no objective evidence is put forward to support the categories

set out at paragraph 5.22. As it stands, this approach does not provide an appropriate framework for the assessment of the impact of any proposals on quality of life. A reference to sensitivity should be included in paragraph 5.21 (**MM8**) and paragraph 5.22 should be deleted (**MM9**). The policy itself sets out a range of factors which must be assessed. These factors should include visual intrusion, in order to recognise the need to take into account the potential for adverse visual impact (**MM10**).

21. Policy 14 encourages a high standard of design through ensuring that due attention is paid to site design and layout. The explanation at paragraph 5.32 as to the standard of landscaping scheme which would be expected is unclear. The final sentence of that paragraph should be deleted and replaced by an explanation of the term 'elements of visual interest', as used in policy 14, so as to make clear that this would include boundary treatments, public information/education displays and specific elements of heritage and built design which would enhance visual interest and appearance (**MM11**). In the opening sentence of Policy 14, the word 'should' in place of 'need to' would give proper effect to the criteria which follow (**MM12**). The first of those criteria should make reference to the restoration phase, in order to recognise that the quality of the landscape scheme would have implications for the quality of restoration in the longer term (**MM13**).
22. Restoration and after-use are important considerations in the assessment of a proposal for mineral extraction. Policy 16 and its supporting text at para 5.45 should also make reference to after-care, including after-use, in order to be consistent with NPPF paragraph 143 (**MM14, MM15 and MM16**). The final bullet point in this policy aims to support restoration for economic development purposes but should be reworded so as to make it more effective and to make clear that it will also be expected to incorporate an ecologically beneficial after-use (**MM17**).
23. With regard to implementation, the supporting text to policy 17 makes a number of references to matters which are not dealt with through that policy (presently contained in paragraphs 5.49, 5.52, 5.57 and 5.60). These paragraphs should be deleted (**MM18, 19, 20, 21**). In the policy itself, it should be made clear that conditions imposed on any permission will cover after-care as well as the operational period, in order to reflect the proposed inclusion of references to aftercare in policy 16 (**MM22**).
24. Subject to these modifications, the Plan will be clear, effective, internally consistent and will fully reflect national policy with regard to its provisions for managing development, for restoration and for implementation.

**Issue 4: Whether the plan provides appropriate justification for the site-specific allocations in terms of the sites selected, their impact and their deliverability**

25. The site allocations are made through policies 3 and 4 of the Plan, with the site profiles being set out at Appendix 1 and giving further details in the form of the proposed use, opportunities, constraints and assessment outcome. Consequently, the profiles address the 'what, where, when and how' questions (PPG 12-010-20140306). Bearing in mind the rural setting for the sites, the potential impact associated with traffic movements would be a generic



consideration dealt with through policy 13. However, where particular environmental sensitivities were identified through the site assessment process, these should be included within the site-specific information for each allocation. Whilst it is to be expected that these would be picked up through an Environmental Statement, the site profiles should also refer to these matters in order to provide greater certainty for those who might be affected by the mineral extraction process and so as to inform discussions on any programme of work (PPG 27-015-20140306).

26. The specific development requirements within the site profile for Calverton/Passenham (site A1) should acknowledge that, in view of the proximity to Passenham, any application should clearly demonstrate that the proposal has been designed to minimise and mitigate any impacts on the environment, particularly as regards effects on residents and heritage assets, including the Passenham Conservation Area (**MM24**). A similar requirement should be included in the site profile for Manor Farm and Lavendon Mill (site A4) (**MM26**).
27. Some requirements have already been set out within the site profile for Northampton Road, Lathbury (site A3). Whilst the concerns of those living near to this site and site A2 are understandable, there is insufficient evidence at this stage to justify the bunding and buffering requirements contained in the site profile, bearing in mind that PPG expects separation distances to be properly justified (PPG ID27-018-20140306). Such matters can only properly be established once the details of a scheme are known. The specific development requirements for this site should be amended by the removal of references to specific stand-off distances and bunding heights. Instead, the paragraph should make clear that a proposal would be expected to demonstrate that it would seek to minimise emissions as well as looking to mitigate impacts on the settlements of Lathbury and Sherington. In doing so, it would need to have regard to the requirements of policy 12, which would allow for consideration of nearby uses or structures which might be particularly sensitive. Rather than seeking to prescribe the location of processing plant, the second paragraph in this section on specific development requirements should be amended to address its design and scale, specifying that the location should minimise visual intrusion (**MM25**).
28. Subject to these modifications, I consider that the proposals would be effective and soundly based and the plan would provide appropriate justification for the site-specific allocations.

## Assessment of Legal Compliance

29. My examination of the compliance of the Plan with the legal requirements is summarised in the table below. I conclude that the Plan meets them all.

LEGAL REQUIREMENTS	
Local Development Scheme (LDS)	The Milton Keynes Minerals Local Plan has been prepared broadly in accordance with the Council's LDS June 2015.
Statement of Community Involvement (SCI) and	The SCI was adopted in March 2014. Consultation on the Local Plan and the MMs has complied with its

relevant regulations	requirements.
Sustainability Appraisal (SA)	SA has been carried out and is adequate.
Habitats Regulations Assessment (HRA)	The Habitats Regulations Scoping Brief, September 2013 was prepared following consultation with Natural England and sets out why AA is not necessary.
National Policy	The Milton Keynes Minerals Local Plan complies with national policy except where indicated and MMs are recommended.
2004 Act (as amended) and 2012 Regulations.	The Milton Keynes Minerals Local Plan complies with the Act and the Regulations.

## Overall Conclusion and Recommendation

30. The Plan has a small number of deficiencies in respect of soundness for the reasons set out above, which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.
31. The Council has requested that I recommend MMs to make the Plan sound and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix the Milton Keynes Minerals Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

*K.A. Ellison*

Inspector

This report is accompanied by an Appendix containing the Main Modifications.