

TABLED NOTE FOR THE MEETING OF THE MILTON KEYNES COUNCIL - 21 JUNE 2017

Item 4. Reports from Cabinet and Committees

(c) Cabinet – 13 June 2017 - Minerals Local Plan

The following note relates to correspondence regarding soundness and legal compliance of the Minerals Local Plan from Lavendon Parish Council and Lathbury Parish Meeting that was received prior to the Cabinet meeting on 13 June and prior to the Council meeting 21 June, respectively. The note also addresses comments raised by Lathbury Parish Meeting at the Cabinet meeting on 13 June.

1. Correspondence from Lavendon Parish Council, dated 13 June 2017

The report at pages 44 to 46 in the agenda papers was considered at the Cabinet meeting on 13 June. Shortly before the meeting, an email was received from Lavendon Parish Council expressing concerns about the site in the plan proposed for sand and gravel extraction at Manor Farm and Lavendon Mill. The email was tabled at the meeting.

Officers have now had the opportunity to consider and reply to the points raised in the email. The email correspondence from Lavendon Parish Council is set out in Appendix A at the end of this note for Members' information.

Dear Jane

Thank you for your email to Simon Heap about the Milton Keynes Minerals Local Plan which was considered at the MKC Cabinet meeting on Tuesday.

We have set below (in purple and italicised text) some responses to the points which you raised in your email.

Regards

John

John Cheston

Development Plans Team Leader

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Normal working hours:

Monday: 8:00 – 18:00

Tuesday: 8:00 – 18:00

Wednesday: 8:00 – 18:00

Thursday: 8:00 – 18:00

Friday: 8:15 – 12:00

Milton Keynes Council | Planning Service | Growth, Economy and Culture | Place | Civic Offices | 1 Saxon Gate East | Central Milton Keynes | MK9 3EJ

Provision

The figure for the amount of minerals that needs to be extracted. We understand that the figure is due to be made up of either the 10 year average of the minerals sales in the area or the 3 year average, whichever is higher. Currently we understand that the 3 year average is drastically higher than the 10 year average and feel the 10 year figure more realistically represents the true need for the demand in Milton Keynes. Milton Keynes has been a growing city for over 40 years with significant mineral demand throughout that time. The proposed levels of expansion are significantly below the all-time peak of building in the city so it seems strange that the needs should continue to rise. Lavendon would ask that these figures are interrogated and further evidence is examined to find the true demand sales figures which we feel will be nearer to the 10 year average than the 3 year average.

In determining the provision figure, it is not the case that a planning authority goes for a ten-year figure unless the three-year figure is higher. Other circumstances have to be taken into account. As the Council stated in their Aggregates Provision paper that went to full Council in October 2015 and was considered by the Inspector, "it should be noted that the Draft Plan preferred option of 0.17 million tonnes per annum was as much about the selecting of a figure that could be justified at examination as it was about strictly adhering to a three year based figure for the most recent three year period".

The Inspector agreed with the Council's approach stating in her report that "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". She concluded that she was satisfied that this approach would be more consistent with the approach outlined in national guidance, especially since it looks ahead and takes into account planned growth in the area.

Recycled Aggregates

Milton Keynes has traditionally not undertaken a huge amount of demolition due to the new nature of the city. It seems fairly obvious to the layman however that this may well change in the life of the minerals plan as regeneration starts across much of Milton Keynes. The targets of how much minerals are recycled therefore should be investigated and revised up. It should be incumbent on MKC to ensure that as much aggregate as possible is recycled and used again rather than digging new.

The primary aggregate provision figure relates to land-won provision and this should not be influenced by recycled aggregates availability unless there is a truly exceptional circumstance. This is not present in the case of the plan area. Secondary and recycled aggregates have different properties and may not be suitable in all cases as a replacement for primary (land-won) aggregates.

Location of sites

While gravel can only be taken from the sites where it exists, much work has been done in understanding where this resource may be found. Lavendon Parish Council supports the policy that minerals should be extracted as close to the point of need as possible. This makes ultimate sense in reducing congestion, the impact on local people and also the carbon footprint. LPC therefore finds it strange that so many sites with gravel close to the current points of usage have not been entered into the scheme. Was this because landowners were not aware of the proposals or because the scheme is being pushed by the vested interest of minerals companies rather than what is in the best interest of the local area? LPC suggest before the current sites can be accepted as the only sites for recommendation that a much more detailed list of landowners are approached to try to get the best possible selection of sites before this plan proceeds any further.

The plan's approach was to consider sites that landowners/ industry put forward at the 'Call for Sites' stage and to allocate those that met the requirements for allocation. Deliverability of the plan (and allocated sites) is an important factor that is reflected in national policy: industry interest and landowner support for sites speaks to deliverability. As such, the 'Call for Sites' process is seen to be the most effective and efficient approach to identifying sites (in comparison with bringing forward sites that are identified as probably containing mineral resources and may be considered to be better related to growth areas but have neither industry interest or landowner support).

The 'Call for Sites' took place in early 2013. However, it should be noted that there was a further call for sites made in January 2015 whereby landowners within the sand and gravel areas of the Great Ouse and Tove Valleys were specifically targeted. The sites that came forward through this targeted

contact were assessed although none was considered to be as suitable as those proposed for inclusion in the plan.

Spatial Strategy/Traffic Impact

LPC supports the principle that sites should generally be south of the river Ouse however notes that the site at Lavendon Mill is North of the river. It is by far the furthest site from Milton Keynes and conforms least to the current principles for site selection. The traffic routes to remove the gravel are also important. Either the minerals will have to go along Olney High Street or, at a meeting held in Lavendon, the proposed operator of the sites suggested that the lorries would go through Cold Brayfield and to Bromham before turning back to Milton Keynes. This is once again a much longer journey. We would request that Bedford Borough Council are made aware of this proposal now and have the opportunity to comment on this as should Turvey Parish Council and other Parish Councils affected along the route.

The plan identifies two areas of focus and Lavendon is within the secondary area of focus. However, the intention is that allocations should not be confined to the primary area of focus - both the primary and secondary areas are appropriate locations in which to identify allocations. It is considered that the primary and secondary areas together achieve a reasonable balance between maintaining the focus on the main built-up areas and the avoidance of an over-concentration of allocations in a particular area.

In relation to traffic routing, this will be covered when a planning application comes forward. However, it should be noted that both the A509 and the A428 are part of the strategic road network. It should also be noted that both Bedford BC and Turvey PC were consulted at various stages during the preparation of the plan.

Landowner Support

At the public meeting held in Lavendon it became clear that one of the landowners whose land has been entered into the Site at Lavendon Mill had not been approached prior to the proposal being submitted and had not committed to the site being available. This therefore demonstrates that the proposals are not robust and may not be able to deliver the amounts that are currently suggested making the whole plan unsound.

It remains the Council's understanding that there is landowner/industry support to bring this site forward, and if the situation were to the contrary, it is expected that that part of the site would have been withdrawn from the plan by the unsupportive landowner before or at the examination; however, this is not the case. It should be noted that there is a significant amount of time for the site to come forward with the plan period being to 2032.

Changes to the Plan

With all these things in mind Lavendon Parish Council asks that Milton Keynes Council removes the proposal for the site at Lavendon Mill and suggests that the allocations are either reduced due to lower need for minerals after further interrogation of the figures or are re-allocated to sites closer to the usage at Wolverton or the surrounding areas.

The Council can either accept the Inspector's recommendations in full or it can withdraw the plan in its entirety and start the plan again; it cannot make amendments to the plan such as changing the provision rate or deleting allocations. However, bearing in mind the plan has been through an independent examination and been found 'sound', there would be no justification whatsoever in withdrawing the plan and re-starting the process (including the cost of doing so).

Incidentally, withdrawing the plan would not prevent the sites in the plan from coming forward as planning applications.

2. Comments made by Members at the Cabinet meeting on 13 June 2017

The Planning Inspector's recommended removal of the bunding and buffering requirements for the site at Lathbury

The Planning Inspector addressed this issue in paragraph 27 of her report (Annex A to the Council report). This states:

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 [the Government Planning Practice Guidance] 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).

If the Council wishes to adopt the plan, as Cabinet recommends, by law it must be modified in the manner recommended by the Inspector.

The consultants at the public examination

Officers of Northamptonshire County Council were retained as consultants to prepare the plan and represent the Council at the public examination. When the Inspector questioned the justification for the proposed bunding and buffering requirements for the site at Lathbury during the examination, the consultants accepted in retrospect that they could have done more to defend the Council's proposed policy and duly apologised for misjudging the matter. It is the view of officers, however, that the Inspector's mind was already made up on this issue and that the less than robust response provided by the consultants did not make a significant difference to the Inspector's findings.

Factual inaccuracies

The Chair of Lathbury Parish Meeting commented at the Cabinet meeting that the plan contains factual inaccuracies about the proximity between the proposed site at Lathbury and the nearest listed buildings. The plan states that this site is located within 100m from the Grade II listed Inn Farmhouse (Lathbury Manor) and Home Farm House. Using a measuring tool on digital mapping software reveals that Home Farm House is in fact about 51m from the site.

Because of this proximity, the site profile for the site stipulates that any planning application and accompanying site working scheme which are submitted will need to include a satisfactory site layout (including screening and stand-offs where necessary) and a management scheme that clearly demonstrates that it can adequately minimise and

mitigate the impacts of the proposed development on nearby sensitive receptors (such as hospitals, schools, daycare facilities and housing for the elderly) and heritage assets in the settlements of Lathbury and Sherington.

Furthermore, Policy 12 of the plan requires that:

Proposals for minerals-related development must ensure that potentially adverse impacts on quality of life and amenity (compatibility of land use, dust, noise, vibration, light pollution, visual intrusion etc) are avoided and / or reduced to acceptable levels.

Site-specific assessments may be required to determine existing / ambient levels, identify potential impacts and appropriate avoidance and / or mitigation measures to be implemented. Where applicable a site management plan should be developed to ensure implementation and maintenance of mitigation measures throughout operations.

It is therefore considered that sufficient protections are in place in the plan to safeguard residential properties and listed buildings close to the proposed minerals extraction sites.

3. Correspondence from Lathbury Parish Meeting Minerals Committee

Subsequent to the Cabinet meeting on 13 June, Lathbury Parish Meeting Minerals Committee submitted an email and letter on 18 June expressing a range of concerns suggesting the Minerals Local Plan was not legally compliant. The email and letter are set out in Appendix B at the end of this note for Members' information.

We have taken Counsel's advice on the concerns and potential challenge to the Minerals Local plan raised by Lathbury Parish Meeting Minerals Committee as set out in their email and letter of 18th June 2017. In summary, Counsel's opinion is that the issues raised would not give rise to a successful challenge and there is no reason why the Council should not adopt the Minerals Local Plan. The Plan has been found to be sound under examination by a Planning Inspector, subject to modifications. Any challenge to the Inspectors decision would not look at the merits of the Plan and would only consider public law grounds such as irrationality, failure to take relevant guidance into account or failure to take into account material considerations. None of the criticisms made fall into these categories

Appendix A: Email from Lavendon Parish Council, dated 13 June

From: Clerk @ Lavendon Parish Council [<mailto:clerk@lavendonpc.org>]

Sent: 13 June 2017 17:19

To: Heap, Simon

Cc: Olney Ward Councillors

Subject: [EXT] Milton Keynes Minerals Local Plan

Dear Sirs,

Lavendon Parish council expresses concern about the site proposed for gravel extraction near to Lavendon Mill and raises the following concerns.

The figure for the amount of minerals that needs to be extracted

We understand that the figure is due to be made up of either the 10 year average of the minerals sales in the area or the 3 year average, whichever is higher. Currently we understand that the 3 year average is drastically higher than the 10 year average and feel the 10 year figure more realistically represents the true need for the demand in Milton Keynes. Milton Keynes has been a growing city for over 40 years with significant mineral demand throughout that time. The proposed levels of expansion are significantly below the all-time peak of building in the city so it seems strange that the needs should continue to rise. Lavendon would ask that these figures are interrogated and further evidence is examined to find the true demand sales figures which we feel will be nearer to the 10 year average than the 3 year average.

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LPC supports the principle that sites should generally be south of the river Ouse however notes that the site at Lavendon Mill is North of the river. It is by far the furthest site from Milton Keynes and conforms least to the current principles for site selection. The traffic routes to remove the gravel are also important. Either the minerals will have to go along Olney High Street or, at a meeting held in Lavendon, the proposed operator of the sites suggested that the lorries would go through Cold Brayfield and to Bromham before turning back to Milton Keynes. This is once again a much longer journey. We would request that Bedford Borough Council are made aware of this proposal now and have the opportunity to comment on this as should Turvey Parish Council and other Parish Councils affected along the route.

At the public meeting held in Lavendon it became clear that one of the landowners whose land has been entered into the Site at Lavendon Mill had not been approached prior to the proposal being submitted and had not committed to the site being available. This therefore demonstrates that the proposals are not robust and may not be able to deliver the amounts that are currently suggested making the whole plan unsound.

With all these things in mind Lavendon Parish Council asks that Milton Keynes Council removes the proposal for the site at Lavendon Mill and suggests that the allocations are either reduced due to lower need for minerals after further interrogation of the figures or are re-allocated to sites closer to the usage at Wolverton or the surrounding areas.

Yours faithfully

Jane Brushwood
Clerk to Lavendon Parish Council
The Pavilion
63a High Street
Lavendon
MK46 4HA
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www.lavendonpc.org
Normal office hours Monday – Thursday 2-6pm and Fridays 8-12

Appendix B: Email and Letter from Lathbury Parish Meeting Minerals Committee, dated 18 June 2017

From: Maureen Smith - Secretary Lathbury Parish Meeting
Date: 18 June 2017 at 12:02:17 BST
To: Various
Cc: Chair - Lathbury Parish Meeting <
Subject: [EXT] Minerals Local Plan - Submission from Lathbury Parish Meeting
Reply-To: <secretary@lathburyvillage.org.uk>

Dear Councillors

In advance of the full Council meeting on Wednesday 21 June, we would like to bring to your attention to relevant and important information on the Minerals Local Plan, to help in your decision-making prior to voting.

We attach a copy of the full points for you to read in advance of the meeting on 21st. As you can see, we have reviewed the adoption submission and associated documents prepared for the full Council meeting and we feel that there are still unanswered questions on points in all three of the following categories: Process, MLP Adoption Version and Site A3:Northampton Road, Lathbury.

Since the conception of the current MLP process, Lathbury Parish Meeting has fully engaged with Milton Keynes Council and its Officers. We have hosted Public Information Meetings, discussed with the residents & Ward Councillors and responded to every request for information & feedback to consultations.

In particular we draw your attention to the question **“do the Councillors believe that they have a plan that is legally sound?”**

Whilst in the Officer's report for this matter it states that *“the Minerals Local Plan has been prepared in accordance with the Planning and Compulsory Purchase Act 2004 (as amended) and associated regulations and guidance.”* We must question if the Planning (Listed Buildings and Conservation Areas) Act has been taken into account and especially the case law relating to development vs Listed Buildings. **We recommend that the Council seek legal guidance** that their Plan reflects the law with respect to, but not limited to, Policy 10 (heritage assets) in order to prevent future legal challenge.

We advise you that Lathbury Parish Meeting is taking legal advice on this matter.

We kindly request, that in making your decision, you consider the points raised above and in our attached document together with those in our previous consultation responses and **REJECT** the MLP as it stands in its current form.

Kind regards

Lathbury Parish Meeting **Minerals Committee**

James Fishwick - Chair | Lathbury Parish Meeting
Maureen Smith – Secretary | Lathbury Parish Meeting
Dr David Crowe PhD
Steve Crowther
Professor Leo Murray
Peter Snelling

Professor Joan Swann
Will Swann MBE

Maureen Smith
Secretary - Lathbury Parish Meeting
secretary@lathburyvillage.org.uk
www.lathburyvillage.org.uk

Enclosed letter from Lathbury Parish Meeting Minerals Committee:

“Dear Councillors

In advance of the full Council meeting on Wednesday 21 June we would like to bring to your attention the following items regarding the Minerals Local Plan.

Since the conception of the current MLP process, Lathbury Parish Meeting has fully engaged with Milton Keynes Council Officers. We have hosted Public Information Meetings, discussed with the residents & Ward Councillors and responded to every request for information & feedback to consultations.

We have reviewed the revised MLP Adoption Version and associated documents prepared for the full Council meeting and we feel that there are still unanswered questions on points in all three of the following categories.

In particular, but not exclusively, we would like to draw your attention to the following points:

Process

- During the Inspection, the Consultants engaged by the Council - i) did not act in the best interest of the Council with regard to supporting the inclusion of buffer/bunding zones that had been approved by Full Council and put forward in the Submission Plan presented to the Inspector, and ii) gave factually incorrect information – they later “apologised” to the Council but this was **too late** as the Inspector had formed their opinion based on the information given during the hearing.
- The 2nd call for sites was rushed and ineffective. All sites were reviewed as *“Site accords with the draft spatial strategy but the site yield and quality is unknown reducing potential deliverability. Do not take forward allocation.”* (ITEM04(a)(i)_MINERALS LOCAL PLAN_ANNEX C) This is simply a factor of the short time period the land owners and agents were given, and therefore they were unable to gather full details of the minerals volume and gain industry acceptance for their sites. This doesn’t mean that the sites are less suitable but simply that further evaluation is required.
- This has been a terribly managed Consultation and when linked with issues seen on the “Plan:MK” consultation the Council should, separately, investigate how such major consultations are run in the future. Some of the issues with the MLP include:
 - Use of Consultants from a neighbouring Council and the mixed/confusing messages this gave especially regarding correspondence, using Northampton County Council headed paper & logo and not Milton Keynes Council’s.
 - Issues with the Inspection hearings due to missing notifications and documents leading to a deferral of the original inspection dates

MLP – Adoption Version

- Within the draft MLP, there is reference to the ‘secondary focus areas’ (section 4.13). These are estimated to contain 60 M mT (metric tonnes) of sand and gravel. Policy 2 of the draft MLP, states that these sites should *“be supported if it can be demonstrated that the site would have reduced impacts (compared to sites in the primary focus areas)”*. Given this information, MKC should delay the adoption of the current draft until the sites in the secondary focus areas and

those of the second call for sites have been given time to gather data to accurately support or dismiss their inclusion in the MLP. There has now been sufficient time to gather this data to produce a sound and robust revised site allocations list.

- The Adoption version has seen the removal of buffer zones compared to the Submission version. These buffer zones are to mitigate the impact on residents and the local environment from noise, dust, visual intrusion and general pollution on the area surrounding extraction. We would like to understand, when precedent has been set on the use of buffer zones in both the previously adopted MLP and the National Planning Policy Framework (Technical Guidance Paragraph 22), **why** the Officers feel it necessary to remove this safeguard from the current draft.
- Policy 1 – given the provision of 0.17 mT pa dates from 2013 why, in light of downturn in the rate of building within the borough,* has this value not been reviewed and we are now nearly 4 years on – what is a realistic new value? *Cllr Marland acknowledged a downturn in building relating to the Eastern Expansion at the Cabinet meeting of 13th June 2017

Site A3:Northampton Road, Lathbury

- This site was refused permission previously (application 02/00945/MIN) on 5 areas:

(01) The development would damage the special character and appearance of the Area of Attractive Landscape.

(02) The development would cause a significant adverse visual impact in the locality and wider area, ..., and would have a detrimental effect on the settings of Listed Buildings

(03) The proposed development would have a detrimental effect on the amenities of residents in the area.

(04) The proposed development involves works which will result in the loss of floodplain

(05) The application contains insufficient information to determine the acceptability of the backfilling with inert waste material to restore the site back to ground levels.

What has changed that means this site would be granted permission in the future?

- The proposed Northampton Road site borders the village of Lathbury (population approx. 200+). We are unaware of ANY mineral extraction sites that are so close to people's homes. This is an area of open countryside and the village would therefore be directly affected by noise, vibration, dust, visual intrusion and additional traffic. This would affect the elderly and infirm residents of Lathbury Manor Residential Home. The residential home is within **50 metres** of the boundary of the Northampton Road site. Residential homes are classified as 'high sensitivity' in the NPPF yet Lathbury Manor is not mentioned as a constraint on the development of the Northampton Road site in the MLP.
- The NPPF states that consideration should be given to any pre-existing business within the proximity of proposed mineral extraction. Within Lathbury village there are several 'sensitive' businesses including; a Residential Home, a horticultural (flower growing) business, agricultural small holdings and stabling/livery yard. All of these have the potential to be adversely affected.
- The site profile identifies two listed buildings within 100 metres of the Northampton Road Site. Lathbury has 7 listed buildings within 500 metres of the site, including a Grade 1 listed Church; Home Farm **abuts** the proposed site and Lathbury Manor (Residential Home) is within 50 metres, both have extensive views over the site. Should the Northampton Road site owner apply for planning permission, it is highly likely to be refused given recent cases at the Court of Appeal interpreting Section 66 sub section 1 of the Planning (listed buildings and conservation areas) Act. The Courts have ruled that there is a duty on decision makers to give 'considerable importance and weight to the desirability of preserving listed buildings in their settings'. This includes identifying views of the site and from the site. The Courts have said it is not enough to carry out a straight balancing exercise between harm and public good. Section 66 imposes a duty on decision makers to ask whether there is any justification for overriding the presumption in favour of preservation.

On this last matter, we ask **“do the Councillors believe that they have a plan that is legally sound?”**

Whilst in the Officers report for this matter it states that “The Minerals Local Plan has been prepared in accordance with the Planning and Compulsory Purchase Act 2004 (as amended) and associated regulations and guidance.” We must question if the Planning (Listed Buildings and Conservation Areas) Act has been taken into account and especially the case law relating to development vs Listed Buildings. **We recommend that the Council seeks legal guidance** that their Plan reflects the law with respect to, but not limited to, Policy 10 (heritage assets) in order to prevent future legal challenge. We advise you that Lathbury Parish Meeting is taking legal advice on this matter.

We kindly request, that in making your decision, you consider the points raised above and those in our previous consultation responses and **REJECT** the MLP as it stands in its current form.

Yours faithfully
Lathbury Parish Meeting Minerals Committee

James Fishwick - Chair | Lathbury Parish Meeting
Maureen Smith – Secretary | Lathbury Parish Meeting
Dr David Crowe PhD
Steve Crowther
Professor Leo Murray
Peter Snelling
Professor Joan Swann
Will Swann MBE”