



Appeal Decision

Inquiry opened on 18 March 2025

by **Paul Griffiths BSc(Hons) BArch IHBC**

an Inspector appointed by the Secretary of State

Decision date: 8th July 2025

Appeal Ref: APP/Y0435/W/24/3350378

The Point, 602 Midsummer Boulevard, Milton Keynes MK9 3NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by GHL (Milton Keynes) Ltd against the decision of Milton Keynes Council.
 - The application ref.23/02265/FUL dated 20 October 2023 was refused by notice dated 23 July 2024.
 - The development proposed is described as the demolition of all existing vacant entertainment complex buildings and redevelopment to provide flexible Class E leisure/retail uses (upper and lower ground level), up to 487 apartments (Build to Rent, private and affordable) over the upper floors (up to 21 storeys with a floor to floor height of 3m plus a crown structure), re-cladding of the existing car park with Class E/F.2/sui generis leisure uses (bar, outdoor sports and cinema) at rooftop level, landscaped public realm, amenity space, cycle parking and associated access and servicing provision.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of all existing vacant entertainment complex buildings and redevelopment to provide flexible Class E leisure/retail uses (upper and lower ground level), up to 487 apartments (Build to Rent and private) over the upper floors (up to 21 storeys with a floor to floor height of 3m plus a crown structure), re-cladding of the existing car park with Class E/F.2/sui generis leisure uses (bar, outdoor sports and cinema) at rooftop level, landscaped public realm, amenity space, cycle parking and associated access and servicing provision in accordance with the terms of the application, ref.23/02265/FUL, dated 20 October 2023, subject to the conditions set out in Annex C to this decision.

Preliminary Matters

2. The Inquiry opened on 18 March 2025 and closed on 26 March 2025 after 5 sitting days. I carried out unaccompanied visits to the site and its surroundings, including the Shopping Building, at various times of the day and evening during the Inquiry. I also carried out an accompanied site visit to the Shopping Building on the afternoon of 25 March 2025 when access was gained to Queens Square. This part of the Shopping Building, a courtyard, open to the sky, is usually accessible to the public, but was closed off at the time of the visit to enable works to the building.
3. Helpfully, the Council catalogued and stored the documentation relating to the Inquiry as Core Documents and I was able to gain access to them electronically before, during, and after the Inquiry. They can be found via [Public Inquiry – 23/02265/FUL – The Point | Milton Keynes City Council](#). On that basis, there is no purpose served by my listing them all as an Annex to my decision. I have, however, listed those documents submitted during and after the event as Inquiry Documents in my Annex B.

4. At the Inquiry, applications for costs were made by the appellant against the Council and by the Council against the appellant. I allowed time after the Inquiry closed for written responses to the applications, and final comments. These applications for costs are the subject of separate decisions.
5. Discussions about various planning obligations, and their nature, took place during the Inquiry culminating in the parties' acceptance that an Agreement under s.106 was the best route forward. I allowed time after the Inquiry for this to be prepared and signed and a copy of the completed Agreement, dated 10 April 2025, was received on 11 April 2025¹. I deal with its contents below.
6. The description of development was the subject of some discussion at the Inquiry. In the format originally submitted, it refers to the provision of affordable housing as part of the residential element of the scheme. However, for reasons of viability, that I deal with below, none is included on site in the scheme before me. I have adjusted the original description of development in my decision to reflect that.
7. Both sides produced viability evidence, but neither party tended their relevant witness to give evidence to the Inquiry. I was content with that position, for reasons that I cover below. In advance of the Inquiry, I asked that the scheme architect present the scheme, and the rationale behind it, to the Inquiry. After that presentation took place, issues around the design on the proposals were discussed on a 'round table' basis, with the agreement of the parties. Other elements of the evidence, notably the 'heritage' evidence, and the planning evidence, were dealt with in the traditional way.

Main Issues

8. In summary, the proposal involves the complete demolition of 'The Point' (that is the entrance structure and the block containing the cinemas) and its replacement with a mixed-use scheme that would fill the same part of the New Town grid. Residential and commercial space would be contained in four relatively tall blocks (Block A – 13 storeys; Block B – 9 storeys; Block C – 21 storeys plus crown structure so 22 storeys; and Block D – 18 storeys plus crown structure so 19 storeys) arranged around open space, some of which would be public, some private. The existing multi-storey car park facing Avebury Boulevard would be re-clad and lit, providing parking, as well as a bar, outdoor sports facilities, and a cinema at rooftop level.
9. In its decision notice, the Council cited 7 (seven) separate reasons for refusal. Discussions in the lead up to, and during, the Inquiry meant that subject to the imposition of suitably worded conditions, and/or the terms of the Agreement under s.106, those reasons for refusal relating to affordable housing, other forms of infrastructure, density and visual impact, and design and character, were not pursued by the Council.
10. That left two matters as the main issues for the Inquiry. These are (1) whether the approach of the proposals to 'The Point', a non-designated heritage asset, is an appropriate one; and (2) the effect of the proposals on the setting and thereby the significance of the Grade II listed Shopping Building.

¹ ID10

11. The analysis of those, to an extent, linked matters, needs to take place against the backdrop of the development plan, other material considerations, and the National Planning Policy Framework (the Framework) in particular, and the planning benefits that the proposals might bring forward.

Reasons

The Backcloth

12. The development plan includes Plan:MK 2016 - 2031 (Plan:MK) that was adopted in 2019. The central policy in terms of the main issues identified above is Policy HE1 that sets out the Council's approach to heritage and development. Proposals will be supported where they sustain and, where possible, enhance the significance of heritage assets (A). Where less than substantial harm would be caused to (the significance of) a designated heritage asset, permission will only be granted where the harm is demonstrably outweighed by public benefits delivered by the scheme (E). Proposals that would result in harm to the significance of non-designated heritage assets will be resisted unless the need for, and benefits of, the development clearly outweigh the harm, taking into account the asset's significance and importance, and only once all feasible solutions to avoid and mitigate that harm have been fully implemented (F).
13. This approach accords with Government policy in the Framework. In line with the workings of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), and in this case s.66(1) in particular, paragraph 212 sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 215 says that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
14. Paragraph 216 deals with non-designated heritage assets. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgment will be required having regard to the scale of any harm or loss, and the significance of the heritage asset.

'The Point'

15. The building known as 'The Point' has been treated by the main parties (correctly in my view) as a non-designated heritage asset. It is included on the MK New Town Heritage Register (MKNTHR). When it opened in 1985, it was the first of a number of multiplex cinemas planned in the UK. The building is made up of two elements – to the rear is the rectangular block containing the cinemas, and at the front, facing the Shopping Building, is the 'ziggurat' or 'pyramid' structure which formed the main entrance. It is this part of the overall building that is regarded as having heritage significance. Once the tallest building in Milton Keynes, the pyramid frame was lit in red, and visible from afar, giving the building a landmark quality.

16. I consider that the building makes some contribution in terms of 'group value' to the significance of the Shopping Building opposite. They have an obvious synergy as two of the buildings that were part of the original growth phase of the New Town. On top of that, it is instructive, in an architectural sense at least, to see the unashamedly modernist Shopping Building, inspired by the works of Mies van der Rohe, alongside a post-modern building, an architectural style that was a reaction to modernism². It is perhaps unfair to suggest that the Shopping Building has stood the test of time rather better, because development economics obviously played a part in the way 'The Point' was implemented. It suffices to say that 'The Point' has nowhere near the build quality of the Shopping Building, and as it stands today, it is in a very sorry state, largely unused, and with a somewhat uncared for appearance.
17. On the face of it, the proposals would result in the total loss of 'The Point' and its significance. I do appreciate that the building has a special place in the memory of the people of Milton Keynes, and others beyond. That attachment to the building is understandable, given its history, and its loss would be a shame, in many ways. Having said that, the evidence shows that the 'The Point' has clearly outlived its purpose, and there are no realistic prospects for its effective re-use.
18. All that said, the scheme does not propose to leave no trace whatsoever of 'The Point'. There has been dialogue between the parties about the best way in which a nod or reference back to the 'The Point' could be included as a part of its replacement. To my mind, retaining elements of the existing building, for example the pyramid structure, as part of the scheme, would be all too predictable and indeed tokenistic. There ought to be room for a more subtle and considered response and to my mind, lighting the crown of Block C of the proposal in red, as the pyramid structure of 'The Point' was formerly, would be a more respectful and intelligent way of recognising the building that formerly occupied the site, and its landmark quality. In that way, people's memories of 'The Point' could be triggered in a pleasing way, long after it had gone.
19. Nevertheless, it must be acknowledged that very much, if not all, of the significance of 'The Point' would be lost as a result of the scheme. The contribution it makes to the significance of the Shopping Building would disappear so there would be a harmful impact on the setting and as a result, the significance of the listed building too. That needs to be brought into the balancing exercise that I carry out below.

The Shopping Building

20. As set out in the helpfully comprehensive list description, the Shopping Building was designed by Stuart Moss crop and Christopher Woodward working under Derek Walker. The list description refers to the principal reasons for designation as: Architectural Interest: a highly-regarded, little altered, 650 metre long steel and glass structure whose design was heavily influenced by the work of the leading early-mid C20 architect Mies van der Rohe; its rigour, consistency, luminosity and user friendliness all denote its success as a new approach to retail design; Exemplar: as the outstanding post-war retail development in England, successfully drawing on American inspirations but creating a singular shopping centre, realised on a monumental scale; Materials: for the high quality and consistent deployment of materials and finishes, all executed to careful standards of finish; Intactness: the

² Mies van der Rohe's 'less is more' having become (in the words of Denise Scott Brown and Robert Venturi) 'less is a bore'

public elements of the shopping centre are little-altered and retain the original appearance of the design; Adaptability: the success of the complex lies in part in its ability to accommodate fast-changing retail stores while retaining its overall architectural integrity; Artistic interest: for its public artworks, notably Liliane Lijn's Circle of Light which endows this retail complex with prestige and meaning; and Town planning: as the purpose-built centrepiece of Britain's last, largest, and in planning terms most innovative new town, which created a retail space realised on a civic scale.

21. It is also useful to reflect on the importance of the building's monumental scale to its significance. That monumental scale is related to its horizontal extent rather than its height. It is relevant to note too, that the original design of the city centre and its grid – and thus the Shopping Building, which was integral to the plan – was informed by the play of natural light, and the arcades are parallel with Midsummer Boulevard which itself is aligned with where the sun rises on the Summer Solstice. Indeed, I found the most pleasing exterior views of the Shopping Building, where the contribution setting makes to its significance can best be appreciated, to be where you can take in its length, disappearing into the distance, eastwards, from relatively close quarters.
22. It is right to observe that from some points, on the Midsummer Boulevard side of the Shopping Building especially, that this sense of the building disappearing into the distance has been devalued by the intrusive presence of the Hotel la Tour, and the multi-storey car park alongside it, which close off the view in one direction, and by Midsummer Place, the extension to the Shopping Building, which interrupts the view in the other.
23. It is also of note, for reasons will become clear, that the Shopping Building also includes two 'public squares', one covered - Middleton Hall - and one open to the sky - Queens Court. The latter is not in its original form having been eaten into by covered areas but that makes no great difference to its importance as part of the overall composition.
24. Apart from the group value it shares with 'The Point', that I have referred to above and return to below, like the Council, I consider there to be two main aspects to a consideration of the potential impact of the proposal on the setting and thereby the significance of the Shopping Building. The first relates to the interrelationship between the relatively tall buildings that form part of the proposal, and the Shopping Building when viewed from Midsummer, and Silbury, Boulevards, while the second relates to the presence of the proposals in views from Queens Square.
25. In terms of Midsummer Boulevard, the nearest parts of the proposal would be much higher than the Shopping Building, and its verticality would be very much in contrast to the horizontality of the Shopping Building. However, unlike Midsummer Court, the proposal would respect the grid, which would allow for a significant degree of separation (of the order of 80 metres) between the proposals and the listed building. As a result, the ability to appreciate the composition, and in particular the monumental length, of the Shopping Building, from Midsummer Boulevard would be unaffected. Moreover, the 'breathing space' allowed for by this degree of separation means that the contrast between the Shopping Building and the proposal would not be an injurious one.

26. From Silbury Boulevard, the proposal would be a contrasting visual presence in views towards the Shopping Building, with the towers beyond, rising above it. However, in these views, which, despite the trees, are very open as a result of the generosity of the grid, the horizontal monumentality of the Shopping Building would remain easily dominant. The presence of the proposal beyond it would not take away from the sense of the monumental Shopping Building disappearing into the distance. In that way, views of the proposal from Silbury Boulevard would not detract from the setting or the significance of the Shopping Building.
27. I note that Historic England in objecting to the proposal take a contrary view, suggesting (and I summarise) that the tall building nature of the proposal would challenge the architectural and landmark qualities of the Shopping Building, making it a secondary feature in these views. I disagree with that for the reasons I have set out above, but I must also note that the monumental scale of the Shopping Building gives it a degree of robustness that a single proposal, like that before me, offers no real challenge to its supremacy.
28. I recognise that this situation could change if a succession of proposals for tall buildings emerged, along Midsummer Boulevard especially, and my attention has been drawn to a number of such schemes in central Milton Keynes. However, no issues around cumulative impact were raised by the Council and the potential for such an impact seems to me to be a strategic question best dealt with through a Tall Buildings Strategy, enshrined in policy. I can only deal with the proposal before me and these wider questions are for others in the future to deal with
29. Unlike Silbury Boulevard, Queens Square, and for that matter the arcades surrounding it, are much more enclosed spaces. From what I saw, views of the sky, whether directly, or through the glazed arcades of the Shopping Building, are an important part of the experience of the square and for that matter, the arcades. The ability to appreciate the largely transparent nature of the building, and the lightness of the structure, from Queens Square and its environs, contributes to its overall heritage significance. While 'The Point' is already visible from Queens Square and enclosed areas around it, the proposals would be a much stronger visual presence in these views, and as a result of the heights of the buildings that make up the scheme overall, it would block off much more of the sky.
30. That said, like 'The Point', the proposals would accord with the town grid so the sense of them lining up with the axis of Queens Square would remain. That would allow the buildings to avoid appearing as arbitrary intrusions but nevertheless, the strength of their visual presence, and the extent to which they would reduce the ability to appreciate the transparent, light, nature of the Shopping Building by blocking out, to an extent, the sky beyond, would have something of a damaging impact on the setting and thereby the significance of the listed building.
31. Bringing those points together, the proposals would in my view cause a degree of harm to the setting and thereby the significance of the Shopping Building. This harm would manifest itself in two ways. First, there would be the harm caused by the loss of a good part of the relationship between the Shopping Building and 'The Point', or their group value. Secondly, there would be the harmful impact caused by the visual presence of the proposal, blocking out the sky, in views from Queens Square and areas around it.

32. To my mind, this harm to the setting and thereby the significance of the Shopping Building would be 'less than substantial' so, in accordance with the workings of Plan:MK Policy HE1 and paragraph 215 of the Framework, that harm needs to be weighed against the public benefits of the proposal. To carry out that balancing exercise, it is necessary to conclude where on the scale of less than substantial harm, which runs from a level of harm that is hardly perceptible, at one end, to something not very far short of the vitiation of significance at the other, the level of harm caused would sit.
33. On my analysis, the extent of harm would be very much at the lower end of the 'less than substantial' scale. I reach that conclusion because first of all, there would be no direct impact on the listed building, and the fabric of the building, enclosing the spaces within it, provides the predominant constituent of its overall significance. Moreover, the close-up views of the building that best inform its significance, in other words the key parts of its setting, would be unaffected.
34. Secondly, the harmful impact on the setting of the Shopping Building would be experienced in only very limited areas. Large swathes of the extensive interior would still allow the play of natural light, and the transparency of the structure, to be readily appreciated. Again, I can see that there would be a danger of this impact becoming cumulatively greater if a succession of proposals for tall buildings along Midsummer Boulevard came forward. However, as I have indicated above, that is a strategic question best dealt with in those terms.
35. Thirdly, the loss of the relationship with the 'The Point' would not devalue the significance of the Shopping Building to any great degree, and in any event, an echo of that relationship would remain as part of the proposals.

Conclusion

36. Having set out these harmful heritage impacts, in relation to 'The Point' and the Shopping Building, following the line of MK:Plan Policy HE1 and the approach of the Framework, I need to address the public benefits that would come forward if it is implemented. Before doing so, I must say something about the nature of the proposal. The evidence shows that as things stand, it is not viable. Conventional wisdom suggests that a proposal that is not viable is very unlikely to be implemented, so the benefits will not come forward. However, in that instance, the harmful impacts would not manifest themselves either.
37. It seems to me that the decision-maker rarely knows for sure whether a development for which permission might be granted will come forward, so all balancing exercises of this type are carried out in the abstract. In that context, questions around viability have not exerted any great influence on my approach to the balancing exercise, save for one particular matter relating to affordable housing, that I highlight below.
38. First, the delivery of almost 500 accessible, energy efficient residential units, or apartments, would represent a significant boost in housing terms. As things stand, the Council can demonstrate a five-year supply of housing but nevertheless, the objective of the Government is to significantly boost the supply of housing, and not just in areas that cannot demonstrate a five-year supply. The housing crisis is a national one, after all.

39. The Agreement under s.106 includes a financial contribution to the provision of affordable housing off-site. For the reasons set out below, I have not attached any weight to this in reaching my conclusions.
40. Second, there would be significant economic benefits in the construction phase. I note what the Council says about the nature of these benefits, but Government policy says that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The construction industry is an important driver of economic growth and as such the jobs created or sustained, and the expenditure on materials and such like, involved in the scheme, attract significant weight in its favour.
41. The proposal would also bring forward economic benefits in operation. New residents would be brought into the city centre creating meaningful increases in local expenditure that could help sustain the Shopping Building, and the facilities within it, as well as other city centre facilities. The provision of new leisure and outdoor sports facilities as part of the scheme would be attractions in themselves, generating visitors to the city centre, and associated expenditure.
42. There would also be environmental benefits flowing from the proposal. In particular, notwithstanding its status as a non-designated heritage asset, 'The Point' is largely unused and has a semi-derelict appearance. There is no reasonable prospect of it coming back into operation. To suggest that it should remain, nevertheless, would serve to fossilise an important city centre site that is largely moribund and crying out for effective re-use. Bringing the site back into that effective re-use through what I regard as a very well-designed scheme would make for an efficient use of the site, in line with advice in the Framework, and have a positive impact on the city centre in character and appearance terms. On top of that, the scheme would provide a biodiversity net gain of 90.4%.
43. Bringing those points together, I am of the view that these public benefits are easily sufficient to outweigh the less than substantial harm that would be caused to the significance of the Shopping Building, through development in its setting, and to justify the loss of 'The Point'. On that basis the proposal accords with Plan:MK Policy HE1, the development plan considered as a whole, and Government advice in the Framework. There are no other material considerations that would justify a decision not in accordance with the development plan. On that basis, it is my conclusion that the appeal should be allowed.

Conditions and Obligations

44. Paragraph 57 of the Framework tells us that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. Helpfully the parties worked up a list of conditions that formed the basis of discussion at the Inquiry³. I have largely repeated these in Annex C save for some minor adjustments relating to implementation clauses and the like. These adjustments are necessary for the sake of precision. I pick out the more substantive changes in what follows.

³ ID4

45. As is usual, conditions are necessary to deal with commencement (condition 1) and to set out the approved plans (condition 2). To protect the living conditions of existing occupiers, and future occupiers of the development, conditions are also required to limit the range of uses possible on the rooftop of the Multi-Storey Car Park building (condition 3), the times at which those uses can operate (condition 4), and to secure a scheme designed to limit any noise from those uses (condition 5). In a similar vein, a condition is needed to set out the uses that can take place in the commercial areas of the buildings (condition 6) and to deal with the potential for noise and vibration from the gym proposed on the mezzanine floor of Blocks C and D (condition 7).
46. As I have set out above the proposals would involve the loss of 'The Point' which all agree is a non-designated heritage asset. The proposals would also be close to the Shopping Building, a Grade II listed building, in the centre of the city. In that context, it seems to me reasonable to apply a condition to ensure that demolition of the existing building and the construction of the proposals take place as one operation (condition 8), rather than leave the potential for a 'gap site' to persist after demolition. Moreover, given the nature of 'The Point', it is necessary for it to be recorded before it is demolished, in accordance with a scheme first agreed with the Council (condition 9).
47. In order to ensure the proposal attains the potential shown on the approved plans, it is reasonable to apply a condition requiring details of façade elements to be approved by the Council. As drafted the condition requires details of 'any' façade elements to be submitted for approval. I consider that to be rather wide in its compass – there would be elements of the façade that do not require that level of control. The condition would function more reasonably if it referred to 'any important' façade elements. To my mind, that would include the facing materials, the glazing modules/panels at different levels, the treatment of the openings at ground floor and upper levels, canopies, the cladding of the Multi-Storey Car Park, and signage. There may well be others, but it would be a matter between the parties to agree on what elements of the façade could be described as 'important'. I have corrected the submitted condition accordingly (condition 10).
48. I have referred above to the importance of the crown structure to Block C as a nod, or a reference back, to 'The Point'. It is essential then that this part of the scheme is properly considered. To that end, details will need to be agreed with the Council before the crown structure is installed. There is a difference between the parties as to when those details should be submitted for approval. To my mind, using first occupation of Block C as the trigger, as the appellant suggests, rather than construction above the 15th floor as the Council suggests, is reasonable and provides a clear incentive for the appellant to submit and agree the required scheme expeditiously. I have adjusted the condition accordingly and included a requirement for an implementation timetable (condition 11). Allied to that, a condition is necessary to secure details of the manner in which the crown structure would be illuminated (condition 13), and in order to avoid the accretion of extraneous paraphernalia, to prevent the rooftop areas around the crown structure from being used as balconies, or for plant or machinery (condition 12).
49. In order to protect the living conditions of existing and future occupiers, another condition is needed to control the external lighting of the proposals (condition 14).

Similarly, conditions are needed to deal with noise emissions from any external plant or machinery (condition 15) and to secure details of boundary treatments (condition 16). A proper approach to the security and general amenity of occupiers of the proposal necessitates the agreement and implementation of a Security and Access Strategy across the site (condition 17), a scheme to cover residents' access to internal and external amenity space, taking account of the fact that not all blocks provide general internal amenity space (condition 18), and to secure details of a means to ensure a reasonable level of privacy is maintained between occupiers of flats on the 1st to 12th floors of Blocks A and C (condition 19).

50. It is necessary to apply a condition to deal with the submission of details of all hard and soft landscaping and to cover its implementation and maintenance (condition 20). Conditions are also required to protect the existing trees on the site in the course of construction (conditions 21 and 22). Similarly, there is a need to secure a Construction Ecological Management Plan (condition 23) and in order to comply with the approach of Plan:MK Policy NE3, a Landscape and Ecological Management Plan and Biodiversity Enhancement Scheme (condition 24).
51. A series of highways-related conditions are required. The first relates to the provision of the storage areas for refuse and recyclables (condition 25). It is necessary too to apply a condition require the approval of a Service Delivery Management Plan (condition 26). Details of cycle parking for residents and visitors need to be secured by condition, including a timetable for its provision (condition 27) and the same is true of the vehicular parking (condition 28). Another condition is required to bring forward the electric vehicle charging points (condition 29).
52. The demolition of the existing buildings on the site, and the subsequent construction of the proposed development, will be a major undertaking. As such it is imperative that those operations are properly managed to ensure that they cause the least amount of disruption and disturbance necessary. In that context, conditions are needed to require the Council's approval of details relating to demolition and disposal (condition 30), construction (condition 31) to control noise, dust, and vibration (condition 32), and surface water run-off (condition 33).
53. A condition is needed to ensure that the Council can approve details of surface water drainage (condition 34), and its long-term maintenance (condition 33), and foul drainage (condition 36). Finally, it is reasonable to apply a condition dealing with the way the scheme addresses the sustainability requirements of Plan:MK Policy SC1, and the Council's Sustainable Construction SPD (condition 37).
54. As I have referred to above, an Agreement under s.106 (the Agreement)⁴ was entered into by the parties. Reflective of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, paragraph 58 of the Framework tells us that planning obligations must only be sought where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Unusually, the Agreement does not include a 'blue pencil' clause. All it says, in paragraph 3.4, is that if I conclude that any of the obligations contained in the Agreement is incompatible with one or more of these tests, I may attach no weight to it in determining the appeal.

⁴ ID10

55. Against that background, I need to highlight some linked matters. The first of these relates to the Affordable Housing Contribution. According to the Agreement this is a financial contribution of £690,009.20 to be paid to the Council in lieu of on-site provision of affordable housing, to be used by the Council towards the provision of affordable housing, off-site, in Milton Keynes. The evidence provided by the appellant is that the scheme cannot provide any affordable housing for viability reasons. While this evidence was not tested at the Inquiry, there is nothing in the Council's similarly untested viability evidence to suggest that the appellant has been anything other than open and transparent. Moreover, the Agreement includes an affordable housing review mechanism which requires a Second Viability Assessment to be carried out if the development is not brought forward within a set period. This could result in an Additional Affordable Housing Contribution being payable if the viability position has improved in the intervening period.
56. Having regard to Plan:MK Policy HN2 that deals with the provision of affordable housing, a flexible approach ought to be taken to achieve a viable position. Requiring a scheme that is demonstrably not viable to shoulder the burden of a financial contribution towards affordable housing off-site does not fall within the spirit or indeed the letter of the policy. It is not necessary to make the development acceptable in planning terms, nor is it fairly and reasonably related in scale and kind to the development. In accordance with the terms of the Agreement, the Affordable Housing Contribution is not a factor to which I have attached weight. That is especially the case when the Agreement includes a mechanism which allows for a review. It seems to me that this review is all that could reasonably be required to protect the Council's position.
57. Other obligations in the Agreement are there to govern the nature of the development, in particular the Build to Rent element, or to mitigate its impacts, for example the other financial contributions therein, the Travel Plan, a parking management plan, a Car Club, and the provision of Category M4 housing units. I am content that these meet the tests set out above but because they are necessary controls on the proposal, or inserted to mitigate impacts, I have not attached any weight to them in the planning balance.

Final Conclusion

58. For the reasons set out above, and having taken account of the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be allowed, and planning permission granted subject to the conditions set out in Annex C.

Paul Griffiths
INSPECTOR

Annex A: Appearances

For the Local Planning Authority

Richard Harwood KC

Instructed by Milton Keynes City Council

He called:

Simon Peart

Heritage and Design Manager
Milton Keynes City Council

Elizabeth Verdegem

Team Leader, Strategic Team
(DM), Milton Keynes City Council

Matthew Clarke⁵

Principal Urban Designer, Milton
Keynes City Council

For the Appellant

Charles Banner KC

Instructed by Town Legal LLP

He called:

Jeremy Pickard

Studio Director SWAP Architects

Laurie Handcock

Director of Heritage and
Townscape, Icen Projects

Philippa Dalton

Director of Planning, Battersea
Power Station Development
Company (formerly Head of
Planning for DS Real Estate

Spencer Tewis-Allen⁶

Partner Town Legal LLP

⁵ Took part in the round table discussion about design and associated matters

⁶ Took part in the discussion on conditions and obligations

Annex B: Inquiry Documents

ID1:	Opening Statement for the appellant
ID2:	Opening Statement for the Council
ID3:	Scheme Architect's Presentation
ID4:	List of Agreed Conditions
ID5:	Draft Obligations
ID6:	Closing Statement for the Council
ID7:	Closing Statement for the appellant
ID8:	Appellant's application for costs and responses
ID9:	Council's application for costs and responses
ID10:	Completed Agreement under s.106

Annex C: Schedule of Conditions

- 1) The development permitted shall be begun before the expiration of three years from the date of this permission
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 21019-SWAP-XX-00-DR-A-GA-1200 Rev P06 - Ground Floor General Arrangement
 - 21019-SWAP-XX-01-DR-A-GA-1201 Rev P06 - First Floor General Arrangement
 - 21019-SWAP-XX-02-DR-A-GA-1202 Rev P06- Second Floor General Arrangement
 - 21019-SWAP-XX-03-DR-A-GA-1203 Rev P06 - Third Floor General Arrangement
 - 21019-SWAP-XX-04-DR-A-GA-1204 Rev P05 - Fourth Floor General Arrangement
 - 21019-SWAP-XX-05-DR-A- GA-1205 Rev P05 - Fifth Floor General Arrangement
 - 21019-SWAP-XX-06-DR-A-GA-1206 Rev P05 - Sixth Floor General Arrangement
 - 21019-SWAP-XX-07-DR-A-GA-1207 Rev P05 - Seventh Floor General Arrangement
 - 21019-SWAP-XX-08-DR-A-GA-1208 Rev P05 - Eighth Floor General Arrangement
 - 21019-SWAP-XX-09-DR-A-GA-1209 Rev P06 - Ninth Floor General Arrangement
 - 21019-SWAP-XX-10-DR-A-GA-1210 Rev P05 - Tenth Floor General Arrangement
 - 21019-SWAP-XX-11-DR-A-GA-1211 Rev P05 - Eleventh Floor General Arrangement
 - 21019-SWAP-XX-12-DR-A-GA-1212 Rev P05 - Twelfth Floor General Arrangement
 - 21019-SWAP-XX-13-DR-A-GA-1213 Rev P05 - Thirteenth Floor General Arrangement
 - 21019-SWAP-XX-14-DR-A-GA-1214 Rev P05- Fourteenth Floor General Arrangement
 - 21019-SWAP-XX-15-DR-A-GA-1215 Rev P05 - Fifteenth Floor General Arrangement
 - 21019-SWAP-XX-16-DR-A-GA-1216 Rev P05 - Sixteenth Floor General Arrangement
 - 21019-SWAP-XX-17-DR-A-GA-1217 Rev P05 - Seventeenth Floor General Arrangement
 - 21019-SWAP-XX-18-DR-A-GA-1218 Rev P05 - Eighteenth Floor General Arrangement
 - 21019-SWAP-XX-19-DR-A-GA-1219 Rev P06 - Nineteenth Floor General Arrangement
 - 21019-SWAP-XX-20-DR-A-GA-1220 Rev P05 - Twentieth Floor General Arrangement
 - 21019-SWAP-XX-21-DR-A-GA-1221 Rev P04 - Twenty First Floor General Arrangement
 - 21019-SWAP-XX-M01-DR-A-GA-1201 Rev P05 - Mezzanine Floor General Arrangement
 - 21019-SWAP-XX-RF-DR-A-GA-1221 Rev P06 - Roof Plan General Arrangement
 - 21019-SWA-XX-XX-DR-A-GA-0002 Rev P01 - Demolition Plan

21019-SWAP-XX-XX-DR-A-GA-0004 Rev P05 - Site Plan
21019-SWAP-XX-ZZ-DR-A-GA-2101 Rev P06 - Lower Ninth Street Elevation
21019-SWAP-XX-ZZ-DR-A-GA-2102 Rev P06 - Lower Tenth Street Elevation
21019-SWAP-XX-ZZ-DR-A-GA-2103 Rev P06 - Midsummer Boulevard Elevation
21019-SWAP-XX-ZZ-DR-A-GA-2104 Rev P06 - Avebury Boulevard Elevation
21019-SWAP-XX-ZZ-DR-A-GA-2201 Rev P06 - Sectional Elevation A-A
21019-SWAP-XX-ZZ-DR-A-GA-2202 Rev P06 - Sectional Elevation B-B
21019-SWAP-XX-ZZ-DR-A-GA-2203 Rev P03 - Section C-C
21019-SWAP-XX-ZZ-DR-A-GA-2204 Rev P01 - Section D-D
4842/01/21-1760 Revision v1 - Tree Constraints Plan
D3124-FAB-00-00-DR-L-1000 Rev P01 - Ground Floor Combined Hard and Soft General Arrangement Plan
D3124-FAB-00-00-DR-L-8000 Rev P01 - Indicative Sitewide Sections Sheet 01
D3124-FAB-00-00-DR-L-8001 Rev P01 - Indicative Sitewide Sections Sheet 01
D3124-FAB-00-ZZ-DR-L-1001 Rev P01 - Podium and Roofs Combined Hard and Soft General Arrangement Plan
D3124-FAB-00-ZZ-DR-L-0001 Rev P01 - Landscape Masterplan
21019-SWA-XX-XX-DR-A-GA-0000 Rev P02 - Site Location Plan
21019-SWAP-XX-XX-DR-A-GA-0005 Rev P06 - Ground Floor Masterplan
CE Plan 8244/204 Rev A - Swept Path Analysis - Refuse Vehicle
21019-SWAP-XX-00-DR-A-GA-1221 Rev P07 - Lower Ground Floor General Arrangement

Housing Accommodation Schedule R5 Revised Offer Market Only – 20 May 2024

- 3) The rooftop of the Multi-Storey Car Park building shall be used only for the purpose as a bar, outdoor sports and outdoor cinema facility falling within use class E(b) and F2(c) and sui generis (cinema) respectively, and for no other purpose whatsoever, including any other purpose in Classes E and F2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that class in any statutory instrument revoking, amending or re-enacting that order.
- 4) The use of the rooftop of the Multi-Storey Car Park shall be limited to the period between the hours of 0900 and 2300 Monday to Sunday, including bank holidays. The rooftop of the Multi-Storey Car Park shall not be used for showing televised sports or as a music entertainment venue at any time. No amplification or loudspeaker equipment shall be used.
- 5) Prior to the use of the rooftop Multi-Storey Car Park for outdoor sports, a scheme for the acoustic and/or noise dampening screening shall be submitted to, and approved in writing by, the local planning authority. The scheme shall set out the types of sports or activity that may be undertaken on site, and the acoustic screening for a worst-case scenario. Any sport or activity which has not been tested shall not be undertaken at the site. The acoustic/noise dampening screening shall be installed in accordance with the approved details before the first use of the rooftop Multi-Storey Car Park for

- outdoor sports and retained as such throughout the lifetime of the development.
- 6) The proposed ground and lower ground floor units in commercial use shall be used only for the purpose of retail, services, café, restaurant, gym/recreation or medical services/health centre falling within use class E(a), E(b), E(c), E(d), E(e) and sui generis (radio station) and for no other purpose whatsoever, including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that class in any statutory instrument revoking, amending or re-enacting that order.
 - 7) Prior to the use of the gym on the mezzanine floor of Blocks C and D, a noise and vibration assessment and scheme of mitigation for the impact of the gym on surrounding floors shall be submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved before the gym is brought into use and retained as such for the lifetime of the development.
 - 8) No demolition or alteration by way of substantial or partial demolition shall take place before evidence has been submitted to and approved in writing by the local planning authority of a completed contract for the construction of the comprehensive proposed scheme of development hereby approved. Should that contract fall away prior to works commencing, a revised submission shall be first submitted and approved by the local planning authority.
 - 9) Prior to any demolition taking place, the applicant shall ensure the production of a historic record of the buildings to be demolished to a scheme and level agreed in writing by the local planning authority and detailed in a Written Scheme of Investigation (WSI). The subsequent report shall be submitted to and approved by the local planning authority in writing. The building recording report will be deposited with Milton Keynes Historic Environment Record in PDF(A) format within three months of the recording survey being completed. The final report and details of the project will also be added to the Archaeology Data Service OASIS website.
 - 10) Prior to installation of any important façade element for the relevant block, a full materials specification and Design and Access Statement Explanatory Note, including consideration of any materials previously approved by this or any other condition, shall be submitted and mock panels of external facing façade elements of the relevant block shall be constructed, for the approval of the local planning authority. No external facing façade elements shall be installed until the full specification of materials and the mock panels for the relevant block have been agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 11) Prior to the first occupation of Block C, full detailed specifications and illustrations of the crown structure, including specifications of materials, window frames and casement hanging, glazing, method of window opening, and railings, and a timetable for implementation, shall be submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.

- 12) At no time shall the rooftop areas around the crown structure of Block C be used or accessed as private balconies and no plant or machinery shall be installed on these areas.
- 13) Prior to the occupation of the 19th and 20th floors of Block C, a scheme for the lighting and illumination of the crown structure shall be submitted to, and approved in writing by, the local planning authority. The scheme shall include the type, design, colour, timing and location of the lighting, together with a lighting report including details of fixtures and fittings, associated angle, fall, spread and intensity, an assessment of the impact on the residential amenity of the occupiers of the 19th and 20th floors and an Illumination Agreement for the method of decision making for any changes to the design as a result of a special occasion. Development shall be carried out in accordance with the approved details.
- 14) No external lighting shall be provided or erected on the site unless full details of the type, design and location of the additional lighting, together with a lighting report including details of fixtures and fittings, associated angle, fall, spread and intensity, have first been submitted to and approved in writing by the local planning authority. No external lighting shall be erected and installed other than in accordance with the approved details.
- 15) Prior to the installation of any externally sited plant or equipment, full specifications of the plant or equipment shall be submitted to and approved in writing by the local planning authority. The specification shall include details of noise levels as predicted at the boundary of the site with any sensitive receptors and include mitigation measures to reduce noise levels at those receptors to acceptable levels. The details shall include any enclosures, safety barriers and lighting. The externally located plant or equipment, along with any mitigation measures required, shall be installed in accordance with the approved details prior to first use of said plant or equipment and thereafter maintained in accordance with the agreed levels.
- 16) Notwithstanding the approved details, no development shall take place above slab level until details of the proposed boundary treatments have been submitted to and approved in writing by the local planning authority. The details shall include a boundary treatment plan (at a minimum scale of 1:500) detailing the position of all proposed boundary treatment and annotated or accompanied by a schedule specifying the type, height, composition, appearance and installation method of boundary treatment throughout the site. The boundary treatments shall be completed in accordance with the approved details prior to the occupation of any part of the development and retained in that form thereafter.
- 17) Prior to the occupation of the development hereby permitted a Security and Access Strategy, to include private and public spaces including the residential, servicing area, routes through public spaces, commercial units and Multi-Storey Car Park, shall be submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 18) Prior to the occupation of the relevant block of the development hereby permitted a plan for the detailed specification of, and residents' access to, the internal (where applicable) and external amenity space relating to that block, shall be submitted to and approved in writing by, the local planning authority.

- The internal (where applicable) and external amenity space shall be provided and installed as approved, and the approved access plan for residents shall be in place at all times.
- 19) Other than for the construction of any building cores, no development above ground floor level shall take place until measures to ensure privacy between Blocks A and C on flats between the 1st and 12th floors (inclusive), including specifications of materials and glazing as required shall be submitted, to and approved in writing by, the local planning authority. The measures shall be installed prior to occupation of those flats in accordance with the approved details and retained as such thereafter.
 - 20) Notwithstanding the approved drawings, no development shall take place above slab level until full details of both hard and soft landscape works, inclusive of full details of replacement tree planting in accordance with BS 8545: 2014, have been submitted to and approved in writing by the local planning authority. Soft landscape works shall include planting plans with schedules of plants noting species, supply sizes, numbers of plants and proposed densities; and a tree planting details drawing. The planting plans shall include existing trees to be retained and/or removed accurately shown with root protection areas; existing and proposed finished levels and contours; visibility splays; proximity between lighting and tree planting; proposed and existing functional services above and below ground. All replacement tree planting shall include full details of tree sizes, species, planting locations, planting spacings, pre-planting ground preparations, planting method and long-term maintenance. Where appropriate details of root deflection barriers and permanent protective measures against soil compaction, vehicle impact, de-icing salt etc shall be submitted. All hard and soft landscape works shall be carried out in accordance with the approved details and prior to the first occupation of the building(s) or the completion of the development whichever is sooner. Any plant which within a period of five years from the date of the planting (ten years in the case of any tree), that tree or shrub, or any tree and shrub planted in replacement for it, is removed, uprooted or destroyed, dies, becomes severely damaged or diseased, shall be replaced in the next planting season with trees and shrubs of equivalent size, species and quantity and thereafter retained for at least the same period.
 - 21) If construction-facilitation pruning of the trees is required, this should be carried out by a competent, qualified and experienced tree surgeon according to the provisions of BS 3998:2010 and current arboriculture industry best practice. The local authority arboriculture officer shall be given 5 working days' notice before the works are carried out so they have the opportunity to attend on site and agree the exact extent of the works with the tree surgery contractor.
 - 22) All existing trees to be retained are to be protected according to provisions of BS 5837:2012 'Trees in relation to design, demolition and construction-Recommendations' and the submitted Arboricultural Method Statement of February 2023 by Plowman Craven. All protective measures especially the fencing, hoarding and any ground protection must be put in place first, prior to any other work commencing on the 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 contractors, equipment and materials have left site. Once erected, the Local Authority Tree Officer shall be notified so the fencing can be inspected and approved. 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.

- 23) Prior to the commencement of any works hereby permitted a Construction Ecological Management Plan (CEcMP) shall be submitted to, and approved in writing by, the local planning authority. The CEcMP shall include, but not be limited to the measures detailed in Chapter 10 Ecological Appraisal (PEA) Report Lockhart Garratt. All approved measures shall be implemented in full.
- 24) Prior to the first occupation of any unit hereby permitted, a Landscape and Ecological Management Plan and Biodiversity Enhancement Scheme shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details prior to the occupation of the development.
- 25) No building or use hereby permitted shall be occupied or commenced until the refuse stores and areas/facilities allocated for storing of recyclable materials, as shown on the approved plans, have been completed for that building in accordance with the approved plans. Thereafter, all refuse and recyclable materials associated with the development shall be stored within these dedicated stores/areas.
- 26) Prior to the first occupation of the development hereby permitted a Service Delivery Management Plan to serve the non-residential and communal aspects of the residential development, shall be submitted to, and approved in writing by, the local planning authority. The scheme shall include schedule and timing of deliveries, the location of loading and unloading points, and be carried out as approved for the lifetime of the development.
- 27) Prior to the first occupation of the development hereby permitted details of the exact position, number and specification of the residents' and visitors' cycle parking, and a timetable for its provision, shall be submitted to, and approved in writing by, the local planning authority. The cycle parking shall be provided in accordance with the approved details.
- 28) Prior to the first occupation of the development hereby permitted and the first use of the Multi-Storey Car Park, a parking management plan shall be submitted to, and approved in writing by, the local planning authority. The plan shall clearly set out the number and type of residential and non-residential spaces, including justification for each, and the method of how the residential spaces will be assigned and securely accessed. The development shall thereafter be completed and operated in accordance with the plan.
- 29) Prior to the first occupation of the development hereby permitted and the first residential use of the Multi-Storey Car Park, a scheme for the details of the electric vehicle changing points for each residential space, including specifications on the type of provision, shall be submitted to, and approved in

- writing by, the local planning authority. The electric vehicle charging points shall be installed in accordance with the specifications approved, prior to the first use of the residential spaces.
- 30) No development hereby permitted, including any works of demolition, shall take place until a site-wide Demolition Method Statement and a Site Waste Management Plan for the construction period have been submitted to and approved in writing by the local planning authority. The development shall be carried out in full accordance with the approved documents.
- 31) Notwithstanding the submitted details and/or the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, no development including preparatory works shall take place until the following details have been submitted and approved in writing by the Local Planning Authority: (i) The location, internal layout, boundary treatments and lighting for a secure compound on or adjacent to the site to cater for (a) the unloading, storage and loading of plant and materials, (b) the parking of contractor vehicles during the construction and fitting out phases of the development, (c) welfare accommodation and site offices, and (d) any cranes required during the course of construction works; (ii) The location and method(s) to ensure availability at all times of a static wheel wash solution to minimise, in so far as is practicable, the likelihood of mud and debris being carried onto adopted highways and/or highways being provided within the site; (iii) The timing for the removal of the secure compound along with all associated plant, cranes, materials, parking provision, accommodation, site offices, boundary treatments and lighting, along with details of the method of restoration of the land where not to be developed pursuant to the permission hereby granted; (iv) Intended routes for heavy goods vehicles to travel to and from the site, from and to the nearest trunk or grid road, avoiding entering areas subject to weight restrictions where feasible, along with the method in which such preferred routes will be communicated to all contractors utilising heavy goods vehicles; and (v) The method of communicating, no less than once every 3 months, the phasing of site works to the affected town and parish council(s) and relevant ward councillors, including off-site works to provide utility connections whether carried out by the developer or by a statutory undertaker. The details submitted shall be bespoke to the site concerned and specific to solely those matters listed above and not supplemented by other matters addressed under alternative regulations or working practices or by other conditions attached to this permission. The construction and fitting out phases of the development shall be carried out in accordance with the approved details, with all site operatives and contractors informed of these measures prior to them first commencing work at the site. The secure compound along with all associated plant, cranes, materials, parking provision, accommodation, site offices, boundary treatments and lighting shall be removed and the land restored (where applicable) in accordance with the approved timescales.
- 32) No development shall take place until a scheme of preventative and mitigation measures for the control of noise, vibration and dust emanating and arising from the site during the construction period has been submitted to and approved in writing by the local planning authority. The approved measures shall be implemented throughout the construction period.

- 33) No development, including any preparatory works, shall commence until details of measures indicating how additional surface water run-off from the site will be avoided during the construction works have been submitted to and approved in writing by the local planning authority. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved measures and systems shall be brought into operation before any works to create buildings or hard surfaces commence.
- 34) No laying of services, creation of hard surfaces or erection of a building shall commence until a detailed surface water drainage scheme for the site, based on the agreed Flood Risk Assessment & Drainage Strategy, prepared by Cole Easdon Consultants Limited, revision 3, dated January 2024 has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in full accordance with the approved details prior to occupation of the first dwelling.
- 35) Prior to the first occupation of the development hereby permitted details for the long-term maintenance arrangements for the surface water drainage system (including all SuDS features) shall be submitted to, and approved in writing by, the local planning authority. The submitted details should identify runoff sub-catchments, SuDS components, control structures, flow routes and outfalls. In addition, the plan must clarify the access that is required to each surface water management component for maintenance purposes. The maintenance plan shall be carried out in full thereafter.
- 36) Prior to the commencement of the development hereby permitted a scheme for on-site foul water drainage works, including connection points and discharge rates, shall be submitted to and approved in writing by, the local planning authority. Prior to the occupation of any phase, the foul water drainage works relating to that phase shall be carried out in complete accordance with the approved details.
- 37) Prior to the commencement above slab level of the development hereby permitted, details of the applicant's proposed strategy for according with the requirements in Parts K.4, K.5. and K.6 of Policy SC1 in Plan:MK, considering the guidance in the Sustainable Construction SPD (2021), shall be submitted to, and approved in writing by, the local planning authority. Upon their completion, the annual output reports from the monitoring regime will be sent to the applicable owners/occupiers of the monitored dwellings, and to the local planning authority.



Costs Decision (1)

Inquiry opened on 18 March 2025

by **Paul Griffiths BSc(Hons) BArch IHBC**

an Inspector appointed by the Secretary of State

Decision date: 8th July 2025

Costs application in relation to Appeal Ref: APP/Y0435/W/24/3350378

The Point, 602 Midsummer Boulevard, Milton Keynes MK9 3NB

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by GHIL (Milton Keynes) Ltd for a full or failing that a partial award of costs against Milton Keynes Council.
 - The Inquiry was in connection with an appeal against the refusal of planning permission for what was described as: the demolition of all existing vacant entertainment complex buildings and redevelopment to provide flexible Class E leisure/retail uses (upper and lower ground level), up to 487 apartments (Build to Rent, private and affordable) over the upper floors (up to 21 storeys with a floor to floor height of 3m plus a crown structure), re-cladding of the existing car park with Class E/F.2/sui generis leisure uses (bar, outdoor sports and cinema) at rooftop level, landscaped public realm, amenity space, cycle parking and associated access and servicing provision.
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Decision

1. The application for a full, or failing that a partial, award of costs is refused.

The submissions for the appellant

2. Submissions for the appellant were made in writing at the Inquiry. Final comments on the Council's response were received in writing after the Inquiry closed. In addition, the appellant also sought a partial award of costs for having to respond to the Council's application for costs.

The response by the Council

3. The Council's responses to the appellant's applications for costs were made in writing after the Inquiry closed¹.

Reasons

4. The Planning Practice Guidance (PPG) tells us that parties in appeals and other planning proceedings normally meet their own expenses but where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeals process, they may be subject to an award of costs. Such unreasonable behaviour might be procedural, relating to the appeal process, or it might be substantive, relating to the issues arising from the merits of the case presented.
5. The PPG gives examples of the type of behaviour that might give rise to a substantive award of costs against a local planning authority. These include (and the list is not exhaustive): preventing or delaying development which should clearly

¹ The applications, responses and final comments are found at ID8

be permitted, having regard to its accordence with the development plan, national policy and any other material considerations; a failure to produce evidence to substantiate each reason for refusal on appeal; vague generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.

6. The Council advanced 7 (seven) reasons for refusal of the original application. I intend to deal with each in turn. The first reason for refusal related to the provision of affordable housing, linked to questions around viability. Both sides produced viability evidence for the Inquiry but as things turned out, neither witness was called, so the evidence of both sides was left untested. That said, the appellant maintained their position that the scheme is not viable, and that did not appear to me to be questioned by the Council. The suggestion is that the Council acted unreasonably in relation to the viability question and ought to have agreed a Statement of Common Ground relating to it, thereby obviating the need for the preparation of viability evidence. However, I can understand why the Council might have been reluctant to do so in the terms advanced.
7. First, there was the confusion caused by the reference to affordable housing in the original description of development. If the scheme was not viable at the outset, then this reference should not have been included. More importantly, despite maintaining the position that the scheme was and is unviable, the appellant at various times offered the Council a sum of £1 million as a contribution to affordable housing off-site, and the Inquiry was handed an Agreement under s.106 that included a contribution of more than £690k for the same purpose. That same Agreement did not include a 'blue pencil' clause enabling me to strike the contribution out even though it must have been obvious to both sides that on the basis of the evidence, the contribution failed to meet the tests for obligations in the Framework.
8. In that overall context, I do not believe that the Council's apprehension about the viability position, and the ability of the scheme to deliver affordable housing, on- or off-site, was unreasonable.
9. I accept that the Council's second and seventh reasons for refusal relating to 'infrastructure' and 'play and open space provision' could have been dealt with through a resolution to grant permission subject to an Agreement or Unilateral Undertaking under s.106 under when the Council made its decision. However, that would only have been possible if the Council was content with the scheme in all other respects. Clearly, the Council was not. On that basis, given the lack of any Agreement or Unilateral Undertaking at that stage, the reasons for refusal were not in themselves unreasonable. Reasons for refusal of this type are, in my experience, typical in this sort of situation. These matters then needed to be resolved in the appeal process and, as I have set out above, an Agreement under s.106 was entered into that dealt with them.
10. The sixth reason for refusal relates to concerns about the height of the proposals and in particular, the detailed design of the crown structure, while the fifth relates to concerns about the height of the proposals in the context of longer-range views.

11. I appreciate that the design of the crown structure was always capable of being dealt with by condition and that visual renderings of the long-range views were provided. However, it seems to me that the Council's concerns about the height of the proposals went beyond these matters and formed a good part of the Council's concerns about the impact on the setting and thereby the significance of the Shopping Building. The potential loss of 'The Point' had a part to play in that analysis too. It seems to me that questions around the design of the crown structure, could only be resolved by condition if the Council had no issue in relation to the Shopping Building and/or 'The Point'. Similarly, the Council could only accept the impact of the proposal in long distance views if it was prepared to accept the loss of 'The Point'.
12. However, the Council maintained its position in relation to the Shopping Building and the loss of 'The Point'. In this context, I can understand why the Council was concerned about the impacts of the taller elements of the proposal rising above the Shopping Building from Silbury Boulevard, and in views out of Queens Square. They were supported to an extent by Historic England. In relation to Queens Square, I have agreed that some less than substantial harm to significance would be caused by the visual presence of the proposals, but I have found this to be outweighed by public benefits. I take a similar view in relation to the Council's approach to 'The Point' as a non-designated heritage asset. In applying the necessary balancing exercise, I have found the loss of 'The Point' to have been justified by public benefits.
13. It is suggested that in relation to the Shopping Building and 'The Point' the Council was unreasonable in not concluding similarly. However, these are matters of planning judgment and while I have not agreed with the Council's apportionment of weight, I do not consider the position they adopted to have been so lacking in merit as to be unarguable. On that basis, I do not consider that the Council's approach in relation to their third, fourth, fifth and sixth reasons for refusal to have been unreasonable.
14. Finally, I must deal with the appellant's application for a partial award of costs for responding to the Council's application for costs. I have not awarded costs in favour of the Council for the reasons set out in that separate decision. However, while the application might have been made in a retaliatory way, it was not so frivolous as to have been unreasonable. On that basis, I do not believe that the appellant has incurred unnecessary or wasted expense in responding to it.

Conclusion

15. Bringing all those points together, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeals process, as described in the PPG, has not been demonstrated. As such, neither a full, nor a partial award of costs is justified.

Paul Griffiths

INSPECTOR



Costs Decision (2)

Inquiry opened on 18 March 2025

by **Paul Griffiths BSc(Hons) BArch IHBC**

an Inspector appointed by the Secretary of State

Decision date: 8th July 2025

Costs application in relation to Appeal Ref: APP/Y0435/W/24/3350378

The Point, 602 Midsummer Boulevard, Milton Keynes MK9 3NB

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Milton Keynes Council for a partial award of costs against GHL (Milton Keynes) Ltd.
 - The Inquiry was in connection with an appeal against the refusal of planning permission for what was described as: the demolition of all existing vacant entertainment complex buildings and redevelopment to provide flexible Class E leisure/retail uses (upper and lower ground level), up to 487 apartments (Build to Rent, private and affordable) over the upper floors (up to 21 storeys with a floor to floor height of 3m plus a crown structure), re-cladding of the existing car park with Class E/F.2/sui generis leisure uses (bar, outdoor sports and cinema) at rooftop level, landscaped public realm, amenity space, cycle parking and associated access and servicing provision.
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Decision

1. The application for an award of costs is refused.

The Submissions for the Council

2. These were made in writing at the Inquiry. Final comments on the appellant's response to the application for costs were received in writing after the Inquiry closed.

The response by the appellant

3. This was made in writing after the Inquiry closed¹.

Reasons

4. The Planning Practice Guidance (PPG) tells us that parties in appeals and other planning proceedings normally meet their own expenses but where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeals process, they may be subject to an award of costs. Such unreasonable behaviour might be procedural, relating to the appeal process, or it might be substantive, relating to the issues arising from the merits of the case presented.
5. We are told that costs may be awarded against an appellant for introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; or not completing a timely Statement of Common Ground or not agreeing factual matters common to witnesses of both principal parties.

¹ The application responses and final comments can be found at ID9

6. In essence, the Council suggests that the appellant has submitted appeal material, in particular proofs of evidence and rebuttals, of grossly excessive length and scale, meaning that considerable time has been spent on matters that were (and still are) agreed.
7. I can understand the basis of the Council's concern but at the same time, in the absence of any agreement at a sufficiently early stage of the appeal process, the appellant had to address the Council's reasons for refusal in full. I do not see that they had much alternative other than to protect their position in that way. As such, the amount of material produced, while extensive, was relevant, and while agreement on some matters was eventually arrived at, this material was not without its purpose.

Conclusion

8. On that basis, unreasonable behaviour that has directly caused another party to incur unnecessary or wasted expense in the appeals process has not been demonstrated. As such, the application for an award of partial costs is refused.

Paul Griffiths
INSPECTOR