



Department for  
Communities and  
Local Government

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Our Ref: APP/Y0435/V/15/3139212

19 July 2017

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION BY INTU MILTON KEYNES LTD  
MIDSUMMER BOULEVARD AND OAK COURT WITHIN THE INTU MILTON KEYNES  
SHOPPING CENTRE, MILTON KEYNES, MK9 3GB  
APPLICATION REF: 15/01074/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Siân Worden MCD DipLH MRTPI, who held a public local inquiry between 6-9 September and 30 November – 2 December 2016, into your client's application for the partial demolition and redevelopment of the Boulevard and Oak Court to provide a range of retail, financial and professional and restaurant (Use Classes A1, A2, A3 and A5) and leisure (Use Class D2) uses together with public realm and highway works, in accordance with application ref: 15/01074/OUT, dated 5 May 2015.
2. On 17 November 2015, the Secretary of State directed, in pursuance of section 77 of the Town and Country Planning Act 1990, that the application be referred to him instead of being dealt with by Milton Keynes Council.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that planning permission be granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural matters**

5. The Inquiry was conjoined, the second case being a proposed Order under section 247 of the Town and Country Planning Act 1990 to authorise the stopping up of six areas of

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highway in Midsummer Boulevard, Milton Keynes. That proposal, DPI/Y0435/16/11, is the subject of a separate report to the Secretary of State for Transport. The decision letter on that case will be issued on 20 July by the Secretary of State for Transport, and is available on request to the National Transport Casework Team, Tyneside House, Skinnerburn Road, Newcastle Business Park, Newcastle upon Tyne, NE4 7AR.

### **Policy and statutory considerations**

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case the development plan for the area comprises the saved policies in the Milton Keynes Local Plan adopted in December 2005 (LP), the Core Strategy adopted in July 2013 (CS), and the Central Milton Keynes Alliance Plan (CMKAP) 2026 Business Neighbourhood Plan made in June 2015. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR10-12. He agrees with the Inspector's assessment of the relevance of the Local Plan policies set out in IR9.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.

### **Main issues**

10. The Secretary of State agrees with the Inspector that the main issues are those set out at IR251 and 252.

#### *Effect on semi-public open space*

11. For the reasons given by the Inspector at IR253-260, the Secretary of State agrees that there would be a reduction in the quantity of semi-public open space in Midsummer Place (IR260). He notes the different quantifications which have been put forward by the applicant and Central Milton Keynes Town Council (CMKTC), and considers overall that there would be a moderate reduction in quantity.
12. For the reasons given at IR261-267, the Secretary of State agrees with the Inspector that the proposed development would draw more people into the area and encourage them to stay for longer, and that the design and appearance of the new development would be significantly enhanced. In addition, he agrees that active frontages would make a valuable contribution to the quality of Midsummer Place (IR264). For the reasons given at IR266, he agrees that the proposed development would be consistent with Policy CMKAP G7.
13. For the reasons given at IR268-273, the Secretary of State agrees with the Inspector that it is not likely that the proposed new space would become unpleasantly congested or

busy (IR268), that there are limited grounds to consider that the use of the area would be reduced (IR269) and that there is no evidence that the proposal would rule out the installation of an appropriate public transport system in the period up to 2080 (IR273).

14. For the reasons given at IR274-278, the Secretary of States agrees with the Inspector's overall conclusion that a balanced interpretation of Policy CMKAP G3 – one that considers that the overall functionality and value of the semi-public open spaces, as characterised by their size, quality, use and public accessibility combined, should not be reduced (IR274) – is the only one that is consistent with case law, the Framework and the development plan. He further agrees that on that basis, the proposed development would not cause a reduction in the quantity, quality, use and public accessibility of Midsummer Place and is consistent with Policy CMKAP G3 (IR278).

#### *Effect on classic Central Milton Keynes (CMK) infrastructure*

15. For the reasons given at IR279-283, the Secretary of State agrees with the Inspector's conclusion at IR283 that the proposed development would retain the extent, layout and quality of classic CMK infrastructure, and is consistent with Policy CMKAP G1.
16. For the reasons given in IR314-316, the Secretary of State agrees with the Inspector that in both its appearance and function the scheme would go some way to repairing the damage to the grid, and that it would respect the existing CMK grid layout consistent with Policy CMKAP G9 (IR316).

#### *Effect on the health of the Primary Shopping Area (PSA)*

17. The Secretary of State agrees with the Inspector that for the reasons given at IR284-286, in attracting more visitors – for longer periods and for more varied activities – and in consolidating the retail circuit, the proposed development would boost the health of the PSA (IR286).

#### *Public benefits of the proposed development*

18. Turning to the public benefits of the proposal, for the reasons given at IR288-294, the Secretary of State agrees with the Inspector that the proposal would attract more investment, helping Milton Keynes to compete against existing centres and improving its long-term vitality and viability (IR288). He further agrees that the retail offer in the PSA would be improved, strengthening the retail circuit between intu and centre:mk, and enabling MK to compete more successfully with other shopping centres (IR289). He further agrees that since the majority of restaurants and retailers would be additional to those already located in CMK, most of the jobs created in them (as set out in IR288) would also be new (IR293).
19. The Secretary of State agrees with the overall conclusion of the Inspector that the benefits as a whole are convincing, certain, and significant, and carry considerable weight (IR294).

#### *Whether the setting of the listed Shopping Building would be preserved*

20. The Secretary of State has considered carefully whether the setting of the listed Shopping Building would be preserved. He agrees that there is no question that Midsummer Place, and thus the proposed development, is within the setting of the Shopping Building (IR303).

21. For the reasons given in IR304–307, the Secretary of State agrees that while the proposed development would result in blocks of increased height, length and depth, and would affect views of the listed Shopping Building, in comparison with the vast length of the Shopping Building’s side elevations, the amount of these lost to view due to the proposal would be negligible (IR304). He also agrees that the existing intu centre is a harmful element in the setting of the listed Shopping Building, that the infinity views along the southern elevation of the Shopping Building are already hindered by the existing intu development, and the increased impact on these views would be barely noticeable. He further agrees that the changes in the reflections in the mirror glass would not be significant (IR307).
22. For the reasons given at IR308-9, the Secretary of State agrees with the Inspector that in respect of its use and function, the proposed development would be appropriate within the setting of the Shopping Building. He further agrees that the listed building’s significance includes its use and the way it functions, for example its user-friendliness, and that these aspects would be improved by the proposed development as, consequently, would be the way in which those characteristics of the listed building were experienced by shoppers and other visitors (IR308). He further agrees that the Shopping Building’s massive scale, simple form and uniform appearance allow it to remain largely undisturbed by minor changes within its setting (IR309).
23. For the reasons given in IR304-311, the Secretary of State agrees with the Inspector that the harm is ‘less than substantial’. He further agrees with the Inspector, for the reasons given in IR304-309, that the harm is at the lower end of the ‘less than substantial’ spectrum, and is of overall minor harm in magnitude. In reaching this conclusion the Secretary of State has had careful regard to the views and concerns of Historic England as his statutory advisor on heritage matters. He agrees with the Inspector’s assessment of Historic England’s views, as set out in IR311-312.
24. Overall the Secretary of State agrees with the Inspector at IR313 that the public benefits of the proposal are considerable and sufficient to outweigh the ‘less than substantial’ harm to the significance of the listed Shopping Building. The balancing exercise under paragraph 134 of the Framework is therefore favourable to the proposal. In reaching this conclusion he has had special regard to the desirability of preserving the setting of the listed building in accordance with section 66(1) of the LBCA Act.

#### *Other matters*

25. For the reasons given at IR317-321, the Secretary of State agrees with the Inspector’s conclusions on the weight attaching to the outcomes of the MBE workshops (IR318), the implications for the interior climate of a possible future PTS (IR319), and the relevance of previous appeal decisions (IR320-321).

#### **Planning conditions**

26. The Secretary of State has given consideration to the Inspector’s analysis at IR243-247, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework, and that the conditions set out at Annex A should form part of his decision.

## **Planning obligations**

27. The Secretary of State has considered the Inspector's analysis at IR248-249, the planning obligations submitted as part of the appeal, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended. He considers that the obligations comply with Regulations 122 and 123 of the CIL Regulations and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development.

## **Planning balance and overall conclusion**

28. For the reasons given above, the Secretary of State considers that the application is in accordance with development plan policies, including those in the Neighbourhood Plan, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

29. The Secretary of State considers that weighing in favour of the proposal are the substantial public benefits arising from the proposed development. He considers that these benefits carry considerable weight.

30. The Secretary of State considers that a material consideration weighing against the proposed development is that it would result in harm to the significance of the neighbouring Grade II listed Shopping Building. However, he agrees with the Inspector that the harm would be 'less than substantial' and, within that classification, at the lower end. He further agrees that the collective weight of the public benefits of the proposal outweighs the identified 'less than substantial' harm to the significance of the Shopping Building. The balancing exercise under paragraph 134 of the Framework is therefore favourable to the proposal.

31. The Secretary of State considers that there are no material considerations which indicate that the application should be determined other than in accordance with the development plan.

## **Formal decision**

32. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants planning permission for the partial demolition and redevelopment of the Boulevard and Oak Court to provide a range of retail, financial and professional and restaurant (Use Classes A1, A2, A3 and A5) and leisure (Use Class D2) uses together with public realm and highway works, in accordance with application ref: 15/01074/OUT, dated 5 May 2015, subject to the conditions set out in Annex A of this letter.

33. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

## **Right to challenge the decision**

34. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
35. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
36. Copies of this letter have been sent to Milton Keynes Council and Central Milton Keynes Town Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Maria Stasiak*

Authorised by Secretary of State to sign in that behalf

## **Annex A Schedule of conditions**

- 1) The approved development shall be carried out in accordance with the following drawings/details, all electronically registered on 12th May 2015:
  - 130317-D-101 REV A
  - 130317-D-102 REV A
  - 130317-D-103 REV A
  - 130317-D-104 REV A
  - 130317-D-105 REV A
  - 130317-D-106 REV A
  - 130317-D-107 REV A
  - 130317-D-108 REV A
  - 130317-D-109 REV A
  - 130317-D-110 REV A
  - 130317-D-111 REV A
  - 130317-D-112 REV A
  - 130317-D-113 REV A
  - 130317-D-114 REV A
  - 130317-D-115 REV A
- 2) Approval of the details of the appearance and scale of the buildings and landscaping of the site (hereinafter called "the reserved matters") shall be obtained in writing from the Local Planning Authority before any development is commenced. Application for approval of the reserved matters for each phase approved pursuant to condition 5 hereof shall be made to the Local Planning Authority before the expiration of five years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Prior to the submission of any applications pursuant to condition 2 hereof (submission of the reserved matters), a phasing plan to illustrate the proposed delivery programme for the implementation of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing plan thereafter.
- 5) Prior to the submission of the first application pursuant to condition 2 hereof (submission of the reserved matters), a Design Code for the whole site, which shall be substantially in accordance with the draft Design Code submitted as part of the application, shall be submitted to and approved in writing by the Local Planning Authority. The Design Code shall set out the proposed vision and key design principles for the development to include (but not be limited to) the following details: final building heights, building massing, building materials, key architectural principles, sustainable construction, access and servicing, location of entrances, weather protection, activated and animated frontages, display windows, signage, lighting, public realm materials including footways, landscaping, street furniture and

linkages to the surrounding public realm. The details subsequently submitted in each and every application pursuant to condition 2 shall be in complete accordance with the approved Design Code and the development shall be carried out in complete accordance with the approved Design Code.

- 6) Prior to the commencement of the development of each block shown on Parameters Plan 10 Block Plan and Uses (drawing no. 130317-D-110), a use class schedule for that block shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall outline the minimum floor space and maximum floor space parameters per each use class intended to occupy the units within that block. The development shall be implemented in accordance with the approved schedule and retained thereafter.
- 7) Prior to the commencement of the development, a feasibility study for connecting the development to the CMK CHP network shall be submitted to and approved in writing by the Local Planning Authority. If the study shows a connection to be feasible and economically viable, it shall include a detailed action plan to secure the connection. The development shall then be carried out strictly in accordance with the approved details and retained thereafter.
- 8) The details to be submitted pursuant to condition 2 hereof (submission of the reserved matters), shall include the proposed floor levels of the buildings hereby permitted and the proposed ground levels of the site in relation to the existing site levels of surrounding property shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details thereafter.
- 9) Prior to the initial occupation of each phase of the development approved pursuant to condition 5, cycle parking facilities shall be erected in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The cycle parking facilities shall be retained thereafter and used for no other purpose.
- 10) The development shall not be occupied until motorcycle parking spaces have been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The motorcycle parking facilities shall be retained thereafter and used for no other purpose.
- 11) Prior to the occupation of the development hereby permitted, an interim travel plan shall be submitted to and approved in writing by the Local Planning Authority. Within three months of the initial occupation of the development, a site coordinator shall be nominated to manage the Travel Plan and conduct a site audit and staff travel surveys leading to the submission of a site-wide Travel Plan Report within six months of initial occupation. The Travel Plan Report shall either be produced utilising Travel Plan management software or mirror its outputs in a format that is acceptable to the Local Planning Authority. Targets for modal shift must be agreed in line with Milton Keynes Council targets to achieve a reduction in single occupancy vehicle usage. The approved full Travel Plan shall be implemented in accordance with the timetable and targets contained within and shall continue to be implemented as long as any part of the development is occupied with a minimum of annual reporting for the first five years, biannually thereafter.
- 12) Development of each phase approved pursuant to condition 5 hereof shall not commence until details of the construction accesses, site compounds, vehicle parking, hoardings, and removal/storage of existing materials have been submitted to and approved in writing by the Local Planning Authority. The construction of the

development hereby permitted shall be carried out in accordance with the permitted details thereafter.

- 13) The development hereby permitted shall be serviced solely from the vehicular access located on Lower Eighth Street.
- 14) Prior to the initial occupation of any permitted building, a lighting scheme for the building shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a LUX/lighting plan and shall demonstrate that both adopted and unadopted publically accessible areas shall be lit in accordance with British Standards. The submitted LUX/lighting plan shall detail what lamps are being proposed and also the maximum, minimum, average and uniformity levels for each area. The approved lighting scheme shall be implemented prior to the occupation of each building to which it relates and maintained thereafter.
- 15) No phase of the development approved pursuant to condition 5 herein shall be occupied until a CCTV system that provides comprehensive surveillance of that phase of the development and the immediate pedestrian accesses thereto has been installed in accordance with details submitted to and approved in writing by the Local Planning Authority. The details of the CCTV system to be submitted shall demonstrate that the proposed system is compatible with and will be integrated with the current system that covers the site and other areas within Central Milton Keynes. Once installed the system shall thereafter be retained and no modifications from the approved details shall be made.
- 16) Prior to the commencement of any phase of the development approved pursuant to condition 5, a tree protection scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a Tree Protection Plan detailing the location of retained trees, tree protection areas and protection measures including fencing and ground protection that shall be in accordance with the provisions of BS 5837:2012 Trees in Relation to Construction. The approved scheme shall be implemented prior to the commencement of any construction works and maintained in full until the construction process is completed.
- 17) Prior to the initial occupation of any unit with a use classes A3, A4 or A5, details of the means of fume extraction and odour control shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full prior to the initial occupation of each unit and shall be retained thereafter.
- 18) There shall be no external storage of refuse, rubbish or waste materials nor external storage of any containers used to store such materials within or adjacent to the application site other than where express approval has been granted through the approval of details submitted pursuant to condition 2 hereof (submission of reserved matters).
- 19) Prior to the commencement of the development hereby permitted a detailed design, and associated management and maintenance plan, for a surface water drainage scheme, based on sustainable drainage principles for the site shall be submitted to and be approved in writing by the local planning authority. The management and maintenance plan shall include a detailed time table for the implementation of the surface water drainage scheme. The approved drainage scheme shall subsequently be implemented in accordance with the approved detailed design and in accordance with the approved time table for implementation and be retained thereafter.

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# **Report to the Secretary of State for Communities and Local Government**

**by Siân Worden BA MCD DipLH MRTPI**

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

**Date: 14 February 2017**

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**Town and Country Planning Act 1990**

**Milton Keynes Council**

**Application made by intu Milton Keynes Ltd**

Inquiry held on 6-9 September and 30 November – 2 December 2016

Midsummer Boulevard and Oak Court, Milton Keynes, MK9 3GB

File Ref: APP/Y0435/V/15/3139212

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## Acronyms and Other Terms

<b>App</b>	<b>Appendix</b>
<b>CD</b>	<b>Core Document</b>
<b>CMK</b>	<b>Central Milton Keynes</b>
<b>CMKTC</b>	<b>Central Milton Keynes Town Council</b>
<b>CS</b>	<b>Core Strategy</b>
<b>DL</b>	<b>David Lock (CMKTC team)</b>
<b>DP</b>	<b>Development Plan</b>
<b>HE</b>	<b>Historic England</b>
<b>IF</b>	<b>Ignus Froneman (applicant team)</b>
<b>JS</b>	<b>Jonathan Smith (MKC team)</b>
<b>LP</b>	<b>Local Plan</b>
<b>MA</b>	<b>Mark Anders (applicant team)</b>
<b>MK</b>	<b>Milton Keynes</b>
<b>MKC</b>	<b>Milton Keynes Council</b>
<b>M&amp;S</b>	<b>Marks and Spencer</b>
<b>MU</b>	<b>Mark Underwood (applicant team)</b>
<b>Neighbourhood Plan</b>	<b>The Central Milton Keynes Alliance Plan 2026, aka the Business Neighbourhood Plan</b>
<b>PoE</b>	<b>Proof of Evidence</b>
<b>PPG</b>	<b>Planning practice guidance</b>
<b>PSA</b>	<b>Primary Shopping Area</b>
<b>PTS</b>	<b>Public transport corridor</b>
<b>PTS</b>	<b>Public transport system</b>
<b>The Framework</b>	<b>National Planning Policy Framework</b>

**File Ref: APP/Y0435/V/15/3139212**

**Midsummer Boulevard and Oak Court within the intu Milton Keynes shopping centre, Milton Keynes, MK9 3GB**

- *The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 17 November 2015.*
- *The application is made by intu Milton Keynes Ltd to Milton Keynes Council.*
- *The application Ref 15/01074/OUT is dated 5 May 2015.*
- *The development proposed is the partial demolition and redevelopment of the Boulevard and Oak Court to provide a range of retail, financial and professional and restaurant (Use Classes A1, A2, A3 and A5) and leisure (Use Class D2) uses together with public realm and highway works.*
- *On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application: the consistency of the application with the development plan for the area including the Central Milton Keynes Business Neighbourhood Plan.*

**Summary of Recommendation: The application be approved.**

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**Procedural Matters**

1. The application is in outline with access and layout to be determined; appearance, landscaping and scale would be the subject of later, reserved matters applications.
2. The Inquiry was conjoined, the second case being a proposed Order under S247 of the Town and Country Planning Act 1990 to authorise the stopping up of six areas of highway in Midsummer Boulevard, Milton Keynes. That proposal, DPI/Y0435/16/11, is the subject of a separate report to the Secretary of State for Transport.

**The Site and Surroundings**

3. The application site spans Midsummer Boulevard, the broad, straight route running between the railway station and Campbell Park, and is adjacent to the distinctive, listed Shopping Building now known as centre:mk. It comprises that part of the intu shopping centre between centre:mk and the shops in the mall beyond Oak Court. The main function of Midsummer Place, which is a large and airy open space under a high, curving roof, is to facilitate a connection between the two shopping areas. As well as a few free-standing shop units and fast-food outlets there are smaller kiosks scattered around; the area has a rather disorganised feeling. There are glass walls and doors to the eastern and western ends but the space is not fully enclosed and thus not weather tight. The open approach areas outside the doors at each end are also included in the application site.

4. The linking nature of Midsummer Place, together with the way it all but severs Midsummer Boulevard, is clearly illustrated on the aerial view of CMK in The Central Milton Keynes Alliance Plan 2026 (Neighbourhood Plan) <sup>1</sup>.

**Planning Policy**

**National Planning Policy**

5. National planning policy is contained in the National Planning Policy Framework (the Framework)<sup>2</sup> and is a material consideration in decision making. At the heart of the Framework is a presumption in favour of sustainable development which has three dimensions: economic, social and environmental.
6. Framework policy specific to the matters at issue in this case includes:

<b><i>Ensuring the vitality of town centres</i></b>	
Paragraph 23	Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. In drawing up Local Plans, local planning authorities should: <ul style="list-style-type: none"> <li>i. recognise town centres as the heart of their communities and pursue policies to support their viability and vitality;</li> <li>ii. define a network and hierarchy of centres that is resilient to anticipated future economic changes;</li> <li>iii. promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres.</li> </ul>
Paragraph 24	Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date plan.
Paragraph 26	When assessing applications for retail development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold.
<b><i>Conserving and enhancing the historic environment</i></b>	
Paragraph 131	In determining planning applications, local planning authorities should take account of: <ul style="list-style-type: none"> <li>• the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;</li> <li>• the positive contribution that conservation of heritage</li> </ul>

<sup>1</sup> CD68 page 23

<sup>2</sup> CD46

	<p>assets can make to sustainable communities including their economic vitality; and</p> <ul style="list-style-type: none"> <li>the desirability of new development making a positive contribution to local character and distinctiveness.</li> </ul>
Paragraph 132	<p>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. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.</p>
Paragraph 134	<p>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 securing its optimum viable use.</p>
<b><i>Neighbourhood Plans</i></b>	
Paragraph 183	<p>Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.</p>
Paragraph 184	<p>Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan.</p>
Paragraph 185	<p>Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area. Once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the Local Plan for that neighbourhood, where they are in conflict.</p>
<b><i>Decision-taking</i></b>	
Paragraph 12	<p>This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.</p>
Paragraph 198	<p>Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.</p>

**Development Plan**

7. The Development Plan for the area including the application site comprises the following three documents:
  - Local Plan<sup>3</sup> (adopted December 2005) saved policies;
  - Core Strategy<sup>4</sup> (adopted July 2013); and
  - Neighbourhood Plan<sup>5</sup> (adopted June 2015).
8. The main development plan guiding principles and policies relevant to this case are set out below. For the sake of conciseness they are not repeated in full but only those parts which are applicable to the proposed development. The lists are not exclusive; several other policies were referenced by the parties as reported in their cases.

**Local Plan**

9. In 2008 certain policies in the Milton Keynes Local Plan<sup>6</sup>, adopted 2005, were saved by the Secretary of State<sup>7</sup>. These include policies on shopping, the City Spine and City Core, design, heritage and transport which might be pertinent to the call-in application. In the light of the adoption of the Core Strategy in 2013 and the making of the Neighbourhood Plan in 2015 they are no longer the most relevant policies and I do not provide detail of them here.

**Core Strategy**

10. Relevant policies in the Core Strategy<sup>8</sup> are as follows.

<b>Development Strategy and Areas of Change</b>	
Table 5.7	Up to 110.781sqm of comparison floorspace needed in CMK by 2026.
<b>Policy CS4 - Retail and Leisure Development</b>	
<p>The Planning Authority will grant planning permission for additional retail floorspace and other uses appropriate within town centres as defined in national policy such as leisure, entertainment and cultural will also be granted planning permission within the city centre CMK Development Boundary as defined on Figure 7.1 'Central Milton Keynes Location Plan'</p> <p>Regional Shopping Centre: The Primary Shopping Area (within CMK), will function and develop as a regional shopping centre for comparison shopping. Planning permission will be granted for additional comparison retail floorspace and other</p>	

<sup>3</sup> CD48  
<sup>4</sup> CD66  
<sup>5</sup> CD68  
<sup>6</sup> CD48  
<sup>7</sup> CD49  
<sup>8</sup> CD66

associated development in the area between Silbury and Avebury Boulevards, Saxon Gate and Marlborough Gate (The Primary Shopping Area [PSA]). Central Milton Keynes also serves as a local centre and caters for the daily convenience needs of its increased workforce, and the daily and weekly needs of its growing residential population and the surrounding estates.

***Policy CS7 – Central Milton Keynes***

Central Milton Keynes is a modern and carefully planned new city centre but needs to continue to evolve and change. It will retain and enhance its role as a regional centre and the city's focus for retail, office, hotel, leisure and cultural development, together with new housing and related facilities.

The key objectives for CMK include:

- 1 Achieve higher quality buildings and spaces around them, with greater attention to human scale and more detail and variety of uses within proposals,
- 3 Achieve growing visitor numbers from outside the city to further enhance CMK's status as a regional and national destination for shopping, culture and leisure,
- 5 Develop as an attractive focus for all the residents of the Borough, whilst recognising its role as a District Centre for most of the surrounding estates,
- 7 Provide more pedestrian-friendly routes and spaces between new and existing buildings and public areas,
- 8 Improve integration between the facilities and defined quarters of the area.

***Policy CS13 – Ensuring High Quality, Well Designed Places.***

All new development must be of high design quality in terms of layout, form and appearance, and make a positive contribution to the character of the area in which it is located.

- To ensure high design quality, all new developments should:
- Comply with best practice urban design principles
- Integrate energy efficiency
- Provide visual landmarks
- Respect the existing landscaped grid road corridors

***Policy CS19 – The Historic and Natural Environment***

Developments will protect and enhance the significance of the Borough's Heritage Assets, including important elements of the 20th Century New Town architecture. Development proposals must consider the character, appearance and setting of sites, buildings, structures, areas, parks and gardens and landscapes that are of historic, architectural, cultural, biodiversity or archaeological significance.

## **Neighbourhood Plan**

11. The Neighbourhood Plan was the first business neighbourhood plan to be made in England. At two borough-wide referenda, one for residents and one for businesses, over three quarters of voters were in favour of the plan. Overall turn-out for the referenda, which were held on the same day as the General Election, was 63.8%. The plan was made in June 2015. It has received national planning awards for neighbourhood planning and stakeholder engagement.
12. As with the Core Strategy I set out only those elements which are of particular relevance to the proposed development.

### **Executive Summary**

- There are almost 50 hectares (120 acres) of land yet to be fully developed in CMK, where the Plan proposes to expand and diversify the retail offer of CMK [amongst other things].
- To achieve growth within the existing grid layout and development plots, the Plan supports building at higher densities than those assumed when CMK was originally planned.
- The Alliance's aspiration is to transform Midsummer Boulevard between Secklow Gate and Midsummer Place into the 'heart' of the city: an exciting public space – a destination in its own right – with animated public art and programmed events, a place where Milton Keynes meets, celebrates and demonstrates.

### **Vision, Principles & Objectives**

Our Vision By 2026, CMK will be the dynamic centre of one of the fastest-growing regions in the South-East. It will support thousands of new jobs and wide-spread prosperity as:

- A vibrant and safe place, with an increasingly regional and national role, that welcomes, surprises and delights workers, visitors and residents alike, with a rich mix of shopping, leisure, sports, cultural and social facilities offering an exciting street life and a diverse night life;

[NB one of seven elements of the vision.]

### **Opportunities & Challenges**

Opportunity Two - To transform the primary shopping area into the heart of Milton Keynes.

Challenge Three - To provide flexibility for development whilst protecting CMK's heritage.

***Spatial & Design Strategy***

A successful city centre needs to have a diverse street life and a safe night life, to which the intensity of use contributes together with the mixture of different uses – offices, shops, restaurants, theatres and flats, all built in close proximity, creating ‘comings and goings’ from early morning to late evening, on weekdays and at weekends. (para. 6.3)

The success of retailing in CMK is based on the regional and national draw of the shopping centres with their award-winning accessibility and sunlit high arcades and meeting places. Their millions of visitors have led to thousands of jobs being brought to CMK, and the evidence suggests that investors are expressing great interest in further expansion even though MK Council has approved major retail developments in out-of-centre locations elsewhere in Milton Keynes. The two main CMK centres are mostly occupied by national multiple retailers and have tended to develop to be inward looking, presenting to some Boulevards a blank elevation. (para. 6.22)

***Section 2: Policies***

***Policy CMKAP G1 Classic CMK Infrastructure***

The classic CMK infrastructure\* is widely recognised as part of CMK’s heritage and as an important public asset that establishes a principle design framework for further development and future prosperity in CMK and its extent, layout and quality will be retained.

\*the ‘classic CMK infrastructure’ includes the grid of tree-lined Boulevards, Gates, Streets, tree-lined North Row and South Rows, and the space for one, two or four rows of ground level car parking that flanks them; the associated grid of pavements, with underpasses, bridges and porte cocheres; the function and position of linkages to the adjacent grid squares; use of silver grey granite facings, granite quadrants, planters, and kerbs; the use of silver grey stone chippings rolled into asphalt road surfaces on Gates and Boulevards and silver grey blockwork for streets; and the use of Breendon Gravel or similar in Boulevard medians.

***Policy CMKAP G3 Landscaping and Open Space***

c) Existing semi-public spaces: a reduction in quantity, quality, use and public accessibility of all or part of Bouverie Square, Ashton & Norfolk House Square, Middleton Hall, Queens Court, Midsummer Place, City Square, and Exchange Square to make way for new development shall not be acceptable other than for exceptional developments as defined within Policy CMKAP G11.

***Policy CMKAP G7 Active Frontages***

a) Ground floor blocklet frontages facing the public realm and identified in Figure 10 shall be expected to provide predominantly active frontages including offices, shops and retail showcases, cafes and restaurants, service providers, civic and

<p>cultural uses and artistic installations, subject to viability. Design facilitating passive surveillance will be encouraged.</p> <p>b) Weather protection: Development comprising blocklet frontages shall normally provide continuous weather protection and shelter with a depth of at least two metres at the same level as the adopted pavement.</p>
<p><b>Policy CMKAP G9 Design and Height of Buildings</b></p>
<p>New development should respect the existing CMK grid layout, providing continuity and enclosure through appropriate relationships between buildings and spaces, with frontages that engage with the street at lower levels, and contributing towards ease of movement through and around CMK.</p>
<p><b>Policy CMKAP G11 Exceptional Developments</b></p>
<p>Policy CMKAP G1 may be applied with some flexibility if an exceptional development is proposed. An exceptional development would demonstrably raise the profile of Milton Keynes nationally or internationally, would make a substantial contribution to the economic, employment, social, cultural and other key objectives of the Plan and city prosperity, and would enhance CMK's distinctive identity.</p>
<p><b>Policy CMKAP SS3 Midsummer Boulevard East</b></p>
<p>Midsummer Boulevard East as identified in Figure 11 is proposed as an Inset Action Plan Area , for which a detailed design and consultation process is to be undertaken by the CMK Alliance.</p>

**Planning History**

13. Key planning applications and other matters in respect of the application site are as follows:

MK/00055/96 <sup>9</sup>	Permitted 30.9.1996	Retail and associated development including roof structure spanning Midsummer Boulevard and associated access works in conjunction with shopping development on land south of Midsummer Boulevard (outline).	Included the Walkways Agreement <sup>10</sup>
98/00263/MK <sup>11</sup>	Approved 22.5.1998	Erection of parts of retail development including wide-span roofed structure containing retail catering and public space (the	

<sup>9</sup> CD92

<sup>10</sup> CD80

<sup>11</sup> CD92 - CD94

		Boulevard) (approval of details).	
05/01251/FUL <sup>12</sup> 09/00223/FUL <sup>13</sup> 11/00671/FUL <sup>14</sup> 12/00313/FUL <sup>15</sup>	Various dates	Applications for alterations and extensions to existing units, approved since the shopping centre was first built in an attempt to improve the Boulevard.	
12/02080/FUL <sup>16</sup>	Refused 22.2.13	Extension and alterations to Midsummer Place Shopping Centre to create 2 new retail units, new square, erection of advertising signage and associated works.	Included a proposal to remove the PTS route and the 24 hour pedestrian access from the western entrance.
12/02082/FUL <sup>17</sup> 12/02081/ADV	Refused 22.2.13	Removal of 3 x temporary kiosks and erection of restaurant units; provision of external seating and associated works at Midsummer Place Shopping Centre"; and "advert consent to display 4 x fascia signs on new building fronting Saxon Gate	
Two applications above refused on grounds of design, quality of the pedestrian route along Midsummer Lane, removal of the PTS route.			
intu acquired the shopping centre from Legal & General in March 2013.			
14/00563/FUL <sup>18</sup>	Granted 8.7.14	Erection of four new temporary kiosks for flexible uses (Use Classes A1, A3 and A5) and the demolition of two existing kiosk units (5 and 6)	
14/02460/FUL <sup>19</sup>	Granted 16.2.15	Erection of a retail kiosk located to the rear of Chopstix	

## The Proposals

14. Outline planning permission is sought for the partial demolition and redevelopment of the Boulevard and Oak Court to provide a range of retail, financial, professional and restaurant and leisure uses together with public realm and highway works. Matters related to appearance, landscaping and scale are reserved for future applications.

<sup>12</sup> CD96

<sup>13</sup> CD99

<sup>14</sup> CD101

<sup>15</sup> CD103

<sup>16</sup> CD109

<sup>17</sup> CD110

<sup>18</sup> CD105

<sup>19</sup> CD107

15. The scheme is intended to enhance the retail, food and beverage and leisure offer within the PSA and particularly within the intu shopping centre through increasing the amount of floorspace and providing modern retail units that are better suited to meeting retailers' requirements.
16. The increase in floorspace will be achieved through removing the existing kiosks and extending the retail blocks at both ground and first floor levels. A strip of land through the centre will continue to be reserved to enable the introduction of a PTS if this is pursued by MKC in the future. The central space will be up to 19.2 m wide, narrowing to 15 m in width at either side. The 24 hour pedestrian walkways through the site would also be retained.
17. The Boulevard would be lined with two storey units suitable for retail and/or food and beverage use under the existing roof structure. A walkway would connect the upper levels providing additional street scene and public space. Outside of the roof structure, the existing units at both the east and west entrances would also be partially demolished and redeveloped. A D2 leisure unit is proposed within the mix, the current intention being that it should be occupied by a boutique cinema. This element of the proposal, Block 6, would be three storeys in height to accommodate the floorspace required for such a use and to provide an enhanced gateway into the PSA. A total of eight blocks are proposed in total (six within the Boulevard and two within Oak Court).

### **Agreed Facts**

18. Had it not been called in, MKC would have approved the application. There are thus no material matters in dispute between MKC and the applicant<sup>20</sup>.
19. Common ground between the main parties at the inquiry including CMKTC is that:<sup>21</sup>
  - The existing development in Midsummer Place has numerous shortcomings;
  - The proposals should be assessed as against what is already there;
  - In the PSA it is good in principle to have additional retail and similar floorspace in terms of broadening and expanding the retail food, drink and leisure offerings;
  - The current buildings are blank along Midsummer Lane, and anything would be better than the present condition of the blocks;
  - The listed Shopping Building and the intu centre form a retail circuit and are the largest agglomeration of comparison goods retail floorspace in the PSA to a significant degree.

### **The Case for the Applicant – intu Milton Keynes Ltd**

20. The gist of the applicant's case is as follows.
21. The applicant states that the scheme would create a modern retail, dining and leisure destination, providing a sense of arrival to the city centre and addressing

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<sup>20</sup> CD4, paragraph 7.1

<sup>21</sup> IS10 MKC Closing Submissions, paragraph 15

the obvious deficiencies of the current development. In particular significant improvements would be made to five key areas: the Western Gateway, the Eastern Gateway, the Boulevard, Oak Court and Midsummer Lane. The Framework<sup>22</sup> states that "permission should be refused for development that fails to take the opportunities available for improving the character and quality of an area and the way it functions". Conversely, as here, planning permission should be granted for a scheme that improves the character and quality of the PSA and the way it functions.

22. The applicant considered CMKTC was wrong to argue that the details of the proposal could not be known because the application was in outline. Access and layout are fixed by the application, not reserved matters, and the parameter plans submitted as part of the application fix the maximum parameters of the scheme e.g. the maximum height and the maximum floorspace for each use. The urban design benefits would all be secured by the conventional mechanism of a planning condition requiring the submission of details in accordance with an approved Design Code. MKC explained at the inquiry that intu had submitted a Design Code as part of the planning application<sup>23</sup> and that the Council would not grant reserved matters approval unless it considered that the submitted details were suitable and in accordance with development plan policy.

*The status and interpretation of planning policy*

23. The applicant reiterated that the starting point for decision making is s.38 (6) of the Planning and Compulsory Purchase Act 2004 which provides that planning applications must be determined "in accordance with the plan unless material considerations indicate otherwise". Crucially, the decision maker must consider compliance with the development plan as a whole rather than compliance with individual policies<sup>24 25</sup>.
24. Its view was that, when considering the development plan as a whole, there is no special status for the Neighbourhood Plan over the rest of the development plan. All that the Framework says in paragraph 198 is that planning permission should not normally be granted for development that conflicts with a neighbourhood plan. The same point is made in Framework paragraphs 11, 12 and 196 in relation to the rest of the development plan. Paragraph 198 does not mean that a neighbourhood plan trumps or overrides other parts of the development plan<sup>26</sup>. The case was emphatically not 'a test case for neighbourhood planning' but straightforward application of section 38(6) of the 2004 Act. Neither was there any conflict between the Neighbourhood Plan and the rest of the development plan.
25. With regard to the interpretation of planning policy, the applicant referred to *Tesco Stores Ltd v Dundee City Council and Phides Estates (Overseas) Ltd v SSCLG* which concluded that planning policy should be interpreted by looking only at the contents of the plan itself (read fairly as a whole) and not by

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<sup>22</sup> Paragraph 64

<sup>23</sup> CD26.

<sup>24</sup> *R (on application of Cummins) v. LB Camden* [2001] paragraphs 162,163

<sup>25</sup> *R v. Rochdale MBC ex parte Milne*, paragraphs 48, 49

<sup>26</sup> *Woodcock Holdings v SSCLG* [2015] JPL 1151 [CD188] paragraphs 24 & 198

reference to background documents to the plan's preparation. CMKTC frequently referred to its role in drafting the Neighbourhood Plan, seemingly implying that its interpretation should thus be preferred; that was not correct. The examining inspector's opinions were also irrelevant. These arguments were supported by the judgement in *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836, which quoted *McFarland* [2004] 1 WLR 1289, [24] and *Hilder v Dexter* [1902] A.C. 474, 477.

26. The primary case made by the applicant was that the scheme accords with the development plan read as a whole, i.e. the saved policies of the Local Plan, the Core Strategy and the Neighbourhood Plan. The applicant does not say that the Neighbourhood Plan does not have status or weight but rather that the scheme complies with the Neighbourhood Plan. The applicant's cause for concern was not the Neighbourhood Plan or what read objectively it says but CMKTC's extreme, and unlawful, misinterpretation of the meaning and effect of the Neighbourhood Plan policies in question.
27. Even if it were considered that the scheme breaches some policies of the Neighbourhood Plan (e.g. Policies CMKAP G1 or CMKAP G3) it nevertheless accords with the development plan as a whole because it complies with all the specific development plan policies about what is expected in the PSA and more generally. If it is found that the scheme does not comply with the development plan then planning permission should still be granted because other material considerations, that is the benefits of the scheme, outweigh any policy conflict.
28. The context in which those benefits must be assessed was that there has been no significant investment in Central Milton Keynes, and particularly the PSA, since 2000; Milton Keynes city centre needs investment in retail, leisure, culture and other town centres uses as set out in the Core Strategy and Neighbourhood Plan; inward investment in retail and town centre uses in the PSA is wholly supported by the NPPF and the development plan; Milton Keynes is dropping in the rankings of centres and needs investment quickly; intu Milton Keynes is under-performing relatively and that needs to change for the good of Milton Keynes.
29. The applicant set out the benefits of the proposal under four headings as follows:
  - Physical Improvements: more comfortable and desirable space; improved environment, with wind and rain protection measures, provided on ground and 1st floor; better public access to car park and connectivity; significantly better public realm; an improved visitor experience with diversified retail and leisure and food and beverage offer.
  - New Retail Floorspace: more retail floorspace as required by the CS and Neighbourhood Plan; flexible/larger units to compete with out of centre retailers and also smaller units if demand; strengthen offer and retail circuit to the benefit of the PSA as a whole allowing it to compete more effectively.
  - Diversification of Town Centre Offer and Increasing Dwell time: food and beverage offer (currently well below average provision in CMK) will significantly diversify the offer of the PSA; benefits for residents and business plus jobs, social and cultural facilities; boutique cinema would be complementary to retail and food and beverage, extending activity in CMK beyond shopping hours and increasing expenditure; consistent with Neighbourhood Plan/NPPF to diversify town centre floorspace.

- Investment and Job creation: significant capital investment in CMK by intu of £70m; business rates premium; re-investment into MK/spin-off expenditure would have a catalytic effect; 355-467 direct jobs (mid point 411) and local training initiatives (and the s.106 agreement seeks to ensure that the jobs would be created and trained locally), 300 construction jobs, 150 indirect jobs.
30. intu intended to begin preparing and submitting reserved matters applications as soon as planning permission was granted. CMKTC's intervention requesting the scheme be called-in was the principal cause of delay. If the Secretary of State were concerned not to delay the scheme's benefits the period for discharging reserved matters could be reduced from 5 years to 3.
31. The applicant considered CMKTC's suggestion that a cinema would not benefit the scheme contrary to the fact that experienced shopping centre operators are introducing cinemas into their centres. It would be bound to increase footfall, dwell time and the number of linked trips. There is no evidence to suggest that jobs created by the scheme would be transferred jobs; that it would result in any existing food outlets closing or relocating; or, even if they did, that the existing unit would not be reoccupied. It is also unreasonable to expect restaurant tenants to be signed up to the scheme before planning permission has been granted. It would be perverse for an experienced operator such as intu to go to the trouble and expense of promoting the scheme if there were no demand.
32. The scheme must be assessed against what currently exists on the site. CMKTC agreed that the existing shopping centre has numerous shortcomings and deficiencies in urban design terms and needed improvement in urban design. National policy<sup>27</sup> encourages decision makers to look for solutions and to approve applications for sustainable development. Given that the existing design is not successful and given that the scheme would undoubtedly improve the area considerably, the scheme represents an acceptable solution.
33. It is also relevant to consider the fall-back position i.e. the extant unimplemented planning permissions for new kiosks in the central part of the roofed area and the northern boundary. A fall-back is what a person could do with a site without any new grant of planning permission. intu could install the kiosks under extant planning permissions and would do so were this application to be refused. The fall-back is therefore a material consideration and the scheme should be compared to what intu could and would do in the event this application is refused. CMKTC suggested that if permission is refused then intu could install wind blockers and improve the kiosks. There is no evidence that such would be likely.

**ISSUE 1: The effect of the scheme on the quality, quantity, use and accessibility of semi-public open space**

34. CMKTC's position, in the view of the applicant, was that Policy CMKAP G3c of the Neighbourhood Plan named Midsummer Place as a semi-public place for absolute protection and that the loss of circa 50% of the existing semi-public space automatically breached this policy. It also argued that the scheme breached

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<sup>27</sup> The Framework, paragraph 187

Policy CMKAP G3c in terms of the “quality”, “use” and “public accessibility” of the semi-public space.

35. Affording absolute protection to semi-public space (which is not even a non-designated heritage asset) is not a sensible objective interpretation of Policy G3 compared with the protection planning policy gives to other valued things. For example, the Framework permits substantial harm to/total loss of listed buildings where it is justified by substantial public benefits<sup>28</sup>; allows less than substantial harm to listed buildings and/or conservation areas to be outweighed by public benefits<sup>29</sup>; and merely requires a balanced judgment when dealing with harm to un-designated heritage assets<sup>30</sup>. Even nationally important heritage assets do not have as strong policy protection as the space under intu Milton Keynes’s roof according to CMKTC’s absolute interpretation of Policy CMKAP G3. There is nothing in the examiner’s report to suggest that he understood Policy CMKAP G3c in the way that CMKTC understands it.
36. The applicant considered that, properly interpreted, Policy CMKAP G3c requires an overall assessment of the scheme in terms of quantity, quality, use and public accessibility of the semi-public space. In other words the policy requires decision-makers to carry out an internal balancing process. For example if development would result in a smaller area of better, more useful and more accessible semi-public space and thus an overall improvement, it can legitimately be regarded as policy compliant notwithstanding the quantitative loss. It makes no sense to interpret Policy CMKAP G3c in a way which would preclude development that would make an unsatisfactory place better in terms of look, feel and function.
37. The semi-public space protected by Policy CMKAP G3 should be identified by reference to Figure 15 of the Neighbourhood Plan. If a policy requires a quantitative analysis there needs to be a clear, publically accessible, geographical base against which to measure.
38. CMKTC had argued that the proposed first floor space cannot be CMKAP G3c semi-public space because it is proposed space rather than “existing” space. As a matter of principle it must be relevant that the loss of existing space would be compensated for by the creation of new space. It would be unlawful to ignore the new space that would be created. If one ignores the first floor then there would be a small loss of semi-public space. Each iteration of CMKTC’s case has argued for an ever-increasing amount of semi-public space lost. The applicant does not consider that approach credible but even if any of its figures are right, under any and all circumstances it is the considerable improvement in the quality of the space that is determinative.
39. On Policy CMKAP G3 the applicant supported MKC’s interpretation: there would be a small reduction in the quantity of semi-public space, but that is outweighed by the significant benefits in terms of the scheme better reflecting the grid, providing active frontages, more useable space under the roof, improved gateways, higher quality semi-public space both inside and outside, and relating better to the wider public realm.

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<sup>28</sup> The Framework, paragraph 133

<sup>29</sup> The Framework, paragraph 134

<sup>30</sup> The Framework, paragraph 135

**ISSUE 2: The effect of the scheme on the design and function of the surrounding area, including on classic Milton Keynes infrastructure**

40. The applicant considered that CMKTC's interpretation of Policy CMKAP G1, namely that any loss would breach the policy, was extreme. An absolute interpretation is inconsistent with national and local policy concerning the protection of important heritage assets and would mean that the classic CMK infrastructure had greater protection than the Grade II listed Shopping Building next door.
41. It would also mean that Policy CMKAP G1 would be prohibitive of development in CMK which is the location in which the development plan specifies a requirement for up to 110,781 sqm of new retail floorspace. One of the Neighbourhood Plan's key objectives would thus be stymied. The applicant says this reading of Policy CMKAP G1 is internally inconsistent with the Neighbourhood Plan read as a whole and should be rejected.
42. The applicant noted that CMKTC argues that the correct identification of classic CMK infrastructure should be derived from the text of the Policy description, rather than from Figure 15 alone. This argument, it considered, is inconsistent with the wording of the Neighbourhood Plan. A straightforward reading of the Neighbourhood Plan is that Figures 14 & 15 show all the protected Classic CMK infrastructure because they are expressly said to record the situation on the ground<sup>31</sup>.
43. CMKTC's witness agreed that there is no original Classic CMK Infrastructure on the eastern side of the development. CMKTC suggested late during the inquiry, during cross examination of the applicant's witness, that recently installed materials may be Classic CMK Infrastructure on a "spatial" basis. I ruled that raising this contradictory new point after CMKTC's evidence had been given and tested was inappropriate.
44. The area immediately west of intu Milton Keynes is not designated as Classic CMK Infrastructure. The area was significantly altered during the construction phase of Midsummer Place between 1996 and 2000. It is not original or classic in any way. In any event, the area would remain largely untouched by the scheme and would retain similar characteristics as now.
45. The area further to the west of intu Milton Keynes, outside intu's ownership, is designated as Classic CMK Infrastructure and was not altered by the construction of Midsummer Place. The scheme would improve the landscaping in this area. Landscaping is a reserved matter and the area could be omitted from the final detailed scheme, or amended in light of policy CMKAP G1, if that is thought necessary. Furthermore the land in this area is owned by MKDP and managed as adopted highway by MKC. Permission would therefore be needed to carry out the indicative landscaping scheme. Therefore the Classic CMK Infrastructure to the west could be retained if that is thought preferable to a high quality landscaping scheme. The scheme's impact (if any) on Classic CMK Infrastructure would be tiny in the context of the whole CMK grid.

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<sup>31</sup> CD68 paragraph 11.2

46. As the scheme complies with Policies CMKAP G1 and CMKAP G3 of the Neighbourhood Plan recourse to Policy CMKAP G11 is not required. If, contrary to the applicant's case, it is concluded that the scheme is in breach of the development plan when read as a whole the applicant relies on material considerations (the considerable public benefits of the scheme) to outweigh any such inconsistencies rather than resorting to policy CMKAP G11 of the Neighbourhood Plan.

### **ISSUE 3: The effect of the scheme on the primary shopping area**

47. The scheme provides for retail floorspace and other town centre uses within what Local Plan Policy CC1 describes as the "main shopping area". It therefore fully accords with Policy CC1 of the Local Plan and Policy C4 of the Core Strategy which contains a presumption in favour of additional retail and other town centre uses in the PSA.

48. The provision of more retail floorspace in the PSA is also fully consistent with the Neighbourhood Plan. The aim of Policy SS2 of the Neighbourhood Plan is to define the PSA and to widen retail choice and competitiveness<sup>32</sup>. It supports new retail and town centre uses in the PSA.

49. It is common ground that the scheme fully accords with Local Plan Policy CC2. It would have a significant positive impact on the vitality and viability of CMK. The requirement<sup>33</sup> for additional retail and leisure floorspace in the town centre is now contained in the Core Strategy and the Neighbourhood Plan. CS Chapter 5 states that up to 110,781 sq m gross new comparison floorspace is needed in CMK which should be the main focus for the development of complementary commercial, leisure and entertainment facilities.

50. Despite the clear policy imperative for more retail and leisure floorspace, little or none of the required floorspace has come forward. That underlines the critical importance of the scheme in terms of meeting the policy objective of safeguarding Milton Keynes's role as a regional centre. It is beside the point that the scheme would contribute only some 4% of the retail floorspace identified as needed in the development plan. It would have a catalytic effect and there are other sites in the PSA, allocated and not, that could deliver the remainder of the requirement.

51. CMKTC's evidence suggested that there are alternative sites for the scheme. As a matter of both national and local policy (including the Neighbourhood Plan), additional retail and town centre uses in the PSA like this one are acceptable in principle, irrespective of the availability of other sites. It is also irrelevant that the site is not specifically allocated for more retail development. Under CS Policy CS4 there is no requirement that a site be allocated in addition to being located within the PSA. There is a presumption in favour of retail and town centre uses within the PSA regardless of whether a site is shown on the proposals map. The same is true of the Neighbourhood Plan.

52. CMKTC also argued that alternative proposals could/should come forward on the application site itself. That argument is also wrong in law: the test is whether the

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<sup>32</sup> CD68 page 81.

<sup>33</sup> Roger Tym 2011 Retail Capacity Update

scheme is acceptable having regard to the development plan and other material considerations. It is beside the point that there are other ways the site might be developed<sup>34</sup>. There is no statutory or policy requirement to consider alternative proposals for the site, there is no tangible alternative scheme to consider and in those circumstances the scheme falls to be considered on its own merits.

53. The proposed mix of uses is required by LP Policy CC13 in the City Core. The complementary food and beverage, leisure and entertainment uses will support the predominant retail use and provide the retail destination that modern shoppers expect. A particular benefit of the scheme will be the significant increase in the number of active frontages which is specifically encouraged by Policy G7 of the Neighbourhood Plan.

#### **ISSUE 4: The effect of the scheme on the setting of the listed Shopping Building**

##### *Policy and Guidance*

54. It is clear from the language of paras.132-135 NPPF (“a proposal” and “an application”) that the assessment required is of any harm caused by the proposal put forward by intu. The scheme must be assessed in its own right, rather than by accumulating the harm caused by the existing development. Historic England (HE) does not raise any issue of cumulative harm and the inquiry is only concerned with any heritage harm caused by the scheme itself.
55. The Practice Guidance does not refer to a duty to minimise harm. Instead it encourages developers to “explore ways” of minimising harm. Moreover that encouragement appears in a section of guidance preceded by an introduction stating that it recommends “a broad approach to be applied proportionately...” In any event, para.134 NPPF requires a simple balance between harm (whether minimised or not) and public benefits.
56. The correct approach is straightforward, namely one must apply para.134 NPPF and balance the less than substantial harm against the scheme’s public benefits.
57. It is also important to note that LP Policy HE5 is inconsistent with the NPPF in that it does not reflect the more nuanced gradation of harm or the balancing test. Despite the conflict with this outdated policy the scheme complies with the development plan read as a whole. Alternatively, any breach of the development plan is readily outweighed by the scheme’s public benefits.
58. The issue of “justification” which formed the only major theme of HE’s objection is wrong in law. There is no test of justification<sup>35</sup>; if the scheme meets the tests in the NPPF then it has been “justified”. Although HE is statutory advisor on heritage matters it is not always right. Whilst it was legitimate for HE to ask whether a different configuration of the scheme had been examined, the possibility of alternative configurations is not a legitimate basis for objection to it.

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<sup>34</sup> *Mount Cook Land Ltd v Westminster City Council* [2004] paragraph 30

<sup>35</sup> *R (Pugh) v Secretary of State for Communities and Local Government* [2015] EWHC 3 (Admin).

*The impact of the scheme*

59. The applicant stated that CMKTC had agreed that the harm caused by the scheme to the listed Shopping Building is less than substantial thereby engaging para. 134 NPPF.
60. The experts disagreed, however, as to the precise degree of less than substantial harm that would be caused. The applicant explained that the less than substantial harm is at the low end of the spectrum, indeed it is so slight as to be bordering on the inconsequential (in the sense of being fractional, tiny or very small). In addition the applicant considered that the M&S extension had eroded the significance of the listed building; it was a clumsy addition but demonstrated the robustness of the listed building and its ability to absorb change;
61. The existing intu Milton Keynes building had degraded a part of the listed building's setting particularly by obscuring part of its elevation and changing its relationship with the grid. Much of the listed building's setting had remained unaffected despite the construction of intu Milton Keynes. There was no evidence that the construction of the intu centre was the reason for listing the Shopping Building;
62. The scheme would be located in the least sensitive part of the listed building's setting. Although it would add a further incremental change to the effect of intu Milton Keynes, this would be fractional in the context of the whole of the listed building's setting. When calibrating the scheme's impact it was necessary to take into account: (i) the sensitivity of this part of the setting; (ii) the scale of the impact on the contribution of the whole of the listed building's setting to its significance; (iii) the resulting effect on the significance of the whole listed building, taking into account that there is more its significance than its exterior and its setting. The scheme would also deliver improvements to the setting of the listed building and wider public benefits.
63. In contrast CMKTC regarded the less than substantial harm as being at the upper end of the spectrum. Its assessment of the impact on the setting was flawed because it focused only on the small fraction of the setting that would be affected. Contrary to that approach, it is clear from the definition of the setting of a heritage asset in the NPPF's glossary that the setting is the full extent of a building's surroundings. The applicant explained that the listed building is highly modular with no front or back and unlike other listed buildings which were designed to have parts of the façade that were more significant than others.
64. The Shopping Building was listed after, and despite the fact that, it had already undergone considerable adverse change to its setting. It is robust and able to accommodate change. It could, therefore, clearly maintain its significance following changes that the scheme would make as these would be considerably smaller than those arising from the existing intu development.
65. There is no uniform infinity view of the listed building from the western end of Midsummer Lane<sup>36</sup> and it is only past the M&S extension that the uniform infinity view of the original part of the listed building begins. The fact that the scheme

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<sup>36</sup> MA PoE pp.58-59

would be reflected in the mirrored glass of the taller M&S extension has no impact on the uniform infinity view. The scheme would have no effect on the infinity views on the northern side of the listed building, east of the Arriva kiosk looking east and from Secklow Gate looking both east and west.

66. In terms of the mirrored reflections, the list citation for the Grade II Shopping Building does not refer to what is, or should be, reflected in mirrored glass. Given that there is already considerable reflection of buildings and given that the Arriva kiosk will be replaced by the more attractive Blocks 1 & 3, the change will not be significant.
67. The extended Midsummer Lane façade would contain active frontages and be a significant improvement compared to the current position. The scheme would redress the negative impact resulting from the inactive frontage of the M&S extension. That would be a positive heritage gain. CMKTC had raised a new objection during the inquiry, namely that the scheme would be constructed from different materials and would not resemble the listed building. Materials are a reserved matter and it will be up to the Council to decide the materials that best relate to the listed building. What is certain is that there are better ways to respond to the listed building than what is on the site currently. The overall balance under para.134 NPPF is overwhelmingly in favour of granting planning permission.
68. CMKTC had a secondary heritage objection concerning Classic CMK Infrastructure which is a non-designated heritage asset. NPPF para 135 differs from para 134 in that it simply requires a balanced judgment as opposed to requiring public benefits to outweigh harm. A straightforward balanced judgment can only conclude that any harm, if any, to properly classified Classic CMK Infrastructure is outweighed by the public benefits of the scheme.

*Other matters raised by the objectors*

69. The scheme would reduce the PTS reservation to 15m and it would retain 24 hour pedestrian access to the walkway 7 days a week.
70. The applicant stated that no progress had been made to develop a PTS that could use the reservation, there was no funding and it was not part of adopted planning policy. It was no part of intu's case that a PTS cannot or should not come forward. Its evidence demonstrated that the scheme is fully compatible with delivery of a PTS should a proposal come forward in the future. It does not introduce any new element that would make delivery of the PTS more difficult or more expensive to implement than currently.
71. By modern design standards a 20m PTS reservation was in excess of what was required, a view shared by the applicant's and MKC's expert witnesses on the matter. A 20m PTS reservation has no technical justification whatsoever. All known types of PTS typically require a maximum of 7m in order to accommodate a two-way alignment. That width could adequately be provided for within a 15m wide reservation together with suitable east-west pedestrian routes. As a minimum this would allow for 4m for pedestrians either side between the PTS and the adjacent building line. There would be no restriction to pedestrians walking along the PTS route which would be likely to be flush with the walkway. Consequently pedestrians would only be limited to a width of 4m when a vehicle is passing by.

72. Transport systems are not usually designed to accommodate an overtaking lane; the vast majority of roads, trams, guided buses etc run with only two lanes each going in opposite directions. The objectors' repeated references to the need for flexibility and future-proofing should not be confused with any technical or scientific objection to the scheme. There was no technical evidence to justify a PTS reservation of more than 15m.
73. Many of the transport systems/scenarios suggested by objectors failed to appreciate the terms of the Walkways Agreement. The obligation not to materially impede pedestrian movement<sup>37</sup> necessarily limits the type, design and frequency of operation of any PTS. A 3-4 lane PTS with vehicles moving at high speeds through intu Milton Keynes would also not be permitted<sup>38</sup>. The reservation is for a single PTS not multiple systems and therefore a number of different forms of PTS, including pods, could not operate side by side.
74. In terms of the height available for a PTS the scheme would not be an impediment. Existing systems (e.g. trams in Manchester) run under structures with only 3.8m clearance and there is no reason to suppose any more clearance is required here. That is especially the case when one considers that there are highway structures imposing additional height restrictions elsewhere along the PTS reservation, outside the red line application boundary.
75. The Walkways Agreement provides for a 23m wide East-West Walkway thorough intu Milton Keynes and also for two 19m wide North-South routes between intu Milton Keynes and centre:mk. The scheme would reduce these widths to 15m and 11.4m respectively. Given the level of usage the width of the walkways would be sufficient and not lead to congestion. Most pedestrians cross the PTS reservation to enter or leave the shopping centre as opposed to walking directly along its length.
76. The walkways in the scheme compare favourably to those in Midsummer Arcade and Silbury Arcade which are less than 4m wide. There was no evidence behind CMKTC's computer generated image of a 15m walkway<sup>39</sup>, in particular no data to show pedestrian flows at any given time would require people to walk 6 abreast.
77. The objections on behalf of cyclists failed to understand what is proposed in the scheme. Ever since intu Milton Keynes was built it has been fully pedestrianised. Cyclists have never been permitted to cycle thorough the shopping centre. Part of the original 1996 planning application involved diverting cycle route no.51 along Midsummer Lane and around intu Milton Keynes. The scheme will not change that and there would be no disadvantage for cyclists. There would, however, be an additional 107 cycle parking spaces provided.
78. The existing development significantly compromised the grid layout. The site is now "off grid" and there is no "existing" grid layout in this area to be protected. Policy G9 does not require the grid to be reinstated but requires that proposals respect the grid. The scheme has been designed to have a series of straight horizontal lines that better respect the rectilinear grid than the current

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<sup>37</sup> CD 80 clause 6.1

<sup>38</sup> CD 80 clause 6.1

<sup>39</sup> CD 182

development does. It also provides new and valuable public views from the first floor along the length of Midsummer Boulevard.

### *Conclusion of the Applicant's Case*

79. On the evidence before the Inspector and the Secretary of State, there is no good reason to refuse the application and every good reason to grant planning permission. Milton Keynes is in real need of improvement. The scheme would undoubtedly improve the existing situation very significantly. The sooner permission is granted the better.

### **The Case for Milton Keynes Council (MKC)**

80. MKC was minded to approve the application and its case is, naturally, very similar to that of the applicant. Additional points made by MKC are set out below.
81. MKC considered that CMKTC had incorrectly characterised the application as giving rise to the principle of the significance of the Neighbourhood Plan whereas it was actually concerned with its interpretation. There was no dispute about the significance of the CMKAP as part of the development plan or in terms of national policy. MKC was not seeking to downgrade the weight which should properly be given to Neighbourhood Plan nor its role as part of the development plan. The Neighbourhood Plan is part of the development plan, and should be given weight in accordance with s. 38(6)<sup>40</sup> in the light of the Framework and PPG<sup>41</sup>. The suggestion by CMKTC that the Neighbourhood Plan might be rendered toothless was thus misconceived. Neither the Framework nor PPG provides that the Neighbourhood Plan should automatically be given overriding weight or preferred to any other part of the development plan.
82. MKC stated that CMKTC's approach had been blinkered and that its consequent loss of objectivity in dealing with the interpretation of the CMKAP or the proposals meant that its evidence and objection should be treated with circumspection and given little weight.
83. MKC quoted case law in emphasising that the development plan must be interpreted as a whole and that the decision-maker "needs to have regard to all of the relevant policies and not just one"<sup>42</sup>. In addition, the creator of a plan has no special status when it comes to interpreting the plan, nor does the view of the examiner of the plan. The interpretation of policy is no longer a matter for a decision-maker but for the court<sup>43</sup>. Developers or members of the public should not have to delve into the history of policies in order to understand what they mean<sup>44</sup>.
84. MKC's view was that the proposals were in accordance with, and promoted the objectives, of the policies of the CS in particular policies CS4 and CS7. The benefits of the proposals met the strategic objectives for the town centre set out

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<sup>40</sup> Planning and Compulsory Purchase Act 2004

<sup>41</sup> PPG Section 41, paras. 4 and 6 (ID 41-004-20140306 and 41-006-20140306)

<sup>42</sup> *Tiviot Way Investments Ltd v SSCLG* paragraph 31

<sup>43</sup> *Tesco Stores Ltd v Dundee City Council*

<sup>44</sup> *Phides Estates (Overseas) Ltd v. SSCLG* paragraph 56

in CS7 and applied by the Neighbourhood Plan<sup>45</sup>. CMKTC had not advanced a coherent case that the proposals do not accord with the MKCS policies but had focused its attention on the Neighbourhood Plan. The proposals and their benefits meet the objectives of the Neighbourhood Plan. The failure of CMKTC to recognise the benefits of the proposals impaired its understanding of applying the development plan and of the planning balance and led them to wrong conclusions on policy and its application.

85. In respect of Policy CMKAP G3 MKC submits that there is no true ambiguity in the policy and its and intu's approach must be correct. In considering the meaning it is relevant to note that:
- There is no suggestion of taking an absolute approach to each element of CMKAP G3c in the accompanying text at paras. 8.15 to 8.26 (pp. 65-66);
  - That accompanying text places emphasis on the quality of semi-public and public space (e.g. at 8.17 and 8.22) which is consistent with MKC's interpretation and is not consistent with the CMKTC approach.
86. CMKTC's interpretation would result in the space under the roof at intu being protected from any reduction in quantity at all, unless the test in CMKAP G11 could be reached. The CMKAP G11 test is a threshold higher than that in NPPF 134 for the protection of listed buildings from less than substantial harm. CMKTC conceded that its interpretation would mean that space, including the useless space east of Starbucks, was given a higher level of protection than the listed Shopping Building. MKC did not consider that to be a tenable approach and that, if the interpretation had been articulated in that way before making the CMKAP, it was doubtful that it could have survived examination.
87. CMKTC had relied on the use of "absolute" in the examiner's report<sup>46</sup>. MKC pointed out that the report is not part of the development plan and is subject to the approach in Phides (it is planning history not the document available generally to the public); the referendum was in respect of the draft Neighbourhood Plan not of the examiner's report; the examiner's view as to meaning does not displace the proper construction of the policy which is a matter of law; his statement is short and it is not wholly clear what he meant by "absolute" ; and the words used by the examiner do not appear in the policy or the supporting text and cannot therefore be used to construe the policy.
88. MKC drew attention to the fact that the very special circumstances test which, could allow development in the green belt, was lower than the Policy CMKAP G11 test and that similar circumstances applied to AONBs. CMKTC's interpretation of Policy G3 was therefore more restrictive than green belt and AONB policy. CMKTC also considered that the remaining three elements listed in Policy CMKAP G3 were reduced by reason of the reduction in quantity. MKC considered this to be an irrational view which should be discounted.
89. In respect of the measurement of the semi-public open space MKC noted that no method is prescribed by the CMKAP and no quantum is listed in the plan itself; the measurement is therefore a general matter of planning judgment; the issue

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<sup>45</sup> CD68 paragraph 3.32

<sup>46</sup> CD 147

of precise quantum is only critical if the policy is interpreted to mean that every square centimetre is to be preserved.

90. With regard to Policy CMKAP G1 the approach taken by MKC, and intu, was to be preferred. The stock of classic CMK infrastructure must be viewed as a whole. The "principle design framework" in CMKAP G1 is the grid system. The loss of a small part of degraded infrastructure (i.e. a stub remaining after the original development of the shopping centre) will in no way impact upon the principle design framework of CMK for future development and future prosperity. Policy CMKAP G1 must be read in context in order not to unreasonably stifle development. Absolute protection for classic CMK infrastructure would be very prohibitive. The Neighbourhood Plan must be read sensibly and as a whole.
91. Policy SS3 identifies Midsummer Boulevard East as an Inset Action Area Plan Area which contemplates the loss of more of Midsummer Boulevard. There is no explicit provision in CMKAP G1 for the loss of classic CMK infrastructure in bringing forward such an AAP. CMKTC's interpretation of CMKAP G1 as permitting no loss of classic CMK infrastructure other than in accordance with CMKAP G11 is inconsistent with policy SS3. CMKTC had agreed in evidence that, in order to constitute classic CMK infrastructure, the infrastructure must be original. MKC considered that to be correct.
92. MKC noted that CMKTC had placed a considerable amount of weight upon the Framework's paragraph 198, which provides "...Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted." CMKTC's evidence was that paragraph 198 gave neighbourhood plans special additional status above other parts of the development plan, and that special regard is to be had to them. However, CMKTC conceded that paragraph 12<sup>47</sup> is very similar to NPPF 198. CMKTC also accepted that NPPF 198 is a 'reminder' to LPAs that the development plan includes the neighbourhood plan.
93. MKC pointed out that the correct interpretation of NPPF 198 is a matter of law. It had been held that the effect of NPPF 198 was the same as s. 38(6) of the Planning and Compulsory Purchase Act 2004 and that to read it differently would mean that NPPF 198 was in conflict with s. 38(6)<sup>48</sup>. In addition, the Framework was not a statute and should not to be treated as if it had the force of statute; it did not displace the statutory "presumption in favour of the development plan"<sup>49</sup>. Paragraph 198 does not give any different approach to the weight to be given to neighbourhood plans. MKC reinforced that the development plan should be interpreted as a whole. In any event, CMKTC did not contend that the Neighbourhood Plan superseded the CS because of a conflict.

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<sup>47</sup> Paragraph 12 states that the Framework "does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise",

<sup>48</sup> R (Irving) v Mid-Sussex District Council

<sup>49</sup> *Phides* paragraph 74

*Main Issue: the Impact of the Proposed Development on Quantity, Quality, Use and Accessibility of Semi-public Space*

94. It is agreed that the proposal will result in a reduction in the quantity of semi-public space available at intu. As stated above, the basis upon which CMKTC contends that there would be a reduction in the quality of semi-public space is a matter of the reduction in quantity; the quality is lower because the space is smaller. MKC considered that this was not the correct approach and that CMKTC had ignored the benefits which would be provided to a space which it accepted was bordering on the unpleasant. More space is not necessarily better space and CMKTC had accepted that less space could be better - although this would fail to comply with CMKTC's interpretation of CMKAP G3c. As described in MKC's PoE<sup>50</sup> the proposed development would:

- better reflect the rectilinear grid principles of CMK;
- generate a higher proportion of active frontages;
- replace the existing kiosks with buildings which would better define and enclose the public realm than the present building;
- remove poor quality and underused space;
- make the space under the roof a "more vibrant and animated space" by the intensification of the use of the space;
- regardless of whether it would amount to semi-public open space, the new space created at the upper level would be high-quality with excellent views east to west from the new bridge;
- provide a new key entrance at the Western Gateway for intu to replace the existing unattractive entrance (which forms part of the setting of the Shopping Building);
- reflect the principle of the rectilinear grid at the Eastern Gateway and potentially act as a catalyst for wider public realm improvements to Midsummer Boulevard East as agreed at the MBE workshops;
- create more active frontages on Midsummer Lane and additional features to enliven it.

95. MKC's conclusion was that the proposed development would be a substantial improvement and that it would be possible to have any category of events within the 15m available. A 15m continuous width is generally wider and more usable than the current variable width which drops as low as 8m in one place.

96. CMKTC's view was that there would be a reduction in accessibility due to the reduction in quantity of space but that was the wrong approach. The ability to access the site would be the same as now. Access would be improved for those coming by car as a result of the improved access and connectivity from the multi-storey car park.

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<sup>50</sup> NS PoE Section 3

97. In short, MKC's view was that while the proposals would reduce the quantity of semi-public space that did not mean that Policy CMKAP G3c would be breached. There would be no reasonable uses of the space ruled out by the proposed development, and the proposed development would be subject to the new Walkway Agreement and would still be accessible. The only factor on the negative side of the balance would be the loss in quantity of space but the majority would be of poor quality and does not work well. On the positive side of the balance, there would be a considerable improvement in the quality of the space.
98. When viewed as a whole, the application satisfies Policy CMKAP G3c and the strategic objectives of CS7. The proposal would lead to a considerable improvement in this semi-public space and would not impair its use or accessibility.
99. If, contrary to MKC's case, the proposal would constitute a breach of Policy CMKAP G3c, the positive benefits in terms of substantial improvement to the design and functioning of the area would constitute an "other material consideration" under s. 38(6), and (given it meets CS4, CS7 and the strategic objectives) a reason for granting permission, even if it could not be brought within the high threshold of CMKAP G11.

*Main Issue: Effect on Design and Function of Area including Classic CMK Infrastructure*

100. MKC agreed that there would be some impact upon classic CMK infrastructure. However, the level of this impact would be so minor with the consequence that Policy CMKAP G1 was not engaged. In order to constitute classic CMK infrastructure, an element must be original.
101. Photographs indicated how little classic CMK infrastructure remains at the western end and thus the impact of the proposal upon classic CMK infrastructure would be very minor. MKC submits that the proposals remain overall in compliance with Policy CMKAP G1. There is a gap in the grid at the western entrance to intu. The western approach to intu does not fall within either Policy CMKAP G1 or paragraph 135 of the Framework.
102. The proposed development would lead to a considerable improvement of Midsummer Lane consistent with the strategic objectives. Midsummer Lane would be lengthened and those aspects that make it unpleasant would be ameliorated. The proposed development would increase the proportion of active frontage on Midsummer Lane and there would also be more illumination and interest. This would also be a positive gain in that part of the setting of the Listed Building. Further, the proposed development bears a close similarity to the build-to line produced as a result of the Workshops.
103. The proposed development would not have an impact upon transport in the area. Cycling is not currently permitted under the roof, and it would cause conflict. The PTS would be maintained, and a width of 15m would be sufficient in order to accommodate a form of transport which could realistically be expected to come forward. It would not be consistent with pedestrian safety to have 3-4 lanes of transport under the roof. The PTS would be required not to materially impede pedestrians, and could not include internal combustion systems. CMKTC's objection that the PTS should be kept at 20m in order to keep flexibility for future

technology lacked any scientific or technical basis. Considering systems that would require more, rather than less, space than current systems assumes a backward step in technology. MKC considered that, as any application for the PTS would have to be considered against CMKAP G3c, CMKTC's stance on that policy was inconsistent.

104. The proposed development would result in a space which functioned considerably better than it does at present. Whilst there may be some loss of degraded elements of old infrastructure, this would fall far below anything that could be considered a breach of Policy CMKAP G1. If, contrary to MKC's case, the proposal breaches Policy CMKAP G1, the fact that the proposed development constitutes a considerable improvement to the design and function of the area would be an "other material consideration" under s. 38(6), and a reason for granting permission, even if it could not be brought within the high threshold of Policy CMKAP G11.
105. MKC acknowledges that Policy CMKAP G11 is a high threshold and does not contend that the Policy CMKAP G11 test is met in the present case. Indeed, this forms part of the context within which it is submitted that CMKTC's interpretation of the relevant CMKAP policies has been unduly restrictive and inflexible.

*Main Issue: Effect of the Proposed Development on the Health of the PSA*

106. The proposed development would bring forward further and improved A1 and A3 floorspace, in the heart of the PSA. This is consistent with Framework town centre policy. The Listed Shopping Building and the intu centre form a retail circuit and the largest agglomeration of comparison goods retail floorspace in the PSA. The proposed increase in floorspace is therefore a considerable advantage and meets the strategic objectives of CS7 which guide the Neighbourhood Plan.
107. The CS sets out the forecast need for 69,714 sqm to 110,781 sqm additional floorspace comparison retail floorspace in CMK 2011-2026<sup>51</sup>. The CS explains that these figures represent about 85% of the larger total requirement for the period, which is directed to the PSA rather than to other centres. The details as to available retail space in CMK at INQ 13 are agreed by CMKTC and show the lack of retail floorspace within CMK to meet the MKCS anticipated requirement for the plan period.
108. Due to the location of the site in the PSA, national policy does not require a sequential approach, nor does it require alternative sites to be considered. CMKTC's suggestion that it is necessary to test alternatives in the PSA due to the impact upon the listed Shopping Building is without foundation and is contrary to CS Policies CS4 and CS7. Town centre uses, such as those that are proposed in the application, are uses that should be located within the PSA.
109. MKC confirms that additional floorspace, beyond that specified in the Neighbourhood Plan, is needed in the PSA. There is no test within the PSA of whether the permission would prevent another site from coming forward. Other than the Point site, MKC is not aware of other sites for major retail development in the PSA. Neither is it aware of active proposals to implement the Point

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<sup>51</sup> CD66 page 35 Table 5.7.

permission. However, the example of the application by Primark shows that MKC does not approve any proposals in the PSA that come forward. What matters is dwell time in the PSA, not whether people would shop as well as go to the cinema. Both shops and cinemas are town centre uses.

*Preservation of the Setting of the Listed Building*

110. MKC stresses that the parties are agreed that there would be an impact upon the setting of the listed Shopping Building. It is also agreed that the harm caused would be less than substantial, and therefore would fall within paragraph 134 of the Framework. The disagreement relates to the level of harm within the "less than substantial" bracket. The parties agree that the construction of what is now intu caused harm to the setting of the Shopping Building (albeit this was before the Shopping Building was listed). The Inspector and SoS must be clear as to the proper basis for considering the impact of the proposed development.
111. MKC and CMKTC had referred to HE's guidance *GPA3: Historic Environment Good Practice Advice in Planning: The Setting of Heritage Assets*<sup>52</sup>. CMKTC contended that, on the basis of two passages, there is a presumption against cumulative harm in GPA3:
112. Firstly: 'Where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies, consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset'<sup>53</sup>. Secondly: "Step 4: explore the way to maximise enhancement and avoid or minimise harm."<sup>54</sup>
113. Neither of these establishes a presumption against cumulative harm. Indeed, it is plain from NPPF 134 that it requires consideration to be given to the effect of the actual proposal: "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 securing its optimum viable use."
114. The correct approach to cumulative harm as expressed in GPA3 is no more than to say that the fact that an asset has been harmed in the past is not a reason to conclude that further harm does not matter. It is not correct to simply add the former and the proposed harm together as this would not reflect the actual impact of the proposal. This is not the approach taken by HE, would be contrary to good practice and is inconsistent with NPPF 134. The intu building has already caused harm to the setting of the Shopping Building, but it is no part of the present proposal to consider whether that permission should have been granted or not. MKC's evidence was that the intu building had obscured a small proportion of the experience of the elevation of the listed building, and the call-in scheme would add a tiny bit more to this.
115. Furthermore, MKC stated that it was wrong to question whether there could have been a proposal which would better preserve the setting of the Shopping

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<sup>52</sup> CD85.

<sup>53</sup> CD85, p.4.

<sup>54</sup> CD 85, p.6.

Building. The point is not what a (hypothetical) proposal might have achieved, but what harm will be caused to the setting by the proposal that is actually made.

116. The context of the Shopping Building is important. It is an enormous structure and the intu building affects only part of its setting. The proposed development would affect only a very small part and the Shopping Building can accept change. English Heritage did not form the view that the intu building compromised the listability of the Shopping Building. The ability of the Shopping Building to accept change is demonstrated by the fact that it has retained its significance, despite the addition of the M&S extension. The description of the M&S extension in Pevsner<sup>55</sup> is not a flattering one. The proposed development is in an area of the Shopping Building already affected by that M&S extension.
117. One striking feature of the Shopping Building is the “infinity views” which can be seen from certain, fairly oblique, angles. CMKTC had accepted that the proposed development would still permit the infinity views to be seen, but the point at which one would reach the oblique angle for the infinity view would change. However, infinity views would be available unaffected on the northern side of the Shopping Building, eastwards from the Arriva kiosk, and east and west from Secklow Gate. The impact upon the experience of infinity views would therefore be small, in the context of the setting of the heritage asset as a whole.
118. CMKTC also contended that there would be an impact upon the Shopping Building in terms of the reflections seen in the mirror glass. The current position with reflection is not that the viewer would have a view of uninhibited reflected trees and sky. The reflection would include the blank facades on Midsummer Lane. The re-animation of frontages and adding active frontages would almost certainly have a positive impact upon the setting of the Listed Building. Therefore, the proposed development has a positive impact in this respect.
119. CMKTC’s view is that the harm that would be caused by the proposed development would be serious. It also contended that the harm caused by the original construction of the intu building was serious. This reveals the fundamental inconsistency in, and thus implausibility of, its evidence. It is verging on the irrational to treat the harm caused by the construction of the roof and the loss of Midsummer Boulevard, caused by the original construction, as comparable to the much more modest impact of the present proposals.
120. MKC’s own view was that the harm caused to the setting of the Shopping Building would be overall minor harm in magnitude<sup>56</sup>.

#### *The Planning Balance*

121. There are a number of important benefits of the scheme which are set out in the applicant’s evidence<sup>57</sup>. Briefly these would include:
- improving the design of the area;

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<sup>55</sup> Nikolaus Pevsner and Elizabeth Williamson, *The Buildings of England: Buckinghamshire* (RJ Appendix RJ2; INQ4).

<sup>56</sup> JS Proof 7.2.6.

<sup>57</sup> <sup>57</sup> MU PoE section 11

- increasing the proportion of active frontages;
  - providing improved A1 and A3 floorspace in the PSA;
  - increasing footfall to the PSA;
  - encouraging £70m investment into the PSA;
122. When compared with the existing centre, and in accordance with CMKAP policies, the proposals would:
- improve weather protection along Saxon Gate;
  - better define the edge of the public realm with frontages that appear continuous;
  - provide greater continuity and enclosure;
  - better demonstrate an appreciation of and response to the wider context, namely CMK's rectilinear grid principles.
123. MKC also considered it necessary to take into account the existence of the fall-back position of unimplemented permissions for further kiosks under the roof, if satisfied that there is a reasonable possibility that they may be implemented. These would cause further clutter to the space under the roof, and decrease its legibility.
124. MKC's conclusion was that the development is in accordance with the development plan read as a whole, and therefore should be permitted. Specifically, the application would comply with MKCS and CMKAP. The impact upon classic CMK infrastructure would not be enough to amount to a breach of Policy CMKAP G1. Despite the reduction in semi-public space, the vast improvement in quality of space would mean that the proposal will attract the policy support of CMKAP G3c, properly understood and given the importance attached to quality by the supporting text. By increasing the proportion of active frontages, the proposal would comply with Policy CMKAP G7. Even giving considerable importance and weight to the importance of preserving the setting of the listed building, this is still a clear case for the grant of planning permission.
125. For the avoidance of doubt, MKC noted that this is not a case where the presumption in favour of sustainable development in NPPF 14 applies since the development plan is up-to-date to the extent relevant to the proposals and contains relevant policies relating to retail development and other relevant matters.

### **The Case for Central Milton Keynes Town Council (CMKTC)**

126. CMKTC considers this case to be a test case for neighbourhood planning in England today. The vote in favour of the Neighbourhood Plan was the largest single vote in the history of neighbourhood plan-making, it is the only Business Neighbourhood Plan to have been "made" to date and this is the only Call-In case to date to have considered a Neighbourhood Plan.
127. The statutory position is that Sections 38(3) and (6) of the Planning and Compulsory Purchase Act (PCPA) provide that development plan documents and neighbourhood development plans have equivalent status except where a 38(5)

conflict arises. MKC found the Neighbourhood Plan to be in general conformity with the Core Strategy and Saved Local Plan policies.

128. The provisions of the NPPF indicate that a neighbourhood plan should be accorded very substantial weight in the decision-making process. CMKTC points out that paragraph 198 states that planning applications conflicting with neighbourhood plans should not normally be granted. It does not include the qualifying phrase “unless other material considerations indicate otherwise” appended to the similar advice in respect of Local Plans<sup>58</sup>.
129. CMKTC also acknowledges, however, that the PPG specifies: “A neighbourhood plan attains the same legal status as the Local Plan once it has been agreed at a referendum and is made ...”<sup>59</sup> adding that the paragraph does no more than re-state the statutory test.
130. CMKTC refers to case law<sup>60</sup>, also quoted by the other main parties, in respect of the interpretation of policies. It notes that Section 38(6) requires regard to be had to the development plan as a whole but that the exercise to be undertaken is not a simple checklist or scorecard.
131. The history and distinctive features of the Neighbourhood Plan, including that it had front-runner status and involved business and commercial interests on the steering group, are cited as reasons why it should be accorded elevated weight. CMKTC considers that the applicant emphasises the role of the Neighbourhood Plan in promoting investment but misses the overarching context in which growth is welcomed but not in any place and in any form.

#### *Policy CMKAP G3*

132. CMKTC’s position is that the supporting text makes it clear that the policy is intended to protect the landscaping and open spaces which contribute to the classic CMK infrastructure. Policy CMKAP G3(c) spaces were considered by the makers of the Neighbourhood Plan to be particularly vulnerable to proposals requiring them to make way for new development. There were no submissions or objections seeking the removal of Midsummer Place from Policy CMKAP G3c and the applicant did not seek any modification to remove that policy from the Neighbourhood Plan. The Examiner’s Report was an informed view by a qualified and specially appointed independent individual.
133. With regard to the Policy CMKAP G3c test of quantity CMKTC’s position is that, by building on parts of the existing semi-public space within Midsummer Place, there would be a reduction in its quantity. MKC concurred in the Officer’s Report that it would be reduced. The applicants’ Planning Statement initially ignored the policy and its approach has been to ignore the physical dimensions and site features. Its suggestion that the area should be fixed by reference to the 1:5000 Map provided in the Neighbourhood Plan is unworkable. It is clear that large areas outside the khaki square/red line are excluded, although they have exactly the same semi-public space character.

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<sup>58</sup> NPPF paragraph 12

<sup>59</sup> Paragraph: 006 Reference ID: 41-006-20140306

<sup>60</sup> *Tesco v Dundee* [2012] UKSC 13 and *Tiviot Way Investments v SSCLG* [2016] JPL 171, paragraph 31 and 36

134. In measuring the area of semi-public open space CMKTC did not exclude those areas with temporary planning permissions or the unimplemented temporary planning permissions as the time limit to construct the kiosks will expire in mid-2017 and there is no certainty that the land will be developed. CMKTC does not accept that the seating areas around cafes should be excluded either.
135. CMKTC did not consider it possible to cover the loss through an addition to the semi-public space at first floor level as those areas could not form part of the existing semi-public space to which Policy CMKAP G3c refers. They would be created by a loss of semi-public space at ground floor to generate the 'platform' that would support them.
136. In respect of the remaining Policy CMKAP G3c tests, CMKTC considered that a reduction in the quantity of the space would impair the quality, use and accessibility of the existing semi-public space. The effect of the proposal would be to reduce the present Walkway Agreement area by over a third, compacting pedestrian flows and permanently restricting community activities and other types of public event. The applicant and MKC were not correct in their argument that the design of the diminished space would make the space of better quality.
137. As the planning application was in outline with all design details reserved and a Design Code based on precedents, it had not been proven that the remaining space would be better quality.

*Policy CMKAP G1*

138. CMKTC does not pursue a breach of Policy CMKAP G1 in relation to the eastern extension. In respect of the area to the west there would be extensive loss of silver grey granite facings, silver grey blockwork and Breedon Gravel medians in the underpass area to the west of site abutting Saxon Gate. This development is not consented by the scheme, but the area is inside the application boundary and the off-site works are promised in the Design Guide. A direct breach of the policy should be accorded substantial weight.
139. CMKTC considers that the purpose of Policy CMKAP G9(a) is to provide protection for the existing grid layout of the whole of CMK in addition to Policy CMKAP G1. The building frontages on the axial line of Midsummer Boulevard would be brought much closer together; the longer and tighter enclosure would not be an appropriate relationship between buildings across a CMK Boulevard and would not respect the grid layout. The extension of the building footprint, and to a much greater mass and height (notably at Block 6), is not an appropriate relationship with the Saxon Gate infrastructure either and the residual "gateway" space is not of appropriate scale. The enclosure behind doors of more of the Boulevard would not assist ease of movement through and around CMK, neither would the compressed flows through the reduced pedestrian routes especially if a public transport system is installed.
140. CMKTC states that MKC's assessment is of no conflict at all on the basis that the harm has already been done by the original development. More harm is now proposed and this is a worsening of a situation that was already a carefully balanced compromise.
141. It also considers that MKC relies upon the rectilinear arrangement of the proposal as a demonstration of "respect to the existing CMK grid layout". The

CMK-wide grid has more to it than that. MKC extols the proposal for being “much smaller and more human scale” which is to misunderstand the monumental scale of the design of CMK. There is no assessment or appreciation of the way in which CMK as a whole has been designed and operates and of Midsummer Place's role within it, or of CMK's presently incomplete state.

142. The western extension proposed is visually very prominent and the blank cinema walls at the Saxon Gate crossroads would be of an overbearing nature. The extension at the eastern gateway is lower and shorter, but Block 4 is a further prominent extension. Block 3 would be a significant extension, adjacent to the Shopping Building and extending prominently beyond the grid line.
143. There is no evidence of a clear attempt to scale the development line back, either within Midsummer Place or at either western or eastern side. This is despite the specific recommendation from HE to consider an alternative approach. The resulting impression is of a development that extends as far as it is able to, rather than respecting the grid. It is unsupported by any viability data. There is profound conflict with G9.

*The Effect of the Development on the Health of the PSA*

144. The total net additional A1 floorspace: 4,042 sqm would provide less than 4% contribution towards the Core Strategy target. Policies SS4 and SS2-3 of the Neighbourhood Plan encourage mixed use retail development on vacant land or land awaiting redevelopment immediately east of the Application Site and in other locations in the PSA. CMKTC's position is that it is not correct to suggest that the SS policies simply record the existence of the PSA as they also provide for all types of retail across the full PSA area and outside it. In short, they make very clear that all of the benefits of the proposal can be delivered elsewhere within the PSA.
145. There is underused development land and empty buildings in the PSA including at the Point, Block D3.4 and the Food Centre. The vision of Policy SS4 is to encourage the broader development of the PSA, while bringing forward the regeneration vision that has begun to be explored by stakeholders for Midsummer Boulevard East. The proposal would not contribute to CMKAP's spatial vision of Indicative Land Uses but would cast a shadow over the property market and could well constrain those sites from coming forward. There is no documentary evidence that the scheme will stimulate the redevelopment of the adjacent Point site. It is also reasonable to assume that the proposed new catering units might draw tenants from elsewhere in CMK or the PSA and thus have a zero sum effect.

*The Impact of the Development on the Setting of the Listed Shopping Building*

146. There is no dispute that the term “less than substantial harm” can encompass a range of levels of harm. All parties agree on the importance of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990: ‘special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.’

147. CMKTC quoted case law establishing that "preservation" means doing no harm<sup>61</sup>, that an authority 'must give that harm [to the setting of a listed building] considerable importance and weight' and that 'a finding of harm... gives rise to a strong presumption against planning permission being granted'<sup>62</sup>
148. It also noted that all parties agreed that HE GPA 3<sup>63</sup> was applicable as good practice although it does not prescribe a single methodology or particular data sources.
149. CMKTC considered that the rarity of the asset as the only listed asset of its kind contributes to its significance. It picked out elements of the listing citation of particular note including that the Shopping Building is 'a highly-regarded, little altered, 650-metre long steel and glass structure...', 'the outstanding post-war retail development in England,' and 'the purpose-built centrepiece of Britain's last, largest, and in planning terms most innovative new town'. It noted, furthermore, HE's commentary on the application: "The Shopping Building is both highly significant ... and unusual, in that it is the only listed shopping centre in the country."
150. CMKTC identified as key elements of the setting: "the designed landscape of the wide tree-planted Boulevards and Gates between which the listed Building sits", noting in particular the connection between the "design intention of the Shopping Building and the landscape of this part of CMK". It pointed out that the applicant stressed that the Marks & Spencer construction, having obscured the frontage, no longer makes a positive contribution to its setting or reveals its significance, a view which was at odds with HE's analysis.
151. Applying the PPG and the GPA3 guidance, CMKTC identified the particular importance of the infinity views along the Shopping Building. Whilst it is acknowledged that these are already obstructed by the construction of the intu development, the view from the south-east corner down Midsummer Lane still offers a view of the length of the building. A significant element of the infinity view will be lost at the eastern end. At the north-eastern corner of the development, the extension by 17m will have a consequence on the significance of the heritage asset within this area, both in terms of obscuration looking towards the Shopping Building and extending the Midsummer Lane frontages. At the western side the development will alter the height of the elevations, thus impacting how the Shopping Building appears in mid-distance views.
152. CMKTC also criticised the applicant's arithmetical approach to setting by calculating the portion of the elevation that is lost. This methodology was not supported in the PPG or the GPA 3 and the resulting figure of 1.31% was an artificial statistic. The correct approach was to take into account the importance of the key views.
153. The GPA3 makes clear that cumulative change is a key component of the assessment of the effect of the development on the significance of the asset<sup>64</sup>.

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<sup>61</sup> *South Lakeland District Council v Secretary of State for the Environment* [1992]

<sup>62</sup> *Forge Field Society v Sevenoaks DC* [2014] EWHC 1895 (Admin), CD89 paragraphs 48 & 49

<sup>63</sup> *Historic England Good Practice Advice in Planning Note 3: The Setting of Heritage Assets*

<sup>64</sup> CD85, paragraph 9 (bullet 1)

In this respect CMKTC identifies serious harm from (a) the extension of the existing built form from 150 to 189 metres; (b) the increase in height to three storeys at Block 6; (c) the increase in the footprint further robbing the building of its vanishing point; (d) the obscuration of the frontages at Midsummer Lane.

154. NPPF 137 states that "Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably." The GPA3<sup>65</sup> advises that consideration needs to be given to the extent to which the development enhances the heritage asset and minimises harm. CMKTC reports that HE repeatedly drew the Applicant's attention to this component, referring to the need to demonstrate that there were "no less harmful alternatives"<sup>66</sup> before directly addressing the north-eastern extension and the failure to demonstrate why this, involving the most serious part of the harm, could not be omitted with "ingenuity" and flexibility"<sup>67</sup>. HE also drew the applicant's attention to the importance of setting out viability justification but this was not provided.
155. CMKTC noted that all parties accepted harm to the setting of the listed building. Its own assessment was of less than substantial harm, but still categorised as "serious" whilst the applicant concludes that it would be "so marginal as to border on the inconsequential", updated during the inquiry to "minimal". The word "inconsequential" did not derive from the NPPF, nor the PPG, nor the GPA3 methodology; it was incorrect and inappropriate. In accordance with section 66(1) of the Planning (Listed Buildings) Act 1990, great weight should be accorded any such harm.

#### *CMKTC'S ADDITIONAL MAIN ISSUES*

##### *Reduction of the 20 metre strip for a future Public Transport Scheme<sup>68</sup>*

156. CMKTC's position is as follows:

- (1) The delivery of a PTS of some form, within the period remaining to 2080, is a planning goal of considerable importance to Milton Keynes and is an essential feature of the MKC policy commitment to increase modal shift from private cars;
- (2) There is no justification for reducing the 20m width. The technology of public transport systems continues to develop, and so the design installation and maintenance of presently unknown systems require flexibility to remain;
- (3) Maintenance of the reservation at the full 20m is necessary to ensure flexibility in the use of the space, whilst ensuring pedestrian movement;
- (4) For the same reasons, the 20m strip needs to be free from new height constraints;

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<sup>65</sup> CD85 paragraphs 26-28

<sup>66</sup> IF, Appendix 1: Letter from HE to Deloitte, 1 April 2015

<sup>67</sup> IF, Appendix 4, Letter from HE to Deloitte, 26 June 2015

<sup>68</sup> CMKTC's case on this matter is set out in greater detail in my report to the SoS Transport on the draft Stopping Up Order.

(5) Implementation of the proposed development, with its reduced strip for public transport and more compressed pedestrian spaces, will dramatically constrain the design and implementation of a PTS and obstruct its progress;

(6) There is no public benefit in the proposed reduction in width of the present 20m strip, and in the extent of the adjoining Walkway Agreement areas, that cannot be achieved somewhere else in the PSA or CMK generally.

157. CMKTC thus concludes that the construction of the scheme would increase the constraints on the development of a public transport scheme linking the Station and Campbell Park, with further impacts on the city's ability to move towards a carbon neutral future as set out in the Core Strategy.

#### *Scrutiny of the Benefits Case*

158. CMKTC submits that the material considerations case made by the applicant, and supported by MKC, has some considerable gaps.

##### (a) The Outline Nature of the Application

159. CMKTC is concerned about the use of an outline application for the proposed development. Although the inquiry process has clarified certain aspects, it is still difficult to ascertain precisely what the design improvements and accordingly the level of benefit arising from the proposal will be.

160. It is impossible to be certain as to compliance with various policies in the development plan, notably the CMKAP's Policy G7 on Active Frontages. MKC and the applicant accept that the specific design of each unit will be a matter for discussion with each prospective tenant. There seems little desire currently for active frontages surrounding the Gap and Zara units, nor from the restaurant/café units already under the roof. Much of the Design Code is based upon precedents. There can be only limited confidence that the sketch diagrams provided can be delivered.

##### (b) The Timescale for Delivery

161. Conditions provide for an elongated design period and phasing totalling 7 years. The applicant has professed its willingness to implement as soon as possible, and the need to implement over a longer period block-by-block, whilst working with existing tenants. Unimplemented, the permission could be 'banked' until after the 2017 review of the Local Plan. Other sites would then be further dis-incentivised from coming forward in the interim. In addition, the benefits case presented by the applicant would be postponed and rendered more uncertain.

162. MKC acknowledged that the development may come forward only after the Local Plan has been formulated, with the retail report becoming increasingly out of date. At that stage, those sites looking for allocations elsewhere (including those which are consistent with the CMKAP's Indicative Land Use Plan) will have to contend with the 'banked' permission. Thus a development proposal that has been in development since at least 2013, which has purportedly been the subject of advanced design preparation, will be permitted to take 7 years to reach fruition.

##### (c) The Boutique Cinema Anchor (or Open D2 Use)

163. The 'boutique cinema' is presented as the anchor development of the restaurant/food centre element of the development. It is notable that it was unable to provide any evidence beyond an indicative list of cinema operators who had expressed interest. This should be considered against the backdrop of: (a) the closure of the Odeon cinema at the Point; (b) the diversification of the Arts Centre theatre; (c) the existence of cinema provision at Xscape.

164. Furthermore, its contribution to footfall should not be over-stated. At one level the presence of individuals on the premises ensures a longer 'dwell time'. It may also be preceded or followed by a meal but there is no documentary evidence before the inquiry that those who visit the cinema for a 1930hrs showing will engage in shopping beforehand, and plainly none can take place following.

(d) The retail/restaurant benefits

165. A wish-list of restaurants has been provided with the planning application but none have written to confirm their interest in the acquisition of the space in the area. Almost all of those listed already have premises in the centre:mk. Unlike the fast food entities, there is no evidence that the likes of Wagamama, Café Rouge, Byron Burger would wish to open an additional premises in the adjacent building. If the development draws existing restaurant operators from the Hub or the Theatre District there is no guarantee that those units would themselves be replaced.

166. A similar principle applies to the retail sector, especially in respect of men's and women's wear. There is no evidence before the inquiry, even from those currently with premises such as Gap and Zara, that they wish to have larger premises in the area. The list of stores provided with the Planning Statement significantly overlaps with those already in centre:mk. There is no evidence that store-based retail is due a major upswing in the 7-year window proposed by the development. Thus, the precise retail benefits case remains to be ascertained.

167. The figure for investment has been listed at £70m. This is revealed to be construction costs, without further breakdown. Centre MK assess economic output at £10m per year. The applicant was not able to break this down further either.

(e) The additional jobs figure

168. The jobs figure of 430 is now broken down to between 355 and 467<sup>69</sup>. To describe these as new jobs assumes (a) the creation of a new store/restaurant, even if located elsewhere in the PSA (b) no closure of the same brand store/restaurant elsewhere in CMK (c) no consequent closure of a store/restaurant within CMK. There is no objection to the creation of jobs in principle, but not at any cost, especially the loss of a protected semi-public space.

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<sup>69</sup> INQ22

169. In conclusion CMKTC drew attention to the powerful impact on plan-making and decision-taking that Neighbourhood Planning has had, quoting from the Minister's letter of March 2016<sup>70</sup>.

*"I am very mindful of the huge efforts made by communities preparing their plans, and that particular individuals leading the process contribute significant amounts of voluntary time, so decisions which are perceived by those individuals as going against the plan are extremely frustrating to them..."*

170. Neighbourhood Planning, within Localism, had conferred particular power on third parties. The policies in a Neighbourhood Plan may be drafted at a more site-specific level and cover narrower local concerns, but are often a more accurate reflection of local issues. The Proposal is not the best available option or indeed the only option for the site.

171. The refusal of the application would not be the end of the potential for improvements to Midsummer Place. It would allow all those present to reconvene to develop a proposal that reached a suitable compromise between the respective interests and led a genuine addition to future prosperity. CMKTC considered it very much a test case for neighbourhood planning today.

### **The Cases for Other Third Parties**

172. Several local residents, some also representing interest groups, made statements at the Inquiry in objection to the proposal. Most provided written copies which are listed as inquiry documents and appended to this report. The gist of their cases is as follows.

#### ***Cllr Isabella Fraser***

173. Cllr Fraser spoke on behalf of Campbell Park Parish Council in support of CMKTC. The National Association of Local Councils representing Buckinghamshire and Milton Keynes was working closely with DCLG to implement Neighbourhood Plans.

174. Milton Keynes City Centre is not only a regional centre it is a local centre for 30k residents. These include disadvantaged and deprived communities, who are not targeted by these current development plans, and communities who value the public realm space currently provided.

175. The decision opposed by the PC was one of interpretation by MKC officers; it appeared to the PC that Neighbourhood Plans were heeded grudgingly. Such Plans were meant to give a voice to people, a voice best put by those closest to the people such as Town & Parish Councils. Planning laws exist to give justice and to ensure fair and equitable decision making, not only for the businessman and, in this case, the wealthy remote Business Operators/Developers, but also for communities. Town and parish councils and Neighbourhood plans are that voice and should be heard.

176. The PC considered that MKC and INTU were the Goliath in this case with CMKTC a David, albeit with a strong voice and strong democratic legitimacy. Planning and planning law, however complex and complicated, should not be allowed to supersede democracy or democratic legitimacy.

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<sup>70</sup> CD191

**Carol Barac**

177. Ms Barac is a retired town planner and member of MK Forum but was objecting primarily as a long-time resident and user of the spaces. She also uses the buses frequently. Ms Barac agreed that the existing spaces were in need of redesign but the introduction of more restaurants and the enlargement of the existing shops would not enhance visitors' experience at all. A better range of small, interesting shops is needed together with a proper outdoor space and a meeting place. A transit system linking the shopping area to the rest of the business area and the station is also required.
178. MKC had overridden the decision of the Neighbourhood Plan in favour of a distant commercial organisation; the interest of MKC is not the interest of the residents. A number of workshops concerning the future development of Midsummer Boulevard had been held and MKC was well aware of their outcomes. Ms Barac agreed that the intu building should be redesigned but did not consider that designers, developers and legal people who did not live in MK should impose their ideas on the residents. MKC should respect that and work with them to make the aims of the Neighbourhood Plan a reality. These would include many of the wishes expressed by intu in their brief for the redesign.

**Robert de Grey**

179. CMK and the Shopping Building have been damaged by the clumsy and unsympathetic design of Midsummer Place. MK Central Railway Station is the only other building that closes the grid in CMK: that has the status and, with Station Square, the sense of grandeur to pull it off. Midsummer Place, with its crude, asymmetrical arch does not. Although it only abuts the muddled Marks and Spencer extension to the Shopping Building, it is in such an important location, cutting across the Boulevard and terminating the view along the southern façade of the Shopping Building, that its mere presence causes great harm.
180. Midsummer Place has also damaged access to CMK on public transport. Buses now have to loop around Midsummer Place with an inconvenient interchange, part on the Street, part on the Boulevard. As the use of public transport grows, this arrangement will come under greater pressure and the inconvenience for more and more passengers will increase.

*Midsummer Place: the Arch*

181. Properly curated, the space under the arch could be a great asset to CMK but it does not work well. The space under the arch is cluttered with smaller structures; the two cross routes sub-divide it rather than frame it. Under the arch there is little environmental control, and it is especially cold and windy in winter.
182. Allowance for, say, electrical buses or trams has been made across the arch which means in the future substantial openings will have to be made in the two glazed flank walls; environmental conditions can only get worse. The close proximity of Midsummer Place to the Shopping Building creates an unanimated, windswept pedestrian route, Midsummer Lane, shared with cyclists. There are other nasty places in CMK but this is as bad as any of them.

*The intu Proposals*

183. It has to be considered whether the current proposals are an improvement on what is there at present. The size of the public spaces under the arch is reduced

to the minimum, calculated in total to be by about 34%. It seems that the only contribution to public transport made in the proposals is to reduce the zone through which electric buses or trams can pass, without understanding the physical implications. When electric buses or trams run through the building, the central space will not be easy to use and will be open at both ends.

184. Midsummer Lane will be longer, and if it has any animated elevations, these will still probably be on one side only and will not come from small shop units but from the shop windows of larger shops which are often screened off later. What the proposals create is a superblock of inward-looking retailing, from the south of Midsummer Place through the arch into the Shopping Building west of Queen's Court with virtually unbroken frontages and with no relief. The proposals are a huge step backwards. A public space that should be enhanced is downgraded. Impact on the Shopping Building is increased not reduced. Options for improving public transport are reduced.
185. This is a far cry from the aspirations that emerged from the Midsummer Boulevard East (MBE) workshops, attended by intu, which took place before the proposals were submitted to the planning authority, where it seems that intu's emerging proposals were roundly rejected.

*Economic Growth and Design*

186. There is a complete misunderstanding by MKC and developers of the views held by members of Milton Keynes Forum and which they share with others. It supports growth and greater economic activity but believe that these will only be achieved by understanding and respecting the assets created for Milton Keynes by our predecessors. Thus it supports the introductory pages of the Neighbourhood Plan, especially Section 6, which promotes development generally and encourages, indeed maximises, the development of CMK.
187. Residents of MK were frustrated by the failure of the landowners within the PSA to bring forward acceptable proposals that do not damage the health of the part of CMK they purport to defend. It has taken the efforts of one of the smaller town councils in MK, CMK Town Council, with a huge amount of voluntary work, to prepare plans that encourage growth and protect the unique character of CMK.
188. Collective efforts seem to be diverted towards resisting inappropriate development that does not conform with current policies rather than promoting ideas that would help resolve the difficulties faced by this area of CMK. Surely it is not beyond the resources of intu, thecentre:mk, Hammersons and MKDP to prepare a masterplan for the area that would resolve all the practical problems and create spaces and buildings that would implement the policies of the Neighbourhood Plan and generate not just community support but enthusiasm.
189. Mr de Grey described the preparation process of the Neighbourhood Plan and what he considered to be the ambiguous relationship that MKC had with it.
190. As well as the policies which were discussed fully during the Inquiry, Mr de Grey believed the proposals would breach the following policies<sup>71</sup>.

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<sup>71</sup> See paragraphs 7 – 12 of this report for relevant policy wording and CD66 and CD68 for full policies.

*Core Strategy Policy CS 7 Central Milton Keynes* - The relationship between blocks 5 and 8 is poor, with the residual planting behind units 8A and 8B inadequate.

*Core Strategy: Policy CS 11 A Well Connected Milton Keynes* - There appears to be no coherent strategy for change in improvements in public transport and to reduce the width of the route across Midsummer Place at this critical stage is not helpful.

*Core Strategy: Policy CS 13 Ensuring High Quality, Well Designed Places* - The proposals would not ensure high design quality.

*Neighbourhood Plan Policy CMKAP SS2 Shopping Area* - No cultural or community uses are included in the proposals.

191. The proposals should be rejected. In addition, there should be a Council-led initiative, supported by all the adjacent landowners and the general public, to create a sensible plan for developing the PSA in accordance with the policies of the Neighbourhood Plan. Sixteen years of failure to bring forward acceptable applications including these proposals must now be brought to an end. The Neighbourhood Plan creates a virtuous circle, respecting the design of CMK and thus encouraging investment.

### **Graham Benjamin**

192. Mr Benjamin noted that in 2000 the then Deputy Prime Minister announced the expansion of MK which departed radically from the masterplan. It produced a development which is now discredited. Common sense says that the covenant should be respected and public space conserved particularly where it is design consistent with the city centre as a whole; quibbling about 20m versus 15m was irrelevant. Mr Benjamin was concerned that the planning authority was appearing with the applicants, represented by barristers, and it was left to CMKTC to defend the unitary authorities' Neighbourhood Plan.
193. MKC had spoken of the need for the plan to be taken as a whole. Mr Benjamin agreed particularly if the plan was taken in the context of the city, its integrated design and the Neighbourhood Plan's respect for that whilst planning for the future. He considered that the application should fail for it is non-contextual. For Mr Benjamin, the context in policy terms was exemplified the Framework where paragraph 7 speaks of integrating economic, social and environmental roles to achieve sustainable development. He could think of no better example of the possibility to achieve such integration than here, in the context of its original intent brought up-to-date to meet what is now reality. Further, paragraph 30 develops the environmental role in this instance, with the promotion of sustainable transport, whose time has now arrived in Milton Keynes.
194. The tide is turning against commercialisation of the public realm, the effect of which is to move forwards not backwards.

### **Margaret Weston**

195. Ms Weston was shocked at MKC's disregard of the Neighbourhood Plan; it should not be overridden. The curving roof was distinctive but the proposed development would lose the safety of space and the vista through. The businesses would not be local but more national chains.

**Philip Ashbourne on behalf of Cycling UK**

196. The Inspector at the 1997 Public Inquiry agreed that cyclists could cross the proposed Midsummer Place provided they dismounted, arguing that a pedestrian domain would not be achievable if it included cyclists riding through it. Bikes are now banned from Midsummer Place which is very off putting in an area which is public space and should be clearly shown to be. Space is either public or private, it cannot be both.

197. Cycling UK has no objections to the proposed works beyond the 20 metres strip but strongly objects to its reduction to 15 metres. Moreover, as CMKTC estimated, there could be a 34 per cent reduction in effective walking area and a 54.5 per cent reduction in accessible space. Cycling UK did not think that 15 metres is wide enough for a public transport route. Space needs to be added to vehicle widths to allow for passengers getting on and off and other non-public transport users passing through. It was also concerned at any future proposal to change or close the underpass to the west of Intu. They are the main ingredients of safe and easy cycling in CMK.

198. The 1997 Public Inquiry was a major disaster for CMK. The clock cannot be turned back but we can make sure the best is made of a bad situation. The traditional High Street is in turmoil and Mr Ashbourne suspected Intu was having as tough a time as anyone in meeting future challenges. Most people were not unsympathetic to this. However, taking an extra five metres from a very scarce public space was unreasonable. Both central government and MKC have clear transport policies that give top priority to walking and cycling. Cycling UK would like to see this happen.

**Tim Skelton on behalf of Milton Keynes Forum**

199. The Forum is the Civic Society for Milton Keynes and was founded in 1989 to contribute to the development of civic awareness and to encourage informed participation in the life of the growing city. It has always taken a particular interest in the built heritage and was the body that first proposed the Listing of the Shopping Building in the early 1990s. A number of years ago the Forum was concerned about what was happening to CMK and prepared its own plan, *CMK Revisited*, which, in many ways, was a precursor to the Neighbourhood Plan

200. The Shopping Building breaks all of the design rules for such buildings - two malls rather than one, and anchor stores spread along its length rather than just at the ends - and yet there is probably not a fund manager who would not jump at the opportunity to acquire it if the owners decided to sell. What is apparent is that, if CMK is to develop to its full potential, then issues around public transport must be solved. In due course buses, trams, monorails, will have to run through the middle of Intu. It's not a question of "if" but "when". The idea of a "super tram" is already in the Council Plan and electric buses have been operating here successfully for a number of years.

201. Mr Skelton asked what would happen if the application scheme was built and the Council exercised its option on the transport route. How would buses or trams get into the covered area? It is likely that the doors would have to be removed completely, making the place even colder and draughtier than it is now. A sensible investor would take a proper long-term view and would plan the area as an outdoor space, albeit that it might function as an indoor space in the meantime.

202. intu do not understand the need to give something back to the community of Milton Keynes. The idea that large developments should contain some form of social and community provision has been an integral part of MK for some time. Policy CMKAP SS2 places a clear requirement on all major retail developments in CMK above 2,500 sq m to have a mix of leisure, cultural and community uses. The purpose of this is to give richness and provide facilities in popular areas for those who could not otherwise afford to be there. There is nothing within this scheme about such uses. Neither does intu understand the issues around open space. Oak Court was not a great space but it offered a place to sit down and watch the world go by. However, it is now going and there is no replacement open space being provided.
203. The covered area needs to be better but there is more than one way to improve it and filling it full of development is not the only option. intu is not a failing scheme, it is highly successful and, as intu's own figures show it is outperforming the IPD benchmark that the company uses to monitor its performance. intu knew the challenges when they bought the building and that will have been factored into the price that they paid.
204. In respect of active frontages along Midsummer Lane, the best way to deal with it would be to provide a series of small shops that open directly onto it. It would add a texture and variety to CMK that is much needed. It is very difficult to understand how the proposals can equate to the idea of an Active Frontage that many people would understand. Mr Sainsbury's [MKC] comment upon the Application stated "The majority of the proposed inactive frontage is located alongside Midsummer Lane. The desire for active frontages was discussed at pre-application stage but given that servicing and back of house needs need to be accommodated an entire active frontage onto Midsummer Lane was not deemed possible by the applicant". Given such a negative statement, the Forum does not have much faith in the Council insisting that there should be Active Frontages along Midsummer Lane as part of any reserved matters application.
205. Mr Skelton concurred with CMKTC's interpretation of Policy CMKAP and noted that it seemed to be shared by MKC in its email of 16 June 2015 to the applicant "There appears to be significant conflict with Policy CMKAP G3". It is important also to look at the open spaces that were not included in the list of Semi-Public Open Space in the Plan - the square in the Hub and Oak Court, for example. As there was ambiguity over this policy it was proper to do some further investigation. All of the people who were involved in writing the policy are still around and it should not be difficult to get their views upon it.
206. The concern that the Forum has is that, if this development is approved, then it will not solve the real issue of the covered area. There may be a short term gain but this will disappear once the public transport route is constructed. Additionally, the Neighbourhood Plan position will not be known. Landowners in CMK have enormous power. The Neighbourhood Plan helps counterbalance this with the needs of the community - a chance to ensure that the whole is greater than the sum of the parts. If CMK is not right then it will be to the detriment of all - residents, council and landowners. There will not be a second chance. If this application is agreed, it will set landowners, council, Town Council and residents in conflict with one another and no-one will not know where they are. Just when people thought they had stability it will have imploded.

207. This is a good plan. It is in the best tradition of Milton Keynes - yet again leading the way but this time it is the residents that are doing this rather than an authority. The Plan is not anti-development, far from it, it merely says that the community wants good development in the best traditions of the city that it knows and loves.

**Mike Leroy**

208. Mr Leroy liked to look through the glass in Midsummer Place to the lines of London Plane trees. He remembered seeing a mini play take place there acted to several audiences throughout the day. The space was functioning as it was intended to, for community activities and public enjoyment near the heart of the commercial centre of MK. It was a pleasure to enjoy such a distinctive city centre but it seemed to be the intention of MKC to undo much of the framework. intu had submitted its application a few days before the referendum at which the Neighbourhood Plan was overwhelmingly approved.

209. When the CMK Alliance Plan was so overwhelmingly approved and supported by referenda of businesses and residents Mr Leroy was relieved that, at last, there could be clarity and much greater certainty about the future development and shape of CMK. He was astonished that Council officers had not appeared to have warned the property owner and developer that their intended plans would not accord with the Neighbourhood; even more so when officers recommended approval; and worse still when the Planning Committee gave their consent. In doing so, the Council has thrown the development of the city centre backwards into the uncertainties that the Neighbourhood Plan was intended to end.

210. CMK is facing increasing peak time traffic congestion, which affects private and public transport. MKC recognises that the city requires a step-change in provision of frequent, efficient and attractive public transport, but no plan has demonstrated more than aspirations for incremental changes. The most efficient route through Central Milton Keynes is a straight line, not one kinked round three sides of a rectangle, which was why the Walkway Agreement also protected a spacious route though Midsummer Place for emission-free transport.

211. There is an established emission-free battery-powered bus service operating on one of Milton Keynes' most popular routes. Emission-free transport is here now. What intu propose would be far more limiting than current requirements for emission-free public transport to run through Midsummer Place. It would require a highly-constrained and expensive form of public transport that would — effectively — be running down the middle of a shopping mall and would require its own track. In any case, intu seem to have conflicting aspirations for this space as the artist's impressions accompanying their planning application show what looks like a fashion show or retail demonstration, or other activity in just the space along which public transport would travel.

**Peter Ballantyne**

212. Mr Ballantyne spoke both as chair of MK Bus Users Group (MKBUG) and as a concerned citizen. He asked what effect the planning application would have on bus users. When the original building was constructed bus services lost direct access to Midsummer Boulevard East, and this meant they had to travel around a dog leg to get round the intu building before being able to access bus stops in the CMK area. With over 100 buses per hour traversing this dog leg, it has led to

considerable delays to bus services. Coming from the station, buses currently have considerable difficulty at peak shopping times, particularly on Saturdays, from cars backing up at the entrance to Midsummer Place car park, this leads to as many as eight buses backing up trying to get through the junction as drivers ignore the changes of traffic lights.

213. MKBUG was disappointed that with the increased potential footfall from the modified retail area no attention seemed to have been made in the plans to address this problem, and the situation would just get worse. Because all bus services have to access the CMK bus stops this has an effect across the whole bus network affecting punctuality.
214. Secondly, the argument over the reduction of the passenger transport corridor in the building was viewed by MKBUG cynically. It would seem that the legal codicil to preserve the corridor, which was in place as part of the planning permission for the original building was to be disregarded. The argument whether the public corridor is 15m or 20m wide therefore becomes academic if the 'Stopping Up' order is allowed.
215. As a citizen, the loss of the airy pedestrian area below the canopy to closely located units, with limited width pedestrian corridors, seems a retrograde step.

**John Muncaster**

216. Mr Muncaster's opinion was that the proposed development would seriously affect twentieth century heritage particularly the listed Shopping Building and infrastructure. The open space was cherished and it was no wonder that some thought it more important than recognised in national policy. Closing the spine had been a very poor decision and it would be folly to reduce the transport corridor further. Who could tell what would be available in terms of transport modes in 60 years? In addition the cycle route should be relocated.
217. The political context was that, in calling in the scheme, the SoS recognised the national debate – 'Localism in action'. Brandon Lewis had said that people would be looking at what happens in MK. The proposals contravened the Neighbourhood Plan. They thus exposed localism policies as a charade; it would be a failure of localism.

**Alan Senior**

218. Mr Senior thought that if CMK were just a regional shopping mall there would be no problem with access, parking, square footage, footfall and dwell time. Those were good retail principles for places such as Meadow Hall, Trafford Park, Blue Water etc. But it was much more than that; a city centre where residents and visitors meet, greet, eat, drink, stroll, cycle, ride the bus, go to market, meet friends and family, entertain guests and visitors. Residents are proud of it.
219. The otherwise perfect grid matrix was compromised by the erection of Midsummer Place. MKC states that the application represents only incremental harm, i.e. no harm at all because the harm is already done. It also says that the reduction of the PTS corridor to 15m doesn't compromise the grid system because it is already compromised.

220. intu wants to do one of the few things the Neighbourhood Plan does not accept - building unexceptional, infill development on protected open space. A submitted diagram<sup>72</sup> shows the same number of pedestrians in the current space versus the same number in the reduced space. Obviously the original space is much more flexible, safe and user-friendly.
221. Crowding in pedestrians next to moving vehicles is not appropriate in MK. intu might have all the statistics to 'prove' it would be fine, but they're missing a vital point. This isn't Oxford Street —it's Midsummer Boulevard where people are not used to being crowded onto narrow pavements, next to moving traffic. If the application is permitted we feel it is extremely unlikely the transport route will ever be activated. This flies in the face of the legal covenant; ignores the fact that there is now non-polluting transport; cripples the neighbourhood plan and the principle of localism; sacrifices public space for a retail use when there are acres of free retail space.
222. Residents are proud of the city centre, love the master plan and the road system. Mr Senior questions why they are having to fight their own council to get what is rightfully theirs. He asks to be given back the city centre, the way it was planned to be.

**George Harlock**

223. Mr Harlock had campaigned for the Neighbourhood Plan and considered the concept of localised plans to have been a sham.

**Linda Inoki representing Xplain**

224. Ms Inoki spoke on behalf Xplain, a local citizens' group with several hundred members. As she spoke she displayed some photographs. The first was of Xplain members at a rally, before last September's Development Control Committee met to consider intu's application, urging MK Council to 'Stand by the Plan'.
225. Xplain was formed six years ago because people realised that if they didn't get involved in the planning system MK would gradually lose the very qualities that attracted people here in the first place. Its members considered that the Local Plan, including the CMK Development Framework (2001), set out to destroy the original and successful design of CMK. Several applications based on this alien approach triggered bitter disputes. For example, an application by the previous owners of Midsummer Place in 2012, and the 'Primark' application.
226. Against this backdrop, Neighbourhood Planning was a breath of fresh air. Xplain believed in Greg Clark's promise that Localism would give "*real power to local people to say what kind of development goes where.*"
227. Xplain does not want to stop development and has never been against that. But it wants to agree some rules in order to end the conflict between developers, MKC, and residents, and get on with the business of completing our town centre. Several things are missing such as more independent shops, more residents and students; more heart and soul.
228. The Neighbourhood Plan process was innovative and transparent and feedback to consultations was taken seriously. Some people were not happy with 8 storey

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<sup>72</sup> CD182

buildings in low-rise CMK, but accepted that 5,000 homes had to be built. The Plan would protect the classic infrastructure and key public open space from mediocre development and overall it was a clear, positive package which nearly everyone could sign up to. Many supporters from all over MK made superhuman efforts to raise awareness leading up to the referendum. It is not surprising, after all the effort and landslide vote, that many feel betrayed.

229. In respect of the appeal application, the first loss is a vista of great importance along Midsummer Boulevard. It has been broken in two but it hasn't disappeared. There is still a thrill when the sun tracks along the grand central line on Midsummer's Day. The grid lives on. Second is the loss of important, publicly accessible space.
230. Xplain also believes that if you lose all sense of the boulevard, as proposed, and lose the ability to see it running along the southern edge of the Shopping Building, you have inevitably damaged its setting within the grid. The Shopping Building was not only listed because of its outstanding architecture but because it means something to the people of MK.
231. Third is the lost opportunity. Sadly, this is another example of "the right type of development – in the wrong place". Intu would be welcome to propose new eateries and shops just yards away, on designated development sites.
232. The planning system has changed but the Borough Council seems unwilling to change, and take the long view by giving enough weight to the Neighbourhood Plan, especially where retail is concerned in CMK. In January 2016, MKC approved plans to regenerate Lloyds Court, CMK's first ever building, with mixed use development. The plans complied with the Neighbourhood Plan, the developer improved his original proposals to reflect community feedback, and it won widespread praise and support. The only parties to object were rivals, Intu and Hermes, and after further conditions were agreed, it was readily approved at the DCC.
233. After all the hard work that went into the Neighbourhood Plan there has to be belief that democracy and long-term thinking will prevail. Xplain sincerely hopes that this application will not be allowed to sink its dreams, and the flagship of Localism, before it has scarcely set sail.

**Alan Hancock**

234. Mr Hancock attended the first day of the inquiry but was unable to stay. He therefore provided a written copy of what he would have said. His main points concerned the Neighbourhood Plan, both as a process and as a vision. One of the first of its kind, it had been recognised as a model initiative, both locally and nationally. It had a remarkable level of public support in the referendum and, if not properly respected, a very negative signal would be sent to other localities which are embarking on, or already on this route, both in Milton Keynes and more widely.
235. It was not simply a matter of arguing legal niceties: to see whether or not the Intu proposal and the Neighbourhood Plan can be reconciled in some way by stretching the language of each, or investigating whether some kind of public transport route can be fitted into a 15m corridor. It is rather whether the Intu proposal is consistent with the overall approach taken by the Neighbourhood Plan, and the vision that it puts forward. In Mr Hancock's view, it was not.

236. Towns and cities are characterised by their public spaces, and the integrity of their environment, and from its beginnings Milton Keynes has had a unique sense of identity and place. Midsummer Boulevard and the unbroken line from the station to Campbell Park are part of that vision, and it was preserved with some difficulty when Midsummer Place was first created, and the public space between The Centre MK and Midsummer Place was retained. The intu proposal is a further erosion of that vision, one which is well expressed in the Neighbourhood Plan.

237. This is not an attack against commercial development, which of course Milton Keynes needs. But it should support the development strategy of the Neighbourhood Plan, not contradict it. There is no shortage of space for commercial development in Central Milton Keynes—the empty spaces to the South of Midsummer Boulevard and in the Food Centre are proof enough of that. intu does not need to build over space that the Neighbourhood Plan sets out to protect.

### **Written Representations**

238. There were twenty nine objections, fourteen letters in support and one comment. All the substantive matters raised were considered at the Inquiry. A list of those who made representations is included at the end of this document.

### **Representations at planning application stage**

239. Sixty<sup>73</sup> representations were received in support of the proposal and thirty<sup>74</sup> in objection to the proposal.

240. A further 8 representations were received that neither supported nor objected to the proposal. 5 of the representations in support of the proposal were received from outside of the Milton Keynes and the immediate surrounding area.

241. The reasons for support included;

- The proposal would provide economic benefits that support each of the five objectives of the Destination Management Plan which seeks to develop the visitor economy of Milton Keynes;
- The development will offer greater variety and will improve the night time economy;
- The shopping centre needs a face lift and to keep pace with the growth of Milton Keynes;
- CMK needs a new injection of life and a boutique cinema and food hall would assist this;
- The corridor is freezing in winter and not welcoming to visitors and the proposal would improve this;
- There is a lot of empty space in intu which should be utilised to make it a better piece to visit
- The application suitably addresses the importance of heritage and the transport route;
- The grid has already been lost in this location.

242. The objections to the scheme included:

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<sup>73</sup> Including 8 late supporting representations listed in CD171

<sup>74</sup> Including 4 late supporting representations listed in CD171

- There is no need for development and it might result in the provision of retail, cinemas and eating/drinking establishments that would harm town centre viability;
- The proposal would build on classic CMK Infrastructure and would narrow the grid road further:
- The proposal would result in the loss of public open space;
- The proposal would build on land covered by a Walkway Agreement that is dedicated for public use in perpetuity. The Walkways have been measured inaccurately;
- The proposal would cause harm to the setting of the listed Shopping Building;
- There is insufficient parking to serve the proposal;
- The proposal would increase traffic congestion;
- The proposal does not provide active frontages to Midsummer Lane therefore this area will become a no-go area.
- The PTS route should be preserved without height or width reductions that reduce its flexibility in the future.
- Oak Court should be retained and improved;
- Mitigation measures will not work – shops will not retain active shop fronts;
- The increase in floor space at the north side of Midsummer Boulevard will exacerbate existing problems with the delivery of goods and servicing;
- The proposal does not encourage cycling;
- There are no plans for public art.
- An approval would fatally wound the Neighbourhood Plan and wound other Neighbourhood Plans in the Borough;
- The proposal will have a long term effect on the connectivity of the city and its aesthetic standards;
- The development does not provide a mix of leisure, cultural and community uses;
- Future transport technologies are unknown and opportunities to accommodate them would be closed down;

### **Conditions**

243. The draft conditions set out in the Statement of Common Ground had been agreed by MKC and the applicant. They were discussed at the Inquiry in the light of the tests set out in the Framework<sup>75</sup>. Those in respect of reserved matters are necessary to ensure that the final scheme is of an appropriate design and appearance, and is approved within a suitable timetable. On that matter, CMKTC had questioned the applicant's request for an approval period of five years. The applicant was willing for this to be reduced to the more usual three years. As five years would enable the proposed development to be built in phases and the centre to be kept partially open throughout construction I consider it is necessary for the commercial health of the centre. Details of phasing would also be provided through a condition.

244. The Design Code<sup>76</sup> submitted with the application was referred to during the inquiry. A further design code would be submitted for approval by MKC prior to the submission of reserved matters. This would ensure that the design, appearance and other features of the proposed development, such as active frontages, were appropriate for its location in CMK, adjacent to the listed Shopping Building. The condition also requires that the approved design code

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<sup>75</sup> The Framework paragraph 206

<sup>76</sup> CD26

would be substantially in accordance with that submitted with the application and considered at the Inquiry.

245. Other conditions are necessary to ensure an appropriate mix of uses is delivered to protect the vitality of the PSA, and that the development complies with MKC's objectives of delivering sustainable development and promoting the use of local energy networks. The condition in respect of levels will protect the appearance of the development and surrounding area, and the amenity of neighbouring properties. Those requiring parking for cycles and motorcycles and a travel plan will enable compliance with adopted parking standards and help to reduce the number of trips taken by car.
246. The approval of construction traffic details and restriction on servicing will protect highway safety for all road users whilst the lighting and CCTV schemes will reduce the risk of crime. Conditions regarding the protection of trees, means of fume extraction and restrictions on refuse storage will minimise the effect of the development on the appearance of the surrounding area and the amenity of its occupiers and users. The surface water drainage scheme will prevent the increased risk of flooding on and off the site.
247. The conditions which should be imposed should the application be approved are listed in a schedule at the end of this report.

### **Obligations**

248. Certified copies of the new Section 106 Agreement<sup>77</sup> and Section 35 Walkway Agreement<sup>78</sup> were provided after the close of the Inquiry. The first provides for intu, or other owner of the centre, to make contributions in respect of carbon neutrality, public art, public transport, and the highway network. Before implementing the scheme it must also submit schemes on training and employment management, public realm works, public art, and tree planting. In addition, a further obligation will mirror the planning obligations given in the existing Walkways Agreement<sup>79</sup> except that the PTS strip will be 15m rather than 20m wide. It would be protected for 80 years starting on 24 June 2000. All of the obligations are consistent with identified policies in the CS and Neighbourhood Plan. I can therefore give the new S106 agreement full weight in making my recommendation on the application.
249. CMKTC pointed out that there was no planning justification for reducing the width of the PTS strip. This matter had been considered in the Derwent Holdings judgement<sup>80</sup> in which it was ruled that "There is nothing objectionable in principle in a council and a developer entering into an agreement to secure objectives which are regarded as desirable for the area, whether or not they are necessary to strengthen the planning case for a particular development." I am therefore confident as to the legality of the S106 agreement and its compliance with CIL Regulations 122 and 123.

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<sup>77</sup> INQ29

<sup>78</sup> INQ30

<sup>79</sup> CD80

<sup>80</sup> INQ27 paragraph 15

## Conclusions

250. In this section of my report, numbers in square parentheses thus [ ] refer to paragraphs in the preceding sections of the report from which these conclusions are drawn.

251. As identified at the beginning of this report the Secretary of State particularly wishes to be informed about the consistency of the application with the development plan for the area including the CMK Business Neighbourhood Plan<sup>81</sup>. My view is that the main matters contributing to that consideration are:

- the effect of the proposed development upon the quantity, quality, use and public accessibility of the existing semi-public open space in Midsummer Place;
- the effect of the proposed development upon the design and function of the surrounding area including classic CMK infrastructure;
- the effect of the proposed development upon the health of the Primary Shopping Area.

252. A further matter I consider relevant is whether the setting of the listed Shopping Building would be preserved.

### *Effect on semi-public open space*

#### *Quantity*

253. Midsummer Place is designated as an area of semi-public space in the Neighbourhood Plan; its area is defined on Figure 15<sup>82</sup> and it is protected by Policy CMKAP G3. This states that it is not acceptable to reduce the quantity, quality, use and public accessibility of named semi-public space, including Midsummer Place, to make way for new development. [12, 37]

254. The question as to quantity was discussed in detail the inquiry. Various methods of measuring the existing area of semi-public open space and comparing it with that proposed were put forward<sup>83</sup>.

255. One of the causes of the variation between the applicant's figures and those of CMKTC was that the former had measured only the designated area of semi-public open space whilst the latter included the whole area inside the walls and doors. As was pointed out at the site visit there is no difference in character between the space within the designation and that just outside it. It might appear pedantic to make a distinction when computing the area but, on the other hand and strictly speaking, only the designated area is protected by Policy CMKAP G3. Notwithstanding that the protected spaces are listed in the policy the Proposals Map, on which the designation is drawn and which was the basis for the applicant's measurements, is the definitive source of the exact boundary, regardless of inaccuracies in drafting or reproduction. [34, 37, 133]

256. There was a question as to whether the seating areas outside units such as Pret a Manger and Burger King should be classified as semi-public open space and, consequently, how they should be treated in the calculations. The

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<sup>81</sup> CD68

<sup>82</sup> CD68, page 98

<sup>83</sup> Including MU PoE, paragraphs 9.80-9.89, DL PoE, App4, INQ20, INQ25 and INQ26

explanatory text to Policy CMKAP G3<sup>84</sup> refers to previously public spaces becoming semi-public with Midsummer Place having limited rights of public access. There is not, however, a clear definition of semi-public open space. In the absence of such it is difficult to reach a conclusion on the matter. The use of these areas is undoubtedly more constrained than that of other parts of the space but not as completely as if they were within a building and, as far as I am aware, only when the parent units are open for business. On balance I consider that the characteristics of these seating areas are sufficiently similar to those of the semi-public open space as a whole for them to be treated as such in the calculations. On that basis their measured area should not be subtracted from the total. [134]

257. A matter of dispute was whether to subtract the floor area of kiosks which are not in place yet but which have extant permission. On this issue I consider that, as the buildings could be erected at any time – the applicant confirmed at the Inquiry that it would do so if the application was not permitted - their area should be excluded. As I understand it the permissions will expire in mid-2017 but I am not aware of any significant change in circumstances which would prevent their renewal. The extant permissions are therefore a realistic fall-back. [33, 123, 134]

258. Overall, the applicant's calculation is that the difference between the existing units' footprint within Midsummer Place (including tenanted seating areas and extant permissions) and the proposed blocks would be 439 sqm, a reduction of 11%<sup>85</sup>. CMKTC, on the other hand, calculates the loss of semi-public open space to be 1093 sqm or 34%<sup>86</sup>. During the inquiry further calculations were produced and CMKTC concluded that the loss would be 2673 sqm or 48%<sup>87</sup>. [38]

259. The proposal could provide walkway and seating space outside of the new units at first floor level. The applicant considered that these new areas would off-set the loss of semi-public, ground floor open space leading to an overall increase of 669 sqm. As shown on the indicative plans<sup>88,89</sup> they would have a functional purpose, connecting the units at first floor level and also providing enhanced access to the car park via bridge links<sup>90</sup>. Nonetheless, as this is an outline application there is no certainty that the first floor walkways and seating areas would be provided at such quantity in the final scheme. The possible off-set in the loss of semi-public open space thus carries little weight. [38, 135]

260. The calculations of existing and proposed semi-public open space vary greatly in methodology and therefore outcome. I agree with some elements of both parties' methods, as indicated above, but do not prefer one over the other and cannot, therefore, endorse either party's final results. As the provision of first floor semi-public space would not balance the loss on the ground floor my overall

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<sup>84</sup> CD68, paragraph 8.24

<sup>85</sup> MU PoE paragraph 9.82 on and Table 3.

<sup>86</sup> DL PoE App4

<sup>87</sup> INQ26

<sup>88</sup> Architect's [MA] PoE, page 37

<sup>89</sup> MU PoE Figure 2, & App6

<sup>90</sup> Bridge links 1 & 2 are shown on the Block Layout Plan [CD18] and would be elements of the approved layout.

conclusion is that there would be a reduction in the quantity of semi-public open space in Midsummer Place. [38, 89]

*Quality*

261. The scale, distinctive roof form and glazed end walls of Midsummer Place create a sense of anticipation on approach which is not fulfilled by its disappointing interior. Although it is a pleasingly lofty and light space with an interesting visible structure, the humdrum appearance of the existing units, kiosks and furniture, and their somewhat illegible layout, is unsatisfactory. The existing materials, particularly the glossy, off-white cladding facing several of the structures, look clinical and dated. Depending on the weather the space can also be cold, wet and draughty. [94, 95]
262. At the moment Midsummer Place functions mainly as a covered link between the two retail areas but it is not used to its full potential. In providing more retail and restaurant floorspace and a leisure use, such as a cinema, the proposed development would extend and consolidate uses appropriate to the PSA. It would draw more people into the area, at both ground and first floor levels, and would encourage them to stay for longer periods than they do at present. In addition, the design and appearance of the new development would be significantly enhanced. The increased scale of the proposed blocks would be more in keeping with that of the space itself and neighbouring retail units in centre:MK and the main intu shopping area. In terms of their appearance the approved design code, implemented through reserved matters applications, would ensure a cohesive and attractive scheme. [22]
263. The existing glass walls and doors at either end of Midsummer Place allow views out and through along Midsummer Boulevard. This is particularly important as the alignment of the boulevard is with the rising sun on Midsummer Day. Although the proposed blocks would reduce the width of the central corridor running along the line of the boulevard they would not obscure it and such views would remain possible. The proposed bridge link at first floor level would provide a vantage point for enhanced views. [229]
264. Active frontages would make a valuable contribution to the quality of Midsummer Place. The Neighbourhood Plan describes these as essential features in creating the impression of a vibrant and safe city centre which can be achieved by locating primary entrance doors and windows within the elevation<sup>91</sup>. There is a dearth of active frontages in Midsummer Place at the moment, partly because of the shape and size of the existing units. The considerably longer perimeters of the blocks proposed would provide greater potential for the provision of active frontages, as shown in the Design Code<sup>92</sup>. These would be at first floor as well as ground floor level. [124, 160, 204]
265. It is not practicable for servicing reasons to have active frontages on all sides of a block. The Design Code indicates that the service side of Blocks 1, 2 & 3 would be adjacent to Midsummer Lane, a currently dark and canyon-like route between and parallel to centre:MK and intu. Some new window space is proposed to wrap around corners into Midsummer Lane, flanking the more

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<sup>91</sup> CD68, paragraphs 8.41 & 8.42

<sup>92</sup> CD26, pp 18 & 19

defined entrances to intu. The treatment of these two access points would, in itself, be an improvement on the existing situation. In addition the Design Code indicates that there would be small display windows, graphics and lighting to enliven the Midsummer Lane frontage. [102, 160]

266. Midsummer Lane is not within the semi-public open space and so conditions there are not subject to Policy CMKAP G3. Its south eastern side would be within and altered by the proposed development but is not identified<sup>93</sup> as a frontage expected, through Policy CMKAP G7, to provide predominantly active frontages. The proposed development would therefore be consistent with Policy CMKAP G7.

267. If the proposal is permitted it will be conditional on the approval by MKC of a design code consistent with that submitted with the application<sup>94</sup>. I am thus satisfied that there would be a mechanism for implementing its provisions, including active frontages, in the final scheme. The problem of unit occupiers covering over windows, and thus removing activity, cannot be addressed through planning measures and is more appropriately dealt with through discussion and management. [22]

#### *Use and accessibility*

268. The distance between the new blocks would be no less than 15m along the line of Midsummer Boulevard and 11m for those aisles running north-west/south-east. These dimensions are similar to those in centre:MK. It is not likely, therefore, that even with the desired, increased footfall the proposed new space would become unpleasantly congested or busy. [76, 95, 136, 174, 184, 221]

269. Plenty of space would remain for the type of community events and activities which commonly take place in shopping centres. At the inquiry Mr Leroy recounted watching a play in Midsummer Place but there is little evidence that such events have been held frequently. In this respect there are limited grounds to consider that the use of the area would be reduced. [95, 136, 209]

270. An important element of the use of Midsummer Place is the potential in future for some form of public transport to operate through it following the route of Midsummer Boulevard. To that end a Walkways Agreement<sup>95</sup> was put in place retaining a public transport corridor (PTC) of 20m; the proposed development would reduce its width to 15m. [16, 198, 210]

271. The Walkways Agreement requires that whichever form of public transport is eventually selected it must not be driven by an internal combustion engine. Cycles do not have to be accommodated as they are not a form of public transport and there is no requirement for more than one mode. There does not appear to have been a particular rationale for the original 20m strip. The 15m width proposed would be sufficient for two lanes for electric buses or trams<sup>96</sup> and the height of the bridge links at first floor level would not preclude the latter. Such an arrangement would also provide 4m of space to either side for pedestrians. This would be ample to ensure their safety and comfort. [71, 72, 73, 74, 77, 102, 197, 200, 214, 221]

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<sup>93</sup> CD68, page 70, Figure 10

<sup>94</sup> CD26

<sup>95</sup> CD80

<sup>96</sup> MA PoE Figure 47

272. CMKTC and other parties objected that the reduction in width would reduce flexibility and limit options. No evidence was provided, however, as to forms of public transport, including in prototype, which would be ruled out by the proposal. In respect of modes which might be developed by the end date, 2080, of the Walkways Agreement, it is usually the case that technological developments enable the size of machines and apparatus to be reduced over time. [72, 102, 156]
273. There is no evidence, therefore, that the proposed development would rule out the installation of an appropriate PTS in the period up to 2080. This matter is covered in more depth in my report to the Secretary of State for Transport on the draft Stopping Up Order.
274. My conclusion on Policy CMKAP G3 is that part c) can be read in two ways. The absolute way is that there must be no reduction in any of the four identified elements, namely quantity, quality, use and public accessibility. The balanced way considers that the overall functionality and value of the semi-public open spaces, as characterised by their size, quality, use and public accessibility combined, should not be reduced. [8, 25, 36, 38]
275. CMKTC, members of which had been involved in drafting the policy, favoured the first, absolute, approach whilst MKC<sup>97</sup> and the applicant preferred the second. The absolute interpretation confers greater protection on the identified spaces than on acknowledged national interests such as green belt and heritage assets. For that reason alone it is not sensible or reasonable. I also consider that the absolute reading renders the policy one of preservation which makes change, including improvement, difficult if not impossible. To my mind there is no merit in keeping open every square metre of semi-public space if it does not make a contribution to the overall value of that space. The area to the rear of the cookie kiosk illustrates this point. Apart from being unattractive, it serves no purpose and is a literal waste of space. Even during the busy first days of December when much of Midsummer Place was occupied by Christmas market huts it appeared to attract little footfall. [25, 35, 83, 85, 88, 89, 216]
276. Once a neighbourhood plan is made it is no longer in the control of those who prepared it, in this case some of the members of CMKTC. The interpretation of planning policy is a matter of law<sup>98</sup>. It must be able to be carried out by anyone who uses it and through looking at the words of the policies in their normal sense. What their authors might have intended by those words is neither here nor there. Nor can any flexibility or leniency be permitted on the grounds that the policies were written by non-professionals with little experience in such matters. [25, 36, 83]
277. Moreover, excavating the background of policies, including those in a made neighbourhood plan which is thus part of the development plan, is not required of those using them. Such an activity is considered contrary 'to the interests of clarity, certainty and consistency in the "plan-led system"'<sup>99</sup>. The comments of

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<sup>97</sup> CD169 Committee Report paragraph 5.11

<sup>98</sup> *Tesco Stores Ltd v Dundee City Council* [2012]

<sup>99</sup> *Phides Estates (Overseas)Ltd v SSCLG* paragraph 56

the Neighbourhood Plan examiner in his report<sup>100</sup> cannot, therefore, be given any weight. [25, 35, 36, 87]

278. In the light of these considerations my view is that a balanced interpretation of Policy CMKAP G3 is the only one that is consistent with case law, the Framework and the development plan. I therefore conclude that the proposed development would not cause a reduction in the quantity, quality, use and public accessibility of Midsummer Place and is consistent with Policy CMKAP G3. [38, 39, 97, 98, 124]

*Effect on classic CMK infrastructure*

279. Classic CMK infrastructure includes a range of materials and features, such as underpasses and porte cocheres, as well as the grid arrangement which includes streets, pavements and rows of parking spaces. It is described in the Neighbourhood Plan as an important public asset that establishes a principle design framework<sup>101</sup>. [12]

280. Classic CMK infrastructure is identified on the Proposals Plan<sup>102</sup> but in a pale colour which is difficult to distinguish<sup>103</sup>. The area to the east of the doors and wall of the existing building is all designated as classic CMK infrastructure despite being significantly altered during the construction of Midsummer Place between 1996 and 2000. CMKTC agrees that no original infrastructure remains in this location. [43, 138]

281. At the western end the existing open area behind the facades of centre:MK and intu, which it is proposed would be enclosed and partly built upon, was also changed when Midsummer Place was built. It is possible that some original infrastructure remains, namely a part of the central section of the boulevard, but this area is not designated as classic CMK infrastructure and not, to my mind, protected by Policy CMKAP G1. Even if it were, the harm resulting from the loss of such a small and isolated piece would be outweighed by the benefits of the scheme. [42, 43, 90, 101]

282. The area forward of this, around the underpass entrance and straddling Midsummer Boulevard, is within the application site and is designated as classic CMK infrastructure. It is therefore protected by Policy CMKAP G1 which states that the extent, layout and quality of classic CMK infrastructure will be retained. No development is proposed for this area only landscaping, the detail of which would be dealt with through a reserved matters application. A reserved matters landscaping scheme which was contrary to Policy CMKAP G1 would not be approved. [43, 45, 138]

283. The proposed development would retain the extent, layout and quality of classic CMK infrastructure, consistent with Policy CMKAP G1. Under Policy CMKAP G11, Policy CMKAP G1 can be applied flexibly if an exceptional development is proposed. It was not the applicant's case that the scheme in this case amounted to exceptional development. [46, 86, 88, 105]

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<sup>100</sup> CD147

<sup>101</sup> CD68, Policy CMKAP CMKAP G1, page 63

<sup>102</sup> CD68, Figure 15, page 98

<sup>103</sup> INQ20 shows an enlarged extract of the Proposals Plan on which the notation is more clearly defined.

*Effect on the health of the PSA*

284. The proposal would provide additional retail floorspace in CMK where the CS identifies a need for over 110,000 sqm. It would be in an area which, it is unanimously agreed, is not functioning at its full potential. Moreover, it would be on a direct route between two substantial areas of prime shopping anchored by M&S, John Lewis and House of Fraser to one side and Debenhams to the other. The rationale behind the proposed development is thus sensible and logical. [10, 47, 49, 107, 144]
285. There is no need to carry out a sequential test in the PSA. The presence of other sites available for retail development nearby has no bearing on the redevelopment of Midsummer Place. There is no policy preference for those other sites to be developed; neither would the proposed development rule out retail applications being permitted on them. In its closing submissions CMKTC<sup>104</sup> stated that there was no documentary evidence that the application scheme would stimulate the redevelopment of adjacent sites. On the other hand there is no evidence either that the proposed development would constrain those sites from coming forward. [48, 50, 51, 108, 109, 145, 231]
286. All in all, in attracting more visitors - for longer periods and for more varied activities - and in consolidating the retail circuit, the proposed development would boost the health of the PSA.
287. Policy CMKAP SS2 does not require leisure, cultural and community uses to all be provided in every new major retail development in the PSA. The Neighbourhood Plan's monitoring indicator for this policy is a target of one D1/D2 facility to be completed within the PSA by 2018<sup>105</sup>.

*Public benefits of the proposed development*

288. The applicant has calculated<sup>106</sup> that the proposed development would create between 355 and 467 direct new jobs in the shops, restaurants, leisure use and as intu staff. There would also be about 300 construction jobs, 150 indirect jobs and training opportunities. In addition the applicant considers that the scheme would improve the experience of visitors to Midsummer Place, and the wider intu centre, increasing dwell time and expenditure in CMK. This would, in turn, attract more investment, helping Milton Keynes to compete against existing centres and improving its long term vitality and viability. [28, 29]
289. Visitors' experience of the centre would be enhanced by measures including making better use of areas at the rear of kiosks; focussing use into the central area; and re-designing the interior with a high-quality finish. The number of food and beverage units proposed in the centre would also improve the currently limited offer available in the PSA. The new shop units, which could be between 200sqm and 2000sqm, would help to meet the demand from retailers for larger and more flexible units in CMK. The provision of a leisure use, anticipated to be a boutique cinema, would also attract visitors, during evenings as well as the day time, and encourage them to stay in the centre for longer periods than shoppers

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<sup>104</sup> IS9

<sup>105</sup> CD68 page 111

<sup>106</sup> INQ22 Employment Figures

do now. The retail offer in the PSA would be improved, strengthening the retail circuit between intu and centre:mk, and enabling MK to compete more successfully with other shopping centres. [29]

290. CMKTC has, however, several concerns in respect of the purported benefits. The first of these arise from the outline nature of the application which, it says, casts doubt on the ability of the scheme to meet its stated design aspirations, particularly in respect of active frontages. A Design Code<sup>107</sup>, which set out specifications for the design and appearance of the scheme, was submitted with the application and referred to during the Inquiry. A condition would require reserved matters to be in accordance with a further design code approved by MKC; the approved design code would also have to be consistent with that considered at the Inquiry<sup>108</sup>. Such measures would provide a robust mechanism for implementing a high quality scheme with sufficient lengths of active frontage in appropriate positions. [22, 137, 159, 160]
291. CMKTC questioned the relatively long period for the approval of reserved matters which, it suggests, could result in the permission being set aside until after a review of the Local Plan. I agree that such an action would delay the delivery of benefits and create uncertainty in CMK's retail sector but there is no evidence that this would happen. The applicant stated at the inquiry that, should permission be granted, progress would be made immediately on reserved matters applications. The longer approval period would allow development to be phased in order to keep the centre in operation, at least partially, throughout the construction period. [30, 161, 162]
292. CMKTC also queried the likelihood of a boutique cinema operator being attracted to the development. Four cinema operators and three other leisure operators have expressed an interest in the proposal<sup>109</sup>. At this early and uncertain stage I consider that any interest is a strong indication that there would be no difficulty in finding an operator. Even if cinema goes do not also shop in the centre, the presence of a cinema would broaden the range of uses in the centre; it would be highly likely to increase the number of visitors and dwell time. [31, 163, 164]
293. Of the restaurants which have indicated an interest in the proposed development<sup>110</sup> it does not seem to me that many already have an outlet in CMK. If restaurants were to relocate from The Hub or theatre district there is no evidence that their former premises would remain unoccupied. Similarly, the retailers on the list<sup>111</sup> do not, in the main, currently have an interest in CMK. There is no evidence that the proposed units would be difficult to let or that they would attract retailers from centre:mk causing long-term vacancies there. Since the majority of restaurants and retailers would be additional to those already located in CMK, most of the jobs created in them would also be new. [31, 165, 166]

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<sup>107</sup> CD26

<sup>108</sup> CD26

<sup>109</sup> MU App 5, Table 5, 3<sup>rd</sup> column

<sup>110</sup> MU App 5, Table 5, 2<sup>nd</sup> column

<sup>111</sup> MU App 5, Table 5, 1<sup>st</sup> column

294. I conclude on this matter that the benefits as a whole are convincing, certain, and significant, thereby carrying considerable weight.

*Overall consistency with development plan*

295. A neighbourhood plan attains the same legal status as the Local Plan once it has been agreed through a referendum and is made by the local planning authority. At that point it becomes part of the statutory development plan<sup>112</sup>. The CMK Neighbourhood Plan has such status. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise<sup>113, 114</sup>. The omission of the qualifying reference to material considerations in Framework paragraph 198 does not give a special status to neighbourhood plans or imply that they have precedence over other parts of the development plan. [24, 26, 81, 127, 128, 129, 131]

296. I have found that the proposed development would not breach Policy CMKAP G1, Policy CMKAP G3 or any other of the Neighbourhood Plan policies; it is therefore consistent with the development plan.

297. Case law<sup>115 116 117</sup> has ruled that the development plan must be considered as a whole and that proposals do not have to accord with each and every policy. The objectives of the development plan in this case are concerned, amongst other things, with enhancing open spaces<sup>118</sup> and improving the performance of the PSA and CMK<sup>119</sup>. Had the scheme conflicted with any of the relevant Neighbourhood Plan policies, most likely CMKAP G1 or CMKAP G3 and even then to a minor extent only, there would nonetheless have been consistency with the development plan as a whole. [23, 26, 27, 83, 92, 93, 124, 130]

298. Taking the process a step further, planning applications must be determined in accordance with the development plan unless there are justifying material considerations. The proposed development would have several significant benefits in terms of improving an area of semi-public open space, which is acknowledged by most people to be underperforming. In creating new jobs and new retail, restaurant and leisure floorspace it would also contribute considerably to development plan objectives. In my view these benefits are material considerations which would outweigh the policy breaches put forward by opponents of the scheme. [27]

299. I have found, therefore, that the proposed development is consistent with the Neighbourhood Plan. My finding is based on a balanced interpretation of Policy CMKAP G3. Had I taken an absolute approach to the policy, the reduction in the quantity of semi-public open space, would have resulted in a breach of the policy. Nevertheless, the proposed development would have been consistent with the development plan as a whole. In the final instance the considerable benefits of the proposal would have been material considerations sufficient to indicate that it

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<sup>112</sup> PPG paragraph: 006 Reference ID: 41-006-20140306

<sup>113</sup> Planning and Compulsory Purchase Act, 2004, section 38(6)

<sup>114</sup> The Framework, paragraph 196

<sup>115</sup> *Phides Estates (Overseas)Ltd v SSCLG* paragraph 56

<sup>116</sup> *R v Rochdale MBC ex parte Milne*, paragraph 50 [summarised]

<sup>117</sup> *Tiviot Way Investments Ltd v SSCLG*, paragraph 31

<sup>118</sup> CD68 page 28 Key Principle 6, paragraph 3.32 Strategic Objective 1 [from CS Policy CS7].

<sup>119</sup> CD68 page 28 paragraph 3.32 Strategic Objective 3 [from CS Policy CS7].

should be determined other than in accordance with the development plan. [23, 24, 26, 27]

300. The Neighbourhood Plan has therefore been foremost in consideration of this application. Whilst it does not have special status it has been afforded equal weight to the other parts of the development plan as is required. It has not been overridden or ignored and my conclusions in respect of it and its policies do not diminish or undermine its value. [175, 178, 191, 193, 206, 217, 222, 226, 228, 234]

*Whether the setting of the listed Shopping Building would be preserved*

301. Having been designed in 1972/3, the Shopping Building in CMK was built between 1975 and 1979 and extended in 1993/4. It was listed, grade II, in 2010 at which time the M&S extension was in place and also the intu shopping centre. The Framework<sup>120</sup> defines significance, in the context of heritage policy, as the value of a heritage asset to this and future generations because of its heritage interest; the interest may be archaeological, architectural, artistic or historic. It adds that significance derives not only from a heritage asset's physical presence but also from its setting. [64]
302. The lengthy listing description<sup>121</sup> contains a wealth of information about the building's history and architecture, much of which emphasises its unusual and special nature. The reasons for listing include that it is a highly-regarded, little altered, 650m long steel and glass structure; its rigour, consistency, luminosity and user-friendliness denote its success as a new approach to retail design. It is further described as the outstanding post-war retail development in England and a singular shopping centre realised on a monumental design. The significance of the Shopping Building therefore lies within its retail use; its scale; its modern and uniform appearance; and the way in which it functions. The scale of the building is particularly appreciated through the infinity views. [149]
303. The setting of a heritage asset is described as the surroundings in which a heritage asset is experienced<sup>122</sup>. There is no question that Midsummer Place, and thus the proposed development, is within the setting of the Shopping Building.
304. The proposed development would replace the existing development in Midsummer Place, including adjacent to the Shopping Building, with blocks of increased height, length and depth. Views of additional parts of its south-eastern face would thus be obscured. Block 1 would affect views of the M&S extension which, whilst part of the listed building, is generally considered to be architecturally inferior. Block 3 would obstruct views of the original part of the listed building. The removal of the Arriva kiosk however, which although small in size is distracting, would be a modest compensation. In comparison with the vast length of the listed building's side elevations, the amount of these lost to view would be negligible. I consider that to be the case even when one takes into account the more intensive footfall that occurs now, in and around Midsummer Place, and which would be anticipated to rise. [60, 116, 150]

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<sup>120</sup> Annex 2: Glossary

<sup>121</sup> CD86

<sup>122</sup> The Framework, Annex 2: Glossary

305. The applicant translated the amount of frontage lost to view into a numerical proportion: 2.62% of the south western elevation not including the M&S extension<sup>123</sup>. CMKTC criticised this arithmetic approach as not being a methodology supported by PPG or HE's guidance. In the case here, however, where the listed building in question is of such uniformity, it provides a helpful indication of the scale of impact. Moreover, the obstruction would be a modest increase on that already caused by the existing intu building. As such, the effect would be less noticeable than that of an isolated structure of similar size. [61, 113, 114, 152]
306. The existing intu centre is a harmful element in the setting of the listed Shopping Building. CMKTC points to HE's guidance<sup>124</sup> stating that where the significance of a listed building has been compromised in the past by unsympathetic development affecting its setting, consideration still needs to be given to whether the additional change will further detract from, or can enhance, the significance of the asset. In reaching their conclusions that less than substantial harm would be caused, a position with which I agree, the applicant and MKC have given proper consideration to the effect of the proposal and have not, to my mind, diminished the importance of the listed building's setting<sup>125</sup>. [61, 113, 114]
307. The infinity views along the longer elevations of the Shopping Building are impressive. Those of the northern elevation would remain unaltered. The extent of that along the southern elevation would be slightly more restricted by the proposed development at the western end in Midsummer Lane. It is, however, already hindered by the existing intu development and the increased impact on it would be barely noticeable. To my mind CMKTC's assessment of the setting<sup>126</sup> gives undue weight to harm caused by the existing intu structure and does not recognise the small proportion of one elevation of the Shopping Building which would be affected by the proposal now under consideration. The changes in the reflections in the mirror glass would not be significant. [63, 65, 117, 118, 151]
308. In respect of its use and function the proposed development would be appropriate within the setting of the Shopping Building. Indeed, the consolidation and increase of PSA uses in Midsummer Place, transforming its currently somewhat nebulous character and making it a distinct part of the shopping centre, would be an enhancement. As I have identified above, the listed building's significance includes its use and the way it functions, for example, its user-friendliness. These aspects would be improved by the proposed development as, consequently, would be the way in which those characteristics of the listed building were experienced by shoppers and other visitors.
309. The reasons for listing also include the building's adaptability, particularly its ability to accommodate fast-changing retail stores while retaining its overall architectural integrity. It is likely that this refers mainly to the retail stores within the Shopping Building rather than those outside, in Midsummer Place for example. Nonetheless, the underlying design principle is the same; the Shopping

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<sup>123</sup> IF PoE paragraphs 6.5 & 6.6

<sup>124</sup> CD85 page 4

<sup>125</sup> RJ PoE section 6.2

<sup>126</sup> RJ PoE section 6.4

Building's massive scale, simple form and uniform appearance allow it to remain largely undisturbed by minor changes within its setting. [64, 116]

310. The applicant describes the harm as so marginal as to border on the inconsequential<sup>127</sup>. The Council's view is that, within the less than substantial spectrum it is at the lower end, being of overall minor harm in magnitude<sup>128</sup>. Whilst CMKTC agrees that the harm is in the less than substantial category it considers that it is nevertheless serious<sup>129</sup>. Although there is agreement between the parties that the harm is less than substantial it is necessary to quantify the harm further in order to carry out the weighing exercise. Because of the measured way in which it is expressed, my own opinion on the matter is allied with that of the Council. [59, 60, 63, 110, 113, 120, 155]
311. HE is a statutory consultee on heritage matters and it is right that its opinions on the case<sup>130</sup> are properly considered. In my view, however, these do not take into account how little of the whole setting would be affected; or that much of the effect would be on the less-valuable M&S part of the listed building. I agree that the feeling of bulk and solidity<sup>131</sup> would be increased. As the separation between the existing intu centre and its listed neighbour is not particularly clear from most viewpoints, the sense that the Shopping Building is freestanding would not be further compromised to a substantial extent<sup>132</sup>. I address the matters of the grid and infinity views elsewhere in this report. The measures advanced in HE's advice on setting<sup>133</sup> are advisory only; there is no policy requirement to consider how harm may be minimised. [148, 153, 154]
312. In considering justification for the proposal HE does not take into account the benefits set out by the applicant. It seems to me that, where the harm is less than substantial, the clear and convincing justification required in paragraph 132 of the Framework can be achieved through the weighing exercise described in paragraph 134. [58]
313. All things considered the proposed development would cause less than substantial harm to the significance of the listed Shopping Building. Such harm must be weighed against the public benefits of the proposal<sup>134</sup> which are discussed above. These are considerable and sufficient to outweigh the less than substantial harm. In reaching this position I have had special regard to the desirability of preserving the setting of the listed building<sup>135</sup>.

#### *Other matters*

314. I saw that the existing CMK grid layout is a striking, extensive and defining feature of the city centre and I agree that there is more to respecting it than providing a rectilinear arrangement of development. In severing Midsummer Boulevard and creating an open space which most people agree is lacklustre, the

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<sup>127</sup> IF PoE paragraph 6.24

<sup>128</sup> JS PoE paragraph 7.2.6

<sup>129</sup> RJ PoE page 37, final paragraph

<sup>130</sup> IF App 2

<sup>131</sup> IF App 2, 2<sup>nd</sup> page, 2<sup>nd</sup> paragraph

<sup>132</sup> MA PoE page 56 3.6.8, pages 58, 59 3.6.9, pages 60 & 61 3.6.10

<sup>133</sup> CD85

<sup>134</sup> The Framework, paragraph 134

<sup>135</sup> The Planning (Listed Building and Conservation Areas) Act 1990, section 66(1).

harm to the grid in this location was initiated by the existing intu development. [141]

315. To my mind the large open area outside the western entrance is particularly dreary and a wasted opportunity; the eastern gateway is cluttered and unfocused. The proposed development with its larger, bolder blocks would be more consistent with existing, neighbouring development when viewed from both the western and eastern ends than the current buildings. The uses proposed, and that of the intu centre as a whole, would be recognised from further away and would be a more compelling magnet for visitors than the existing, low density and mediocre units.

316. Within Midsummer Place, the straight aisles would continue those from centre:MK and lead shoppers more decisively through to other shops. Moreover, the retail and restaurant offer between the two existing shopping areas would be increased, consolidating and improving the cohesion of the PSA as a whole. In both its appearance and function the scheme would thus go some way to repairing the damage to the grid; it would respect the existing CMK grid layout consistent with Policy CMKAP G9. [78, 139, 142, 143, 219]

#### *MBE Workshops*

317. Everyone agrees the quality of the existing semi-public space is poor. Mr de Grey describes it as nasty but also says that if curated properly it could be an asset to CMK. The Neighbourhood Plan identifies Midsummer Boulevard East, which includes Midsummer Place, as an Inset Action Plan Area for which design work and consultation will be carried out<sup>136</sup>. Progress on this was undertaken in connection with workshops held during 2014. Diagrams, composite plans and specifications arising from them presaged several of the elements now apparent in the appeal application. It seems to have been generally accepted by participants that the area needed improvement. Build-to lines<sup>137</sup> and movement arrows<sup>138</sup> indicate that extended, rectangular blocks might be acceptable. The performance specifications for Midsummer Place<sup>139</sup> include that north/south and east/west permeability should be retained; active frontages should be established; and that adding an extra level to bridge the space should be considered. The future transport corridor, identified as 20m wide elsewhere in the workshop report<sup>140</sup>, should also be retained through the space. [182, 185]

318. There was disagreement at the inquiry as to whether parties had agreed the latest outcomes of the workshops. The project is also either on hold or has ceased. In any case, it has not yet resulted in an adopted area action plan or supplementary planning document and carries no weight. Nonetheless, some of the results of the workshops are significantly similar to elements of the proposal.

#### *Interior climate*

319. If and when a PTS runs through Midsummer Place its installation will be a major construction project. It is not possible or necessary to determine at this

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<sup>136</sup> CD68 page 83, Policy CMKAP SS3

<sup>137</sup> MA PoE page 14

<sup>138</sup> CD75 page 40

<sup>139</sup> MA PoE page16 paragraph 3.4.4.1

<sup>140</sup> CD75

time how the, currently unknown, vehicles would enter and leave the covered area or how the walls and doors at each end would be treated. Neither are the ensuing climatic conditions in Midsummer Place relevant to the consideration of this application. It is possible that stand-alone structural measures could be implemented to improve the unpleasant climatic conditions in the existing shopping centre; such objectives are, however, a small part of this proposal. In any event, that is not the scheme in this case or on which I have to make a recommendation. [183, 202]

### *Appeal Decisions*

320. CMKTC has drawn my attention to a number of appeal decisions, nearly all concerned with consideration of a Neighbourhood Plan and the weight to be given to it. None of the parties in this case disagrees that made neighbourhood plans are part of the development plan and should be upheld as an effective means to shape and direct development in the neighbourhood planning area<sup>141, 142</sup>, or that they represent the aspirations of the community<sup>143</sup>. I have not found that the proposal conflicts with the Neighbourhood Plan in this case and thus the circumstances at South of Verney Road, Winslow<sup>144</sup>; Little Horwood Road, Winslow<sup>145</sup>; Station Road, Earls Barton<sup>146</sup>; and Darnhall School Lane, Winsford<sup>147</sup> do not provide useful comparisons. The same is true of those decisions which concern emerging neighbourhood plans<sup>148</sup> rather than ones which have been made, as this one is.
321. I have noted that, in the decision at Sayers Common, West Sussex<sup>149</sup> the SoS gave considerable weight to the less than substantial harm to a Grade 2 Listed Building. The weight I have ascribed in this case is explained above in my reasoning on the setting of the listed building.

### **Conclusion and Planning Balance**

322. I have found that the proposed development would not be contrary to any of the policies of the Neighbourhood Plan. In particular there would be no reduction in the quantity, quality, use and public accessibility of semi-public open space in Midsummer Place, consistent with Policy CMKAP G3. In addition, and in compliance with Policy CMKAP G1, the extent, layout and quality of classic CMK infrastructure would be retained.
323. The Neighbourhood Plan is an equal part of the development plan and, of necessity, is consistent with the other documents it comprises. The proposal would contribute to the objectives of the development plan and in the absence of significant conflict with any policies, is in accordance with it when read as a whole.

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<sup>141</sup> APP/F2415/A/13/2183653

<sup>142</sup> APP/J0405/A/14/2205858

<sup>143</sup> APP/D3830/A/13/2189451

<sup>144</sup> APP/J0405/A/14/2205858

<sup>145</sup> APP/J0405/W/14/2213924

<sup>146</sup> APP/H2835/W/14/2213617

<sup>147</sup> APP/A0665/W/14/2212671

<sup>148</sup> APP/B3410/W/14/2209697, APP/H2835/W/14/2213617

<sup>149</sup> APP/D3830/A/13/2189451

324. The development proposed would give rise to considerable public benefits. Were it to be considered that it did not comply with the development plan, these would be material considerations of such a scale and advantage as to indicate that the scheme should be considered other than in accordance with the development plan.
325. The proposed development would result in harm to the neighbouring listed Shopping Building but this would be less than substantial and, within that classification, at the lower end. The public benefits of the scheme would therefore outweigh this harm such that the setting of the listed building would be preserved.
326. I have taken into account all the matters raised during the inquiry and at the planning application stage but not found any compelling reasons to recommend that the application be refused.

**Recommendation**

327. I conclude that planning permission should be granted.

*Sian Worden*

Inspector

### **Schedule of Recommended Conditions**

- 1) The approved development shall be carried out in accordance with the following drawings/details, all electronically registered on 12th May 2015:
  - 130317-D-101 REV A
  - 130317-D-102 REV A
  - 130317-D-103 REV A
  - 130317-D-104 REV A
  - 130317-D-105 REV A
  - 130317-D-106 REV A
  - 130317-D-107 REV A
  - 130317-D-108 REV A
  - 130317-D-109 REV A
  - 130317-D-110 REV A
  - 130317-D-111 REV A
  - 130317-D-112 REV A
  - 130317-D-113 REV A
  - 130317-D-114 REV A
  - 130317-D-115 REV A
- 2) Approval of the details of the appearance and scale of the buildings and landscaping of the site (hereinafter called "the reserved matters") shall be obtained in writing from the Local Planning Authority before any development is commenced. Application for approval of the reserved matters for each phase approved pursuant to condition 5 hereof shall be made to the Local Planning Authority before the expiration of five years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Prior to the submission of any applications pursuant to condition 2 hereof (submission of the reserved matters), a phasing plan to illustrate the proposed delivery programme for the implementation of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing plan thereafter.
- 5) Prior to the submission of the first application pursuant to condition 2 hereof (submission of the reserved matters), a Design Code for the whole site, which shall be substantially in accordance with the draft Design Code submitted as part of the application, shall be submitted to and approved in writing by the Local Planning Authority. The Design Code shall set out the

proposed vision and key design principles for the development to include (but not be limited to) the following details: final building heights, building massing, building materials, key architectural principles, sustainable construction, access and servicing, location of entrances, weather protection, activated and animated frontages, display windows, signage, lighting, public realm materials including footways, landscaping, street furniture and linkages to the surrounding public realm. The details subsequently submitted in each and every application pursuant to condition 2 shall be in complete accordance with the approved Design Code and the development shall be carried out in complete accordance with the approved Design Code.

- 6) Prior to the commencement of the development of each block shown on Parameters Plan 10 Block Plan and Uses (drawing no. 130317-D-110), a use class schedule for that block shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall outline the minimum floor space and maximum floor space parameters per each use class intended to occupy the units within that block. The development shall be implemented in accordance with the approved schedule and retained thereafter.
- 7) Prior to the commencement of the development, a feasibility study for connecting the development to the CMK CHP network shall be submitted to and approved in writing by the Local Planning Authority. If the study shows a connection to be feasible and economically viable, it shall include a detailed action plan to secure the connection. The development shall then be carried out strictly in accordance with the approved details and retained thereafter.
- 8) The details to be submitted pursuant to condition 2 hereof (submission of the reserved matters), shall include the proposed floor levels of the buildings hereby permitted and the proposed ground levels of the site in relation to the existing site levels of surrounding property shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details thereafter.
- 9) Prior to the initial occupation of each phase of the development approved pursuant to condition 5, cycle parking facilities shall be erected in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The cycle parking facilities shall be retained thereafter and used for no other purpose.
- 10) The development shall not be occupied until motorcycle parking spaces have been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The motorcycle parking facilities shall be retained thereafter and used for no other purpose.
- 11) Prior to the occupation of the development hereby permitted, an interim travel plan shall be submitted to and approved in writing by the Local Planning Authority. Within three months of the initial occupation of the development, a site coordinator shall be nominated to manage the Travel Plan and conduct a site audit and staff travel surveys leading to the submission of a site-wide Travel Plan Report within six months of initial

occupation. The Travel Plan Report shall either be produced utilising Travel Plan management software or mirror its outputs in a format that is acceptable to the Local Planning Authority. Targets for modal shift must be agreed in line with Milton Keynes Council targets to achieve a reduction in single occupancy vehicle usage. The approved full Travel Plan shall be implemented in accordance with the timetable and targets contained within and shall continue to be implemented as long as any part of the development is occupied with a minimum of annual reporting for the first five years, biannually thereafter.

- 12) Development of each phase approved pursuant to condition 5 hereof shall not commence until details of the construction accesses, site compounds, vehicle parking, hoardings, and removal/storage of existing materials have been submitted to and approved in writing by the Local Planning Authority. The construction of the development hereby permitted shall be carried out in accordance with the permitted details thereafter.
- 13) The development hereby permitted shall be serviced solely from the vehicular access located on Lower Eighth Street.
- 14) Prior to the initial occupation of any permitted building, a lighting scheme for the building shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a LUX/lighting plan and shall demonstrate that both adopted and unadopted publically accessible areas shall be lit in accordance with British Standards. The submitted LUX/lighting plan shall detail what lamps are being proposed and also the maximum, minimum, average and uniformity levels for each area. The approved lighting scheme shall be implemented prior to the occupation of each building to which it relates and maintained thereafter.
- 15) No phase of the development approved pursuant to condition 5 herein shall be occupied until a CCTV system that provides comprehensive surveillance of that phase of the development and the immediate pedestrian accesses thereto has been installed in accordance with details submitted to and approved in writing by the Local Planning Authority. The details of the CCTV system to be submitted shall demonstrate that the proposed system is compatible with and will be integrated with the current system that covers the site and other areas within Central Milton Keynes. Once installed the system shall thereafter be retained and no modifications from the approved details shall be made.
- 16) Prior to the commencement of any phase of the development approved pursuant to condition 5, a tree protection scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a Tree Protection Plan detailing the location of retained trees, tree protection areas and protection measures including fencing and ground protection that shall be in accordance with the provisions of BS 5837:2012 Trees in Relation to Construction. The approved scheme shall be implemented prior to the commencement of any construction works and maintained in full until the construction process is completed.
- 17) Prior to the initial occupation of any unit with a use classes A3, A4 or A5, details of the means of fume extraction and odour control shall be submitted to and approved in writing by the Local Planning Authority. The

approved details shall be implemented in full prior to the initial occupation of each unit and shall be retained thereafter.

- 18) There shall be no external storage of refuse, rubbish or waste materials nor external storage of any containers used to store such materials within or adjacent to the application site other than where express approval has been granted through the approval of details submitted pursuant to condition 2 hereof (submission of reserved matters).
- 19) Prior to the commencement of the development hereby permitted a detailed design, and associated management and maintenance plan, for a surface water drainage scheme, based on sustainable drainage principles for the site shall be submitted to and be approved in writing by the local planning authority. The management and maintenance plan shall include a detailed time table for the implementation of the surface water drainage scheme. The approved drainage scheme shall subsequently be implemented in accordance with the approved detailed design and in accordance with the approved time table for implementation and be retained thereafter.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

David Elvin QC	Instructed by solicitor for MKC
He called	
Neil Sainsbury MA (Planning) MA (Urban Design)	Head of Urban Design and Landscape Architecture, MKC
Jonathan Smith BA(Hons) MA PGCE PGDip MCIFA IHBC	Director of Historic Buildings, RPS CgMs Consulting
Nigel Weeks BSc FACE	Director, Stirling Maynard Transportation
Emily Catcheside MSc MRTPI	Senior Planning Officer, MKC

### FOR THE APPLICANT:

Christopher Katkowski QC	Instructed by Bond Dickinson LLP
He called	
Ian Dix BSc MSc MCILT MIHT	Director, Vectos
Mark Anders BA(Hons) BArch (Hons) RIBA MCIM	Group Director & Head of Retail, 3DReid
Mark Underwood BA (Hons) MPhil MRTPI PIEMA	Partner, Deloitte Real Estate
Ignus Froneman BA Stud ACIFA IHBC	Director, Heritage Collective

### FOR THE RULE 6 PARTY – CENTRAL MILTON KEYNES TOWN COUNCIL:

James Corbut Burcher of Counsel	Instructed by Laura Lee Briggs, solicitor for CMKTC
He called	
Roland Jeffery MA MSc	Director of Historic Chapels Trust
David Lock CBE MRTPI	David Lock Associates Ltd

### INTERESTED PERSONS:

Cllr Isabella Fraser	
Carol Barac	
Robert de Grey	
Graham Benjamin	
Margaret Weston	
Philip Ashbourn	On behalf of Cycling UK
Tim Skelton	On behalf of Milton Keynes Forum
Mike Leroy	
Peter Ballantyne	
John Muncaster	
Alan Senior	

George Harlock  
Linda Inoki

On behalf of Xplain

### Documents submitted during the Inquiry

INQ1	Note on new Section 106 Agreement & Section 35 Agreement
INQ2	Opening of Christopher Katkowski for intu
INQ3	Opening of David Elvin for MKC
INQ4	Extract from Pevsner
INQ5	Revised p.61 of Mr Anders' Proof
INQ6	Revised p.87 Mr Anders' Proof
INQ7	Opening of James Corbet Burcher for CMKTC
INQ8	Size A3 plans from Proof of Mark Underwood
INQ9	Revised "Figure 124: Maximum GIA (sq.m) floor areas that could be provided with each block per use" (at page 85) of the Design and Access Statement (CD25). Also superseding the floorspace figures as noted in the planning application form (CD6).
INQ10	CMKTC calculations of Loss of Classic Infrastructure the Application Boundary West of the Covered Roof.
INQ11	CMK Photographs of Site under Development
INQ12	E-mail from Diane Webber of MKC to Rebecca Kurth of CMKTC dated 16 June 2015
INQ13	MKC Note on Retail Floorspace
INQ14	Revised Engrossed Section 106 Agreement
INQ15	Localism Act 2013 (Neighbourhood Planning amendments to the Town and Country Planning Act 1990)
INQ16	intu Floorspace Table
INQ17	intu Floorspace Area Schedule
INQ18	intu Semi-Public Space Note
INQ19	Policy CMKAP G3 Plans
INQ20	Policy CMKAP G1 Plan
INQ21	Aerial Photograph (28.04.1984)
INQ22	intu Employment Figures Note

INQ23	intu Note on Legal Agreements
INQ24	MKC Note on Legal Agreements
INQ25	CMKTC Draft Statement of Common Ground
INQ26	CMKTC Floorspace Table
INQ27	Derwent Holdings Ltd judgement Case no. C1/2011/0825
INQ28	Susan Savage judgement Case no. C1/2014/0846

**Documents submitted after the Inquiry (with agreement of Inspector)**

INQ29	Certified copy of Section 106 Agreement
INQ30	Certified copy of Section 35 Walkway Agreement

**Closing submissions and written versions of statements made by third parties and**

IS1	Cllr Isabella Fraser
IS2	Carol Barac
IS3	Robert de Grey
IS4	Graham Benjamin
IS5	Tim Skelton on behalf of Milton Keynes Forum
IS6	Philip Ashbourn on behalf of Cycling UK
IS7	Mike Leroy
IS8	Peter Ballantyne on behalf of MK Bus Users Group
IS9	Alan Senior
IS10	Linda Inoki on behalf of Xplain
IS11	Alan Hancock
IS12	Closing submissions on behalf of CMKTC
IS13	Closing submissions on behalf of MKC
IS14	Closing submissions on behalf of intu MK [planning application]
IS15	Closing submissions on behalf of intu MK [stopping up order]

## **Written Representations**

### **Objections**

Brian Salter  
Charles Westwood  
Cllr John Bint  
Celia Hart  
Adrian Morrow  
Xplain  
Milton Keynes Forum  
Hilarie Bowman  
Alan Senior  
Alan Hancock  
David Rudiger  
Historic England  
Georgina Baidoun  
Graham Benjamin  
Alan Francis

Jon Muncaster  
Ian Michie – Urban Eden  
Barry Steadman  
Justin Tunley  
Maggie Weston  
Carol Barac  
Peter Howard  
Trevor Maguire  
C & J Phipps  
David Walmsley  
Sue Malleson  
Bow Brickhill PC  
Maja Dunn  
Ray Weston

### **Support**

Innovate MK  
Marshall Rd Amplification  
D Dalleshe  
Next plc  
Destination Milton Keynes  
Red Bull Technology  
A Kassim, Islamic Arts Heritage and  
Culture  
Cllr Paul Williams

Network Rail  
Metro Bank  
Suzuki GB plc  
Hermes  
JS Media  
Volkswagen Financial Services  
Milton Keynes Chamber  
Debenhams

### **Comment**

South East Midlands Local Enterprise Partnership



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.