

RE: FORMER DXC SITE

A D V I C E

1. I am asked to advise my client, Bellway Homes Limited (Manchester) upon the merits of their proposal to develop 108 dwellings (30% affordable) on a 3.02 ha site at Euxton Lane. The majority of the site is occupied by the former DXC office building. Of particular concern to my client is the stance adopted by Chorley Borough Council (“the LPA”) which regards the site as having particular value as an employment site and that breach of Core Strategy Policy 10 is determinative of the application which should accordingly be refused. I have, however, seen little from the LPA which validates this stance beyond assertion. In particular, I have not seen any attempt to engage with key pertinent issues which I will address below.

Background

2. The site is bordered by Euxton Lane to the south, beyond which lies greenfield land, a children’s nursery/creche and residential properties. To the north the site is bounded by a railway line, which serves Buckshaw Parkway Railway Station (located to the immediate north-west of the site). The Buckshaw Village development, which includes residential dwellings and the District Retail Centre, are located to the immediate north of the site. Industrial units are also located to the north, albeit on the opposite side of the railway line. To the east, the site is bordered by the Preston North End (formerly Bolton Wanderers) football training ground, beyond which lies Euxton Park Golf Course. To the west the site is bordered by further employment uses, including the single-storey building known as Classic House, which is home to a

photography business (Blink Photo). Runshaw College Chorley Campus is also located to the west of the site.

3. In terms of local facilities, Buckshaw District Retail Centre is located to the immediate north of the site which is home to a Tesco Superstore and Petrol Station, takeaways and hairdressers. These facilities can be accessed within a 15 -minute walk from the site.
4. In terms of other facilities, the nearest primary school (Trinity Church of England) is located 0.8 miles to the north-west which can be accessed within a 15 minute walk. Runshaw College is located within just a 2 minute walk to the west, and a local gym (GymWorks Euxton) is also located within a 10 minute walk to the west.
5. The site, therefore, lies within a highly sustainable location for housing.

Development Plan

6. The Core Strategy (“the CS”) was adopted in July 2012 and it covers the period 2010 – 2026. As noted, the policy of key relevance is Policy 10. Policy 10 states that all existing premises and employment sites last used for employment will be protected for employment use. There will be a presumption that “Best Urban” and “Good Urban” sites will be retained for B use class employment use. Proposals on all employment sites/premises for re-use or redevelopment other than B use class employment uses will be assessed under the following criteria:
 - (a) There would not be an unacceptable reduction on the type, quality or quantity of employment land supply;
 - (b) the provision and need for the proposed use;
 - (c) The relative suitability of the site for employment and for the alternative use;
 - (d) The location of the site and its relationship to other uses;

- (e) Whether the ability to accommodate smaller scale requirements would be compromised;
- (f) There would be a net improvement in amenity;

Any proposals for housing use on all employment sites/premises will need to accommodate criteria (a) – (f) above and also be subject to:

- (g) Convincing evidence of lack of demand through a rigorous and active 12 month marketing period for employment re-use and employment redevelopment;
- (h) An assessment of the viability of employment development including employment re-use and employment redevelopment.

The Council’s 2009 Employment Land Study, which provided the evidence base for much of the Employment chapter of the CS, defined the site as part of a larger area, as “Good Urban”. However, the 2009 Study only looked at need to 2021.

- 7. The Chorley Local Plan 2012 – 2026 (adopted 2015) should also be noted at this point. That document provides detailed allocation and management policies. The Plan confirms that the site is located within the defined boundaries of the Buckshaw Village strategic site but it is unallocated.
- 8. Finally of note in a local policy context is the Controlling Re-Use of Employment Premises SPD (2012) which provides more detail in respect of Policy 10 *ibid* requirements.

Key NPPF Policies

- 9. Key policies which are directly relevant to the issues arising in this Advice are as follows:
 - Paragraph 11:

“Plans and decisions should apply a presumption in favour of sustainable development.

For decision-taking this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”

In this case the LPA only has a housing land supply of 2.7 years as against the minimum requirement of a 5 year supply. As a result the most important policies for determination as part of the application are deemed out-of-date. This includes Policy 10 *ibid* which is highly restrictive of the loss of employment land and premises to other uses. However, and as will appear, regardless of the deficit in the housing land supply Policy 10 is out-of-date and should only carry limited weight.

- Paragraph 33: Policies in Local Plans should be reviewed every five years. Again, the CS policies should have been reviewed twice by now. In fact they have never been reviewed. Again this is indicative of the policies in the CS being out-of-date albeit not determinative:
- Paragraph 120 of the NPPF notes that planning policies and decisions should:
 - c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;

- d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively.”
- Paragraph 122 states that the planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:
 - (a) It should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and
 - (b) In the interim, prior to updating the plan, **applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.**
- Paragraph 123 outlines that local planning authorities should take a positive approach for alternative uses of land which is currently developed but not allocated for a specific purpose in plans where this would help to meet identified development needs. In particular, they should support proposals to:
 - (a) Use retail and **employment land for homes in areas of high housing demand**, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres and would be compatible with other policies in this Framework.

It can be seen that the NPPF adopts a more flexible policy to the release of employment land than Policy 10. In the instant case, the application site is not an allocated employment site and therefore the provisions of Paragraph 123 above are engaged and the key issue is therefore whether the release of the land would undermine the local employment base to such an extent that the

Paragraph 11(d)(ii) presumption in favour of housing development can be rebutted.

- Paragraph 219: A Development Plan policy is to be given weight according to its degree of consistency with the NPPF. In *Peel Investments (North) Ltd v. SoS* [2020] EWCA Civ 1175 it was observed that the test essentially is whether a policy has been overtaken by events including changes in national policy.

Analysis

10. Policy 10 *ibid* is deemed out-of-date by reason of the shortfall in the 5 year housing land supply and the tilted balance is therefore engaged. However, it is then necessary to decide how much weight is to be applied in the Paragraph 11(d)(ii) balancing exercise to Policy 10 (see *Gladman Developments Ltd v. SoSHCLG* [2021] EWCA Civ 104). Plainly the weight would need to be fairly significant in order for the tilted balance presumption to be rebutted. In reality, only very limited weight can be attached to Policy 10 for the following reasons:

- CS Policy 10 and the CS employment land requirements were firmly aligned (as they had to be at the time) with the 2008 RSS. The RSS was revoked in 2013. This is a powerful indication that events have overtaken the CS and CS10 in particular. It also illustrates exactly why the CS should have been reviewed at least once since 2012.
- At a local level the CS employment land policies were substantially informed by the 2009 Employment Land Study. That is almost 13 years old and self-evidently much has changed in the interim, not least the working pattern consequences of the Covid pandemic. While these are yet to be worked through, nobody seriously doubts that this is likely to lead to a reduction in demand for office space and an increase in demand for logistics space for example.
- The NPPF has evolved post-212 to establish a less protectionist approach to employment land than was evidenced in the now abandoned RSS. Policy 10

ibid sets up a powerful barrier to the release of employment land. In the NPPF there is no demand for marketing and viability exercises to demonstrate no role for a site but rather a more general question is asked which is whether a site is suitable for employment use or whether the release of a site will undermine local employment strategies. While that might in some cases involve issues of viability for example, it may generally more readily be answered by considering local issues of demand and supply and considering the site's role (or potential role) in that context. The LPA have not engaged with this at all.

- The advent of the new Use Class E further underlines the national move away from rigid protectionist policies in respect of employment land. As a consequence of this, the building on the site could be released to retail or leisure use without the need for planning permission.
- There is no clear evidence of harm to the employment land supply/strategy which results from the release of the site. The 2021 ELMR identified 70.49 ha of employment land available (66 ha of allocated land and 4.49 ha of unallocated land with planning approval). The amount of land available for B1 use is 66.46 ha. Take-up across the whole of Class B1 since 2010 has averaged 0.64 ha pa. Moreover, if one applied the overall employment land take-up of 2.86 ha pa since 2010 to the supply, that would still generate circa 25 years of supply. Finally the “tc property” report (December 2021) reveals no shortage of supply in the Buckshaw Village area of Chorley (see Paragraphs 4.3 - 4.13 ibid).
- The tc property report demonstrates that re-use of the on-site building or redevelopment for employment use is non-viable (in this context the Policy 10 requirement to market the site appears as little more than a box-ticking exercise). Having studied the tc property report, I can see no reason to question its conclusions on viability. The viability deficit is so significant that to market the site for 12 months would, on a balance of probabilities, be utterly pointless and merely serve to delay development for housing for a year. Such an outcome would be unacceptable given the pressing need for additional housing in Chorley. The problem with the supply is compounded by the fact

that Green Belt and other well recognised constraints make the challenge of meeting the housing requirement difficult to discharge. In these circumstances an unnecessary delay to bringing forward this site is wholly unjustified.

Conclusion

11. The tilted balance is engaged in this case I do not believe the presumption in favour of development can be rebutted. The CS is out-of-date. Its approach to need is based upon evidence that is circa 13 years old and the restrictive approach of Policy 10 (which is deemed out-of-date by Policy 11(d)(ii) of the NPPF) can only carry limited weight in that it is:

- (a) Unduly restrictive and out-of-step with the NPPF; and
- (b) The release of the site would not materially undermine the local employment land supply in any event

Set against this is a compelling need for additional housing and the clear contribution that the site could make to meeting housing need in a sustainable location while making full and effective use of previously developed land.

I so advise.

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6th April 2022

RE:

FORMER DXC SITE

ADVICE
