

Town And Country Planning Act 1990 - Planning Appeal

**FORMER DXC TECHNOLOGY SITE, EUXTON HOUSE, EUXTON
LANE CHORLEY PR7 6FE**

By Bellway Homes Limited

PLANNING PROOF OF EVIDENCE OF RICHARD WOOD

**APPLICATION REFERENCE: 21/01475/FULMAJ
APPEAL REFERENCE: APP/D2320/W/22/3309262**

**RICHARD WOOD
ASSOCIATES**

**Chorley
Council**

1.0 INTRODUCTION

Richard Wood BA (HONS) BPI MBA MRTPI

- 1.1 I am a Chartered Town Planner and a Member of the Royal Town Planning Institute (since 1991). I have worked as a planner in the public and private sectors for 33 years. I am a Director at Richard Wood Associates Ltd and work as an independent planning consultant. I hold an Honours Degree in Town and Country Planning and a post-graduate Bachelor of Planning Degree, both from the University of Manchester, and a Diploma in Management Studies and Master of Business Administration from the University of Hull.
- 1.2 Previously I was a Director at O'Neill Associates, Chartered Town Planning Consultants in York, working for public and private sector clients. Prior to working in consultancy, I was Assistant Director for Strategic Planning and Transport at City of York Council and Head of Strategy at the Yorkshire and Humber Assembly (leading the preparation of the Regional Spatial Strategy).
- 1.3 I declare that the case and evidence which I have prepared and provided for this appeal is true and has been prepared in accordance with the guidance of the Royal Town Planning Institute. I confirm that the opinions expressed by me are my true and professional opinions and that this Proof includes all facts which I regard as being relevant to the opinions I have expressed. I am aware that as an expert witness my overriding duty is to the inquiry irrespective of by whom I am called. To inform my appraisal I have visited the appeal site and surrounding locality.

Scope of Evidence

- 1.4 My evidence focuses on planning considerations. The Proof of Mr Sandwell addresses employment land matters.
- 1.5 A General Statement of Common Ground (CD 14.1) and Statements of Common Ground on Employment Land and Viability (CD 14.2), Heritage (CD14.3), and the Suitability of the Site for Housing Development (CD14.4) have been prepared.

1.6 I have set out my evidence as follows:

- Section 2 outlines the background to the appeal proposals.
- Section 3 explains the Development Plan position.
- Section 4 sets out other material considerations, including National Policy.
- Section 5 undertakes a planning analysis related to reason for refusal 1.
- Section 6 undertakes a planning analysis related to reason for refusal 2.
- Section 7 sets out the planning balance and overall conclusions.

2.0 BACKGROUND

- 2.1 The application subject to the appeal seeks full planning permission for the demolition of the existing building on site and the erection of 108 no. dwellings (Use Class C3). The **appeal proposal** comprises both market and affordable dwellings, over a range of house types in a traditional design style. Car parking spaces are predominantly provided within the plot or through integral garages. Some properties are accompanied by detached, single garages.
- 2.2 The **layout** of the proposed development includes dwellings facing Euxton Lane and around internal estate roads, whilst a public open space with play area would be included to the western end of the site. Vehicular access would be taken from Euxton Lane. Through a process of negotiation, the proposal has been reduced from 118 dwellings to 108 dwellings to secure public open space and children's play facilities on site.
- 2.3 The **General Statement of Common Ground** (CD 14.1) sets out the background to the appeal site and development proposals using the following structure:
- Section 2 sets out the 'Site Description and Proposals Map Designations' – the site is vacant with an unoccupied office building and is 3.02 hectares in size.
 - Section 3 explains surrounding uses and describes the background to the development of Buckshaw Village.
 - Section 4 sets out distances to services based on walking distances from the centre of the site to local amenities using existing footway provision in the area.
 - Section 5 lists out the application plans and documents for the appeal proposal.
 - Section 6 outlines relevant development plan policies and the position with the emerging Local Plan.
 - Section 7 identifies relevant evidence base documents.
 - Section 8 explains matters agreed.
 - Section 9 sets out matters not agreed.

- 2.4 In summary the appeal site is located within the settlement area at Euxton and falls within the Buckshaw Village Strategic Site boundary. The site measures 3.02 hectares in area and is occupied by the two storey 'DXC Technology' office building, surface car parks, areas of grass sward and some landscaping. The appeal site is fully vacant, with the office building on site no longer occupied. The previous occupier, Hewlett Packard (HP), vacated the site in January 2022.
- 2.5 The western extent of the appeal site primarily comprises a car park, with the south-eastern extent of the site comprising an area of hardstanding also previously utilised as car parking for the now vacant office building. The remainder of the site is lawned, but still represents previously developed land. There are two mature oak trees to the western side of the site, both of which are protected by tree preservation orders.
- 2.6 The appeal site is positioned between the Manchester to Preston railway line with Buckshaw Parkway railway station to the north and Euxton Lane to the south. The Buckshaw Village development, which is a large mixed-use development including residential dwellings, employment land uses and a District Retail Centre, is located to the north of the site, beyond the railway line.
- 2.7 To the east is a football training ground and associated facilities, whilst to the west are offices and a Runshaw College site. The site has an open aspect with Euxton Lane being a particularly wide carriageway in this location, and with which the site has a frontage, from which it is highly prominent. The area comprises a mixture of uses including business, leisure, and education, with a range of modern buildings and more functional structures. There is open land on the opposite side of Euxton Lane with some sporadic buildings including a dwelling and a children's nursery. This results in a rather mixed character, although it is noted that there is existing residential development further to the east and west.
- 2.8 The Chorley Local Plan 2012-2026 policies map (CD 2.2.1) identifies part of the site as being a sport and recreational facility in the Green Belt, however, the site has never been in use for this purpose and is not in the Green Belt. These designations are not

identified on the web based mapping system and are considered to be cartographic errors.

2.9 In terms of **planning history** there is one previous approved application:

Ref: 89/00409/FUL Decision: PERFPP Decision Date: 2 August 1989 Description: Refurbishment of existing storage building to form divisional offices provision of associated car parking and landscaping. Former Royal Ordnance Site Euxton Lane Euxton Lancashire.

Reasons for Refusal

2.10 The Council's decision notice is dated 22 September 2022 (CD 11.1). There are two reasons for refusal, which are as follows.

Reason 1: The proposed development would result in an unacceptable reduction in the type and quantity of employment land supply contrary to policy 10 of the Central Lancashire Core Strategy.

Reason 2: The application site is proposed in isolation from residential development patterns and associated amenities resulting in an unsustainable form of development. It would fail to provide connectivity with supporting amenities, which means that the development does not integrate or function well with the surrounding area. The proposal does not, therefore, secure a high-quality inclusive design. The proposal is, therefore, contrary to policy 17 of the Central Lancashire Core Strategy 2012 and the National Planning Policy Framework.

3.0 DEVELOPMENT PLAN

- 3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that if regard is to be had to the development plan for any determination, then that determination must be made in accordance with the plan unless material considerations indicate otherwise. The Development Plan comprises the:
- Central Lancashire Core Strategy (CD 2.1), adopted July 2012, with a plan period of 2010-2026; and
 - Chorley Local Plan 2012 – 2026 (CD 2.2), adopted 21st July 2015.
- 3.2 The proposal is located within the settlement of Euxton as covered by **Local Plan Policy V2** where there is a presumption in favour of appropriate sustainable development, subject to material planning considerations and the other Policies and Proposals within this Plan.
- 3.3 **Core Strategy Policy 1** sets out the locations for growth and investment across Central Lancashire. The appeal site is within the strategic site allocated at Buckshaw Village for mixed use (Policy 1(ciii)).
- 3.4 **Core Strategy Strategic Objective SO5** seeks to make available and maintain within Central Lancashire a ready supply of residential development land over the plan period. **Core Strategy Policy 4**, Housing Delivery, sets out minimum requirements for the delivery of new housing in each district, for the period 2011-2026. It looks to ensure enough deliverable land suitable for house building.
- 3.5 **Core Strategy Policy 9: Economic Growth and Employment** sets the overall framework for economic growth across the 3 local authority areas including:
- (a) The identification of 454 hectares of employment land between 2010 and 2026
 - (b) Chorley Town Centre, included as a focus for local office schemes
 - (c/d) Buckshaw Village, included as regionally significant employment scheme, and Botany/ Great Knowley included as a sub regionally significant employment scheme.

3.6 **Strategic Objective SO10** of the Core Strategy seeks “to ensure there is a sufficient range of locations available for employment purposes.” **Core Strategy Policy 10** seeks to protect all existing employment premises and sites last used for employment for employment use. There will be a presumption that ‘Best Urban’ and ‘Good Urban’ sites will be retained for B use class employment use.

Policy 10: Employment Premises and Sites states that all existing premises and sites last used for employment will be protected for employment use. Consideration will only be given to alternative uses where an applicant has clearly demonstrated that the criteria in the policy have been met in full, including proposals for change of use. These criteria are as follows:

- a) there would not be an unacceptable reduction of 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) 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.*

3.7 An adopted **SPD ‘Controlling Re-Use of Employment Premises’** (CD 2.3) expands on the policy criteria and provides guidance on information that needs to be submitted in relation to these criteria. The SPD emphasises the Council’s starting point that employment sites should be retained unless an applicant wishing to change the use can demonstrate that the criteria in Policy 10 have been addressed.

3.8 **Strategic Objective SO 15** of the Core Strategy is “To foster ‘place shaping’ to enhance the character and local distinctiveness of the built environment in Central Lancashire by encouraging high quality design of new buildings.” **Core Strategy Policy 17** addresses the design of new buildings and how this should take account of the character and appearance of the local area, with a series of criteria set out as below. This reflects an emphasis on design solutions for all developments being based on a thorough site analysis and character appraisal of context.

The design of new buildings will be expected to take account of the character and appearance of the local area, including the following:

- (a) siting, layout, massing, scale, design, materials, building to plot ratio and landscaping.*
- (b) safeguarding and enhancing the built and historic environment.*
- (c) being sympathetic to surrounding land uses and occupiers, and avoiding demonstrable harm to the amenities of the local area.*
- (d) ensuring that the amenities of occupiers of the new development will not be adversely affected by neighbouring uses and vice versa.*
- (e) linking in with surrounding movement patterns and not prejudicing the development of neighbouring land, including the creation of landlocked sites.*
- (f) minimising opportunity for crime, and maximising natural surveillance.*
- (g) providing landscaping as an integral part of the development, protecting existing landscape features and natural assets, habitat creation, providing open space, and enhancing the public realm.*
- (h) including public art in appropriate circumstances.*
- (i) demonstrating, through the Design and Access Statement, the appropriateness of the proposal.*
- (j) making provision for the needs of special groups in the community such as the elderly and those with disabilities.*
- (k) promoting designs that will be adaptable to climate change, and adopting principles of sustainable construction including Sustainable Drainage Systems (SuDS);*
and

(l) achieving Building for Life rating of ‘Silver’ or ‘Gold’ for new residential developments.

(m) ensuring that contaminated land, land stability and other risks associated with coal mining are considered and, where necessary, addressed through appropriate remediation and mitigation measures.

Proposals Map Designations

3.9 The General SOCG (CD 14.1) explains that:

- The appeal site is located within the defined boundaries of the mixed-use Buckshaw Village Strategic Site, as allocated under Policy 1, and as shown on the Proposals Map contained at Appendix B of the Central Lancashire Core Strategy (CD 2.1)
- The appeal site is not allocated for any specific purpose within the adopted Development Plan and associated Proposals Map (Chorley Local Plan – Buckshaw Village Inset – Map 4, CD 2.2.2).

3.10 The appeal site is located within the settlement of Euxton as covered by Chorley Local Plan Policy V2 where there is a presumption in favour of appropriate sustainable development, subject to material planning considerations and the other Policies and Proposals within the Plan.

Emerging Local Plan

3.11 A new Central Lancashire Local Plan is in the process of being prepared. The plan will apply to the boroughs of Chorley, Preston, and South Ribble for the period from 2023 to 2038. The Central Lancashire Local Plan (CLLP) will replace the Central Lancashire Core Strategy (2012), the Chorley Local Plan (2015), the Preston Local Plan (2015) and the South Ribble Local Plan (2015). It will include both strategic and local (development management) policies and will bring all these policies into one plan.

3.12 A Regulation 18 Preferred Options Consultation is being undertaken in two parts. Part One (CD 5.1) includes details of the strategic framework for the new Local Plan, such as the vision, objectives, and spatial strategy, setting out the ambition for

Central Lancashire. The Part One Preferred Options Consultation is open until Friday 24th February 2023. A part two consultation is planned for Summer 2023.

- 3.13 No weight is afforded to the emerging policies of the Local Plan, given the early stages of the plan preparation process and NPPF paragraph 48.

4.0 OTHER MATERIAL CONSIDERATIONS

4.1 Other material considerations relevant to the appeal proposals are the National Planning Policy Framework (CD 1.1), the National Design Guide (CD 8.10), National Planning Practice Guidance (PPG, CD 1.2), the Walking and Cycling Strategy for England (CD 8.5), CIHT guidance (CD's 8.2 & 8.4), Building for a Healthy Life (CD 8.9), Putting Health into Place guidance (CDs 8.11 & 8.12) and the Chorley Economic Strategy (CD 9.8).

National Planning Policies (CD 1.1)

4.2 The National Planning Policy Framework (NPPF) July 2021 sets out the Government's planning policies for England and how these are expected to be applied. It is a key material consideration. The NPPF states that *"the purpose of the planning system is to contribute to the achievement of sustainable development"* (Paragraph 7). Interdependent economic, social, and environmental objectives are set out under Paragraph 8:

- a) an **economic objective** – to help build a strong, responsive, and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation, and improved productivity; and by identifying and coordinating the provision of infrastructure.
- b) a **social role** – to support strong, vibrant, and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful, and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
- c) an **environmental objective** – to protect and enhance our natural, built, and historic environment, including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

- 4.3 Paragraph 8 advises that the above three objectives are interdependent. Economic growth can secure higher social and environmental standards, and well-designed buildings and places can improve the lives of people and communities. Therefore, to achieve sustainable development, economic, social, and environmental net gains should be sought jointly and simultaneously through the planning system.
- 4.4 At the heart of the NPPF is a presumption in favour of sustainable development Paragraph 11 states that 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.
- 4.5 Section 5 of the NPPF sets out the national policy approach for **delivering a sufficient supply of housing** in support of the Government’s objective of significantly boosting the supply of homes. Paragraph 74 requires Local Planning Authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old.
- 4.6 **Building a strong, competitive economy** is the focus of NPPF section 6 – to help create the conditions in which businesses can invest, expand, and adapt. Significant weight

should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

- 4.7 Healthy, inclusive, and safe places are promoted in NPPF section 8, **promoting healthy and safe communities**. Places should support social interaction, be safe and accessible and enable and support healthy lifestyles. Community facilities and services, school places and open spaces and opportunities for sport and physical activity are all important aspects.
- 4.8 Section 9 of the NPPF is focussed on **promoting sustainable transport**. Development proposals should promote sustainable transport modes, provide safe and suitable access, be well-designed and cost effectively mitigate to an acceptable degree any significant impacts from the development on the transport network. In considering transport issues at the earliest stage with development proposals (paragraph 104) *“opportunities to “promote walking, cycling and public transport use” should be identified and pursued. Paragraph 105 addresses patterns of growth in that “significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health”. “Opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.”*
- 4.9 **Making effective use of land** is the subject of section 11. Paragraph 120 c) requires significant weight to be given to the value of using suitable brownfield land within settlements for homes and other identified needs. Planning decisions need to reflect changes in the demand for land (paragraph 122) and a positive approach should be taken to applications 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 needs (paragraph 123). The use of retail and employment land for homes in areas of high housing demand should be supported, provided this would not undermine key

economic sectors or sites and be compatible with other Framework policies (criterion a) paragraph 123).

4.10 **Achieving well-designed places** is the focus of NPPF section 12. Good design is a key aspect of sustainable development. Developments should function well and add to the overall quality of the area, be visually attractive, be sympathetic to local character and history, establish or maintain a strong sense of place, optimise the potential of the site, and create places that are safe, inclusive, and accessible. Paragraph 126 requires *“the creation of high quality, beautiful and sustainable buildings and places”*. Developments should *“function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development”* (Paragraph 130 criterion b) and in optimising the potential of the site *“support local facilities and transport networks”* (criterion e). The importance of design quality is set out at Paragraph 132.

4.11 Section 14 of the NPPF aims to **meet the challenge of climate change, flooding, and coastal change**. Paragraph 152 sets out that the planning system should shape places in ways that contribute to radical reductions in greenhouse gas emissions.

National Design Guide (CD 8.10)

4.12 The National Design Guide (NDG) addresses the question of how we recognise well-designed places, by outlining and illustrating the Government’s priorities for well-designed places in the form of ten characteristics. The Guide is based on national planning policy, practice guidance and objectives for good design, as set out in the National Planning Policy Framework. The ‘Context’ characteristic focuses on the location of the development and the attributes of its immediate, local, and regional surroundings.

4.13 The importance of a movement network that makes connections to destinations, places, and communities, both within the site and beyond its boundaries is highlighted in the NDG (page 22, para 75). This should limit the impacts of car use by prioritising and encouraging walking, cycling and public transport, mitigating impacts and identifying opportunities to improve air quality. Under the characteristic of ‘Built

Form’, the NDG (page 20) defines walkable as “Local facilities are within walking distance, generally considered to be no more than a 10-minute walk (800m radius)”.

National Planning Practice Guidance (PPG, CD 1.2.1)

4.14 PPG paragraph 66-001- 20190722 sets out: “What evidence can be used to help determine whether land should be reallocated for a more deliverable use? When considering whether there is a realistic prospect of an allocated site being developed for its intended use, it may be relevant to take into account factors such as:

- the length of time since the site was allocated in the development plan;
- the planning history of the site including any planning applications or pre-application enquiries;
- whether there is evidence that the site has been actively marketed for its intended use for a reasonable period, and at a realistic price; and
- whether there are any changes of circumstance that mean that take-up of the site for its intended use is now unlikely. Where an alternative use for the allocated site is proposed, it will also be relevant to consider the extent to which evidence suggests the alternative use would address an unmet need, as well as the implications for the wider planning strategy for the area and other development plan policies.”

4.15 Whilst the above paragraph is focused on reallocation it does indicate relevant factors in considering whether an allocated site (as opposed to an existing use) has a realistic prospect of being developed for its intended use.

Walking and Cycling Strategy for England (CD 8.5)

4.16 *Gear Change, A bold vision for cycling and walking* was published by the Department for Transport in July 2020 and aims to support a step-change in cycling and walking. The vision highlights how increasing cycling and walking can help tackle some of the most challenging issues we face as a society – improving air quality, combatting climate change, improving health and wellbeing, addressing inequalities, and tackling congestion on our roads. The aim is to see a future where half of all journeys in towns

and cities are cycled or walked in the context that 58% of car journeys in 2018 were under 5 miles.

- 4.17 The national walking and cycling strategy (page 8) identifies that *“Many people do not realise the health benefits from physical activity Physical activity, like cycling and walking, can help to prevent and manage over 20 chronic conditions and diseases, including some cancers, heart disease, type 2 diabetes and depression. Physical inactivity is responsible for one in six UK deaths (equal to smoking) and is estimated to cost the UK £7.4 billion annually (including £0.9 billion to the NHS alone)”*

CIHT Guidelines for Providing Journeys on Foot (CD 8.2)

- 4.18 As included below, Table 3.2 (page 49) in the Chartered Institution of Highways and Transportation’s (CIHT) 2000 publication *Guidelines for Providing Journeys on Foot* sets out suggested acceptable walking distances, for pedestrians without a mobility impairment for some common facilities. A preferred maximum acceptable walking distance of 2,000m was included in the Guidelines for “Commuting/School Sight-seeing”, whereas for “Town centres” it was 800m and for “Elsewhere” 1,200m.

	Town centres (m)	Commuting/School Sight-seeing (m)	Elsewhere (m)
Desirable	200	500	400
Acceptable	400	1000	800
Preferred maximum	800	2000	1200

CIHT Planning for Walking (CD 8.4)

- 4.19 CIHT’s more up to date 2015 publication entitled *Planning for Walking* does not repeat reference to the above maximum acceptable walking distances (including 2,000 m). It states that walking neighbourhoods are typically characterised as having a range of facilities within 10 minutes’ walking distance (around 800 metres).

Building for a Healthy Life (CD 8.9)

- 4.20 Building for a Healthy Life (BHL) is a Design Code to help people improve the design of new and growing neighbourhoods, it is used in the Design and Access Statement (CD 10.6) for the Appeal Proposal. Twelve considerations are presented under three themes, the first of which is Integrated Neighbourhoods. At page 14 it is explained that for Integrated Neighbourhoods there is a need to *“Create places that are well integrated into the site and their wider natural and built surroundings. Avoid creating isolated and disconnected places that are not easy places to move through and around”* and achieve *“Places that offer social, leisure and recreational opportunities a short walk or cycle from their homes”* (Page 26).

Putting Health into Place (CDs 8.11 & 8.12)

- 4.21 The Executive Summary for Putting Health into Place (PHiP) explains and focuses on the point that *“The places where people live have a significant impact on their mental and physical health”* (page 6, CD 8.11). Published by the NHS, Public Health England, the Young Foundation, the King’s Foundation and the Town and Country Planning Association (TCPA) PHiP draws out lessons from NHS England’s Healthy New Towns programme on how to create healthier new communities. Ten principles for healthy place making are identified. Principle 5 (see CD 8.12) is ‘maximise active travel’. Encouraging everyone to walk or cycle more often is an effective way of increasing regular physical activity and thereby improve people’s health. The ten PHiP principles are also embedded within BHL (page 12, CD 8.9).

Chorley Economic Strategy (CD 9.8)

- 4.22 Mr Sandwell’s evidence (paragraphs 3.38 to 3.40) explains the importance of space for businesses, enabling Chorley businesses to grow and for the delivering the borough’s economic strategy.

5.0 REASON FOR REFUSAL 1 – PLANNING ANALYSIS

Reason 1: The proposed development would result in an unacceptable reduction in the type and quantity of employment land supply contrary to policy 10 of the Central Lancashire Core Strategy.

- 5.1 This reason for refusal is addressed by Mr Sandwell’s evidence and this section of my proof draws out key points in relation to employment land.

Employment Land Shortfall

- 5.2 Mr Sandwell’s evidence sets out at paragraph 3.43 that “Across three assessments of OAN, completed since 2017, Chorley Borough is identified as having shortfalls of employment land against needs. In 2017-2019, the shortfall was identified as being some 36-37 ha. In 2021 a shortfall of 20.06 ha was identified for the period 2021-2038”. The shortage of industrial/warehouse land and property identified by Mr Sandwell (throughout Section 4) is both in market terms and in terms of OAN, in Chorley Borough and across the region.
- 5.3 The 2022 Central Lancashire Employment Land Study (CD 6.5) remains the most up to date employment land study for Chorley Borough. It is an identified evidence base document for the emerging Joint Local Plan and was conducted in compliance with NPPF and relevant Planning Practice Guidance including “*Housing and Economic Land Availability Assessment, Housing and Economic Needs*” and “*Effective Use of Land*”. As set out above, this most up to date analysis suggests a shortage of 20.06 ha of employment land, in Chorley Borough over 2021-2038.

Demand

- 5.4 Recent market assessments identify strong demand for industrial/warehouse uses in Chorley Borough, particularly smaller units of up to 1,000 sqm, from both local businesses and inward investors. In terms of offices, demand is for small flexible suites of 0-100 sqm (Mr Sandwell paragraph 3.44). Factors which make Buckshaw Village an area of high demand include its strong links to the national motorway network, large

stock of modern industrial, warehouse and office premises, and its critical mass of established companies on the Strategic Site (Mr Sandwell paragraph 4.24). These locational factors are examined in more detail by Mr Sandwell at paragraphs 4.25 to 4.29. There are a number of examples of successful industrial development in the Buckshaw Market Area as set out by Mr Sandwell (paragraphs 4.30 to 4.34 and Table 3). All are presently well occupied and two are fully occupied. These show that industrial development is achievable in the area, on plots of comparable size to the appellant's site (Mr Sandwell paragraph 4.31).

- 5.5 Mr Sandwell (paragraphs 4.37 to 4.42) sets out market signals which provide evidence of the current strength of the industrial market across different size ranges and that support the view that industrial/warehouse uses would be deliverable on the appeal site.

Occupancy Rates

- 5.6 The evidence presented by Mr Sandwell (paragraph 4.20) includes the 'Chorley Market Update (BE Group 2022)'. This identifies that Chorley Borough's total industrial stock was 98.6 percent occupied by premises number and 96.9 percent by floorspace. An updated assessment (Mr Sandwell, paragraph 4.22) provides similar results – an occupancy rate of 98.4 percent by premises or 96.5 percent by floorspace. Mr Sandwell outlines how high occupancy rates (above 90-95 percent) are an indicator of supply shortfall with businesses having difficulty in finding premises. This makes it important to protect existing stock, particularly in high demand locations.

Important Employment Location and Site

- 5.7 Paragraph 3.11 of the EL&V SOCG sets out that the appeal site was assessed in the 2009 Drivers Jonas Employment Land Study, as part of the wider Runshaw College and XTON Business Park and this employment area was ranked as 'good urban'. The appeal site was not assessed as a stand-alone site. At the time of the 2009 assessment, the existing offices were fully let.

- 5.8 Mr Sandwell sets out (paragraph 3.27) that an assessment of employment areas (industrial estates/business parks) completed in the 2017 Employment Land Study identified the commercial elements of Buckshaw Village as a whole, although not the appeal site specifically, as being 'A Grade' or 'Best Urban' in nature and generally comprising high grade, well occupied space with services nearby. This confirmed the earlier statements of the Adopted Core Strategy that Buckshaw Village is a Best Urban or prime employment area for Central Lancashire. The existing offices on the appeal site were fully let at the time of the 2017 Employment Land Study. The appeal site and the wider XTON Business Park were not identified or assessed as part of the 2017 study's assessment.
- 5.9 The Core Strategy at paragraphs 9.5 and 9.6 draws a distinction modern industrial estates and business parks (which generally are categorised as Best Urban or Good Urban) and older existing premises (classed as Other Urban). As set out in the Employment Land and Viability SOCG (CD 14.2, paragraph 3.9) Core Strategy Policy 10 seeks to protect all existing employment premises and sites last used for employment use. There will be a presumption that 'Best Urban' and 'Good Urban' sites will be retained for B use class employment use (Core Strategy paragraph 9.8).
- 5.10 The EL&V SOCG (CD 14.2, paragraph 3.10) references that Paragraph 5.36 the Core Strategy states that all parts of Buckshaw Village "*are or have the potential to be ranked as 'Best Urban'*", a location of high economic value in the Borough and across Central Lancashire.

Assessment against the Criteria of Core Strategy Policy 10

- 5.11 Mr Sandwell's evidence demonstrates that the proposed appeal development does not satisfy criteria (a), (c), (d), (g) and (h) of Core Strategy Policy 10 (as set out by Mr Sandwell at paragraph 5.1). This is summarised below:

Criterion a) - there would not be an unacceptable reduction of the type, quality, or quantity of employment land supply.

- 5.12 Multiple assessments of OAN show that Chorley Borough has a shortfall of employment land. The appeal proposal would result in an unacceptable reduction in the type, quality, and quantity of employment land in the Borough. The Borough cannot absorb further losses of employment land.

Criterion (c) - the relative suitability of the site for employment and for the alternative use.

- 5.13 There remains a need for E(g)(iii), B2, B8 light industrial, general industrial and storage and distribution uses in the Euxton Lane/Buckshaw Village area of Chorley Borough, uses which could be accommodated on the Former DXC Technology site. Buckshaw villages is a strong location for employment uses and attractive to businesses.

Criterion (d) - the location of the site and its relationship to other uses.

- 5.14 Deficiencies in the site's location and relationship to nearby services form Reason for refusal 2, this is addressed in section 6 of my evidence.

Criterion (g) - convincing evidence of lack of demand through a rigorous and active 12 month marketing period for employment re-use and employment redevelopment.

- 5.15 The Appellant has not conducted any such marketing exercise either prior to the submission of the planning application or during the period it was being considered by the Council. This has been confirmed by Mr Sandwell (paragraph 4.36). Thus, the Appellant has not provided sufficient evidence that there is no market demand either for the office property on the site or for the site itself for redevelopment for the full range of E(g) or B-Class uses.

Criterion (h) - an assessment of the viability of employment development including employment re-use and employment redevelopment.

5.16 As the Appellant has not undertaken a marketing exercise Mr Sandwell identifies (paragraph 4.36) that the assessment of viability provided by the appellant lacks market evidence - it is not backed by a long term marketing campaign to gather real world data on what rents, values, etc. parties showing interest in the site might be willing to pay. Additionally, the testing of viability and deliverability provided by the appellant did not consider the full range of E(g)/B-Class uses which could be brought forward, specifically redevelopment for industrial and/or warehouse uses. Whilst it was accepted in the General Statement of Common Ground that the appeal site was not viable for office uses, it is not accepted that industrial and warehouse uses are similarly not deliverable.

Employment Land Conclusions

- 5.17 Key findings from Mr Sandwell's evidence are that:
- i. there is a shortfall in Chorley Borough's employment land supply, and this has consistently been the case over recent years.
 - ii. there is strong demand for industrial/warehouse uses in Chorley Borough.
 - iii. Buckshaw village is an area of high demand, with strong locational advantages.
 - iv. there are a number of successful industrial developments in the Buckshaw market area that are presently well occupied.
 - v. Positive market signals show the current strength of the industrial market.
 - vi. Chorley Borough's industrial stock has a high occupancy rate, at a level that indicates a supply shortfall.
 - vii. The 2017 employment land study identifies that all parts of Buckshaw village are, or have the potential to be, rated as 'Best Urban'.
 - viii. The earlier 2009 assessment of the wider Xton Business Park and college site ranked this larger site area as 'Good Urban'.
 - ix. The Core Strategy sets out a presumption that Best Urban and Good Urban sites will be retained for employment use.

- 5.18 It is therefore important for the Borough to protect its existing stock of E(g)/B-Class land. The redevelopment of the 3.02 ha appeal site, for housing, would represent an unacceptable loss for a Borough which already has insufficient land to meet its needs. The appeal proposal conflicts with Core Strategy Policy 10 – criteria (a), (c), (d), (g) and (h). There is clear evidence of need for employment land in Chorley. Redevelopment of the appeal site for residential development would be contrary to Strategic Objective SO10 of the Core Strategy which seeks “to ensure there is a sufficient range of locations available for employment purposes”.
- 5.19 The appeal site should be considered as a key economic site (in the context of NPPF paragraph 123) based on the assessment of the appeal site as part of a wider site in 2009 as ‘Good Urban’ and the more recent 2017 assessment of the commercial elements of Buckshaw Village as being ‘A Grade’ or ‘Best Urban’.

6.0 REASON FOR REFUSAL 2 – PLANNING ANALYSIS

Reason 2: The application (now appeal) site is proposed in isolation from residential development patterns and associated amenities resulting in an unsustainable form of development. It would fail to provide connectivity with supporting amenities, which means that the development does not integrate or function well with the surrounding area. The proposal does not, therefore, secure a high-quality inclusive design. The proposal is, therefore, contrary to policy 17 of the Central Lancashire Core Strategy 2012 and the National Planning Policy Framework.

Site Location

- 6.1 The appeal site is isolated from other residential areas and suffers from a lack of connectivity with established communities or amenities. The site is bound by a major highway to the south and railway to the north. Accessing services on foot or by cycling and to the train station requires a circuitous trip via a road bridge to the west. It is accepted that residential amenity issues will not arise with neighbouring uses, but this does mean that the site is a suitable location for housing.
- 6.2 The appeal site forms part of a business park/employment area, it is in employment use and has an existing office building on it. It forms part of a corridor of employment uses on Euxton Lane, with the Chorley Business and Technology Centre located to the west beyond the Runshaw College site. Immediately to the west of the site is a single storey business unit and beyond this a three storey office completed in 2019/20. To the east, on Euxton Lane, beyond the football training and golf course, is an employment development, Strawberry Meadows (Alker Lane). Figure 4, Page 9, of the Design and Access Statement (CD 10.6) demonstrates that existing residential areas further to the east and west along Euxton Lane are over 1000m from the appeal site. There would be a lack of integration with established communities. The appeal site is divorced from other residential areas.

Access to Services and Facilities

- 6.3 Walking distances from the centre of the appeal site to local amenities are set out in the main SOCG (CD 14.1) and are included in the Design and Access Statement (CD 10.6). This is based on utilising existing footway provision in the area. These distances are set out in the General SoCG (CD14.1) and are shown in Table 1 below.
- 6.4 Under the heading “land use planning for pedestrians” Planning for Walking (CD 8.4) sets out that most people will only walk if their destination is less than a mile away. Land use patterns most conducive to walking and “walkable neighbourhoods” have a typical catchment of around 800 m, or 10 minutes’ walk. This distance and time frame is also set out in the National Design Guide (NDG, CD 8.10), which defines “Walkable” as : “Local facilities are within walking distance, generally considered to be no more than a 10 minute walk (800 m radius).” Column 1 in Table 1 below reflects this emphasis in national guidance on an 800 m walking distance.
- 6.5 It is acknowledged that distances that people will cycle are longer and a 2km cycling distance is often applied. Planning for Walking (CD 8.4, page 29) provides the latest CIHT 2015 guidance on walking. Previous CIHT *Guidelines for Providing Journeys on Foot* (CD 8.2, 2000) did set a range of 1000 m to 2000 m for ‘acceptable’ to ‘preferred maximum’ walking distances for “Commuting/School Sight-seeing” and for elsewhere 800 m to 1200 m. It is accepted that it might not be realistic to have all houses within 800m of all amenities such as for a secondary school or convenience retail use. Columns 3 and 4 in Table 1 below thereby apply further bandings to reflect the above.

Table 1: Walking Distances to Local Amenities

Column 1	Column 2	Column 3	Column 4
LOCAL SERVICES & FACILITIES	Under 800m	800m-2000m	Over 2000m
Gym Works Chorley	550m		
Little Explorers Nursery and Pre-school		950m	
Tesco Superstore		1,450m	
The War Horse Public House		1,480m	
Kids Planet Nursery		1,495m	
KFC		1,500m	
Strawberry Fields Digital Hub		1,550m	
Buckshaw Village Community Centre		1,590m	
Trinity Church of England Primary School		1,600m	
Balshaw CofE High School			3,700m
Parklands Academy			3,400m
Buckshaw Village District Centre		1,400m	
TRANSPORT FACILITIES	Under 800m	800m-2000m	Over 200m
School Service Bus Stop on Euxton Lane	170m		
Public Service Bus Stops on Euxton Lane	350m		
Buckshaw Parkway Railway Station		1,550m	

6.6 The Gym Works and two local bus stops are the only facilities within 800m walking distance of the appeal site. Most amenities are closer to double this walking distance.

Assessment against the Criteria of Core Strategy Policy 17

6.7 The evidence set out above demonstrates that the proposed development does not satisfy criteria (a), (c), (e), and (i) of Core Strategy Policy 17. These criteria are considered in turn below:

Policy 17: Design of New Buildings

The design of new buildings will be expected to take account of the character and appearance of the local area, including the following:

Criterion (a) siting, layout, massing, scale, design, materials, building to plot ratio and landscaping.

- 6.8 In terms of siting, the positioning of housing units within the site is agreed but the appeal site is not an appropriate place for siting housing.

Criterion (c) being sympathetic to surrounding land uses and occupiers, and avoiding demonstrable harm to the amenities of the local area.

- 6.9 The proposed development will not integrate and function well with the surrounding area and represent good place making, given that the isolation of the proposed residential development and that it will not support a walkable neighbourhood.

Criterion (e) linking in with surrounding movement patterns and not prejudicing the development of neighbouring land, including the creation of landlocked sites.

- 6.10 The appeal proposal does not link in with surrounding movement patterns which support a walkable neighbourhood, given the distances to services and facilities. The appeal site is in an isolated location and unsuited to residential development.

Criterion (i) demonstrating, through the Design and Access Statement, the appropriateness of the proposal

- 6.11 The Design and Access statement has not demonstrated appropriateness of residential development/land use on this site at this location given the distances to amenities shown by Figure 4, Page 9 of the DAS (CD 10.6).

Suitability of the Site for Housing Development - Conclusions

- 6.12 Building for a Healthy Life identifies the need for 'Integrated Neighbourhoods', integrating well with their wider natural and built surroundings and avoiding the creation of isolated and disconnected places (see paragraph 4.19 of my proof). The appeal site is isolated from existing residential areas and the distances to services and facilities will not support an integrated and walkable neighbourhood. Table 1 above

shows how most local services and facilities are well beyond the 800m walkable distance set out in both the National Design Guide and Planning for Walking (CIHT) . There would therefore be a lack of integration with established communities and supporting amenities. As set out above, the appeal proposal conflicts with Core Strategy Policy 17 – criteria a), (c), (e), and (i) and the requirements of the NPPF to achieve well-designed and healthy and inclusive places.

7.0 PLANNING BALANCE

- 7.1 Paragraph 11 d (ii) of the NPPF is engaged. Chorley does not have a five-year deliverable supply of housing plus 5% buffer (see General SOCG, CD 14.1). There is a 3.3 year deliverable housing supply over the period 2022 – 2027 based on the annual housing requirement of 569 dwellings, which includes a 5% buffer. Planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- 7.2 There is therefore a requirement to carry out a full ‘balancing exercise’ of the adverse impacts and benefits of the appeal proposal, and this will include (where relevant) consideration of the proposal’s compliance and/or conflict with Development Plan policies.
- 7.3 It is accepted, based on footnote 8 of NPPF Paragraph 11 d (ii), that as the most important policies for determining the application/appeal Core Strategy Policies 10 and 17 are out of date. As set out below these policies are though otherwise consistent with the requirements of the NPPF and weight can still be given to the policies of the Development Plan under the ‘tilted balance’.
- 7.4 Paragraph 9.8 of the Core Strategy explains that proposals for reuse and redevelopment of employment land and premises, including housing will be assessed under Policy 10, and that a balanced criteria based approach is needed. Core Strategy policy 10 sets out criteria that enable this assessment on existing employment sites and premises. If the criteria are satisfied then residential development should be allowed, the policy does not therefore provide a barrier to housing coming forward on a site.
- 7.5 The appeal site is unallocated within the development plan. Paragraph 123 of the Framework is directed at such sites and is summarised in Section 4 of my proof. Paragraph 122 of the Framework also explains that decisions need to reflect changes

in the demand for land and should be informed by regular reviews of both the land allocated for development in plans and of land availability. Consideration of demand for the appeal site for continued employment use in the light of thorough review of the requirements for such use has been appropriately considered by the Council in this case.

- 7.6 Section 5 of my proof, including paragraph 5.19, explains that the appeal site should be considered as a key economic site. Policy 10 should command significant weight in its application to the present appeal case because its approach is consistent with what is to be expected by the NPPF at paragraph 123 in relation to key economic sites.
- 7.7 Policy 17 is consistent with Section 12 of the NPPF, achieving well-designed places and sets out how proposals can achieve the requirements set out in the criteria of paragraph 130 of the NPPF.
- 7.8 I attach significant weight to both Core Strategy Policies 10 and 17.

Assessment against the Policies in the NPPF

- 7.9 The following assessment against the Policies in the NPPF is structured around the three overriding objectives for achieving sustainable development set out in paragraph 8 of the Framework.

Economic Objectives

- 7.10 As outlined in Section 4, Policies of the NPPF aim to build a strong, competitive economy (section 6) and paragraph 123 requires that key economic sectors and sites should not be undermined.

Economic Benefits

- 7.11 The November 2021 Economic Benefits Statement (CD 10.13) submitted with the application for the appeal proposal sets out (based on 120 dwellings) benefits associated with the construction phase and with the new housing – increased labour

supply, increased household expenditure, first occupation expenditure and contribution to Council Tax Income.

- 7.12 It is accepted that as result of the development (and any residential development) benefits such as construction jobs will be created and there is direct and increased household expenditure in the local economy. The estimated economic benefits are generic since they would be realised in substantially the same form wherever the development was located. Some benefits are temporary in nature, as they are related to the construction period. Some benefits relate to funding for the Council, although it is unclear what particular benefits would result in relation to this particular development proposal.
- 7.13 Economic benefits of the appeal proposal which are associated with the construction phase would be relatively short-lived. Whilst housing is important to the economy, the appeal proposal is substantially a residential scheme. In the overall scale of the economy in Chorley, the contribution of the economic benefits would be modest. I thereby attach limited weight to the economic benefits.

Economic Adverse Impacts

- 7.14 In the context of Framework paragraph 123, redevelopment of the appeal site for residential development would undermine a key economic site.
- 7.15 The appeal proposal would contribute to a shortage in employment land supply in the borough, harming economic growth. Chorley Borough has shortfalls in its employment land supply, both across the remainder of the Core Strategy period, to 2026, and onwards into the 2030s for the next Local Plan period. This further reduces capacity in the Borough to absorb losses to its employment land supply. NPPF policies seek to help create the conditions in which businesses can invest, expand, and adapt. The appeal proposal would result in the loss of employment land in a strong and attractive market area, in a Borough experiencing high occupancy levels and strong demand. The loss of the Former DXC Technology site would remove a valuable opportunity site for growth from this key employment area.

- 7.16 NPPF policies require that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development (paragraph 81).
- 7.17 Significant weight is given to Core Strategy Policy 10. As set out in Section 5 the appeal proposal does not satisfy the requirements of criteria (a), (c), (d), (g) and (h) of Core Strategy Policy 10. There is harm to the Development Plan. I attach significant weight to the economic adverse impacts.

Economic Summary

- 7.18 Overall there would be significant adverse economic impacts that would undermine the economic policies of the NPPF and Core Strategy Policy 10. On balance the economic adverse impacts would significantly and demonstrably outweigh the economic benefits.

Social Objectives

- 7.19 As outlined in Section 4 NPPF policies aim to: significantly boost the supply of housing; promote healthy, inclusive, and safe places; and achieve well designed places.

Social Benefits

- 7.20 The appeal proposals will provide 108 dwellings in total, including 13 affordable homes. Chorley does not have a five year supply of housing land and there is a pressing need for more affordable homes in the Borough. This is the principal benefit of the appeal scheme. Core Strategy Policy 1 sets out the locations for growth and investment across Central Lancashire. The site is within the mixed use Buckshaw Village Strategic Site (Policy 1(ciii)). The proposed development of 108no. dwellings clearly accords with this element of the development plan strategy for the area.
- 7.21 It is recognised that the delivery of market and affordable housing is a significant benefit and I attach significant weight to this. This has been agreed in the main

SOCG. The Council is making progress with the neighbouring authorities of Preston and South Ribble in the production of a new Local Plan which will include new site allocations for housing.

Social Adverse Impacts

- 7.22 The appeal site is isolated in locational terms. It is not an accessible location that promotes connectivity by sustainable modes of transport to key services and facilities. Such an approach to place making does not promote healthy and inclusive places as promoted in Framework Paragraph 82 and does not result in a development that functions well, as required by Framework paragraph 130.
- 7.23 Given the distances to services and facilities the appeal proposal will not support a healthy place. The distances set out in Section 6 of my proof will place reliance on use of the private car and do not encourage residents to walk to facilities. These distances to nearly all nearby local services and facilities are greater than the 800m distances set out in the National Design Guide. The use of active travel modes is important in achieving positive health outcomes. Similarly, this poor accessibility to services and facilities does not support an inclusive place. As outlined in Section 4 both 'Putting Health into Place' and 'Gear Change', the national walking and cycling strategy, highlight the importance of active travel and physical activity to people's health. Building for a Healthy Life does likewise and explains the importance of integrated neighbourhoods that avoid creating isolated and disconnected places.
- 7.24 Section 6 of my proof explains the harm that would result to criteria a, c, e, and i of Core Strategy Policy 17 to which full weight is given.

Social Summary

- 7.25 I attach significant weight to the housing delivery benefits associated with the appeal proposal. I also attach significant weight to the place making adverse impacts that would result from the proposal's isolated and disconnected location, as it will not achieve the Framework's requirements to create well-designed and healthy and

inclusive places. The development would be unlikely to function well over its lifetime because of its poor connectivity. Overall, I assess the social balance as neutral.

Environmental Objectives

- 7.26 NPPF policies aim to conserve and enhance the natural environment (section 15), meet the challenge of climate change, and reduce greenhouse gas emissions (section 14), make effective use of land (section 14) and promote sustainable transport (section 9).

Environmental Benefits

- 7.27 There would be a net improvement in amenity as a result of the appeal proposals, due to the provision of Public Open Space, a Local Equipped Area of Play and bringing the vacant site back into viable re-use. Through the creation of private rear and front gardens and a landscaped area of open space and planting of trees elsewhere on the site, a net gain in biodiversity is achieved.
- 7.28 The appeal proposal would result in the reuse of vacant land. Making as much use as possible of previously developed or 'brownfield' land is supported by the Framework at paragraph 119. Paragraph 120 sets out that substantial weight should be given to the value of using suitable brownfield land within settlements for homes and other identified needs. In this case it is a key economic site, an employment site in a Borough with a shortfall of employment land. There is an identified need for employment land and the site is not a suitable location for housing.
- 7.29 I attach limited weight to the environmental benefits.

Environmental Adverse Impacts

- 7.30 The use of unsustainable modes of transport would be encouraged given the lack of appropriate walking distances to local services and facilities. This does not serve to limit the need to travel, with resulting impacts on greenhouse gas emissions, or offer a genuine choice of transport modes. The NDG states that a well-designed

movement network provides a genuine choice of sustainable transport modes and limits the impact of cars by prioritising and encouraging walking, cycling and public transport. The proposed development would conflict with the NDG, which seeks to reduce reliance upon the private car and to move away from car use for short journeys.

- 7.31 I attach moderate weight to the environmental adverse impacts.

Environmental Summary

- 7.32 The environmental adverse impacts outweigh the environmental benefits.

Achieving Sustainable Development

- 7.33 The NPPF sets out that the purpose of the planning system is to contribute to the achievement of sustainable development (section 2, paragraph 7). The appeal proposal would not represent sustainable development considered against the requirements of the NPPF. Net gains would not be achieved against the environmental and economic objectives of the planning system.

Overall Planning Balance

- 7.34 On overall balance the economic, social, and environmental adverse impacts would significantly and demonstrably outweigh the economic, social and environmental benefits.

8.0 CONCLUSIONS

- 8.1 The adverse impacts of the appeal proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. The proposal's adverse impacts include the development's conflict with relevant Development Plan policies and NPPF policy to protect key economic sites support economic growth and achieve well-designed and inclusive/healthy places. Core Strategy Policies 10 and 17 are out of date under the tilted balance for this appeal proposal but are consistent with the NPPF. The appeal proposal is contrary to the development plan and material considerations reinforce the case for refusal.
- 8.2 For the reasons set out above, I respectfully support the view that this appeal should be dismissed.