

Report of the Chief Planning Officer

Report to Development Plan Panel

Date: 19th January 2016

Subject: Planning Application Decisions in the context of emerging Plans

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| Are specific electoral Wards affected? If relevant, name(s) of Ward(s): All . | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Are there implications for equality and diversity and cohesion and integration? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Is the decision eligible for Call-In? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Summary of main issues

1. Employment land is identified and allocated in the development plan to provide for Leeds' future employment needs, but occasionally developers seek permission for housing. The policy framework (national and local) seeks to protect employment land, but only where it is "deliverable".
2. A site at Scott Lane, Morley (AKA Hub 62, Bruntcliffe Road) was identified for employment use in the Site Allocations Plan (SAP) Publication Draft. As Members will be aware, the local planning authority has an obligation to determine planning applications submitted. Within this context, planning permission was given in November to develop the site for housing. At face value the planning application decision appears to contradict the decision to identify the site in the Plan. However, evidence submitted with the planning application was able to test more specifically the viability of employment development far more thoroughly than was possible for SAP preparation.
3. It is thought that most of Leeds' employment land allocations will be retained. Many sites are in locations where residential use would not be attractive; public consultation on the Site Allocations and Aire Valley Leeds Plans should reconfirm landowner support for sites; and the refresh of the Employment Land Review will check the appropriateness of the sites in Leeds' stock of supply. Losing this site and one or two others for employment means that Development Plan Panel will need to review the overall employment supply for the Submission version of the Site Allocations Plan.

Recommendation

4. Development Plan Panel is recommended to note the contents of this report.

1. Purpose of this Report

- 1.1. To respond to issues raised by Members concerning decisions taken on planning applications when development plan allocations are under preparation. This will be explored with particular regard to a recent planning permission for residential development of an employment allocation (ref 14/06825/OT).

2. Background Information

- 2.1. Planning authorities have responsibility to prepare development plans which identify and allocate employment land to meet their employment needs. Leeds' UDP allocated many employment sites and Leeds' Site Allocations Plan (SAP) and Aire Valley Leeds Area Action Plan (AVLAAP) under preparation at the moment are proposing to identify and allocate employment land. The Core Strategy sets the target of 493 hectares of general employment land to be identified or allocated.
- 2.2. In Leeds there is often interest in developing employment sites for housing development. In attractive locations housing development can often be more profitable than employment development. The Core Strategy has Policy EC3 (see below for full text) to manage the loss of employment land so that sites are retained in employment use where appropriate. The tests are different depending whether the employment land is identified or allocated in a plan or whether it is in existing use. The Policy was prepared in the context of national planning policy (NPPF) which expects land to be identified and allocated to meet local needs but recognizes that allocations may be developed for other uses if they are no longer achievable:

Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities (NPPF para 22).

- 2.3. A recent planning application for residential development of a UDP allocated employment site at Scott Lane, Morley tested Policy EC3. Members of Development Plan Panel had endorsed this site to be identified in the SAP (EG1-54 Hub62 Bruntcliffe Road) at Panel in June 2015. The site thus formed part of the Publication Draft of the SAP that was subject to public consultation in the autumn 2015. However, the planning application for residential development was permitted at Plans Panel (19th November 2015) raising issues about the weight that can be given to an emerging plan and the ability of the City Council to protect employment land generally.
- 2.4. It should also be noted that the site is already an employment allocation in the Unitary Development Plan (E4:47).

3. Main Issues

- 3.1. It is unavoidable that planning application decisions will have to be taken whilst new plans are prepared. Plan making takes time from scoping the plan, early consultation, options, draft publication plan, submission, examination, modifications and adoption.
- 3.2. It is often the case that new emerging policy will have a direct bearing on the considerations of a planning application. The amount of “weight” that can be given to emerging policy depends on how advanced the plan preparation is. There is national planning advice on the matter.
- 3.3. National policy on regard to be given to emerging plans is set out in Annex 1, paragraph 216:

From the day of publication [of the NPPF], decision-takers may also give weight (subject to other material considerations) to relevant policies in emerging plans according to:

- **the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);**
- **the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and**
- **the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).**

- 3.4. Further advice is given in National Planning Policy Guidance (Reference ID: 21b-014-20140306) about prematurity:

In what circumstances might it be justifiable to refuse planning permission on the grounds of prematurity?

Annex 1 of the National Planning Policy Framework explains how weight may be given to policies in emerging plans. However in the context of the Framework and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:

a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and

b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.

- 3.5. The above sets out the context for determining planning applications on the grounds of prematurity and refusals will have to bear this context in mind. In the case of Leeds' Site Allocations Plan it has not yet been submitted for examination.
- 3.6. Despite the conclusions above concerning emerging Plans, it should be noted that a number of Leeds' allocations already have statutory development plan status from their allocation in the Unitary Development Plan (UDP). As such, these sites will not have the vulnerability to challenge about prematurity that emerging sites have. Nevertheless they may have other vulnerabilities; one issue will be the long period since the allocation was made in 2001 which raises the question of why the site has not being attractive to the market for so long bearing in mind that the NPPF advises against the long term protection of sites (see paragraph 2.2 above).

Proposal for Residential Development on an Employment Allocation

- 3.7. The reasoning behind the recent permission (ref 14/06825/OT) for residential development on the allocated employment site at Scott Lane, Morley can be reviewed. Policy EC3 of the Core Strategy provided the basis for the decision.
- 3.8. Policy EC3 is as follows:

POLICY EC3: SAFEGUARDING EXISTING EMPLOYMENT LAND AND INDUSTRIAL AREAS

Part A: For all sites across the District outside of areas of shortfall

A) Proposals for a change of use on sites which were last used or allocated for employment to other economic development uses including town centre uses or to non-employment uses will only be permitted where:

(i) The proposal would not result in the loss of a deliverable employment site necessary to meet the employment needs during the plan period ('employment needs' are identified in Spatial Policy 9),

Or

(ii) Existing buildings and land are considered to be non-viable in terms of market attractiveness, business operations, age, condition and/or compatibility with adjacent uses,

Or

(iii) The proposal will deliver a mixed use development which continues to provide for a range of local employment opportunities and would not undermine the viability of the remaining employment site,

And where appropriate,

Part B: For sites in shortfall areas

B) Where a proposal located in an area of shortfall as identified in the most recent Employment Land Review would result in the loss of a general employment allocation or an existing use within the Use Classes B1b, B1c, B2 and B8, non-employment uses will only be permitted where:

The loss of the general employment site or premises can be offset sufficiently by the availability of existing general employment land and premises in the surrounding area (including outside the areas of shortfall) which are suitable to meeting the employment needs of the area.

- 3.9. Morley is not in an area of shortfall so Part A only applied. For understanding how Part A applied it is helpful to look at the supporting text to the policy. Paragraph 5.2.57 states that bullet point i) relates to employment allocations and other land identified in the Employment Land Review (2010) or future updates. It explains that employment needs are set out in Spatial Policy 9. This says that Leeds needs to find land for at least 493ha of general employment land. Bullet point ii) did not apply because Paragraph 5.2.57 goes on to say that this point concerns existing premises and land previously or currently used for employment, but which are not allocated. Bullet point iii) did not apply either because the planning application was for 100% residential.
- 3.10. Analysing bullet point i) further, development should not, "...result in loss of a deliverable employment site necessary to meet the employment needs during the plan period..." It was considered that the residential proposal at Scott Lane would have resulted in loss of an employment site required to meet Leeds' employment needs. The site had been allocated for employment in the UDP; it had been assessed as an appropriate site in the Employment Land Review 2010 and had been proposed as an identified general employment site in the SAP. Members of Development Plan Panel had supported its inclusion following public consultation and this was agreed by Executive Board in summer 2015. The site thus formed part of the overall employment supply set out in the Publication Draft of the SAP and the AVLAAP. In fact, the quantity of Leeds' employment supply as included in the Publication Draft Plans was only just sufficient, with only 3.37ha of surplus. With the removal of 7ha of general employment land at the Headley Hall site, the Plan will be in deficit, although this may be made up by emerging proposals. Nevertheless, it could be concluded that in terms of demand and supply the Scott Lane site was a necessary element of Leeds' general employment supply that ought to be retained.
- 3.11. However, a critical further consideration is whether it is a *deliverable* employment site. This word has a technical meaning. Footnote 11 to Paragraph 47 states:

"To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable."

3.12. Whilst Footnote 11 refers to housing, it has the same relevance to employment sites since the National Planning Policy Guidance for assessments of need and supply deals with housing and employment together.

3.13. Para 173 provides guidance on viability for plans and decision taking:

“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”

3.14. So local planning authorities need to have regard to deliverability and viability of site development both at the plan making and decision making stages. The assessment of the deliverability of Leeds’ employment sites was undertaken as part of the Employment Land Review 2010. Assessments of sites were undertaken during 2008 and 2009. The national tests were different then. Employment sites were expected to be suitable, available and attractive to the market. Given the size of Leeds with hundreds of sites to assess, the assessment of market attractiveness was inevitably designed with a level of assessment appropriate for high volumes of sites at a strategic level. The Council’s economic Services were brought in to give an opinion, based on known factors such as proximity to the strategic highway network, topography and highway access and their knowledge of the local property market. Such level of assessment is acceptable in terms of national planning guidance. Plan makers are urged to avoid expending significant resources on primary research and take a proportionate approach (Reference ID: 2a-014-20140306).

3.15. At the level of assessment expected for employment sites being advanced in the SAP the City Council could be reasonably confident that the sites are sufficiently suitable, available and achievable for the plan to be considered “sound”. Nevertheless, officers are currently undertaking a refresh of the Employment Land Review 2010 because the national planning guidance tests are now slightly different and because of the length of time between when the assessment was undertaken and the forthcoming examination of the Plan.

3.16. However, the assessments of “deliverability” for Plans will not be able to match the depth and quality of assessment that may be required as part of a planning application involving loss of employment land. This was the case with the planning application for Scott Lane where surveyors were commissioned to provide full financial appraisals of different permutations of industrial development. Likewise, the City Council was advised by the District Valuer Service which undertook a review of the applicants’ evidence. The District Valuer Service advised that employment development of the Scott Lane site would not provide sufficient competitive return and therefore would

not be viable. This was a key consideration in determining the planning application; it meant that the proposed loss of employment land was acceptable in terms of Policy EC3 of the Core Strategy.

Implications

- 3.17. A concern will be whether further allocated or identified employment sites may be lost from Leeds' supply? This will always be a possibility, but there are a number of factors that make the Scott Lane site exceptional. It is next to newly completed housing which has obviously been popular. It is owned by the same house builder that has been selling houses on the adjoining site. It has been available for a long time without active interest for employment development being pursued, apart from a temporary highways depot on part of the site. This raises questions against NPPF paragraph 22 which expects long term protection of sites without development interest to be avoided. Many of Leeds' employment sites are in locations in existing industrial areas which would not be attractive for residential development.
- 3.18. A further safeguard is the current work to refresh the Employment Land Review. The last review of the sites was some time ago in 2008 and 2009. A new assessment of sites is underway and, whilst it will not be possible to undertake full financial appraisals of development for all sites, the assessment will be able to identify sites of concern that might warrant further investigation, prior to the Council approving modifications to the SAP and AVLAAP.
- 3.19. Objections to employment sites may suggest that sites are not suitable, available or achievable. On sites where no objections are received this can provide confidence that the sites in the Site Allocations and Aire Valley plans will pass the examination and go on to be adopted. In the case of Scott Lane, Morley the landowner did submit an objection to the Publication Draft consultation of the SAP. This suggested that the site was not available or deliverable and included material on viability. If the Council had not approved planning permission for residential development in November 2015, it is quite likely that the land owner would have challenged the proposed employment use at the examination of the SAP.
- 3.20. Once the Plans are adopted, Policy EC3 of the Core Strategy will be able to offer greater protection to allocated and identified employment sites. But even then, the protection will still be subject to the policy tests. If evidence can be provided that employment development is not "deliverable" this will have to be considered and a decision taken in accordance with Policy EC3. This is an inevitability of national planning policy.
- 3.21. Scott Lane will not be the only employment site to be lost from the supply. The Headley Hall new settlement site included 7ha of employment land which has been lost as a result of the withdrawal of the site. Also, some of the employment supply comes from identified sites that had planning permission for employment use. Part of the end-of-year review will ascertain where new permissions have been given and others dropped out or been developed for other uses. It is known that Burberry's interest in development in Holbeck Urban Village includes plans for new general employment provision.

- 3.22. It would not be appropriate to undertake a review of alternative employment sites in the Outer South West area only at this point in time. Unlike for housing, the requirement for employment land of the Core Strategy relates to the whole of Leeds rather than for HMCAs. Hence, the sufficiency of supply needs to be based on a city-wide perspective. A review of the overall position will need to be presented to a future Development Plan Panel to consider modifications to the Site Allocations Plan and Aire Valley Leeds Area Action Plan, where necessary.

4. Consultation and Engagement

- 4.1. Both plan making and decision taking on planning applications require a level of public consultation to try to notify and involve as necessary those interests likely to be affected.

5. Equality and Diversity / Cohesion and Integration

- 5.1. In the preparation of the SAP and AVLAAP equality impact assessments have been undertaken to understand and deal with equality, diversity, cohesion and integration issues. The subject of this report does not raise any additional issues.

6. Council Policies and City Priorities

- 6.1. The Core Strategy, the emerging SAP and AVLAAP, play a key strategic role in taking forward the spatial and land use elements of the Vision for Leeds and the aspiration to the 'the Best City in the UK'. Related to this overarching approach and in addressing a range of social, environmental and economic objectives, these Plans seek to implement key City Council priorities. These include the Best Council Plan (2013-17) (in particular Objective 2: to 'promote sustainable and inclusive economic growth').

7. Resources and value for money

- 7.1. In terms of planning for employment, the inclusion of employment land in development plans forms part of the overall budget for the preparation of statutory Development Plan Documents. Similarly, the consideration of planning applications involving loss of employment land is part of the overall budget for dealing with planning applications and appeals.

8. Legal Implications, Access to Information and Call In

- 8.1. There are no particular legal implications. The report is not eligible for call in as no decision is being taken.

9. Risk Management

- 9.1. The risk that the SAP and AVLAAP are found unsound because of a lack of supply of employment land needs to be considered. The future round-up of site supply to Development Plan Panel will help to ensure enough land is identified and allocated.

10. Conclusion

- 10.1. The loss of employment land allocations to other development may sometimes be unavoidable if the criteria of Core Strategy Policy EC3 can be satisfied. It is expected that such losses will be exceptional and a sufficient supply of employment land can be maintained.

11. Recommendation

- 11.1. Development Plan Panel is recommended to note the contents of this report.