

22nd September 2021

Kirklees Council  
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FAO Victor Grayson, Planning Officer

Dear Kirklees Council

## Land East of Leeds Road, Chidswell and Land South of Heybeck Lane, Chidswell (Planning Application References 2020/60/92331/E and 2020/60/92350/E)

Please find enclosed a response to the letter dated 29 April 2021 which raised a number of legal issues with the applications.

The Church Commissioners and their consultant team have carefully considered each of the matters raised within the representation and have provided a response below.

In addition, we note that the representation states that transport and ecology specialists have been instructed to review the transport and ecology evidence submitted in support of the applications and we will respond to any representations that may be submitted in due course.

### General approach to the environmental impact assessment

Paragraph 6 states:

*6. In the instant case, there are no factors whatsoever which point to the two applications for planning permission comprising two distinct developments, save for the fact that the applicant has decided to bring them forward as two applications. The applicant could just as well have made a separate application for each parcel or phase of the MXS7 development, with the parcels small enough to escape the need for EIA completely. As things stand, an ES has been submitted for the Mixed Use Scheme, which considers type 2 interproject cumulative impacts with the Residential Scheme, but no ES has been submitted for the Residential Scheme. The effect of this is to downplay the potential impacts that might have been shown to arise had a fully comprehensive ES been submitted for the MXS7 development as a whole.*

It is agreed that the two schemes are in common ownership and part of the same allocation. The outline applications were submitted together; however, they are intended to come forward as stand-alone projects.

This approach to the delivery of the allocation was agreed during the Local Plan Examination process, for which the Church Commissioners submitted an indicative delivery strategy and trajectory. The strategy considers the provision of key infrastructure for each development including site access and internal access roads. To support the strategy

the Church Commissioners proposed to progress the development of 'Heybeck Lane' as a separate outline application to facilitate early delivery, providing the potential for the council to determine the application separately from the Leeds Road application. This development, with access from Heybeck Lane, is a stand-alone development project, which can and will be implemented individually.

The Heybeck Lane site forms part of a wider allocation and therefore to meet the requirements set out by the Council, a Masterplan Framework has been prepared to demonstrate how the allocation as a whole could eventually be developed. In meeting the requirements set out by the Council for the allocation, consideration has been given to the composition and cumulative effects across both Leeds Road and Heybeck Lane applications.

The Leeds Road Environmental Impact Assessment considers the proposed development at Leeds Road, in combination with identified cumulative developments which would be expected to lead to increases in housing provision, employment and expenditure, for example, and potential cumulative impacts. The Heybeck Lane development has been considered within the submitted EIA as a cumulative development and therefore any likely significant effects on the environment arising in this respect are set out and properly considered in the submitted Leeds Road Environmental Statement (ES). The environmental effects of the Heybeck Lane application have been fully considered in a suite of supporting technical documents submitted with the planning application and the effects have therefore not been downplayed. The Leeds Road ES demonstrates that the Heybeck Lane development taken in addition to the Leeds Road development does not alter the assessment.

## Approach to climate impacts in ES

Paragraphs 8 and 9 state:

*8. No assessment of the greenhouse gas emissions of the development, as a result of either its construction or its operational phase, is included in the ES. Instead, the applicant has stated "it was agreed that Climate Change would be dealt with primarily in a Sustainability Statement, however as climate change is highly relevant to flood risk this has been covered within the Flood Risk Assessment to a degree and within the cumulative impacts chapter".*

*9. We have not seen a copy of the correspondence between the council and the applicant in which the council agreed to revise the requirements of its scoping opinion in relation to climate impacts. However, there is no reason why the climate impacts of the development should be scoped out in the manner now proposed by the applicant. In particular, the development will entail a significant amount of greenhouse gas emissions in the production of the materials used in its construction. A sustainability statement may put forward ways in which the climate impacts of the development may be mitigated, but that only addresses one aspect of the EIA process. The ES must set out what the greenhouse gas emissions of the development would be before suggesting what forms of mitigation might be used to lessen them. Without such an assessment, the ES is incomplete and should be supplemented in accordance with Regulation 25.*

Following the formal scoping request further correspondence took place with the Local Planning Authority in which it was agreed that the climate impacts of the Leeds Road development would be considered within individual chapters rather than as a standalone chapter where there was potential for significant effects. In addition, it was agreed that a Sustainability Statement would be produced and submitted as part of the suit of technical documents with the Leeds Road planning application. This statement was to address any climate related effects that were not likely to be significant. As a result of this further correspondence with the local planning authority, the climate impacts of the scheme were considered in the following chapters of the submitted Environmental Statement: Chapter 11, Flood Risk and Drainage and Type 1 Cumulative Effects.

This is considered a reasonable approach to the ES for this allocated site taking into account the nature of the project, its location and resilience to climate change and applying professional judgement and knowledge. It was not

considered reasonable or indeed helpful to require a quantitative assessment of greenhouse gas emissions, not least as at this stage. There is no information available relating to the construction and materials of the scheme or indeed the future occupiers of the employment element and any such assessment would simply not provide any further understanding. The work undertaken in relation to potential climate impacts and presented in the application submission is consistent with our scoping discussions with Kirklees Council.

## The non-residential uses

Paragraph 10 states:

*10. There is some confusion in the application documents as to the quantum of employment floorspace proposed in the Mixed-Use Scheme. The application form states that 122,500 sqm of B1(a) office use are proposed, with no other employment uses. The planning statement however states that there will be “up to 35ha of B1(a and c), B2 and B8 uses”. We assume that the reference to 35 hectares is a mistake – this equates to 350,000 sqm, well over twice the employment floorspace proposed by the MXS7 allocation. This error in the description of development should be corrected as soon as possible and a clarification statement should be published on the application website to explain exactly what quantum of employment floorspace is proposed.*

The reference to 35 hectares relates to the gross area of the employment land within the allocation, as outlined in paragraph 6.1 in the Spatial Development Strategy within the Kirklees Local Plan – Strategy and Policies (pages 31-33).

The amount of employment floorspace will be limited to 122,500 sq. m as set out within the Kirklees Local Plan – Allocations and Designations document (Allocation Site MXS7). This upper floorspace limit formed the basis of the technical assessments submitted with this planning application. We anticipate that this maximum employment floorspace amount will be secured by an appropriately worded planning condition attached to any outline planning permission.

There is no confusion on this matter.

Paragraphs 11-17 state:

*11. We turn now to the sequential assessment submitted in support of the application, which comprises section 6 of the planning statement. The sequential assessment is stated as relating to the proposed local centre only (para 6.5). That is in spite of the fact that there are other main town centre uses which are not included in the local centre. In particular, any office use which comes forward as part of the employment floorspace would be a main town centre use outside of a town centre, which would be subject to the need for sequential assessment in accordance with paragraph 86 of the NPPF and Policy LP13 of the council’s local plan.*

*12. Turning to the sequential assessment that the applicant has carried out, the applicant states that the 500 sqm of retail floorspace proposed as part of the local centre is the only main town centre floorspace in the proposed local centre, but nevertheless concludes that it is appropriate to carry out the sequential assessment on the basis of the total local centre floorspace of 1,500 sqm. The basis for this approach is, according to the applicant, the Rushden Lakes appeal decision, which (again, according to the applicant) established that “various uses should not be disaggregated”. That is incorrect.*

*13. First of all, the approach to disaggregation in Rushden Lakes was that, in that case, it was not appropriate to disaggregate the main town centre uses proposed as part of the development. There was no suggestion that other uses which are not main town centre uses should also be required to be accommodated in any candidate sequentially preferable sites.*

*14. Second, Rushden Lakes did not establish (nor could it have) that disaggregation is never appropriate. The requirement is for the applicant to demonstrate reasonable flexibility as to format and scale. In some instances, that*

*might include looking to whether individual elements in the development might be accommodated independently from other parts of the development. For example, in the Kingswood appeal decision<sup>1</sup> (for a retail centre on the outskirts of Hull) the inspector concluded that disaggregation would appropriate: “In this case there is no particular evidence that it would be commercially or functionally necessary to accommodate a variety of individual and as yet unidentified comparison goods retailers either in only one building or on only one site in the City Centre.” In the current case, no operator has been identified for the retail space proposed and there is no commercial justification for the need for the floorspace to be co-located in a single building or site. Without some compelling justification to the contrary, the “reasonable flexibility” required for the sequential assessment should consider the possibility of accommodating the development across multiple sites or buildings.*

*15. These are fundamental issues in the sequential assessment: on the one hand, it ignores the proposed office floorspace but then on the other assumes that the non-main town centre uses in the local centre should be included. It also fails even to consider the possibility of disaggregating the uses across multiple sites or buildings.*

*16. More than this, however, when the assessment goes on actually to consider the potentially sequentially preferable sites, two of which are currently being marketed and which are therefore available, and all of which could accommodate the whole of the local centre proposed, the applicant dismisses each because it is not located in an area which would be convenient for future residents and users of the proposed development. This completely misunderstands the purpose of the sequential test. The potential sequentially preferable sites in question are in the town centre; that is why they are sequentially preferable. The entire purpose of the sequential test is to direct main town centre uses to the town centre. If any sequentially preferable site could be dismissed purely on the basis that it was not “convenient” enough on the developer’s measure of convenience, then there could never be a sequentially preferable site. That is because town centre sites are in general likely to be less convenient than out of centre sites.*

*17. These issues must be resolved before planning permission can be granted for the Mixed Use Scheme.*

Paragraph 86 of National Planning Policy Framework (NPPF) requires Local Planning Authority’s to apply a sequential test to planning applications for “main town centre uses” which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

Main town centre uses comprise retail (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities). Whether a sequential assessment is required by national policy turns on whether the application accords with the Development Plan.

The Spatial Development Strategy notes that the focus of new retail, leisure, office, cultural and tourist facilities development is in the district’s identified centres and on identified mixed use allocations, taking advantage of existing services and high levels of accessibility.

Kirklees Local Plan - Allocations and Designations places site MXS7 under “Mixed use allocations” – which under the Spatial Development Strategy supports retail and offices. Policy LP67 which governs these allocations states that: “The sites listed below are allocated for mixed use development in the Local Plan. Planning permission will be expected to be granted if proposals accord with the development principles set out in the relevant site boxes, relevant development plan policies and as shown on the Policies Map”.

Policy MXS7 for the allocation states “In accordance with LP13 (part a, paragraph 4) the creation of a new local centre commensurate with the scale of growth proposed will be supported, subject to the sequential test and impact assessment”. There is no requirement for the “employment” to be subject to a sequential test. The indicative Local

Plan “employment” capacity is 122,500 sqm. Compare this for example to certain of the other allocations, where they are wholly or partly expressly subject to Policy LP13.

In conclusion, there is not any policy requirement for a sequential test for the employment / office uses for allocation MXS7.

Turning to the Local Centre, Policy LP13 states that Local Centres should provide top-up shopping and local services particularly food and drink. Supporting paragraph 9.13 notes that the Chidswell site allocation (MXS7) proposes ‘a significant level of residential growth with the absence of an existing local centre nearby’. It further states that in: “accordance with LP13 (Part A, paragraph 4) the creation of a new local centre commensurate with the scale of growth proposed will be supported, subject to the sequential test and impact assessment.” This is cross referenced in allocation Policy MX7, which supports in principle the creation of a new Local Centre at the site subject to the sequential test and impact assessment. Policy LP13 states that: “The scope and content of any Sequential Test shall be agreed with the council and shall be reflective of the scale, role and function of the proposal.”

The Leeds Road application proposes a local centre in accordance with the Development Plan and which comprises a limited amount of retail and leisure floorspace (Use Classes E(a,b,c) (up to 500 sq. m.). This is considered commensurate with “top-up shopping and local services, particularly food and drink” to serve the new development. There is therefore no justification for disaggregating this element of the Local Centre and requiring it to be tested in isolation against any existing local centres which, as acknowledged in the Local Plan, would be remote from the development proposals and not meet the fundamental need for such facilities. To require such an approach would be irrational and contrary to sustainability principles.

Furthermore, the scope and content of the sequential assessment has been agreed with the LPA – in accordance with policy requirements - and an impact assessment is not required for the proposal under Policy LP13.

The sequential assessment accords with the Development Plan. We anticipate that the LPA will secure the upper floorspace limit for retail and leisure use through an appropriately worded planning condition.

## Affordable housing

*18. We note that at present the applicant is not able to demonstrate compliance with the council’s policy that 20% affordable housing should be provided on schemes of more than 10 residential units. Paragraph 5.155 states that:*

*“The proposals will provide a level of affordable housing on Site. The amount and tenure split will be subject to discussion and agreement with the LPA during the determination of this application and will be secured through a s106 agreement.”*

*19. We are not aware of any viability evidence having been published setting out the level of affordable housing that would be appropriate in the case of either the Mixed Use Scheme or the Residential Scheme. Such evidence should be published in accordance with section 100D of the Local Government Act 1972. Failure to do so may give rise to the quashing of any planning permission (see for example Holborn Studios v LB Hackney [2020] EWHC 1509 (Admin)).*

As noted within the Planning Statement, the amount and tenure split are to be discussed with the Local Planning Authority in due course.

## Conclusion

In conclusion, we have responded to all the issues raised within the letter dated 29 April 2021 and do not consider there to be any reason to amend or update the planning application submissions. If you have any questions relating to the response above, please do not hesitate to contact us.

Yours sincerely

**Nolan Tucker**  
For Deloitte LLP