

**Planning application FUL/2022/0149 – Hollins Cross Farm**

**REPORT TO FULL COUNCIL**



<b>DATE</b>	<b>07/06/2023</b>
<b>PORTFOLIO</b>	<b>Council Decision</b>
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**PURPOSE**

1. To introduce the report for the planning application FUL/2022/0149 which is referred to the Full Council from the Development Control (DC) Committee.
2. To seek a determination of the planning application, reference FUL/2022/0149.

**DC COMMITTEE RESOLUTION**

**3. Minute 123. FUL/2022/0149 - Hollins Cross Farm, Woodplumpton Road, Burnley**

*Minutes:*

*Hollins Cross Farm, Woodplumpton Road, Burnley Town and Country Planning Act 1990 Hollins Cross Farm, Woodplumpton Road, Burnley*

*Prior to the vote on the resolution to refuse the planning application the Committee was advised by the Head of Housing and Development Control that the committee would not have delegated authority to pass such a resolution as this would be a decision that, in his professional opinion, was substantially contrary to the Local Plan and Local Plan Policies. The committee was further advised by the Senior Solicitor that, under the Council's constitution, the Committee did not have delegated powers to pass a resolution to refuse as this would be a decision that was substantially contrary to the Local Plan. The vote to refuse would be taken but, if carried, it would have no effect. The decision would be referred to the Head of Legal and Democratic services to confirm in*

*writing within 5 working days after the decision of the Committee, in consultation with the Chair, whether she agreed with the view of the officers. If she agreed that the decision was substantially contrary to the local plan it would be referred to the Full Council for determination.*

*DECISION The resolution to refuse planning permission was carried and the reasons provided were:*

*the application did not meet the requirements of Burnley's Local Plan 2018 policies CC4 Development and Flood Risk and CC5 Surface Water Management and Sustainable Drainage Systems (SuDS) due to the flooding risk that this development would create for the local area.*

*In accordance with the legal advice provided and Part 3 of Burnley Borough Council's Constitution at Section A.1.a.3 - Delegations to the Development Control Committee, the matter stands referred to the Head of Legal and Democratic Services, who (following consultation with the Chairman (or in his or her absence the Vice Chairman) of the Development Control Committee), will confirm in writing that she agrees with the view of the Head of Housing and Development Control no later than 5 working days after the day of the meeting, then the matter will be referred to Full Council for determination.*

On 16<sup>th</sup> March 2023 the Head of Legal and Democratic Services following *consultation* with the Chair of Development Control Committee agreed with the view of the Head of Housing and Development Control, and accordingly the planning application is referred to Full Council for determination.

#### **OFFICER RECOMMENDATION**

4. Delegate authority to the Head of Housing and Development Control to approve the development subject to the completion of a s106 Agreement to secure contributions towards:
  - Education £569,319
  - 10% affordable housing
  - Public Open space off site contribution £75,000
  - Biodiversity off site contribution: £384,600
  - Highways off site contribution £60,000 towards bus service improvements

- Highways off site contribution £70,000 towards upgrade of junction
- £26,140 Bin provision
- Open Space Management and Maintenance Plan
- Management and Maintenance details for any sections of highways and the SUDS within the development which are not to be adopted in perpetuity.

## REASONS FOR RECOMMENDATION

5. To ensure effective decision making, taking into account the adopted local plan, the merits of the proposal and the concerns that have been raised by Members.

## SUMMARY OF KEY POINTS

6. The application would normally be determined by the Council's DC Committee but is referred to the Full Council for determination because the resolution of the DC Committee which would have been to refuse planning permission would be substantially contrary to the adopted local plan. The Council's constitution does not give delegated authority to the DC Committee to make a decision in circumstances where it would be substantially contrary to the local plan. The Council's Head of Legal and Democratic Services in her decision of 16<sup>th</sup> March 2023 agreed with the Head of Housing and Development Control that to refuse the planning application for the reasons given would be a decision that is substantially contrary to the Local Plan. The reasons were;
  - *The application site is allocated as a housing site in the Local Plan.*
  - *The planning application meets and, in some aspects, exceeds the requirement of the Local Plan.*
  - *There are no objections from the Local Lead Flood Authority (LLFA) who is responsible for managing flood risk for all sources. They are a statutory consultee.*
  - *In addition, the Council has had the benefit of a report from SWECO and a letter from LDE.*
  - *There are no objections from United Utilities.*
  - *The application has been assessed under policy CC4 of the Local Plan and the Council is satisfied that paragraph 1 is not engaged as the correct discharge of fully satisfied conditions attached to the report would address any increased flood risk.*
  - *A site-specific flood risk assessment has been carried out under CC4 (6)(a) to establish whether the proposed development can provide appropriate mitigation measures to deal with potential risks and effects.*
  - *It has been determined that mitigation is required to make any identified impacts acceptable, and these have been addressed by the inclusion of conditions*

*recommended by the LLFA, (two of which are pre- commencement conditions) which are to be attached to the planning permission. This is in accordance with CC4 (8).*

- *With the addition of these conditions the Planning Officers consider the flood risk on site is sufficiently controlled and mitigated. In fact, at Page 69 of the report the Case Officer considers that the proposal is likely to improve the current flooding situation.*
  - *The expressed reason for refusal was on the basis that the application did not meet the requirements of Burnley's Local Plan 2018 policies CC4 Development and Flood Risk and CC5 Surface Water Management and Sustainable Drainage Systems (SuDS) due to the flooding risk that this development would create for the local area.*
  - *The Planning Officers consider that with the addition of the conditions recommended by LLFA the flood risk on site is sufficiently controlled and mitigated.*
  - *The objectors have not shown the new development will result in an increased flood risk, only that it might. The report from AEGAEA recommends extra investigations are required. This however is not the view of the experts who have advised the Council.*
  - *It is the view of the Head of Housing and Development Control that to refuse the application on the grounds of an increased perceived flood risk without any evidence of this being the case cannot be substantiated.*
  - *In relation to policy CC5, the Head of Housing and Development Control points out that sustainable drainage is dealt with by the inclusion of the conditions recommended by the LLFA.*
  - *A refusal linked to Policy CC5 cannot be substantiated as the surface water/ drainage conditions already address the matters covered in Policy CC5.*
7. The application has been referred to DC Committee on 3 occasions. At the committee meeting on 8<sup>th</sup> December 2022 the application was deferred to allow further consideration of the application. The minuted decision of this meeting is: *"That the application be deferred until the next meeting of the Committee in order to seek further information from the applicant relating to:*
- *Local Plan Policy NE1 – Biodiversity. To clarify the net position following the late submission on behalf of some residents.*
  - *Flood risk/surface water drainage - specifically in relation to the SUDs across the development – capacity and flooding and how this will be mitigated. Also post construction management and maintenance of the SUDs, including safety measures.*
  - *Local Plan Policy HS4 Part 4 - The plans should also include accessible homes as well as adaptable homes of which there are a number included.*
  - *Local Plan Policy HS4 Part 7 - accessibility of the Public Open Space contribution, particularly related to a stepped footpath. Also the off-site POS contribution at Scott Park –could this be provided closer (Rosehill Road)*

- *Local Plan Policy SP5 Parts 5a and 5b – Accessibility – Transport Plan - Clarity re. numbers and safety management. How will the works manage traffic and improve highway safety?”*

8. Following this deferral work was carried out by the applicant to provide clarity on these issues and the application was referred back to DC committee on 18<sup>th</sup> January 2023. A drainage report by AEGAEA was commissioned by objectors before the meeting, which not all members of the committee had had sight of. This raised questions about the content of the developer’s drainage reports. The minuted decision of that meeting is *“That the item be deferred to allow time for all parties to be provided with a copy of the late submission and for the subsequent response from the Lead Local Flood Authority to be included in the report for consideration by the committee.”*
9. Following this deferral the Council commissioned their own independent drainage report from SWECO. This report concluded that groundwater and any associated potential flood risk is not expected to be a significant constraint to the development. AEGAEA and the applicant’s drainage consultant LDE also commented on the SWECO report. *(All drainage reports are available on the application file on the Council’s website. A link to the file is available at the end of this report)*. Whilst the AEGAEA reports recommended that the risk of groundwater flooding needs to be considered in greater detail officers remained satisfied that the conditions that would be attached to an approval sufficiently deal with drainage matters. The application was referred back to DC committee on 9<sup>th</sup> March 2023 and the decision of this meeting was a resolution to refuse for the reason at paragraph 3 of this report.
10. Since the DC committee meeting in March the applicant has been asked to consider carrying out the additional testing in relation to groundwater over the winter months. In response the applicant has offered an additional condition:

*“The construction of any residential building within phase 2 (as shown on phasing drawing HC/B-ERC-PHPO2), other than enabling works, shall not be permitted until the attenuation basin has been formed and documented within a site specific verification report evidencing that the factors causing the standing water in this area have been removed.”*

*Reason: To ensure satisfactory sustainable drainage facilities are provided to serve the site in accordance with Policy CC4 of the adopted Burnley Local Plan and the provisions of the National Planning Policy Framework.*

In summary, there is an area of standing water to the North of the site. This water has been present at the times when testing has been carried out and none of the tests have shown high ground water elsewhere on the site. The rationale for the additional condition is that further groundwater testing would be impeded by the presence of this standing water. It is therefore considered preferable to form the drainage basin in the wetter winter months that can be monitored and if groundwater draws into the basin this will determine the presence of ground water which can be mitigated if necessary. This condition is intended to give additional comfort to members that any ground water issues encountered will be adequately dealt with.

A specialist independent engineering consultant will oversee the formation of the basin and prepare the verification report. This report would confirm that either,

- a. The basin has been formed as designed without interfering with ground water or,
- b. The basin has been altered to avoid any interference with groundwater whilst still retaining adequate capacity to deal with surface water.

If the development is approved this condition would ensure that only 1/3 of the houses within the development, which do not rely on the basin for drainage, can be constructed prior to the construction of the basin and completion of the verification report. Satisfactory discharge of this condition will ensure there is no issue with groundwater.

## OFFICER COMMENTS ON REASON FOR REFUSAL

### 11. The DC committee's resolution to refuse permission is based on one reason:

*The application does not meet the requirements of Burnley's Local Plan 2018 policies CC4 Development and Flood Risk and CC5 Surface Water Management and Sustainable Drainage Systems (SuDS) due to the flooding risk that this development would create for the local area.*

The NPPF states:-

"Plans and decisions should apply a presumption in favour of sustainable development. For decision-taking this means: approving development proposals that accord with an up-to-date development plan without delay".

Applying the presumption in favour of sustainable development (as required by the NPPF) which is the approach taken in Policy SP1, proposals that are in accordance with Burnley's Local Plan should be approved without delay. This is stated in Policy SP1:-

"Planning applications that accord with the policies in this Local Plan (and, where relevant, with policies in any neighbourhood development plans) will be approved without delay, unless material considerations indicate otherwise".

The agenda report examines the proposal and concludes firmly that the proposed development accords with the policies of the local plan and in some aspects exceeds them. This was the position when the Council have previously considered the application at the Development Control Committee on 8<sup>th</sup> December 2022, 18<sup>th</sup> January 2023 and 8<sup>th</sup> March 2023 and this position is further affirmed by the changes that have been recently made through the suggested addition of another condition discussed at paragraph 10 above.

As such, Policy SP1 and the NPPF indicate that the development should be approved without delay, but it is relevant to consider whether there are any other material considerations which indicate otherwise.

Members of the DC committee who voted to refuse the application considered that to approve the application would be in conflict with local plan policies CC4 and CC5 with relation to increased flood risk. No reference was made to any other matters in the reason for refusal.

**Policy CC4: Development and Flood Risk**

- 1) *The Council will seek to ensure that new development does not result in increased flood risk from any source or other drainage problems, either on the development site or elsewhere.*
- 2) *No development should take place within 8m of the top of the bank of a watercourse either culverted or open, unless this approach is supported by the Environment Agency or Lead Local Flood Authority. Proposals involving the creation of new culverts (unless essential to the provision of access) will not be permitted.*
- 3) *Culverts should be opened up where possible to improve drainage and flood flows.*

**Sequential Test**

- 4) *New development on sites not allocated for the use proposed in this Plan, or which do not comprise minor development or changes or use, should be located within Flood Zone 1 unless the Sequential Test as set out in the NPPF and NPPG has been satisfied.*

**Exception Test**

- 5) *Development in Flood Zones 2, 3a or 3b on allocated or unallocated sites will only be acceptable where it is of a compatible type as set out in the NPPG (Tables 2 and 3), satisfies the Exception Test set out in the NPPF and NPPG and meets criteria 6b ii) to vi) below.*

**Site Specific Flood Risk Assessments.**

- 6) *Development proposals on allocated or unallocated sites:*
  - a) *of 1 hectare or greater in Flood Zone 1, or in an area within Flood Zone 1 which has critical drainage problems or includes an ordinary watercourse; or*
  - b) *in Flood Zones 2, 3a or 3b;**should be supported by a site specific Flood Risk Assessment taking account of the Council's Strategic Flood Risk Assessment (or the most up to date flood risk information available) along with any evidence from the Lead Local Flood Authority (Lancashire County Council), and the Environment Agency to establish whether the proposed development:*
  - i) *is likely to be affected by current or future flooding from any source, taking into account the increased risk associated with climate change;*
  - ii) *will increase flood risk elsewhere or interfere with flood flows;*
  - iii) *can provide appropriate mitigation measures to deal with potential risks and effects;*
  - iv) *would be likely to preclude the future implementation of necessary flood risk measures, including the improvement of flood defences;*
  - v) *can reasonably maintain access and egress at times of flood; and*
  - vi) *can be accommodated within the capacity of the water supply, drainage and sewerage networks.*
- 7) *Where flood defences exist that protect development sites, any site specific Flood Risk Assessment required should also assess the risk overtopping of defences in extreme events and possible breach analysis evidence.*
- 8) *Where mitigation is required to make any identified impacts acceptable, these will be secured through conditions and/or legal agreement, including where necessary through planning contributions.*

**Policy CC5: Surface Water Management and Sustainable Drainage Systems (SuDS)**

- 1) *In order to assist in minimising surface water run-off from sites:*
  - a) *Existing green infrastructure should be retained and integrated and where possible enhanced in line with Policy SP6; and*

- b) The use of permeable materials should be maximised.*
- 2) Surface water should be managed at source and not transferred and discharged. The following order of priority for any water discharge should be adopted:
  - a) A permeable soakaway or some other form of infiltration system*
  - b) An attenuated discharge to a watercourse*
  - c) An attenuated discharge to surface water sewer*
  - d) An attenuated discharge to combined sewer (this should be considered the last resort)**
- 3) In respect of major developments, SuDS will be required and surface water discharges from developed sites should be restricted to QBar rates (mean annual greenfield peak flow) drainage strategy should be submitted detailing the following:
  - a) The types of SuDS and/or measures;*
  - b) Hydraulic design details/calculations;*
  - c) Pollution prevention and water quality treatment measures together with details of pollutant removal capacity as set out in the current CIRIA SuDS Manual C753 or equivalent and updated local or national design guidance; and*
  - d) The proposed management and maintenance regime for the lifetime of the development.**

Officers consider that the proposal is in accordance with these drainage policies.

The application has been assessed under policy CC4 of the Local Plan and the Council is satisfied that paragraph 1 is not engaged as the correct discharge of fully satisfied conditions attached to the report would address any increased flood risk.

A site-specific flood risk assessment has been carried out under CC4 (6)(a) to establish whether the proposed development can provide appropriate mitigation measures to deal with potential risks and effects. It has been determined that mitigation is required to make any identified impacts acceptable, and these have been addressed by the inclusion of conditions recommended by the LLFA, (two of which are pre-commencement conditions) which are to be attached to the planning permission. This is in accordance with CC4 (8).

In relation to policy CC5, that sustainable drainage is dealt with by the inclusion of the conditions recommended by the LLFA. A refusal linked to Policy CC5 cannot be substantiated as the surface water/ drainage conditions already address the matters covered in Policy CC5.

Taking into consideration the technical reports submitted with the application and the addition of the conditions (24 and 25 contained within the full suite of conditions within the DC agenda reports attached as background papers) the Planning Officers consider the flood risk on site is sufficiently controlled and mitigated. In fact, at Page 69 of the report the Case Officer considers that the proposal is likely to improve the current flooding situation. Officers are satisfied that the conditions included in the agenda report to committee would adequately deal with drainage matters and the additional condition offered will give extra certainty.

Policy SP1 projects a positive approach that reflects the presumption in favour of sustainable development which the NPPF affirms means approving development proposals that accord with an up-to-date development plan without delay. Policy SP1 therefore indicates that this proposal should be approved without delay.



## **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

12. Members are asked to consider Counsel's advice at agenda item 7 (Private Agenda- subject to legal and professional privilege and available to Members of Burnley Council only)

## **POLICY IMPLICATIONS**

13. Members are asked to consider Counsel's advice contained at agenda item 7 (Private Agenda- subject to legal and professional privilege and available to Members of Burnley Council only)

## **DETAILS OF CONSULTATION**

14. None

## **BACKGROUND PAPERS**

15. Application file [FUL/2022/0149 | Full planning application for the erection of 200 dwellings and associated works. | Hollin Cross Farm Woodplumpton Road Burnley Habergham Eaves Lancashire BB11 3RS](#)

## **FURTHER INFORMATION**

**PLEASE CONTACT: Laura Golledge**

**ALSO: Paul Gatrell**