

PLANNING APPLICATION FUL/2022/0629 – Land west of Heckenhurst Avenue, Brownside, Burnley

REPORT TO FULL COUNCIL



DATE	17th April 2024
PORTFOLIO	Council Decision
REPORT AUTHOR	Janet Filbin
TEL NO	01282 475896
EMAIL	jfilbin@burnley.gov.uk

PURPOSE

1. To introduce the report for the planning application FUL/2022/0629 which is referred to Full Council from the Development Control (DC) Committee.
2. To seek a determination of the planning application, reference FUL/2022/0629.

RECOMMENDATION

3. Minute 76. FUL/2022/0629 - Land west of Heckenhurst Avenue, Brownside, Burnley

Minutes (Draft):

Town and Country Planning Act 1990

Erection of 36 three and four bedroom dwellings with associated landscaping, car parking and access from Heckenhurst Avenue

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 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 five 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. The Committee was advised by the Legal Advisor that any decision taken in this matter must be based on, and only on, proper planning grounds reflecting their planning judgment of the case. Their officers had advised fully in relation to the relevant material considerations and policy background and members should consider that advice carefully. Whilst they were not bound to follow that advice, in any appeal proceedings arising out of the decision they made, the Council would be expected to produce evidence to substantiate each reason for refusal, by reference to the Development Plan and all other material considerations. If the Council failed to, or could not do so, then costs may be awarded against it. The Legal Advisor reiterated that members were not bound to adopt the

professional or technical advice given by their own officers or received from statutory bodies or consultees. However, they would be expected to show that they had reasonable planning grounds for taking a decision contrary to such advice and were able to produce relevant evidence to support their decision in all respects. If the Council were to fail to do so, it may be liable to have costs awarded against it. Whether or not a costs order may, or may not, be made and how much that may, or may not, amount to, was, however, not a material consideration and was therefore not something members should be considering in deciding whether planning permission should be granted or not. On several occasions the Head of Housing and Development Control asked members who were minded to refuse the application to provide detailed reasons why they believed the application did not meet Local Plan Policies IC1, IC2 and IC5.

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 IC1 Sustainable travel and IC2 Managing transport and travel impacts and IC5 Protection and Provision of Social and Community Infrastructure:

- “1. The social infrastructure within the local area, including the provision of school places and health care facilities, is unable to cater for the cumulative impacts of development in Worsthorne, inclusive of the proposed development, which would adversely affect the delivery of social and community facilities, contrary to Policy IC5 of Burnley's Local Plan (July 2018).*
- 2. The proposed development would fail to deliver sustainable travel and maximise opportunities for the use of sustainable modes of travel by adopting the hierarchy set out in IC1 b) or provide safe and convenient access due to the conditions of Brownside Road which:-*
 - i) is restricted to one lane in width due to parked cars, thereby compounding issues of congestion and inconvenience to users; and,*
 - ii) has inadequate footways that do not exist on both sides of the road, reducing the provision of accessible routes between the application site and local and surrounding facilities including bus stops, and the primary school, local shop, church, public houses in Worsthorne village and facilities towards Pike Hill and Burnley town centre.*

The proposed development would therefore lead to unacceptable conditions and reduce highway safety for all highway users, contrary to Policies IC1 and IC2 of Burnley's Local Plan (July 2018). The risk is heightened for school children, the elderly and those with accessibility issues, who are clearly listed in the Equality Act 2010.”

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 five working days after the day of the meeting, then the matter will be referred to Full Council for determination.

On 21st March 2024 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 that to refuse the planning application for the reasons stated above would be a decision that is substantially contrary to the Local, and accordingly, the planning application is referred to Full Council for determination.

In accordance with the legal advice 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 Full Council for final determination.

OFFICER RECOMMENDATION

4. Delegation to the Head of Housing and Development Control to Approve subject to a section 106 Agreement to secure affordable housing, open space improvements, greenway creation and maintenance and management of public open space, reservoir walls and SuDS and education and highway contributions.

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 is 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 21st March 2024 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 are:
 - The application site is allocated as a housing site in Burnley's Local Plan under Policy HS1 – Site HS1/12 – Former Heckenhurst Reservoir.
 - As a housing allocation, the site forms part of the Local Plan's housing supply identified to meet the borough's housing requirement 2012-2032 as set out on Policy SP2 (Housing Requirement).
 - The appropriate level of infrastructure that is needed to deliver this level of housing growth and the associated impacts from development of all housing allocations were assessed in consultation with the relevant stakeholders and examined by a Planning Inspector appointed by the Secretary of State prior to the adoption of the Local Plan.
 - The Local Plan is sound, is the development plan in force and has full weight in decision making. The Council has recently carried out a five year review of the Local Plan and resolved in July 2023 that an update of Burnley's Local Plan 2012-2032 is not necessary at the present time.

- Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
- The Officer report which is attached below and updated where appropriate, explains that the proposed development is a policy compliant scheme, displays a high quality in its design, that there are no objections from statutory consultees and that there are key benefits that would arise from the development.
- The DC Committee has advanced Policies IC1, IC2 and IC5 as reasons for refusal but have not provided any evidence to support the reasons for refusal.
- In respect of school places, the local education authority (Lancashire County Council) has an adopted Education Contribution Methodology for assessing the impact of residential development on the future capacity of schools within the local area. The Methodology confirms that an education contribution will only be sought where there is a projected shortfall of places in schools within the local area of a development. The local education authority has not identified a shortfall in the capacity for primary school places but has identified a shortfall in capacity for secondary school places and requests a contribution of £133,585 for the cost of 5no. secondary school places which is the full secondary school pupil yield arising from the proposed development of 36 dwellings. The applicant has agreed to this contribution in full.
- The DC Committee's concerns about healthcare services are generalised, are not specific and not based on evidence. Healthcare providers are engaged in the Local Plan process which provides knowledge and time to plan for changes in future capacity. No requests for primary healthcare contributions have been received and there is no evidence that future occupiers would not have access to facilities in Burnley. A contribution towards secondary healthcare was requested by the East Lancashire Health Trust NHS in January 2023; similar requests were also made for other planning applications involving residential development and the Council sought counsel opinion which affirmed that such contributions would not meet the specific tests for contributions (set out at Regulation 122 of the Community Infrastructure Regulations 2010) and would be unlawful. This is explained in the Officer Report. The Council has not therefore sought secondary healthcare contributions on this or other similar applications. The proposed development would be providing for new social and community infrastructure as referred to in Policy IC5 through the provision of on-site public open space and improvements to off-site open space.
- The local highway authority (Lancashire County Council) has no objection to the application subject to a number of conditions and improvements to two bus stops on Brownside Road. Since the application was first considered at the DC Committee on 7th February 2024 and concerns expressed by members in respect of a lack of safe crossing on Brownside Road, the applicant has agreed to a contribution of £100,000 to fund road safety improvements. The local highway authority advise that a pedestrian refuge island would be the most appropriate form of crossing at this location due to the amount of usage, road positioning, viability and overall safety. This would increase the safety in crossing the road, particularly for children walking to and from school and for elderly and would be a benefit to existing residents. The DC Committee's concerns regarding the impact of parked cars, reducing two sections of Brownside Road to single width, would not sustain a reason for refusal. The additional traffic at peak hours would be a very small proportion of overall traffic and the local highway authority raise no highway safety concern.

- The applicant has agreed to a request to contribute to open space and the creation of a Greenway between Brun Valley Forest Park and Worsthorne Recreation Ground which will improve accessibility and recreation by providing a rural route for pedestrians, cyclists and horseriders; this would enhance access to the countryside and provide a route on public footpaths from the application site to Worsthorne village.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

7. Members are asked to consider Counsel's advice which is expected to be issued and available to Members of Burnley Council only prior to the date of the Full Council meeting.

POLICY IMPLICATIONS

8. Members are asked to consider Counsel's advice which is expected to be issued and available to Members of Burnley Council only prior to the date of the Full Council meeting.

DETAILS OF CONSULTATION

8. None.

BACKGROUND PAPERS

9. Application file FUL/2022/0629

FURTHER INFORMATION

PLEASE CONTACT: JANET FILBIN

01282 475896

ALSO: PAUL GATRELL