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## **NOTIFICATION OF THE DECISION OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES FOLLOWING THE MEETING OF THE DEVELOPMENT CONTROL COMMITTEE HELD ON THURSDAY 14TH MARCH 2024**

**10) *Decision of Head of Legal and Democratic Services - FUL/2022/0629-  
Land to the west of Heckenhurst Avenue, Brownside, Burnley***

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**21<sup>st</sup> March 2024**

**PUBLISHED**

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## FUL/2022/0629- Land to the west of Heckenhurst Avenue, Brownside, Burnley

On 14<sup>th</sup> March 2024 the Development Control Committee considered the above planning application. The application is for the erection of 36 three and four bedroom dwellings with associated landscaping, car parking and access from Heckenhurst Avenue.

The matter has been referred to me because at the meeting and prior to the vote on the resolution the Head of Housing and Development Control advised Committee that they would not have delegated authority to pass a resolution to refuse the application as this would be a decision that in his professional opinion was substantially contrary to the Local Plan and Local Planning Policies. This view was supported by the Legal Officer who was present at the meeting.

An extract from the minutes of the meeting is set out below;

*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 officer. 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 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 5 working days after the day of the meeting, then the matter will be referred to Full Council for determination.*

As set out above, the matter has been referred to me in accordance with Section A.1.a.3 of the Council's Constitution for me to consider whether I agree with the view of the Head of Housing and Development Control that the decision to refuse the planning application would be substantially contrary to Burnley's Local Plan and the Local Development Framework or any other clearly stated Council Policy.

In coming to my decision, I have considered the planning report and the correspondence which were before the Development Control Committee together with the minutes of the Development Control Committee meeting and a letter dated 15<sup>th</sup> March from Smith and Love, Planning Consultants. I have reviewed Burnley Local Plan policies IC1 IC2 and IC5. The Head of Housing and Development Control has explained to me the rationale for his advice to Committee and I have also sought guidance from the Council's Principal Planner (Economy and Development.) I have also consulted with the Chair of Development Control Committee in making this decision.

Having considered all the matters I confirm that I am in agreement with 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 Plan.

The reasons for my decision are as follows;

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 boroughs housing requirement 2012-2032 as set out in Policy SP2: Housing Requirement. The appropriate level of infrastructure needed to deliver this level of housing growth and the associated impacts related to this level of development and all the Local Plan's housing allocations were assessed during the preparation of the Local Plan, in consultation with relevant stakeholders, and examined by a Planning Inspector appointed by the Secretary of State prior to the Local Plan's adoption.

The Council resolved in 2023 not to update the Local Plan which means that the Local Plan policies and the allocation of the land for housing continue to have full weight in decision making. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

The Planning Officer provided a detailed report on the planning application setting out in detail how the application complies with the Local Plan.

Whilst the Committee advanced policies IC1, 1C2 and IC5 as reasons to refuse the application, it is noted that the Committee have not provided any evidence to support the reasons for refusal.

The Officers at Development Control Committee explained to members that the proposed reasons were inadequate and unsubstantiated.

It is noted that the relevant statutory consultees do not raise objections to the application.

Lancashire County Council Schools Planning team has carried out an assessment of school places capacity using their adopted Education Contribution Methodology which is to identify and secure contributions against housing developments which are expected to create a shortfall in school places. The Education Contribution Methodology confirms that an education contribution will only be sought where there is a projected shortfall of places at schools within the local area of a development.

Lancashire County Council Schools Planning team have not requested a contribution for primary school places, only a contribution for 5 secondary school spaces that amounts to £133,585. The Applicant has agreed to fund the 5 secondary school spaces at a cost of £133,585. This fulfils the request in full.

Whilst it is noted East Lancashire Health Trust originally requested a contribution of £63,141 towards secondary health care, the request was not supported by the Planning Officers as the request does not meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. Similar requests have been previously made on other planning applications and the Council's view that such contributions would be unlawful has been made following counsel's advice and this position has been accepted on appeal. The members comments about health care are generalised concerns rather than specific and do not take into account that this site has been allocated through the Local Plan process that involves engagement with health providers to plan for any changes in capacity.

The local highway authority (Lancashire County Council) has no objection to the application but requested that two bus stops on Brownside Road be upgraded as part of a section 278 Agreement. This has been agreed by the Applicant. In addition, the Applicant has proposed to pay the sum of £100,000 as a highway safety contribution towards off site improvement works to Brownside Road.

It is anticipated that this would involve the creation of a pedestrian refuge island at an appropriate location on Brownside Road which would increase the safety in crossing the road, particularly for children and elderly persons. These measures will bring about an improvement to highway safety. In respect of parked cars on parts of Brownside Road, the amount of additional traffic using Brownside Road would not be a significant increase in proportion to the overall amount of existing traffic and the local highway authority raises no highway safety concern. A contribution of £60,450 has also been agreed for open space improvements and would in part be used to create a greenway between Brun Valley Forest Park and Worsthorne Recreation Ground. This would be a benefit from the development in improving access for pedestrians and cyclists in the local area. There are no other accessibility improvements in the local area that would directly relate to the development.

In conclusion I agree with 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 Plan.

My decision means that the planning application will need to be referred to Full Council for determination.

A handwritten signature in black ink that reads "CEWaudby". The signature is written in a cursive style with a large, looping 'y' at the end.

Catherine Waudby

Head of Legal and Democratic Services

21st March 2024.

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