



**NOTIFICATION OF THE DECISION OF THE HEAD OF
LEGAL AND DEMOCRATIC SERVICES FOLLOWING THE
MEETING OF THE DEVELOPMENT CONTROL COMMITTEE
HELD ON THURSDAY 9TH MARCH 2023**

**10) *Decision of Head of Legal and Democratic Services - FUL/2022/0149 -
Hollins Cross Farm, Woodplumpton Road, Burnley***

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PUBLISHED

16th March 2023

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FUL/2022/0149 - Hollins Cross Farm, Woodplumpton Road, Burnley

On 9th March 2023 the Development Control Committee considered the above planning application. The application is for the erection of 200no dwellings and associated works.

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 Senior Solicitor 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 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.

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 Local Plan and the Local Development Framework or any other clearly stated Council Policy.

In coming to my decision, I have considered the planning reports and the correspondence which were before the Development Control Committee together with the minutes of the Development Control Committee meeting. I have reviewed Burnley Local Plan policies CC4 and CC5. 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 Growth.) 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 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.

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, slightly slanted style.

Catherine Waudby

Head of Legal and Democratic Services

16th March 2023.

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